



WP(MD)No.14577 of 2020

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **29.06.2022**

CORAM:

THE HONOURABLE **MR.JUSTICE M.S.RAMESH**

W.P.(MD)No.14577 of 2020

The Correspondent,
Amala Convent Girls Higher Secondary School,
Thuckalay – 629 175,
Kanyakumari District.

... Petitioner

/vs./

1.The Chief Educational Officer,
Nagercoil, Kanyakumari District.

2.The District Educational Officer,
Thuckalay,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings vide O.Mu.No.1495/A3/2019 dated 02.07.2020 issued by 2nd respondent, quash the same and further direct the respondents herein to approve the appointment/transfer of Sr.Roselet Mary as BT Assistant (English) in the petitioner school w.e.f., 08.06.2017 and disburse grant-in-aid towards salary and other attendant benefits.



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For Petitioner : Mr.A.Ajith Geethan

For Respondents : Mr.V.Nirmal Kumar

Government Advocate

ORDER

The petitioner school is a Minority Aided Institution. When a post of Secondary Grade Teacher in the Middle School Section fell vacant due to retirement of one M.G.Mary Isabell, the post automatically got upgraded as BT Assistant Post, as per G.O.Ms.No.79, Secondary Education – U1, dated 14.06.2002.

2.In this background, the petitioner school had appointed one Sr.Roselet Mary as BT Assistant English in the sanctioned vacancy. The proposal seeking for approval of such appointment in April, 2019, came to be rejected by the second respondent, through the impugned order dated 02.07.2020 stating that there was surplus teacher from the year 2017-18 to 2019-2020.

3.The reason assigned by the second respondent cannot be sustained on two grounds. Firstly, when the petitioner's appointment was made in the year 2017,



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the staff fixation strength for the year 2016-17 alone ought to have been taken into consideration and not on the basis of the staff fixation done during the ensuing years, when one teacher was declared as surplus. Secondly, the existence of surplus teachers as a ground for rejection is concerned, the authorities are bound to grant approval for the appointments made to such teachers, who are absorbed in the approved vacancies and thereafter, either transfer them or re-deploy them to other needy schools.

4. Section 26 of the Tamil Nadu Recognized School Regulation Act, reads as follows:

“26. Absorption of Teachers or other persons on retrenchment.- Where any retrenchment of any Teacher or other person employed in any private school is rendered necessary consequent on any order of the Government relating to education or course of instruction or to any other matter, [or consequent on the reduction in strength of the pupil's studying in any such private school] it shall be competent for the Government or the School Committee of any private school to appoint such Teacher or other person in any school or institution maintained by the Government or in such private school, as the case may be.



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[Explanation.-For the purpose of this section, the strength of the pupil's shall be determined in accordance with the norms fixed in the Grant-in-Aid Code of the Tamil Nadu Education Department or under any Rule, Regulation or other as may be made or issued by the Government or the Director of School Education, from time to time, for appointment of Teachers or others in any private school].

5.The scope of Section 26 of the Act was dealt in several orders of this Court and in one such decision, a learned Single Judge of this Court, in the case of **S.Rasheetha Banu Vs. State of Tamil Nadu, Represented by its Secretary to Government, Chennai and others** reported in **2012 (4) MLJ 198**, had reiterated this position, in the following manner:

“6..... The fall in strength of the students took place in the year 2003-2004, which cannot be a ground to reject the approval of appointment of the petitioner from 1.4.1998.

7. The issue involved in this Writ Petition was already considered by a Division Bench of this Court in W.A. No. 1263 of 2001, dated 22.1.2004. In the said Judgment, it is held that if a person is appointed in a sanctioned post, the approval of appointment cannot be rejected and if there is fall in strength and the post become surplus, after granting



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approval of the post. the said teacher along with post could be transferred/deployed to a needy school. The said Judgment of the Division Bench was followed in W.P. (MD). No. 11353 of 2008, dated 11.9.2009. As against the said order dated 11.9.2009, the department preferred W.A.(MD). No. 703 of 2009. A Division Bench of this Court, by Judgment dated 1.2.2011, dismissed the said Writ Appeal.

8. Applying the said Judgments to the facts of the present case and having regard to the undisputed fact that the Government has issued G.O(2D), School Education Department, dated 1.2.2011, conferring minority status on the fifth respondent school from the academic year 1990-1991 and directed that the appointment of the petitioner as Secondary Grade Teacher with effect from 1.4.1993 shall be approved and arrears of salary payable to the petitioner was directed to be paid, in my considered opinion, there can be no impediment for the respondents to approve the appointment of the petitioner as Secondary Grade Teacher with effect from 1.4.1998.”

6.A combined reading of Section 26 of the Act, with the decisions of this Court, particularly in the case of **S.Rasheetha (supra)** as extracted above, lays down the proposition that, even in cases when there is a fall in the students strength and the post of Secondary Grade Teachers are rendered as surplus, the



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authorities are bound to grant approval for the appointments made to such teachers, who are absorbed in the approved vacancies and thereafter, either transfer them or re-deploy them to other needy schools. The official respondents have deviated from this legal proposition in the impugned order by rejecting the request for approval of appointment of the petitioner as Secondary Grade Teacher. As such, the impugned rejection order cannot be sustained.

7.In light of the above discussions, the impugned order dated 02.07.2020 issued by the second respondent stands quashed. Consequently, there shall be a direction to the second respondent herein to pass orders granting approval for appointment of Sr.Roselet Mary, as BT Assistant (English), with effect from 08.06.2017, within a period of eight (8) weeks from the date of receipt of a copy of a copy of this order. This Writ Petition stands allowed. There shall be no order as to costs.

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Index : Yes

Internet : Yes

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TO:

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- 2.The District Educational Officer,
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M.S.RAMESH, J.

Sm

Order made in
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Dated:
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