



WP(MD)No.14584 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.14584 of 2020
and W.M.P.(MD)No.12229 of 2020

Correspondent,
Amali Girls Higher Secondary School,
Irudayakulam,
Vickramasingapuram,
Tirunelveli District.

... Petitioner

/vs./

1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St. George, Chennai – 600 009.

2.The Director of School Education,
College Road, Chennai – 600 009.

3.The Chief Educational Officer,
Tirunelveli, Tirunelveli District.

4.The District Educational Officer,
Cheranmahadevi, Tirunelveli 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



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the impugned proceedings issued by the 2nd respondent Director of School Education in Moo.Mu.No.017486/D2/e3/19 dated 01.10.2020, quash the same and further direct the respondents herein to convert one post of BT Assistant Social Science into BT Assistant English and further to approve forthwith the transfer cum appointment of Sr.K.Reeta Pushpam as BT Assistant English in the petitioner's school w.e.f., 13.06.2018 and disburse the grant-in-aid towards her salary and allowance w.e.f. the said date.

For Petitioner : Ms.A.Amala

For Respondents : Mr.V.Nirmal Kumar,
Government Advocate.

ORDER

The petitioner school is a Minority Institution. When a vacancy arose for the post of BT.Assistant (Social Science) on 30.11.2017, the petitioner had appointed one Tmt.Sahaya Kulandai Therese for the post of B.T.Assistant (English) for Standards VI to X, since the school did not have any B.T.Assistant (English) Teacher. For the purpose of conversion, the petitioner school had sent a proposal to the Chief Educational Officer, who had favourably recommended for such conversion to the Joint Director of School Education, through the proceedings dated Nil March 2019, whereby he had observed that the school



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requires four English Teachers and since did not have even one Teacher, such conversion was necessary. However, the second respondent herein, through the impugned proceedings dated 01.10.2020, had rejected the petitioner's proposal and had not considered the recommendation of the third respondent herein by stating that since the school had four surplus Teachers, such conversion was not possible.

2. This Court, in various decisions, had consistently held that whenever Teachers are found to be surplus in an institution, the only recourse available to them is to redeploy the such surplus Teachers to the needy school and that existence of surplus Teachers cannot be a ground for rejection of a proposal seeking approval of appointment made to a sanctioned post.

3. Insofar as the conversion of the sanctioned post is concerned, this Court, in the case of *The Corporate Manager, CSI Corporate Schools Vs. The State of Tamil Nadu, Rep.by its Secretary, Department of School Education* reported in **2006 (5) CTC 504**, has held that there was no impediment for the Management to fill up the post by appointing a Teacher in the relevant subjects, when no such



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qualified Teachers are available. The relevant portion of the order reads as follows:

“II. As rightly argued by the learned counsel for the petitioner; hitherto the concerned managements sent proposal for the conversion of posts and the second respondent used to grant permission to convert the post from one subject to the other needy subject. Learned counsel also submitted that by proceeding Mu.Mu.No.137700/W6/88 dated 8.2.1989, the second respondent at the request of the Management, granted permission to the St.Francis Higher Secondary School, Vavarai, Kanyakumari District, to convert the post of the PG Assistant (Geography) into PG Assistant (Commerce). Similarly, by proceeding Thi.Mu.No.89903/W6/98 dated 16.3.1999, at the request made by the management of the St.Mary Higher Secondary School, Colachal, the second respondent granted permission to convert the post of PG Assistant (Zoology) into PG Assistant (Commerce). From the above proceedings it is clear that the need of the particular subject teacher in a School will be ascertained by the concerned management and if any conversion of post is required, the concerned management will submit a proposal based on the workload and the second respondent after verifying the same, used to grant permission. But, by the impugned circular, the second respondent has directed the management to fill up the vacant posts by subject roster without ascertaining the real need of the school with regard to the subject teacher. Hence the impugned circular is unreasonable and based on no material. It may



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be true, for a new school, when posts are sanctioned, the second respondent is justified in giving a subject roaster to fill up the posts, but cannot insist the Schools, where teachers are already working in different subjects.

12. The Director of School Education on his own has issued circular to fill up the post of Maths, English and Science in the vacancies arising from 1.6.2003. It is also stated in the said circular that for the subject of Scientific Tamil only Science teacher is competent to handle the classes, which is a new subject introduced. It is not in dispute that all the post in a school having standards 6 to 8 are earmarked as Maths, English and Science respectively. It is stated in the impugned circular that the retirement/death/resignation vacancies arising from 1.6.2003 shall be filled up by following the subject roaster. The said circular do not consider the availability of qualified B.A. and B.Ed passed Secondary grade Teacher working in the school for handling English, Maths and Science Subjects. If really there are qualified teachers available to handle English or Maths or Science subjects in the school, it is definitely open to the management to fill up the post by appointing a teacher in the relevant subjects, where there are no qualified or sufficient teachers available. Hence it is clear that the second respondent issued the circular without application of mind and without considering the relevant facts such as availability of teachers in the subjects of English, Maths and Science in a particular school.

13. The impugned order is also in violation of the Tamil



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Nadu Recognised Private Schools (Regulation) Act and Rules, wherein it is not stipulated anywhere that the particular school should follow the subject roaster. Even G.O.Ms.NO.125 dated 12.11.2003, which is governing the appointment of Middle Grade Graduate Teachers in standards 6 to 8, nowhere states that subject-wise roaster should be followed. In the absence of anything contained in the said

Government Order, the second respondent has no jurisdiction to issue the impugned circular and if at all subject roaster is to be followed by the management, it is the government who is competent to issue the subject roaster in accordance with Section 19 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973.”

4. Thus, when there was no illegality or any other impediment for the petitioner to seek for conversion and approval of the appointment of the Teacher to the post of B.T.Assistant (English) in the sanctioned vacancy of B.T.Assistant (Social Science), the respondents were not justified in rejecting the proposal.

5. Accordingly, the impugned order dated 01.10.2020 passed by the second respondent is quashed. Consequently, there shall be a direction to the second respondent herein to forthwith pass orders based on the petitioner's request for



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conversion of the sanctioned vacancy of B.T.Assistant (Social Science) to B.T.Assistant (English), within a period of four weeks from the date of receipt of a copy of this order. Thereafter, the second respondent herein shall duly forward the sanctioned order to the third respondent herein, who shall pass orders approving the appointment of Sr.K.Reeta Pushpam as B.T.Assistant (English) in the petitioner school with effect from 13.06.2018, within a period of four weeks from the date of receipt of the sanctioned order from the second respondent herein.

6. The Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes / No
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M.S.RAMESH, J.

vsm

To

- 1.The Secretary,,
State of Tamil Nadu,
Department of School Education,
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- 2.The Director of School Education,
College Road, Chennai – 600 009.
- 3.The Chief Educational Officer,
Tirunelveli, Tirunelveli District.
- 4.The District Educational Officer,
Cheranmahadevi, Tirunelveli District.

Order made in
W.P.(MD) No.14584 of 2020

Dated:
29.06.2022