



Cont.P.(MD).No.1306 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 04.11.2022

DELIVERED ON : 06.12.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

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In

W.P.(MD).No.20770 of 2016

The Secretary,
Thiyagarajar Colony Primary School,
Pasumalai – 625 004,
Madurai District.

... Petitioner/Petitioner

Vs

The District Elementary Educational Officer,
Madurai, Madurai District
Now
Gokila,
The District Educational Officer,
Thirumangalam – 625 706,
Madurai District.

... Contemnor/2nd Respondent

PRAYER: Petition filed under under Section 11 of the Contempt of Court Act, 1971, to punish the contemnor for wilfully disobeying and not complying with the order of this Court, dated 01.10.2021, in W.P.(MD).No.20770 of 2016.



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For Petitioner : Mr.P.Muthuvel,
For M/s.Isaac Chambers.

For Respondent : Mr.S.Kameswaran,
Government Advocate.

ORDER

This Contempt Petition is filed alleging disobedience of the order passed in W.P.(MD).No.20770 of 2016 dated 01.10.2021.

2. The prayer in the Writ Petition is to quash the impugned order dated 11.08.2016 and the staff fixation order for the academic years 2014-2015 and 2015-2016 dated 30.01.2015 and 19.01.2016, insofar as it renders one post of Secondary Grade Teacher as surplus as against the minimum requirement of five teachers and denies approval to the appointment of D.Tamilarasi as Secondary Grade Teacher with effect from 31.03.2010 and direct the authorities to grant approval and consequential benefits.



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3. This Court after considering the stand of the respondents, directed the authorities to approve the appointment and disburse the grant-in-aid. The Hon'ble Court further held that it is open to the respondents to pass appropriate order for surrender or deployment of surplus teachers. The relevant portion of the order dated 01.10.2021 in W.P.(MD).No.20770 of 2016 is extracted hereunder:

“21. The stand taken by the respondent in the counter affidavit is unacceptable, in view of the precedents cited on behalf of the petitioner. The status of a person appointed earlier on 31.03.2010, and the rights or benefits accrued to the teachers or the management cannot be deprived on the basis of an event that happened much later and the date of application of proposal for approval may not have any relevance or affects the rights of the teacher, who got appointment on 31.03.2010. The approval of appointment is a procedure to be followed after the appointment and the approval makes the appointment valid with effect from the date of appointment. The eligibility of the school to have a teacher should be tested with reference to the date of appointment. The submission of the learned Government Advocate and the stand taken by the respondent cannot be approved by this Court. The impugned order of the first respondent in Na.Ka.No.8785/G3/2016, dated 11.08.2016, relates to the denial of approval of appointment is quashed. Accordingly, this Writ Petition is allowed in part. Learned Senior Counsel appearing for the petitioner did not make any submission regarding the staff fixation for 2014-15 and 2015-16 by order dated 30.01.2015 and 19.01.2016 respectively. Hence no relief is granted. It is open to the respondents to pass any appropriate order regarding surrender or deployment of surplus teachers, as may be



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permissible in law. The second respondent is directed to accord approval to the appointment of G.Tamilarasi, in the post of Secondary Grade Teacher with effect from the date of appointment ie., 31.03.2010 and disburse the grant-in-aid to the teacher concerned and other monetary benefits if any, within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.”

4. The brief facts as stated in the affidavit are that the Thiagarajar Colony Primary School, Pasumalai is a recognized and aided School administered by Thiagarajar Mills Private Limited. The School was established in the year 1959 and offering education from Standards I to V in Tamil Medium. The Government grants financial aid towards staff salary. There are five teachers in the School viz., one Headmistress, four Secondary Grade Teachers. The total student strength of the School is 100. One post of Secondary Grade Teacher fell vacant on 01.11.2005 due to promotion of Mrs.Subbulakshmi as Headmistress. The DEO granted permission to fill up the vacancy vide order dated 09.02.2010. Thereafter, paper notification was issued and the petitioner's School has also obtained list of eligible candidates from the District Employment Exchange. The interview was scheduled on 24.03.2010. The School selected one Mrs.D.Tamilarasi and appointed her as Secondary Grade Teacher with effect from



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31.03.2010 and she joined duty on the same day. The School submitted proposal to DEO for approval. In the meanwhile, the DEO while fixing staff fixation for the next academic year 2010-2011 vide proceedings dated 13.12.2010 rendered one post of Secondary Grade Teacher as surplus and the School immediately submitted an objection on 28.03.2011 to Director seeking to refix the staff strength as a School is eligible for atleast six teachers and requested to approve the appointment of Mrs. D. Tamilarasi. The strength of the students is as follows:

Standard	Students Strength	Eligible Posts	Sanctioned Posts (till 2009-2010)	Teachers Working	Rendered Surplus (2010-2011)
I	42	2	6	6	1
II	19	1			
III	20	1			
IV	23	1			
V	32	1			
TOTAL	136	6	6	6	1

As per the above table, the School is eligible for six teachers and the following teachers were working in the School against the sanctioned vacancy in the academic year 2010-2011.

- 1.K.Sublakshmi - Headmistress
- 2.R.Rajeshwari - Secondary Grade Teacher
- 3.K.Alamelu Mangai - Secondary Grade Teacher



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|------------------|---|
| 4.M.Ramachandran | - Secondary Grade Teacher |
| 5.R.Renganayaki | - Secondary Grade Teacher |
| 6.D.Tamilarasi | - Secondary Grade Teacher (approval pending). |

The above staffs were appointed after getting prior permission from the official respondents. When the appeal preferred by the School to re-fix the staff strength for the academic year 2010-2011 was pending before the Director, for the subsequent years, the DEO issued staff fixation order for the next academic year 2011-2012 and fixed only five teachers are eligible. In the year 2012, the Headmistress namely, Mrs. Subbulakhmi retired from service on 30.09.2012 and the next senior most teacher namely, R.Rajeswarai was promoted as Headmistress with effect from 01.10.2012. Therefore, the School was functioning with five teachers in the academic year 2011-2012 including the said D.Tamilarasi. The DEO settled the staff strength for the academic year 2011-2012 as 6 (one HM and five Secondary Grade Teachers) and for the academic year 2012-2013 as 5+1 (one post rendered as surplus). The DEO while fixing the staff strength for the academic year 2014-2015 rendered one post of Secondary Grade Teacher as surplus against the availability of five sanctioned vide order dated 30.01.2015. The DEO fixed the staff strength of the School as 4 teachers is against law, since



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for each class one teacher is necessary. The School submitted objection on 02.03.2015 requested to fix staff strength as 5. The DEO without passing any orders, again fixed the staff strength of the School as 4 for the academic year 2015-2016 and submitted the students strength as under:

Standard	Students Strength	Eligible Posts	Sanctioned Posts (till 2013-2014)	Teachers Working	Rendered Surplus
I	20	1	5	5	1
II	16	1			
III	20	1			
IV	20	1			
V	24	1			
TOTAL	100	5	5	5	1

5. The claim of the petitioner is since the School is functioning with five standards, five teachers are necessary irrespective of students strength as held in Full Bench decision reported in (2006) 5 CTC 385. Hence, the said Tamilarasi filed W.P.(MD).No.269 of 2015 for Mandamus directing to regularize her service and this Court vide order dated 09.06.2015 directed the first respondent therein to pass appropriate orders in the pending appeal. Since no action was taken, the said Tamilarasi has filed Contempt Petition in Cont.P.(MD).No.964 of 2016. In the



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meanwhile, the Director has rejected the petitioner's request to approve the said Tamilarasi vide order dated 11.08.2016 stating that as per the available students strength, the School is eligible to have one Headmistress and three Secondary Grade Teachers and the said Tamilarasi is in the fifth place for appointment cannot be approved. Challenging the same, the present Writ Petition was filed. This Court after hearing the rival contentions has held the stand of the respondents in the counter affidavit is unacceptable in view of the precedence cited on behalf of the petitioner. This Court has directed the respondents to grant approval and pass appropriate deployment orders.

6. Heard Mr.P.Muthuvel, learned counsel for M/s.Isaac Chambers, appearing for the petitioner and Mr.S.Kameswaran, learned Government Advocate appearing for the respondent.

7. The contention of the petitioner is that since the said Tamilarasi was appointed after getting prior permission from the educational authorities, after selecting the candidates, the respondents cannot deny approval to the said selected teacher. The petitioner further submitted since the School is having five standards, each class is entitled to one teacher as rendered in Full Bench decision



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reported in (2006) 5 CTC 385 case. The basis of the judgement rendered by the Hon'ble Full Bench was taken away by the subsequent enactment of the Right of Children to Free and Compulsory Education Act, 2009, wherein, under schedule, the number of teachers has been fixed, by taking the overall total number of students and not based on the number of standards. The relevant portion is extracted hereunder:

THE SCHEDULE
(See sections 19 and 25)
NORMS AND STANDARDS FOR A SCHOOL

Sl. No.	Item	Norms and Standards
1. Numbers of teachers: (a) For first class to fifth class	Admitted children	Number of teachers
	Up to Sixty	Two
	Between sixty-one to ninety	Three
	Between Ninety-one to one hundred and twenty	Four
	Between One hundred and twenty-one to two hundred	Five
	Above One hundred and fifty children	Five plus one Headteacher
	Above Two hundred children	Pupil-Teacher Ratio (excluding Head-teacher) shall not exceed forty



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Admittedly the respondents have granted prior permission to fill up the post. But at the time of joining, there was no staff fixation order and hence the petitioner school had appointed the teacher. Subsequently, there was steady reduction of students strength. When the staff fixation for the academic year 2013-2014 was fixed, the students strength was only 100 students, for which the school is eligible for four teachers including HM. In such circumstances, the claim of the petitioner school is improper. In order to solve this problem, this Court is of the considered opinion that if the students strength is available at the time of prior permission, but subsequently declined, then the new teacher's appointment should be stated as "ad hoc appointment" which is subject to staff fixation for the subsequent academic years. The ad hoc appointees will be eligible for salary for the period from the date of appointment until the date of staff fixation. If the approval is not granted based on surplus issue, then the appointee shall leave the service. In the present case, the teacher had worked until the staff fixation and is eligible for the grant-in-aid salary upto the date of staff fixation. Thereafter, the petitioner school shall pay the salary from their own funds and cannot seek any grant-in-aid.



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8. The next contention that was raised is that the Department is having every right to transfer the surplus teacher or pass deployment order. The Hon'ble Court has directed the educational authorities to grant approval and thereafter to pass appropriate deployment orders. In such circumstances, the respondents ought to have obeyed the orders of the High Court and cannot deny approval. This Court has passed several order to approve and thereafter transfer to any other school. Based on this order, the surplus teachers strength has increased and reached to above 5000. If the same is allowed, then there will be steady increase in surplus teachers and the issue cannot be solved at all. Therefore, the transfer and deputation order would aggravate the issue.

9. For the reasons stated above, this Court is passing the following order:

i. The petitioner school is entitled to grant-in-aid for salary to be paid for the said teacher Tamilrasi from the date of appointment till the date of next staff fixation where the school was rendered surplus.

ii. Thereafter, the school shall pay the salary to the teacher and the grant-in-aid shall not be paid.

iii. Hence, the school is not entitled to approval of appointment.

10. With the above observation the contempt petition is closed.



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11. Before parting with the judgment, this Court is directing the Education Department to issue Government Orders covering the following issues, thereby, the school shall follow the same.

i. The school shall get prior permission for filling the vacancy and while processing the prior permission application, the Department shall impose condition that the appointment is subject to the staff fixation for the same academic year and the next academic year.

ii. The said appointment shall be adhoc appointments which will be subject to the staff fixation and adhoc appointees are not eligible for any benefits applicable to the regular permanent employee.

iii. Before considering the application for approval, the Department shall circulate the surplus teachers available with the Department and the School is at liberty to choose any one teacher from the list.

iv. The guidelines is not exhaustive. The Department, the School and the Teachers shall co-ordinately work, so that the public money is not wasted by paying enormous salary to surplus teachers.

06.12.2022

Index : Yes / No

Internet : Yes

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To

The District Educational Officer,
Thirumangalam – 625 706,
Madurai District.



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S.SRIMATHY, J

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Pre-delivery Order made in
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