



W.P.(MD)No.10454 of 2015

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.10.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.10454 of 2015

Sundarambal Middle School,
Represented by its Secretary,
G.Joseph Jeyaseelan

... Petitioner

Vs.

1.The District Elementary Educational Officer,
DEEO's Office, R.M.S.Road,
Madurai – 1.

2.The Additional Assistant Elementary Educational Officer,
South Cithirai Street,
South Range,
Madurai – 1.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, forbearing the respondents from insisting prior approval under Rule 15(4) c of the Tamil Nadu Recognized Private School Regulation Rules 1974 in respect of sanctioned post of teachers including retired vacancies arising in the petitioner's School.

(Prayer amended vide Court Order dated 30.11.2020 made in W.M.P.(MD).No. 15649 of 2019 in W.P.(MD).No.10454 of 2015)

For Petitioner : Mr.C.Godwin

For Respondents : Mr.C.Baskaran,
Government Advocate,
(Civil Side).



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ORDER

This Writ Petition has been filed for Writ of Certiorarified Mandamus to quash the impugned order dated 08.06.2015 and to direct the 1st respondent to grant prior approval to the application of the petitioner school dated 16.03.2015 in terms of Rule 15(4)(c). When the writ petition is pending for adjudication, the petitioner filed a petition seeking to amend the prayer and the same was allowed on 30.11.2020 in W.M.P.(MD)No.15649 of 2019. Now the prayer is amended as Writ of Mandamus forbearing the respondents from insisting prior approval under Rule 15(4)(c) of the Tamil Nadu Recognized Private School Regulation Rules 1974 in respect of sanctioned post of teachers including retired vacancies arising in the petitioner's School.

2. The facts as stated in the affidavit are that the petitioner's School is a recognized Private Aided Non-Minority Middle School, having standards I to VIII. The number of students studying in the School is 265 and the teachers-strength is 9. The first respondent who is the competent authority sanctioned 9 teaching posts for academic year 2014-2015, of which 1 Headmaster, 3 B.T. Assistants and 5 Secondary Grade Teachers. Out of 9 posts, 1 Headmaster, 2 B.T.



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Assistants and 2 Secondary Grade Teachers are now working and the remaining 1 B.T. Assistant and 3 Secondary Grade posts are vacant. On 16.03.2015, the petitioner applied before the first respondent under Rule 15(4)(c) of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974 for prior permission to fill up the post of 1 B.T. Assistant and 3 Secondary Grade Teachers. The first respondent returned the application to the second respondent to get additional particulars from the petitioner's School. The second respondent directed the petitioner to produce Stability Certificate, Building License, Sanitary Certificate and No Objection Certificate from Fire Service Department and also recent "Visit Report" of the second respondent. On 19.03.2015, the second respondent visited the School and found that 1 Headmaster and 4 teachers are working and the School has got 4 posts to be filled up. On 21.03.2015, the petitioner resubmitted application to the second respondent along with 4 certificates sought and the "Visit Report" of the second respondent dated 19.03.2015. On 24.03.2015, the second respondent forwarded the resubmitted application to the first respondent. On 18.05.2015, the first respondent directed the second respondent to get few more additional particulars from the petitioner's School and the second respondent directed the petitioner's School to furnish additional particulars. The petitioner has submitted the additional particulars. Instead of forwarding the



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same, the second respondent returned the application stating that the petitioner's School is eligible for 5 Secondary Grade teachers and now, 5 Secondary Grade teachers are working. Hence, prior approval for 3 Secondary Grade teachers cannot be recommended and returned the application. The claim of the petitioner is that the second respondent has no authority to return the application. The competent authority is the first respondent under Rule 15(4)(c) of the Tamil Nadu Recognized Private Schools (Regulation) Rules 1974. The proceedings of the second respondent dated 08.06.2015 is liable to be set aside.

3. The respondents have filed counter stating that as per the staff fixation order for the academic year 2014-2015, 1 Middle School Headmaster and 3 B.T. Assistants, 5 Secondary Grade Teachers were granted. One G.Joseph Jeyaseelan who worked as Secondary Grade Teacher, was promoted as Middle School Headmaster with effect from 01.07.2005 in the retirement vacancy of the existing Middle School Headmaster. No approval for his appointment as Middle School Headmaster was given by the Department till date. The said Teacher filed W.P. No.4829 of 2012 and no final order has been passed. Hence, the post of Secondary Grade Teachers became vacant due to the promotion of the said Teacher, is a disputed post in terms of the facts. Hence, this Secondary Grade



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Teacher post cannot be filled up till the final order passed in the Writ Petition.

The respondents also submitted that 2 Secondary Grade Teachers namely, Rani and G.Arockia Sahayarani have been promoted as B.T. Assistants with effect from 01.06.2010 and no approval was granted for various reasons. The Teachers have filed Writ Petitions in this regard and it is pending. Hence, these Secondary Grade Teachers posts are disputed posts and cannot be filled up till the final orders are passed in the Writ Petitions. The respondents further submitted that the following teachers are now working in the petitioner's School:

1.G.Joseph Jeyaseelan, who has been promoted as Middle School Headmaster. Since it is under dispute, the incumbent is receiving the salary of the Secondary Grade Teachers till date.

2.I.Rani, who has been promoted as B.T.Assistant whose appointment as B.T.Teacher has not been approved. Hence, she is receiving the salary of Secondary Grade Teacher only.

3.G.Shayarani, who has been promoted as B.T.Assistant which is not approved and she also receiving the salary applicable to the Secondary Grade Teacher post.

4.Yasmin Michael Syndia was working as Secondary Grade Teacher.

5.J.Jesintha was also working as Secondary Grade Teacher.

As of now, 5 Secondary Grade Teachers salary is being disbursed. Hence the post of 1 Middle School Headmaster and 3 B.T. Teachers are treated as disputed post as litigations area pending for adjudication. Until final orders are



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passed, the appointment of Middle School Headmaster and 2 B.T. Assistants cannot be filled up and the incumbents who were promoted from the post of Secondary Grade Teachers, will be treated as Secondary Grade Teachers only. Under Rule 15(4) (ii) of the Tamil Nadu Recognized Private (Regulations) Rule 1974, in the case of the appointment from any other School or by the Direct Recruitment, the School Committee shall obtain the prior permission of the District Educational Officer setting out the reasons for such appointment. This is the statutory provision made in the Act. Hence, for making appointment on direct recruitment, prior permission is necessary. The prior permission of the first respondent is a statutory provision and all the aided Schools have to obey it. Therefore, the respondents prayed to dismiss the Writ Petition.

4. The respondents filed additional Counter, wherein, it has been stated in the staff fixation order for the year 2021-2022, the School is eligible for 1 Middle School Headmaster, 3 B.T. Assistants and 3 Secondary Grade Teachers. Pending application, the School was brought under Direct Recruitment. Subsequently, there were litigations and the allegations against the petitioner. Therefore, the official respondents in order to safeguard the welfare of the students passed the deputation order for one G.Murugan of Thirugnanam Middle School and D.Paul



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Samson of Nehru Middle School to serve in the said School. However, the existing teachers working in the School did not permit the said two teachers who were sent on deputation. In the meanwhile, the said Educational Agency was arrested and sent to Jail under Sections 354, 354A, 509 IPC and 4 of TNPHW Act and 28 of the Sexual Harassment of women at work place Act 2013 and 201 I.P.C. On 20.06.2022 in order to ascertain the recent developments, the official respondents visited the School. The strength of students on roll and the students present are hereunder:

Standard	No.on Roll	No.Present
I	2+6	2+4
II	7+11	4+7
III	4+10	1+3
IV	3+7	1+7
V	9+5	3+2
Total	25+39	11+23
VI	8+2	1+2
VII	6+4	4+4
VIII	9+4	5+4
Total	23+10	10+10

Since the students are less the school is not eligible for more teachers as claimed by the school.

5. Heard Mr.C.Godwin, learned counsel for the petitioner and



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Mr.C.Baskaran, learned Government Advocate, (Civil Side) appearing for the respondents and perused the records.

6. On perusal of the papers, it is seen that the petitioner's School was originally sanctioned with 1 Middle School Headmaster, 3 B.T. Assistants and 5 Secondary Grade Teachers, when the students-strength was 265 during the academic year 2014-2015.

Standard	I	II	III	IV	V	Total
s						
Students	38	28	25	35	30	156

Standards	VI	VII	VIII	Total
Students	32	33	44	109

The school is eligible for 5 teachers for standards 1 to 5 based on students-strength of 156 and is eligible for 4 teachers (including HM) for standards 6 to 8 based on students-strength of 109. However, when the respondents visited the School in the year 2022, the students-strength has considerably reduced. For standards 1 to 5 it is only 34 students and for standards 6 to 8 it is 20 students (as stated in the paragraph 4), totally the school is having only 54 students. Whereas in the year 2014-2015 totally it was 265 students. Therefore, the respondents ought to have passed the deputation order or transfer order, if there are surplus



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teachers in the School.

7. The main issue that was raised before this Court is that the respondents have already granted sanctioned post to the School 1 Middle School Headmaster, 3 B.T. Assistants and 5 Secondary Grade Teachers. Therefore, whenever the vacancy arises with regard to retirement or other reasons, the petitioner's school need not obtain prior permission from the official respondents to fill up the posts. In other words, once a sanctioned post is granted, the post will be with the school forever. Hence, the petitioner has come up with the prayer forbearing the respondents from seeking prior permission. This Court is of the considered opinion such a plea cannot be entertained. Whenever the students-strength is increased in the petitioner's School and a need arises, the official respondents would transfer or pass deputation order by posting teachers from other schools. Vice versa, whenever there is reduction in the students-strength, then the petitioner's school is not entitled to retain the post and the post would be surrendered to the "Director's Common Pool". The school would be given a chance to increase its students-strength and if the school increases its strength within three years, then the school would be granted the post, otherwise the post would lapses. Therefore, whenever the need arises based on increase in students-



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strength, the School will be eligible for a teacher from the surplus teachers list.

But, if there is decrease in the students-strength, then the official respondents have every right to take back the surplus teachers post and transfer the teacher to some other needy school. Therefore, the prayer in the Writ Petition is absolutely misconceived. The petitioner's School cannot claim that it has statutory right to retain the post and receive grant-in-aid without enough students and the same can never be permitted, since the salary is paid from the public money. As on date, the petitioner's School is not having sufficient students- strength and hence the petitioner is not entitled to fill up and if the petitioner school is intended to fill up any post, the school should obtain prior permission from the official respondents.

8. Therefore, this Court is of the considered opinion that the respondents are directed to fix staff strength and issue staff fixation order based on the students-strength in the petitioner's school within a period of six (6) weeks from the date of receipt of a copy of this order. If the teachers are surplus, the same may be transferred to some other needy Schools as per the rules and guidelines and if there is surplus post without teachers, then the same shall be surrendered to the "Director's Common Pool".



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9. With the above direction, this Writ Petition is dismissed. There shall be no order as to costs.

12.10.2022

Index : Yes / No

Internet : Yes

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To

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DEEO's Office, R.M.S.Road,
Madurai – 1.
- 2.The Additional Assistant Elementary Educational Officer,
South Cithirai Street,
South Range,
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S.SRIMATHY, J



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