



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **14.03.2022**

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P (MD) .No.25304 of 2019

and

W.M.P (MD) Nos.21887 & 21888 of 2019

WEB COPY

The Correspondent,
St. Lawrence Higher Secondary School
Madathattuvilai
Villukuri-629 180
Kanyakumari District.

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep by its Principal Secretary,
Department of School Education,
Fort St.George,
Chennai-600 009.
- 2.The Director of School Education,
College Road,
Chennai-600 006.
- 3.The Chief Educational Officer,
Kanyakumari District at Nagercoil,
Kanyakumari District.
- 4.The District Educational Officer,
Thuckalay, Kanyakumari District.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 4th respondent DEO in O.Mu.No.6658/A3/2019 dated 09.11.2019, quash the same and further direct the 3rd and 4th respondents to approve forthwith the re-employment of M.Mary Elizabeth Bai as BT Assistant (Maths) in the petitioner school from 01.12.2019 till the end of the academic year 2019-2020 (ie., upto 31.05.2020), with all attendant benefits.

For Petitioners	: Mr.K.Ragatheeshkumar for M/s.Isaac Chambers
For Respondents	: Mr.G.V.Vairam Santhosh Additional Government Pleader



ORDER

The order impugned dated 09.11.2019 rejecting the approval of extended service rendered by one M.Mary Elizabeth Bai as BT Assistant (Maths), beyond her date of superannuation is under challenge in the present writ petition.

WEB COPY

2.The order impugned states that surplus teachers were working in the school and therefore, the Management was not justified in allowing the teacher viz., Tmt.M.Mary Elizabeth Bai as BT Assistant (Maths), for continuing service beyond her date of retirement. Therefore, the competent authorities of the Educational Department, declined approval for extension of service granted to the said teacher viz., M.Mary Elizabeth Bai as BT Assistant (Maths)

3.The learned counsel for the petitioner states that regarding the surplus teachers, the school Management filed a writ petition in the year 2017. However, the said writ petition is no way connected with the issues relating to the extension of service, as she has already attained the age of superannuation and allowed to retire from service.

4.The learned Additional Government Pleader appearing for the respondents made a submission that the Management has already issued relieving order to the said teacher and she was relieved from service.

5.The fact regarding the teacher viz., M.Mary Elizabeth Bai as BT Assistant (Maths) has been narrated by the respondents in para No.5 of the counter affidavit, which reads as follows:

"5.It is submitted that the petitioner school has stated that Tmt.M.Mary Elizabeth Bai is due to retire on 30.11.2019 and she is eligible for reemployment upto 31.05.2020. The proposals submitted by the petitioner school requesting to approve the re employment of Tmt.M.Mary Elizabeth Bai as BT Assistant(Maths) was rejected in view of more surplus teachers in the school an there were 54 BT assistants surplus in the other schools under the same management, on the basis of the instructions in G.O.Ms.No.261 School Education (Pa.ka.5(2) Department dated 20.12.2018. It is submitted that this Court has passed the following order in W.P(MD)No.13421 of 2016 dated 18.01.2018 in a similar case seeking re employment where there are surplus teachers.

"4.The reasons assigned in the impugned order are very much tenable. The purpose of granting reemployment to the teachers who retire in the middle of the academic year is to benefit the students. No doubt, the G.Os, issued by the Government in this regard confess certain rights to the

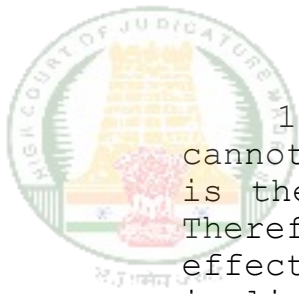


teachers who retire from service during the middle of the academic year. But the said right cannot be perversely applied. In the present case, already 20 teachers have been rendered surplus. Therefore, the question of accepting the request of the writ petitioner will not arise."

6.The Hon'ble Division Bench regarding the extension of service to the teachers and for grant of approval was decided in W.A(MD) Nos.107 of 2020 etc., batch, and an order was passed on 16.03.2021. The relevant portions of the order passed by the Hon'ble Division Bench of this Court are extracted hereunder:

"10.Much reliance has been made on the judgment of the Division Bench of this Court in Reynold Jayasekaran Vs. Director of School Education [cited supra]. In our considered view, the Division Bench of this Court has taken note of the earlier orders passed by this Court. As stated by us earlier, we are dealing with the case of policy decision made. The Government Order passed in G.O. (Ms)No.261, School Education (Pa.Ka.5(2)) Department, dated 20.12.2018, was not available at the relevant point of time before the learned Single Judge, who passed an order dated 06.02.2020, in W.P.No.2772 of 2020. The relevant clause governing has not been placed. The Government Order does not say that the question of surplus teachers will have to be reckoned within the same School. For example, in a Government School if surplus teachers are available, the other Government Schools cannot be allowed to indulge in re-employment without undertaking the process of re-deployment. Similarly, if an aided Private School is having number of institutions, a duty is imposed upon them to see to it that the surplus teachers available in the other Institutions are transferred to the Institution, in which, the teacher attains the age of superannuation during the academic year. It is for them to adopt anyone, in W.A. (MD)Nos.107, 566, 583, 594, 933, 1177 and 1273 of 2020 but they cannot seek aid for both the posts. The same logic applies to the Government School teachers as well. After all, the Government is not expected to make payment for two teachers for imparting education for one set of Students.

11.Mr.S.Xavier Rajini, learned counsel appearing for the respondent in W.A. (MD)No.933 of 2020 submitted that the order passed by the learned Single Judge of this Court has been given effect to and therefore, the Writ Appeal has become infructuous.



12.We are afraid that the said proposition of law cannot be accepted. Compliance of an order appealed against is the discretion of a party, who files the said appeal. Therefore, compliance or non-compliance will not have an effect on the order under challenge. We are also not inclined to accept the submissions made that without complying the mandate of Rule 22 of Right of Children to Free and Compulsory Education Rules, 2010, a re-employment cannot be stopped. Both stand on a different footing, as discussed by us already. For non-compliance of one, the other would not go automatically. If there is non-compliance, the concerned authorities will have to pursue the compliance, but for the alleged default, they cannot seek some other reliefs. In any case, we have already stated that steps ought to have been taken either by in W.A.(MD)Nos.107, 566, 583, 594, 933, 1177 and 1273 of 2020 the Management or by the Headmaster at the earliest point of time to avoid this situation, particularly, when they have stated the interest and welfare of the Students. Similarly, the contentions that re-employment cannot be given only to those teachers, who attained the age of superannuation while working in a surplus post, cannot be accepted in the light of our discussion as above, as the relationship gets terminated on attaining the age of superannuation and thereafter, it is re-entry for the teacher and therefore, the fact as to whether one was working in an existing sanctioned post or excess post will not make any difference.

13.In such view of the matter, the impugned orders passed by the learned Single are set aside and the Writ Appeals are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

7.In view of the fact that the teachers have no right to continue in service beyond the date of superannuation and the extension of service being a concession, is extended only based on certain terms and conditions and ultimately it is the discretion of the authorities competent whether to grant such concessions or not, as such extension would not affect the service condition of the teachers. As per the service conditions, they are allowed to retire from the date of superannuation and all the terminal and pensionary benefits are settled. Whiles, extension of services are granted only in the interest of students studying in the school till the end of the academic year. As the concessions cannot be claimed as a matter of right to the teachers.



8.This being the factum, there is no infirmity in the impugned order passed by the fourth respondent and hence, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

WEB COPY

Sd/-

Assistant Registrar (A.D I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

To

1.The Principal Secretary,
Department of School Education,
Fort St.George,
Chennai-600 009.

2.The Director of School Education,
College Road,
Chennai-600 006.

3.The Chief Educational Officer,
Kanyakumari District at Nagercoil,
Kanyakumari District.

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

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-12282[F] dated 15/03/2022)

+1 CC to M/s.SPL GP (SR-12461[F] dated 16/03/2022)

W.P (MD) .No.25304 of 2019

and

W.M.P (MD) Nos.21887 & 21888 of 2019

14.03.2022

RS (29.03.2022) 5P-7C