



WEB COPY

W.P.(MD)No.20689 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 16.12.2021
DELIVERED ON : 12.01.2022
CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.20689 of 2017

and

W.M.P(MD)os.16971 and 16972 of 2017

The Correspondent,
St. Xavier Middle School,
Kottapatti-621 306,
Trichy District.

... Petitioner

VS

1.The State of Tamil Nadu
Represented by its Secretary,
Department of School Education,
Fort St. George, Chennai-09.

2.The Director of Elementary Education,
College Road, Chennai-06.

3.The District Elementary Educational Officer,
Trichy District, Trichy

4.The Assistant Elementary Educational Officer,
Manaparai, Trichy District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the third respondent District Elementary Educational Officer in Mu.Mu.No.257/A4/2017 dated 12.06.2017 rendering one post of Sewing Mistress (Craft Teacher) to the petitioner school for the academic year 2016-2017 as surplus without teacher, quash the same and further direct the third respondent District Elementary Educational Officer to approve the appointment of A. Pappy Stella as Sewing Mistress (Craft Teacher) in the petitioner school with effect from 01.08.2016 and disburse grant-in-aid towards her salary with all attendant benefits including the arrears of salary and allowance.

For Petitioner : Mr.S.Xavier Rajini

For Respondents : Mr.D.Sachikumar
Additional Government Pleader

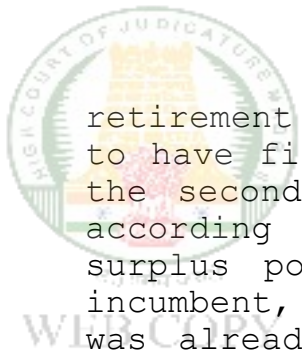


O R D E R

This Writ Petition is filed by St. Xavier Middle School, which is one of the School Administered by the Roman Catholic Diocese of Trichy. The said School is a Recognized, Aided Minority Educational Institution. The School is offering education from standards I to VIII. There are nine Teachers in the School, one Headmistress, two BT Assistants and six Secondary Grade Teachers, apart from one Sewing Mistress / Craft Teacher. The total strength of the school is 180. One Sewing Mistress / Craft Teacher post is vacant in the school on 01.06.2016, due to the retirement of then incumbent Lilly Elizabeth on 31.05.2016. In the said vacancy, the school appointed one A. Pappy Stella as Sewing Teacher on 01.08.2016. On 22.08.2016, the petitioner submitted a proposal to the third respondent requesting to approve her appointment with effect from 01.08.2016 and disburse grand-in-aid towards her salary. The fourth respondent returned the proposal instructing the school to enclose some of the documents, vide proceedings, dated 31.08.2016. On 10.10.2016, the petitioner resubmitted the proposal, requesting to approve the appointment of A. Pappy Stella as Sewing Teacher. The petitioner submitted that it came to know that the said proposal would not be approved, since the Staff Fixation Order for the academic year 2016-2017 was fixed, vide proceedings, dated 12.06.2017. Wherein, the Sewing Teacher post was declared as surplus.

2. The contention of the petitioner is that the respondents having received the proposal on 10.10.2016, the third respondent issued impugned Staff Fixation only on 12.06.2017 and therefore the staff fixation order will be applicable for the academic year 2017-2018. The petitioner contends that the post of Sewing Teacher was sanctioned to the school and the Staff Fixation for every year would show that the post is sanctioned and this is the only post available for Arts and Crafts and the school is running for the rural students and the third respondent ought to approve the appointment, since it has been appointed in the sanctioned vacancy. The petitioner relied on G.O.Ms.No.46 and contended that the revised syllabus for standards 7 to 12 has made the Arts, Crafts and Music as mandatory and has allotted three periods for the said subjects. Since, the Government has made the post mandatory, the respondents are bound to grant the said post. The petitioner also relied on certain judgments rendered by this Court. Therefore, the petitioner has filed this writ petition, challenging the Staff Fixation Order, dated 12.06.2017, wherein, it is declared that the Sewing Teacher post as surplus.

3. The third respondent has filed a counter affidavit stating that the school was allotted the sanctioned post, vide dated 29.12.1997, based on the Students Teachers ratio. The respondent submitted that the Sewing Teacher post became surplus according to the Staff Fixation Order for the academic year 2016-2017 and the



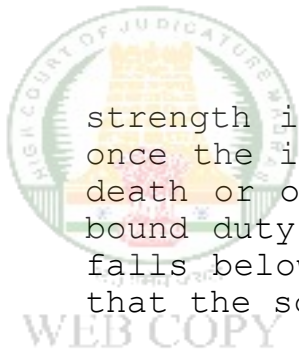
retirement vacancy fell vacant on 31.05.2016. The school ought not to have filled up the post and ought to have surrendered the post to the second respondent and the new appointment should not be made according to the Rules. The petitioner wantonly filled up the surplus post cannot be acceptable. The school has appointed the incumbent, namely, Pappy Stella from 01.08.2016 and the said post was already declared for the academic year 2016-2017 as surplus. Hence, the proposal was returned on 12.06.2017, stating that the post was declared as surplus and the same cannot be approved. As per the Staff Fixation Order for the academic year 2017-2018 also it was declared as surplus. The petitioner school instead of surrendering the surplus post, the petitioner school deliberately filled up the post. Therefore, the petitioners school is not entitled to any grant-in-aid.

4. Heard Mr.S.Xavier Rajini, learned Counsel appearing for the petitioner and Mr.D.Sachikumar, learned Additional Government Pleader appearing for the respondents.

5. On perusing the Staff Fixation Order for the year 2016-2017, dated 12.06.2017, the students' strength is seen as under:

Standards	Students' strength
1	8
2	13
3	16
4	21
5	13
6	25
7	32
8	19
Total	147

6. The total strength is 147. The Sewing Teacher is allotted only to standards 6th to 8th and the strength is 76. The petitioner submitted that the school is a Co-education School and the petitioner has not submitted the strength of boys and girls but submitted that the boys are generally willing to take up the Sewing instruction also. It is seen neither the Staff Fixation Order nor the petitioner has submitted the strength of boys and girls. The petitioner submitted that the Right of Children to Free and Compulsory Education Act, 2009 prescribes one Teacher under the category of Arts, Crafts and Music. On perusing the Act it states the one teacher is prescribed if the students strength is more than 100. Admittedly, if the students were taken for the Standard 6th to 8th, the students strength is only 76. Generally, the respondents advised the incumbent teachers to continue, even if the students



strength is below 100 in order to give "service protection". But once the incumbent vacates the post on attaining superannuation, or death or otherwise, the school has to keep the post vacant. It is bound duty of the school not to fill up, once the students strength falls below 100. Therefore, this Court is of the considered opinion that the school has acted against the rules.

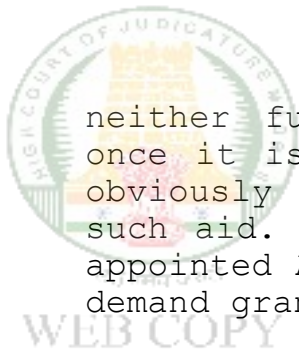
7. The contention of the petitioner is that the Staff Fixation Order, dated 12.06.2017 was issued on 11.07.2017 and this is applicable only for the next academic year i.e. for 2017-2018. On perusing the Staff Fixation Order, it is seen that the order was issued for the academic year 2016-2017, dated 12.06.2017 and signed by the District Educational Officer on 31.07.2017. Since it was issued on 12.06.2017, the contention of the petitioner is that this Staff Fixation is applicable only for the academic year 2017-2018 and this contention cannot be accepted. In the said Staff Fixation Order itself, the post was declared as surplus. To be precise, it has been declared as **"surplus without Teacher" for the academic year 2016-2017**. The same staff fixation order also states that the said post is declared as **"surplus with teacher for the academic year 2015-2016"**.

S. No.	Academic Year	Status
1.	2015-2016	Surplus with teacher
2	2016-2017	Surplus without teacher

The respondents have rightly placed that the said post as "surplus with Teacher" when the previous incumbent namely Lilly Elizabeth was in the post. Once she retires from the said post on 31.05.2016 the post would become "surplus without Teacher". Therefore, the contention of the petitioner that the Staff Fixation Order was issued for the academic year 2016-2017 on 12.06.2017 and it is applicable for the year 2017-2018 is not acceptable. The mentioning of the position for previous academic year (in this case 2015-2016) in the staff fixation is an indication that the school is not allowed to appoint any new person in the said post. In spite of that if the school is appointing, then the school cannot demand grant-in-aid from the Government. The issue of grant-in-aid is considered by the Hon'ble Supreme Court in the State of Bihar v. Sachindra Narayan, [(2019) 3 SCC 803], the Hon'ble Supreme Court took note of the discretionary nature of a grant and observed as under:-

"The release of grant is in discretion of the grantor and cannot be forced by the grantee."

While upholding Section 14-A of the Act, the Hon'ble Division Bench of this Court in Maria Grace Rural Middle School vs. The Government of Tamil Nadu [(2007) 2 MLJ 497], has also held that grant-in-aid is



neither fundamental right nor a constitutional right. Therefore, once it is held that grant-in-aid is the not a fundamental right, obviously no mandamus would lie to compel the Government to grant such aid. The school is at liberty to pay the salary to the newly appointed A. Pappy Stella and the school is not having any right to demand grant-in-aid for salary.

8. The petitioner also contended that the petitioner school is administered by the Roman Catholic Diocese, which is a Minority Aided Private Institution and so the school is having right to fill the vacant post without prior approval from the Educational authority. This Court is of the considered opinion that the concept of prior permission will come only for the "choice of candidate" and it will not come for appointing a person against rules. The school has created the situation that once the post become vacant, the school is appointing the candidates without getting prior permission and making the submission that the prior permission is not necessary. But the school fails to make a note in the academic year 2015-2016 itself the said post was declared as surplus with Teacher and in the year 2016-2017, the said post was declared as surplus without Teacher. Therefore this Court is of the considered opinion that the school ought to take prior permission once the staff fixation order declare the post as surplus. Therefore, based on the facts and circumstances, the judgments relied by the petitioner school is not applicable.

9. The petitioner has relied on G.O.Ms.No.46, where it has been stated that based on the revised syllabus the school ought to conduct arts for three periods. This Court is of the considered opinion it is only a general rule and when rule prescribes the school is entitle to teacher if it has 100 students, then that alone will prevail. Therefore, this Court is of the considered opinion that the petitioner school is not entitled to the prayer, the impugned staff fixation order is valid and there is no ground to interfere. If at all the petitioner school is interested in continuing the said post, the school is at liberty to continue the post without grant-in-aid.

10. Hence, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

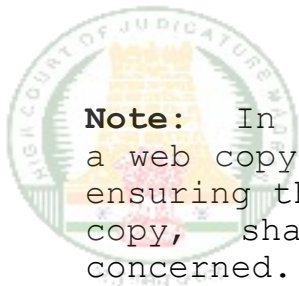
// True Copy //

/ /2022

Sub Assistant Registrar(CS)

jbr

<https://hcservices.ecourts.gov.in/hcservices/>



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

WEB COPY

To

- 1.The Secretary, State of Tamil Nadu,
Department of School Education,
Fort St.George, Chennai-09.
- 2.The Director of Elementary Education,
College Road,
Chennai-06.
- 3.The District Elementary Educational Officer,
Trichy District,
Trichy.
- 4.The Assistant Elementary Educational Officer,
Manaparai,
Trichy District.

+1 CC to M/s.S.XAVIER RAJINI, Advocate (SR-1398[F] dated 12/01/2022)

+1 CC to M/s.SPL.GP (SR-1728[F] dated 19/01/2022)

W.P. (MD) No.20689 of 2017

12.01.2022

RD(02.02.2022) 6P 7C