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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2023

CORAM

THE HON'BLE Mr. JUSTICE **C.V.KARTHIKEYAN**

W.P.No.529 of 2019

A. Mary Pauline Sargunavathy

.. Petitioner

Vs.

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

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

3.The Chief Educational Officer,
Thiruvannamalai.

4.The District Educational Officer,
Thiruvannamalai.

5.The Correspondent,
Danish Mission Higher Secondary School,
Thiruvannamalai.

.. Respondents



Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the entire records connected with the impugned proceeding of the 4th respondent in Na.Ka.No.7061/Aa2/2016 dated 02.05.2017 and to quash the same and consequently direct the respondents to approve the appointment of the petitioner as Commercial Instructor in the 5th respondent School w.e.f. 01.11.2007, with all consequential monetary and terminal benefits.

For Petitioner .. Mr. S. N. Ravichandran

For Respondents .. Mr. U. Bharanidharan, AGP

ORDER

This Writ Petition has been filed in the nature of Certiorarified Mandamus seeking records of the 4th respondent, the District Educational Officer, Thiruvannamalai dated 02.05.2017 and to quash the same and direct the respondents to approve the appointment of the petitioner as Commercial Instructor in the 5th respondent school with effect from 01.11.2007 with all consequential monetary benefits.

2.In the affidavit filed in support of the writ petition, it had been stated that in the 5th respondent, an aided religious minority school, the



petitioner herein had been initially appointed as Typist -cum- Clerk on 02.07.1995 as management staff. She worked till 31.10.2007. Thereafter, the 5th respondent selected and appointed the petitioner as Commercial Instructor by order dated 31.10.2007 in a sanctioned post caused due to retirement of Z. Devarajan who had been appointed as Commercial Instructor on 01.11.2007 in a sanctioned post. The proposal of the 5th respondent school was however, not approved by the 4th respondent. Thereafter, the petitioner had filed W.P.No.33982 of 2016 seeking consideration of the representation made by her. An order was passed on 27.09.2016 directing the 3rd and 4th respondents to consider the representation. It had been stated that pursuant to the directions of the Court, the 4th respondent by proceedings dated 30.11.2016 sought for clarifications from the 5th respondent, which were clarified.

3. In the interregnum period, the impugned order was passed by the 4th respondent after a period of nine years on 02.05.2017 rejecting the proposal submitted by the 5th respondent school as early as on 09.09.2008 on the ground that the earlier appointment to the double part-time post of the Commercial Instructor had lapsed as soon as Z. Devarajan retired on



31.05.2007. There was no post of Commercial Instructor and therefore, the appointment of the petitioner as Commercial Instructor was not recognized or sanctioned by the 4th respondent.

4.Questioning that particular order, the present Writ Petition has been filed.

5.The 4th respondent had filed a counter affidavit, wherein, it had been stated that as per staff fixation report issued by the 3rd respondent dated 06.11.2007, the double part-time teacher post becomes lapsed as soon as the teacher who was working in that post retired on attaining superannuation. It had been stated that the Government had not sanctioned new posts to the 5th respondent school. It had been therefore stated that the appointment of the petitioner was irregular. It had also been stated that G.O.Ms.No.9, School Education (VE) Department, dated 06.01.2009 had been passed, wherein, it had been very specifically stated that, no new vocational course should be started from the academic year 2007 – 2008 and new vocational instructors should also not be appointed either by the school management or by the Parent Teachers Association. It had also been stated that the existing



vocational instructor course should be changed to unifocal courses over a period of five years.

6. In view of those particular facts, it had been stated that the petitioner who had been appointed as Commercial Instructor on retirement of Z. Devarajan, had no right to seek regularization to the post she had been appointed.

7. A similar issue of the same nature had been earlier considered by a learned Single Judge of this Court in *W.P.Nos.150 to 152 of 2019, dated 23.01.2019, A. Joseph, C. Sam Pradeep and G. Joseph Ganakan Vs. The Secretary to Government, Department of School Education, St. George Fort, Chennai and others*. Those writ petitions were with respect to a similarly placed aided minority school. In that particular case, the petitioners had been appointed as Vocational Instructors by the 5th respondent minority educational institution. The 5th respondent therein had sought approval of the appointment. That was rejected by the 4th respondent therein, stating that the post of Vocational Instructor was a man post and not a post allotted to the institution. However, the learned Single Judge had held



as follows:

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*9.As rightly pointed out by Mr.S.Chellapandian, learned counsel appearing for the petitioners, neither G.O.Ms.No.712, dated 28.05.1990 nor G.O.Ms.No.967, 17.10.1992 indicate that the post would lapse on the retirement of the present incumbent. Even though the Government Order No.9, dated 06.01.2009 prohibits the appointment of the vocational teachers, the Government had not discontinued the vocational course and no prohibition has been imposed on the schools from admitting the students in the vocational course. The Division Bench in **W.A.(MD).No.1494 of 2017, State of Tamil Nadu Vs. Secretary/Correspondent, Sethupathi Higher Secondary School, Madurai, dated 01.03.2018** had considered the similar claim made by the Government and held that as long as students strength is available, the teachers must also be made available, particularly in aided institutions. While doing so, the Division Bench has observed as follows:-*

“7.After elaborate and careful perusal of the materials on record, we find from the staff fixation year 2013-2014, dated 29.10.2017 as on 01.08.2013 there was one post of Vocational Instructor for the subject General Machinist and



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on the date when Thiru.R.kannan was appointed, i.e., 10.06.2013, the school had one post of Vocational Instructor and therefore, to state that the appointment itself is not sustainable is a stand which has to be rejected.

8.Next we come to staff fixation done by the Department for the year 2014 vide order dated 07.11.2014. It is interesting to note that in the said order the appellant department records the fact that there are 46 students in the 11th standard and 39 students in the 12th standard in spite of the same stated in the fixation order that one post is surplus. In our considered view, the Department cannot take such a technical plea. When it is admitted fact that there exists sufficient students strength, the course has to continue. Thus the order of the fifth respondent showing one post of Vocational Instructor as surplus, he has virtually closed down the said course as there would be no teacher. We cannot lose sight of the fact when there is full students strength and course is in demand, the Department cannot take such a stand and render one post as surplus. In the Government Order in G.O.Ms.No.525 School Education (D1)



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Department, dated 29.12.1997, in Paragraph No.IV, the number of post eligible for Higher Secondary School is mentioned in the clause (d) of the said order which states that for vocational stream, 2 posts of teachers (full time) will be sanctioned irrespective of the number of courses. Therefore, even while passing the order dated 29.10.2013 and fixing the staff strength for the year 2013-2014, the respondent/Management was entitled to two post of Vocational Instructor. Thus, we find the reason for rejection of approval of the Vocational Instructor, Thiru.R.Kannan as well as staff fixation for the year 2014-2015 is completely flawed.”

10.In view of the above categorical pronouncement of the Division Bench, I am unable to persuade myself to agree with the contentions of the learned Special Government Pleader. The orders of the authorities in rejecting the approval sought for by the fifth respondent Management are liable to be set aside and accordingly, the impugned orders are set aside. There will be a direction to the fourth respondent to consider the proposals for approval in the light of the



pronouncement of the Division Bench and grant approval, within a period of six weeks from the date of receipt of a copy of this order. This however will not preclude the Government from taking a policy decision regarding the continuance or otherwise of the vocational course in private, aided, minority or nonminority schools. The writ petitions are accordingly allowed. No costs.

(Emphasis Supplied)

8.The ratio laid down directly applies to the petitioner.

It had also been very specifically held by the Division Bench in the judgment extracted in ***W.A.(MD).No.1494 of 2017, State of Tamil Nadu Vs. Secretary/Correspondent, Sethupathi Higher Secondary School, Madurai, dated 01.03.2018***, that the department cannot take such a technical plea and when there is an excess sufficient student strength, the course has to continue. It had been stated that the posts cannot be referred as surplus.



9. In view of that particular reasoning given, I would allow the present writ petition and direct the respondents to issue necessary proceedings granting approval of the appointment of the petitioner within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

10. However, I would also place a caveat, in view of the statement made by the learned Additional Government Pleader that since the Government had preferred an appeal against the order in ***W.A.(MD)No.1494 of 2017 dated 01.03.2018, State of Tamil Nadu Vs. Secretary/Correspondent, Sethupathi Higher Secondary School, Madurai,*** and it is informed that the matter is pending before the Hon'ble Supreme Court, any order passed by the respondents would always be subject to the final decision taken by the Hon'ble Supreme Court.

05.09.2023

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Index: Yes/No
Neutral Citation: Yes/No
Speaking order: Yes/No



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School Education Department,
Fort. St. George, Chennai – 600 009.
2. The Director of School Education,
College Road,
Chennai – 600 006.
3. The Chief Educational Officer,
Thiruvannamalai.
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C.V.KARTHIKEYAN,J.

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