



W.A.No.295 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2023

CORAM

**THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MR. JUSTICE D.BHARATHACHAKRAVARTHY**

W.A.No.295 of 2020
and
C.M.P.No.5063 of 2020

1.The Director of Elementary Education,
DPI Campus, College Road,
Chennai – 600 006.

2.The District Educational Officer,
Mayiladuthurai,
Nagapattinam District.

3.The Block Educational Officer,
Kuthalam,
Nagapattinam District.

... Appellants

Versus

Thiruvavaduthurai Adheenam Middle School,
Thiruvavaduthurai,
Kuthalam Union,
Nagapattinam District,
Rep. By its Correspondent,
P.Sundaresan.

... Respondent



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Prayer : Appeal filed under Clause 15 of the Letters Patent, to set aside the order dated 08.01.2020 passed in W.P.No.368 of 2020 and allow this Writ Appeal.

For Appellants : Mr. Abisekmurthy,
Government Advocate

For Respondents : Mr. G. Sankaran, Senior Counsel.
For Mr. S. Nedunchezhiyan

J U D G M E N T

(Delivered by D.Bharatha Chakravarthy, J.)

This Appeal is directed against the order of the Learned Single Judge, dated 08.01.2020 in W.P.No.368 of 2020, in and by which, the Writ Petition filed by the respondent-school, challenging the order dated 21.11.2019 of the appellants, refusing to approve the appointment of the Secondary Grade Teachers, namely, *Thiru. A.Kalaimaran* and *Tmt. B.Sridevi*, was allowed.

2.The admitted case of the parties is that the respondent-school is an aided middle school. While so, in a sanctioned post of Secondary Grade Teacher, a vacancy arose due to the retirement of a teacher in the year



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2013. One *Thiru. A.Kalaimaran* was appointed on 28.4.2014. Similarly, on account of the retirement of one more teacher in the year 2017, *Tmt. B.Sridevi* was appointed as a Secondary Grade Teacher on 13.07.2017. After their appointments, since no orders were passed approving their appointments, a writ petition was filed for Mandamus, whereupon, the appellants were directed to consider the representation of the respondent-school. Pursuant to such direction, by the order impugned in the writ petition dated 21.11.2019, the said representation was rejected. Aggrieved by the same, the present writ petition came to be filed by the respondent-school.

3.The contention of the respondent-school in the writ petition is that the individuals have requisite qualifications and they were appointed by following the due process and are appointed in the sanctioned posts. Therefore, there is no impediment whatsoever to approving their appointments. The writ petition was resisted by the appellants on the ground that Government issued G.O.Ms.No.165 dated 17.09.2019 by which, it was directed that all the surplus posts throughout the State have to be bunched together and until such time the surplus teachers are



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absorbed, fresh appointments shall not be made.

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4.The Learned Single Judge found that the above mentioned G.O cannot be given retrospective effect in respect of a sanctioned vacancy and further found that even the said G.O stood suspended by interim orders of the Division Bench of this Court and therefore allowed the writ petition as prayed for. Aggrieved by the same, the present Writ Appeal is filed by the respondents in the writ petition.

5.Heard *Mr.Abisekmurthy*, Learned Government Advocate appearing on behalf of the appellants and *Mr.G.Sankaran*, Learned Senior Counsel appearing on behalf of the respondent.

6.*Mr. Abishekmurthy*, the Learned Government Advocate would submit that even though it was contended that only on account of G.O.Ms.165 dated 17.09.2019, the appointments of the teachers made in the respondent-school could not be approved, the fact remains that as on date the said G.O.Ms.No.165 stands quashed by a Division Bench of this Court by a Judgement dated 28.9.2020 in W.P(MD).No.76 of 2019 and



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batch of cases. But, however, as against the said Judgement an Appeal is pending before the Hon'ble Supreme Court of India. In any event, he would submit that G.O. Ms.No.165 is not applicable to the present case. Even in the absence of the above Government Order, the matter is governed by G.O. Ms. No.49 dated 21.03.2018 which clearly held that right from the academic year 2013-2014 all the surplus teachers ought to be absorbed by the common pool and until and unless such surplus teachers are once again redeployed, fresh appointments cannot be made. Therefore, he would submit that the learned Single Judge, ought not to have allowed the prayer of the respondent-school. The Learned Government Advocate would submit that the appellants have also filed a detailed affidavit clarifying this position. Therefore, so long as surplus teachers are available for re-deployment, the appointments cannot be approved. Similarly, he would submit that the gender ratio has also not been followed by the school, and therefore, this is also an irregularity committed by the respondent/school.

7.Per contra, *Mr. G.Sankaran*, Learned Senior Counsel appearing on behalf of the respondent school submits that not only G.O.Ms.No.169 has been quashed by the Court, already several orders have been passed by



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the Division Benches of this Court in allowing similar prayers, in the absence of surplus teacher in the same school. He would further submit, that in respect of the additional affidavit filed, a detailed counter is also filed explaining as to how G.O.Ms.No.49 is also not applicable to the facts of this case. He would submit that even in respect of G.O.Ms.No.165, no interim orders have been granted by the Hon'ble Supreme Court of India. He would further submit that after being appointed in the year 2014 and 2017, till date both the teachers have been working without salary being paid to them. He therefore prays that the Writ Appeal be dismissed and the appellants be directed to pass the consequential orders, within a time frame.

8.We have considered the rival submissions made on either side and perused the material records of the case.

9.Even though before the Learned Single Judge arguments were based on G.O.Ms.No.165, now in the appeal, the said arguments are given up. As per the additional affidavit filed before this Court, the contention is that the proposal cannot be approved with reference to G.O.Ms.No.49,



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School Education Department, dated 21.03.2018. In this regard, on a perusal of G.O.Ms.No.49 dated 21.03.2018, it is clear from paragraph No.2 that the said G.O. lays down that up to the end of the academic year 2013 – 2014, the surplus staff has to be ascertained on the basis of teacher-student ratio, and unless and until, such surplus teachers are redeployed, approval cannot be granted for appointing new teachers.

10. Without going into the details, even as per the said Government Order, it took into consideration the teacher-student ratio up to the end of 2013-2014. However, the G.O directing for absorption of surplus teachers was passed only on 21.03.2018. In the meanwhile, when the above said two teachers, namely, *Thiru. A.Kalaimaran* and *Tmt. B.Sridevi*, were appointed in the year 2014 and 2017 respectively. The appellants cannot once again take the aid of G.O.Ms.No.49 which is dated 21.03.2018, retrospectively. Therefore, the original arguments based on the said G.O.Ms.No.165, and the present arguments based on the said G.O.Ms.No.49 do not stand scrutiny and accordingly, this Writ Appeal is without any merits.



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11.In the result,

(i) The Writ Appeal No.295 of 2020 is dismissed;

(ii) The respondent/School, shall implement the order of the Learned Single Judge at the earliest, in any event not later than two months from the date of receipt of a copy of this Order, as the concerned teachers are working without salary for a long number of years;

(iii) There shall be no order as to costs;

(iv) Consequently, the connected miscellaneous petition is closed.

(J.N.B,J.) (D.B.C, J.)

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Index : Yes / No
Speaking /Non-Speaking Order
Neutral Citation : Yes/No

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**J. NISHA BANU, J.
and
D.BHARATHA CHAKRAVARTHY,J.**

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