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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.12.2023

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THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P No.6644 of 2020
and
W.MP.Nos.7871, 7872 & 7874 of 2020

The Correspondent
St.Paul's Girls Higher Secondary School,
Mayiladuthurai-609 001.
Nagapattinam District ...

Petitioner

/vs/

1. The State of Tamil Nadu
Rep by its 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
Near R.T.O Office
South Paalpannaicherry
Nagapattinam District - 611 003.
4. The District Educational Officer
Cutcherry Road
Mayiladuthurai
Nagapattinam District ...

Respondents



WP.No.6644 of 2020

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India for issuance of a CERTIORARIFIED MANDAMUS calling for records relating to the impugned proceedings of the 1st respondent Chief Educational Officer in Na.Ka.No.4555/A2/2015 dated 28.02.2017, Na. Ka. No. 4319/A2/2016 dated 15.03.2017 and Mu. Mu. No. 6019/A2/2017 dated 05.04.2018 in so far as it renders one post of Physical Education Teacher as surplus and the consequential proceedings in Na. Ka. No. 8120/A2/2019 dated 20.11.2019 refusing to approve the appointment of Mrs. M. Smaline as Physical Education Teacher in the petitioner school, QUASH THE SAME, and further DIRECT the 3rd respondent Chief Educational Officer to approve the appointment of Mrs. M. Smaline as Physical Education Teacher with effect from the date of her appointment viz., 01.06.2018 and release salary and other attended benefits from the said date.

For Petitioner : Mr. P.Godsonswaminathan for
M/s.Issac Chambers

For Respondents : Mr.R.Ramnlal,
Additional Advocate General assisted by
Mr. P.Sanjai Gandhi, Government Advocate

ORDER

This Writ Petition has been filed seeking a CERTIORARIFIED MANDAMUS to call for records relating to the impugned proceedings of the 1st respondent Chief Educational Officer in Na.Ka.No.4555/A2/2015 dated



28.02.2017, Na. Ka. No. 4319/A2/2016 dated 15.03.2017 and Mu. Mu. No. 6019/A2/2017 dated 05.04.2018 in so far as it renders one post of Physical Education Teacher as surplus and the consequential proceedings in Na. Ka. No. 8120/A2/2019 dated 20.11.2019 refusing to approve the appointment of Mrs. M. Smaline as Physical Education Teacher in the petitioner school, QUASH THE SAME, and further DIRECT the 3rd respondent Chief Educational Officer to approve the appointment of Mrs. M. Smaline as Physical Education Teacher with effect from the date of her appointment viz., 01.06.2018 and release salary and other attended benefits from the said date.

2. The petitioner Mrs.M.Smaline has been appointed as Physical Education Teacher on 01.06.2018 and she is working in that capacity in the petitioner's school till date. In the mean time, the 3rd respondent while fixing the staff sanction for the years 2015-16, 2016-2017 and 2017-2018 has rendered one post of Physical Education Teacher as vacant and surplus even though the school has adequate students strength for the third post for Physical Education Teacher. Hence the proposal sent by the petitioner was returned on 20.11.2019 vide proceedings in Na.Ka.No.8120/A2/2019 by stating that as per G.O.Ms.525, School Education (D-1) Department dated 20.09.1997 the petitioner's school is



entitled to have one Physical Education Director and two Physical Education Teachers. It is mentioned that the third Physical Education Teacher is held surplus and hence, the petitioner's school is not entitled to fill the third post.

3. Heard the submissions made by Mr. P.Godsonswaminathan for the petitioner and Mr.R.Ramnlal, learned Additional Advocate General for the respondents and perused the materials available on record.

4. Mr. P.Godsonswaminathan, learned counsel for the petitioner submitted that the petitioners school has got a strength of 1625 students. The petitioner's school is entitled to have 3 Physical Education Teachers in accordance with the Student Teacher Ratio as prescribed by the government Vide G.O.Ms. 525, School Education (D-1) Department dated 20.09.1997. As per the said Government Order, if the total strength of the students in classes VI to X in High Schools exceeds 250, the school is entitled to one post of Physical Education Teacher and for every additional strength of 300 one additional post of Physical Education Teacher to the maximum number of 3 Physical Education Teacher. And for the school which has the strength of over 400, one post of Physical Education Director will be given on upgrading one existing post of Physical



Education Teacher. So, the petitioner's school is entitled to get the sanction for 3 Physical Education Teachers and one Physical Education Director in view of the total strength of students studying there. But the 3rd respondent without taking into consideration of these relevant parameters, had chosen to reduce one post in the cadre of Physical Education Teacher and has shown it as surplus vacant. Since one of the Physical Education Teachers has been upgraded to the post of Physical Education Director, the petitioner's school had filled up the said post by appointing Ms.M.Smaline. Without due justification, the petitioner's school had kept one post surplus and hence, all those sanction order pertaining to the years 2015-16, 2016-2017 and 2017-2018 should be set-aside along with the return proposal dated 20.11.2019 in Na.Ka.No.8120/A2/2019.

4.1. In respect of his above contention, the learned counsel for the petitioner cited the decision of the Hon'ble Division Bench of this Court held in WA.No.226/2009 and WP.No.25348 of 2008 dated 04.12.2009, wherein the interpretation for G.O.Ms.No.525 dated 29.12.1997 has been clarified and the petitioner in that writ petition has been given with a relief:

“ 10. This court is necessarily required to give interpretation of G.O.Ms.No.525 with regard to physical education teacher's appointment. In G.O.Ms.No.525 dated 29.12.1997, Teacher- pupil ratio with regard to



Physical Education Teachers in the High Schools is given as follows:

" 5) III. High Schools (Standards IX to X)

a)

b)

c) When the strength in classes VI to X in High Schools exceeds 250

one post of Physical Education Teacher will be sanctioned and for every additional strength of 300, one additional post of Physical Education Teacher will be sanctioned subject to a maximum of 3."

As far as Higher Secondary School is concerned, the aforesaid government order states as follows:

" 5) IV HIGHER SECONDARY SCHOOLS (11th and 12th standard)

a)

b)

c)

d)

e)

f) For schools with a strength of over 400, one post of Physical Director will be given by upgradation of existing post of Physical Education Teacher"

From the above, it is clear that High Schools are entitled to have three Physical Education Teachers, whereas for Higher Secondary School (XI and XII standard) with strength of over 400, one Physical Director would be appointed. The above G.O. has to be interpreted practically, pragmatically and reasonably. It can not be interpreted that Higher Secondary School can have only Physical Education Director apart from three Physical Education Teachers in the High School. The reasonable and possible interpretation is that the Higher Secondary School is entitled to have more physical education teachers and could be increased as per the strength of the student depending upon physical education classes as per the existing norms. Hence the inference is that the High School would have maximum number of three Physical Education Teachers and Higher Secondary School would be added one more teacher as Physical Education Director. If the strength of the students in the Higher Secondary School are more, according to the strength



of the students, Physical Education Teachers are required to be increased. If 1000 or more students are studying in Higher Secondary level (XI to XII Stds.), it would be irrational and unfair to appoint only one physical education teacher and it would not serve the cause of the physical education.

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16. The aforesaid government order is not prohibitive in nature and in fact, if necessity arises, more teachers can be appointed. The criteria applied in G.O.Ms.No.525, School Education dated 29.12.1997, is only the strength of the students and according to which the teachers have to be appointed. Admittedly as stated above the strength of students is 3948, which requires more number of Physical Education Teachers. G.O.Ms.No.525 School Education dated 29.12.1997 speaks about the maximum of three Physical Education Teachers for High School and separate Physical Education director for Higher Secondary School which got strength over 400. In view of that also the school is entitled to have four teachers. Hence the petitioner's position need not be disturbed.

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23. As stated above, the normal understanding of the above government order with regard to Physical Education Teachers is that the High Schools would have maximum number of three Physical Education Teachers and Higher Secondary School would be added one more Physical Education Director in the name of Physical Education Director. However there cannot be any ceiling with regard to the strength of teachers as the same is bound to vary/increase as per the strength of the student's. When the student strength is increased, the ceiling has to be removed and required more Physical Education Teachers are to be appointed, otherwise the students would suffer irreparably and the government order would go against the very scheme of education."



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5. The above judgment of the Hon'ble Division Bench has been followed subsequently by a learned single judge of this Court in WP.No.28795/2008 and hence, there is no doubt in interpreting the impact of G.O.Ms.525 dated 29.12.1997.

6. It is further submitted that Mrs.M.Smaline was relieved on 14.06.2023 in view of her appointment as Physical Assistant; hence the period for which she was working as Physical Education Director in the petitioner's school should be approved with effect from 01.06.2018 and the monetary benefit for the same should be granted for the said period.

7. Mr.R.Ramnlal, learned Additional Advocate General for the respondents submitted that the petitioners were given with three posts in the Physical Education Teacher. They are entitled to fill up only two posts and the remaining one post is declared as surplus. Before proceeding to fill up the third post they ought to have sought for a prior permission from the government and without seeking prior permission and without following due process, the posts have been filled up. During every sanction order given in the years 2015-2016, 2016-2017 &



2017-2018 it has been specially mentioned in the note that two posts alone can be filled up and third post should be allowed to remain as vacant. Hence, the government has rightly considered the proposal and rejected the same as the petitioner is not entitled to fill up the third post of Physical Education Teacher.

8. Further, it is submitted that within the three posts already sanctioned, one post has been upgraded as Physical Education Director, in view of the mandates of having one Physical Director at the level of Higher Secondary School by virtue of G.O.Ms.525 School Education Department, dated 20.09.1997. Even if the petitioner wishes to justify their requirement of one more posts in the cadre of Physical Education Director, he ought to have sought prior permission and got it approved before appointment.

9. Apparently, the petitioner's school is a minority institution and it is also a Higher Secondary School. The petitioner's school has got more than the required strength to have three physical Education Teachers at the level of High School and one Physical Director at the level of Higher Secondary School. It was the argument of the learned counsel for the respondents that out of the three sanctioned Physical Education Teacher, one post has been upgraded as the Physical Director in accordance with the G.O.Ms.525 School Education



Department, dated 20.09.1997. But in the continual sanctioned staff position for the years 2015-16, 2016-17 and 2017-18 would show that the petitioner's school has been sanctioned with one Physical Education Director Grade-I and three Physical Education Teachers.

10. Despite one post in the cadre of Physical Education Teacher is rendered as surplus, that does not go with the actual strength of the students present in the petitioner's school in classes VI to X [high school]. However, in each of the sanction order, there is a note printed by stating that even though three posts are sanctioned only two post can be filled up. It was probably because one was rendered as surplus. The petitioners school is a minority institution. The G.O.Ms.165 which speaks about the deployment on the ground of surplus has held to be inoperative by virtue of the orders of the Hon'ble Division Bench of this Court held in W.A.No.226/2009 and W.P.No.25348 of 2008 dated 04.12.2009 and the same is followed subsequently in W.P.No.28795 of 2008. Hence, it is not right to state that one post in the petitioner's school at the level of physical Education teacher is surplus and the petitioner's school is not entitled to make any appointment for the same.



11. So far as the prior permission is concerned for the sanctioned post it is not required for the minority institution like that of the petitioner is exempted from the application of Rule 15(4). In this regard the learned counsel for the petitioner relied on the judgment of the Hon'ble Division Bench of this Court held in Chief Educational Officer, ***Kanyakumari District at Nagercoil Vs. S.Christy reported in 2016(1) CWC 481***. The relevant paragraph is applicable to the petitioner is seen in paragraph 9 is as extracted hereunder:

“9.But, the ultimate conclusion reached by the learned Judge to direct approval to be granted to the appointment of the 1st respondent cannot be interfered with, for a different reason. The School in question is a minority educational institution. As can be seen from the very Rule 15 of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, relied upon by the appellants, it has no application to minority schools. Therefore, despite the fact that the reasoning contained in the order of the learned Judge is not correct, the conclusion arrived by him is in accordance with law. Therefore, after pointing out that Rule 15 of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 stands on a different footing from Rule 11 of the Tamil Nadu Private Colleges (Regulation) Rules, 1975 and that prior permission is necessary in terms of Rule 15 of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, atleast for non-minority institutions, the writ appeal is liable to be dismissed. However, we wish to clarify that even minority institutions will have to take post- facto approval and that any appointment even in minority institutions would depend only upon the fixation of staff strength by the Educational Authorities. ”



With regard to modality of selection process also, the modality can be within the discretion of the petitioner's management. It is upto the management to adopt a selection process of their choice for appointing any sanctioned post for the school.

12. This is in view of the exemption given to the minority institution under Article 30 (1) of the Constitution of India. So, the discretion of the school authority in choosing the rightful person of its option for the post of Physical Education Director cannot be questioned. Had the respondents passed the impugned order without properly interpreting the various government orders and the judicial order given with regard to the exemptions given to the minority institutions under Article 30 (1) of the Constitution of India and had chosen to reject the approval.

13. On perusal of the impugned order, it is seen that the 3rd respondent was under the impression that out of three sanctioned posts one was upgraded to the post of Physical Education Director and two posts in the cadre of Physical Education Teacher have already been filled up. In reality, even as per the sanction



order and the position of staff, one post in the cadre of Physical Education Director has been sanctioned and three posts were allowed to be retained in the cadre of Physical Education Teacher.

14. In the following years, i.e. 2016-2017 and 2017-2018 also, Physical Education Teachers would have not been reduced and it continued to be three. Out of which, one is kept as surplus. One post of Physical Education Director cannot be rendered as surplus, in view of the more than enough strength of the students in the school. Even if there is any surplus is declared and G.O.Ms.165, School Education Department, dated 17.09.2019 has been issued in this regard, the same is also held to be inoperative. Hence, G.O.Ms. 165, cannot be made applicable to the case of the petitioner which is a minority institution.

15. As per G.O.(Ms.)No.525, School Education (D1) Department, dated 29.12.1997, for schools with a strength of over 400 students one post of Physical Director will be given through up gradation of Physical Education Teacher. Hence the impugned order passed by the 1st respondent Chief Educational Officer in Na.Ka.No.4555/A2/2015 dated 28.02.2017, Na. Ka. No. 4319/A2/2016 dated 15.03.2017 and Mu. Mu. No. 6019/A2/2017 dated 05.04.2018 is and the consequential proceedings in Na. Ka. No. 8120/A2/2019 dated 20.11.2019



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refusing to approve the appointment of Mrs. M. Smaline as Physical Education Teacher in the petitioner school.

16. In the result, the Writ Petition is **allowed** and the impugned order passed by the 1st respondent Chief Educational Officer in Na.Ka.No.4555/A2/2015 dated 28.02.2017, Na. Ka. No. 4319/A2/2016 dated 15.03.2017 and Mu. Mu. No. 6019/A2/2017 dated 05.04.2018 and the consequential proceedings in Na. Ka. No. 8120/A2/2019 dated 20.11.2019 are quashed and a direction is issued to the 3rd and 4th respondents to pass orders approve the appointment of Mrs. M. Smaline as a Physical Education Teacher in the petitioner school with effect from the date of her appointment. No costs. Consequently, connected miscellaneous petitions are closed.

21.12.2023

Index : Yes
Internet : Yes
Speaking

jrs



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To

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Rep by its Secretary
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Fort St. George, Chennai - 600 009.
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College Road, Chennai - 600 006.
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R.N.MANJULA,J

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