



W.P.No.11222 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2023

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No. 11222 of 2019

and

WMP.No.11597 of 2019

Aided Elementary School,
Rep. by its Manager,
Mandakappadi Post,
Sankarapuram Taluk,
Villupuram District.

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Petitioner

Vs

1. Director of Elementary Education,
Chennai – 6.

2. District Elementary Educational Officer,
Villupuram,
Villupuram District.

3. Additional Assistant Elementary
Educational Officer,
Rishivanthiyam,
Villupuram District.

4. District Educational Officer,
Thirukoilur,
Villupuram District.

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Respondents



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PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, prays to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the 4th respondent in his proceedings Na.Ka.No.641/Aa4/2018 dated 13.03.2019 and quash the same and direct the respondents to approve the appointment of M.Usharani as Secondary Grade Teacher from the date of appointment conferring all the consequential benefits.

For Petitioner : Mr.V.Sivalingam
for M/s.C.S.Associates

For Respondents : Mr.M.Shahjahan
Special Government Pleader

ORDER

The petitioner has approached this Court seeking issuance of a writ of Certiorarified Mandamus, to quash the impugned proceedings on the file of the 4th respondent dated 13.03.2019 and consequently to approve the appointment of one M.Usharani as Secondary Grade Teacher, from the date of her appointment and consequently pay all benefits.

2. The petitioner is an Aided Elementary School. The School has been functioning from 1962. The second respondent, by an order dated 04.02.2005, directed the petitioner to surrender one post of Secondary Grade Teacher on the ground that it was a case of surplus



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teacher. At that time, the Manager of the petitioner's School met the second respondent on 15.02.2005 and explained the position that there is no surplus at all in the School and the student strength was 175 and average attendance is 149 in August 2004. The second respondent personally visited the School and verified the position and satisfied himself regarding sufficient strength of students corresponding to the number of teachers working in the School. Therefore, no further proceedings were taken against the petitioner's School. Thereafter, the petitioner was constrained to file W.P.No.13211 of 2012, which was allowed and the respondents were directed to pass orders approving the appointment of one M.Usharani, who had been appointed in the sanctioned post. In and by the impugned proceedings, the respondents have rejected the approval of appointment of the said teacher, M.Usharani on the ground that prior permission was not obtained to appoint the said teacher in the post. However, the case of the petitioner is that permission was already sought for and the same has been pending for long time with the District Elementary Educational Officer, Villupuram District.



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3. The petitioner further relies on the action taken even in the year 2008-2009 when the number of students studying was 147 as against admissible strength of 161. They also stated that the Management cannot be found fault as prior permission was sought for even on 01.04.2008 and some clarifications were required by the second respondent on 05.01.2009. Even thereafter no approval was given and therefore a consolidated proposal was submitted for approval of the appointment of the said M.Usharani on 16.12.2008. Once again, the second respondent sought for some clarification, which was also submitted by the Management with necessary enclosures.

4. According to the petitioner, the School got four posts and the students strength was 99 at the time of inspection conducted in August 2010, though they wrongly reported that the student strength was only 81. Finally, in and by proceedings in Na.Ka.No.641/Aa4/2018 dated 13.03.2019 and in furtherance of the direction of this Court, directing the respondents to pass appropriate orders, after giving an opportunity to the petitioner, insofar as the appointment of M.Usharani, as the Secondary Grade Teacher from the initial date of the appointment is concerned, the



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impugned order came to be passed as the strength was far below the required sanctioned strength to enable the respondents to fill up the post.

This order is challenged by the petitioner on the ground that the post is sanctioned posts, the Authorities ought not to have rejected the approval of the concerned teacher and if at all there was a surplus, as a result of fall in student strength, the appointment of the said teacher cannot be rejected and but after appointment, the teacher concerned may be posted to some other School where there was a need for her service.

5. The fourth respondent filed a counter stating that official inspection was carried out on three occasions and it was confirmed that the post was retained due to resignation of one Sivakumar, as surplus and to be surrendered to the common pool. Therefore, the 4th respondent contented that the order impugned did not warrant any interference by this Court and prayed for dismissal of the writ petition.

6. The counsel for the petitioner invited the attention of the Court to G.O.Ms.No.525, dated 29.12.1997. In W.A.No.1155 of 2020 dated 15.02.2023, in almost identical circumstances, this Court,



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following the earlier Division Bench Judgment in *W.A.(MD) No.628 of 2014* in the case of *Meada Vs. The Secretary to the Government and others*, held that once a teacher is appointed to the sanctioned post, the Government has no right to refuse the approval and the fact that the staff strength was reduced or withdrawn cannot be a ground to refuse the approval when the appointment sought for was for a sanctioned post.

7. In the Judgment in W.A.(MD) No.628 of 2014, which has been relied upon by the learned counsel for the petitioner, this Court held that it is a well settled legal principle that if a person is appointed in a sanctioned post, the approval of appointment cannot be rejected and if at all there is a fall in strength and the post consequently become surplus, the proper approach should be to grant approval to the post of the said teacher along with post could be transferred/deployed to a needy school. Thereafter, as already indicated above, the facts on hand are also similar to the facts in the earlier referred two Division Bench Judgments. The only reason cited by the respondent in the impugned order is that the student strength is insufficient. This issue is no longer res integra and has already been settled by two Judgments of the Division Bench of this



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Court, holding that the approval of appointment to sanctioned posts cannot be refused by the Government.

8. In view of the above, this Writ Petition stands allowed and the respondents shall grant approval for the appointment of the teacher, M.Usharani as a Secondary Grade Teacher, with effect from the date of her initial appointment, together with all monetary benefits as applicable under law. The respondents shall carry out their exercise within a period of six weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. No costs.

30.06.2023

Index: Yes/ No

Internet : Yes/No

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P.B.BALAJI, J.,

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