



W.P.No.13760 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	31.10.2023
Pronounced on	15.11.2023

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

W.P.No.13760 of 2021

and

W.MP.Nos.14603 & 14604 of 2021

Sri Shanmugananda Aided Primary School,
Rep by its Manager,
Dr.Kotteswaran,
Vallimalai,
Ranipet District 632 520.

...

Petitioner

Vs.

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

2. The District Educational Officer,
Vellore.

3.The Block Educational Officer,
Katpadi, Ranipet District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the entire



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records connected with the impugned order passed by the 2nd respondent, vide O.Mu.No.2506/Aa4/2020 dated Nil 12.2020, signed on 23.12.2020 and quash the same and consequently direct the respondents to approve the appointment of Tmt.R.Elakkiya, as Secondary Grade Teacher in the petitioner school w.e.f.17.02.2021, with all consequential monetary benefits.

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mr.P.Sanjai Gandhi, Govt. Advocate

ORDER

This Writ Petition has been filed seeking issuance of Writ of Certiorarified Mandamus to call for the entire records connected with the impugned order passed by the 2nd respondent, vide O.Mu.No.2506/Aa4/2020 dated Nil 12.2020, signed on 23.12.2020 and quash the same and consequently direct the respondents to approve the appointment of Tmt.R.Elakkiya, as Secondary Grade Teacher in the petitioner school w.e.f.17.02.2021, with all consequential monetary benefits.



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2. Heard Mr.S.N.Ravichandran, learned Counsel for the petitioner and Mr.P.Sanjai Gandhi, learned Govt. Advocate for the respondents.

3. The brief facts of the case are as follows:

The petitioner's school is an Aided Primary School and was sanctioned with 5 teaching posts. Since the students strength has reduced drastically, the sanctioned post was also reduced and as on date, the school is functioning with one Headmaster and one Secondary Grade Teacher. On 01.06.2020 due to the retirement of one Mrs.Kasthuri, Secondary Grade Headmistress vacancy in the said cadre had arisen. In the said post one Mr.T.Gandhi was promoted as Headmaster on 01.07.2020 and his promotion approval was sent to the educational authorities and the same was approved. Thereafter the school has submitted a proposal dated 01.07.2021, requesting the educational authorities to grant permission to fill up the vacancy. However, the said proposal was rejected by the second respondent by citing the G.O.Ms. No.165, School Education Department, dated 17.09.2019.

4.The learned counsel for the 2nd respondent has submitted that the



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government has already issued orders in G.O.Ms.No.231, School Education Department dated 11.08.2010 for deployment of surplus teachers with reference to pupil teacher ratio prescribed under Right of Children to Free and Compulsory Education Act-2009. The government has got the right to regulate the expenditure with a view to avoid unnecessary expenditures by employing over and above the norms, which will result in audit objection by the Accountant General.

4.1. Even though G.O.Ms.No.165, School Education Department dated 17.09.2019 which pre postulate a condition that the non availability of the surplus post should be obtained from the government has to be confirmed with the government before filling up any post in a private aided school, there is no express norms and rules to the authorities that the private school managements can make recruitment with reference to pupil teacher ratio. Since prior permission has not been obtained before making fresh recruitment the action of the petitioner in initiating the process is in violation of the statutory rules.

5. In the impugned order dated Nil 12.2020 vide O.Mu.No.2506/Aa4/2020, the only reason for rejecting the permission is



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stated as the availability of surplus teachers in view of the implementation of G.O.Ms.No.231, School Education [C-2] Department dated 11.08.2010. However the petitioner has claimed that G.O.Ms.No.231, School Education [C-2] Department dated 11.08.2010 has been issued for deployment of surplus teachers. Subsequently G.O.Ms.No.165 was also issued on 17.09.2019 on the same line.

6. But it is to be noted that as on the date when the vacancy arose i.e. 31.05.2020, there were two sanctioned posts; one in the cadre of secondary grade Headmaster and another in the cadre of Secondary Grade Teacher. In G.O.Ms. No.220 dated 04.03.1992, it is stated that there is no necessity for the petitioner to get prior permission from the government before sending the proposal. The petitioner has filled up the sanctioned post. So far as the said post is concerned, it is not declared as surplus. Hence, the respondent has to consider the proposal and pass an order of approval of the appointment, provided if the said proposal satisfies all other rules and requirement.

7. Hence, the Writ Petition is **allowed** and the impugned order passed by the 2nd respondent, vide O.Mu.No.2506/Aa4/2020 dated Nil



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12.2020, signed on 23.12.2020 is set-aside. The respondents 1 & 2 are directed to consider the appointment of Tmt.R.Elakkiya, as Secondary Grade Teacher in the petitioner school w.e.f.17.02.2021, with all consequential and attendant benefits and pass order within a period of four weeks from the date of receipt of copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

15.11.2023

Index : Yes/No
Internet : Yes/No
Speaking :Non-speaking
Neutral Citation : Yes
jrs



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To
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R.N.MANJULA, J.

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