



W.P.No.18752 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.18752 of 2020

and

W.M.P.No.23293 of 2020

Aided Elementary School,
Kilavampoondi Village,
Sathampadi PO,
Melmalayanur Taluk,
Villupuram District-604 204,
Rep. by its Manager,
A.Lakshmipathy,
S/o.Anadharatchakan Mudaliyar.

... Petitioner

Vs.

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

2.The District Educational Officer,
Villupuram District,
Villupuram.

3.The Block Educational Officer,
Melmalayanur Block,
Villupuram District.

... Respondents



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PRAYER: The writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order issued by the 2nd respondent in Na.Ka.No.895/Aa1/2020 dated 02.11.2020 and to quash the same and consequently direct the respondents to pass orders on the approval of appointment of Tmt.K.Annapoorni in the post of Secondary Grade Teacher in the sanctioned post in the petitioner school with effect from 01.08.2017, with all consequential and other attendant benefits, including the arrears of payment of salary from the date of appointment on 01.08.2017, within a time frame to be fixed by this Hon'ble Court.

For Petitioner : Mr.S.Nedunchezhiyan

For Respondents : Mr.T.Chezhiyan,
Additional Government Pleader

ORDER

This writ petition has been filed seeking to call for the records relating to the impugned order issued by the 2nd respondent in Na.Ka.No.895/Aa1/2020 dated 02.11.2020 and to quash the same and consequently direct the respondents to pass orders on the approval of appointment of Tmt.K.Annapoorni in the post of Secondary Grade Teacher in the sanctioned post in the petitioner school with effect from 01.08.2017, with all consequential and other attendant benefits, including the arrears of payment of salary from the date of appointment on



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01.08.2017.

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2. The learned counsel for the petitioner submitted that the petitioner school was established in the year 1946 in a rural village called Kilavampoondi Village, Melmalayanur Taluk, Villupuram District and the petitioner school is a Government Aided School governed under the provisions of Tamil Nadu Recognised Private Schools (Regulations) Act 1973 and Rules 1974 made thereunder. The petitioner school remains to be a two teacher school with one post of Headmaster and one Secondary Grade Teacher. In the petitioner school a vacancy to the post of Secondary Grade Teacher arose due to resignation of the incumbent Tmt.R.Manoja on 31.05.2017. Consequently the petitioner school submitted a proposal to the 2nd respondent through 3rd respondent, seeking permission to fill up the resultant vacancy to the post of Secondary Grade Teacher on 06.04.2018. The proposal submitted by the petitioner school dated 06.04.2018 through proper channel was forwarded by the 3rd respondent to 2nd respondent along with his recommendations vide proceedings in Na.Ka.No.221/A1/2018 dated 11.04.2018. Whereas, no further orders have been passed by the 2nd respondent on the proposal submitted by the petitioner school



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dated 06.04.2018 and the subsequent proposal forwarded to the 3rd respondent dated 11.04.2018 thereafter. In the said circumstances, the petitioner school was constrained to file writ petition before this Court in W.P.No.27842 of 2018 to direct the respondents to pass orders on the proposal forwarded by the petitioner school dated 06.04.2018 and the subsequent proposal forwarded by the 3rd respondent to 2nd respondent dated 11.04.2018 for granting permission to fill up the post of Secondary Grade Teacher in the vacancy existing from 01.06.2017 onwards. The petitioner school remains to be a repeated instructions / directions in various Government orders that there shall not be any vacancy to the teaching post in a two teacher school even for a single day. If a teacher is getting transferred from a two teacher school, the concerned teacher should be relieved only after reliever has joined the school, in the interest of students. Therefore, there was an imminent urgency to fill up the Secondary Grade Assistant post in the petitioner school, since the petitioner school remains to be a two teacher school.

3. The learned counsel for the petitioner further submitted that the petitioner school has notified the vacancy through newspaper and conducted the



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selection to fill up the post of Secondary Grade Teacher. Accordingly, one Tmt.K.Annapoorni was selected and appointed as Secondary Grade Teacher in the petitioner school with effect from 01.08.2017. The said Tmt.K.Annapoorni is fully qualified for the post of Secondary Grade Teacher with passing of Teacher Eligibility Test (TET) and the appointment was made only in the sanctioned post within the sanctioned strength. Further, the said Tmt.K.Annapoorni has also joined the post of Secondary Grade Teacher on the same day and continued to work as such till date from the date of appointment by signing the Master Attendance Register and taking classes for the students studying in the school. Consequent to the appointment of Tmt.K.Annapoorni, in respect of all inspections/visits by the Educational authorities' viz D.E.O. and B.E.O., the appointment of Tmt.K.Annapoorni has been written in the school records and the inspection reports. The fact remains that the report of D.E.O. dated 27.11.2017, it is stated that the teacher has been appointed in the Secondary Grade post in the vacancy arose with effect from 31.05.2017, for which sanction should be obtained from the Department. Even in the annual inspection dated 12.12.2017 made by the 3rd respondent, it is stated that the teacher appointed as Secondary Grade Teacher with effect from 01.09.2017 and the teacher should get teaching



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grant/salary after obtaining permission/approval from the 2nd respondent. The

appointment of Tmt.K.Annapoorni in the post of Secondary Grade Teacher in the

petitioner school has been duly acknowledged and endorsed by the respondent

authorities with further instructions that the appointment of teacher to be

approved for payment of salary. The respondents have not passed any orders to

grant permission and approval for the post of Secondary Grade Teacher. In the

said circumstances, since a teacher appoint in the petitioner school with effect

from 01.08.2017, suffered non-payment of salary, filed writ petition before this

Court in W.P.No.28 of 2020. This Court passed in the orders in the writ petitions

in W.P.No.27842 of 2018 filed by the petitioner school as well as W.P.No.28 of

2020 filed by the teacher appointed, on 22.01.2020 by referring to the fact that

the petitioner school is a two teacher school and the proposal forwarded to the 2nd

respondent by the 3rd respondent is pending for more than 1 ½ years, with further

directions to the 2nd respondent to pass orders on the proposal dated 11.04.2018,

in accordance with law, within a period of four weeks. The 2nd respondent issued

the impugned proceedings in Na.Ka.No.895/Aa1/2020 dated 02.11.2020, by

stating that the appointment of Tmt.K.Annapoorni in the post of Secondary

Grade Teacher cannot be approved by referring to the Government orders issued



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in G.O.Ms.No.165, School Education Department dated 17.09.2019 and the Government Letter dated 04.12.2019 on the premises that there are surplus teachers working in other schools in Villupuram District and therefore the post of Secondary Grade Teacher can be filled up by deployment. It is further ordered that the post of Secondary Grade teacher in the petitioner school to be filled up by deployment of one Mr.D.Murugan as Secondary Grade Teacher working in Government Aided Primary School, V.Nayampadi, Ginjee Block, Ginjee Education District, Villupuram District. Aggrieved by the above order the petitioner has come forward with the present writ petition.

4. Further, in this context, the learned counsel for the petitioner relied upon the order of this Court dated 22.07.2014 in W.P.(MD)No.7163 of 2011, wherein this Court at para no.7 held thus:-

“7. From the contentions of both parties, now the question to be decided is whether prior permission is required before filling up the vacancy caused as against an already sanctioned post. This issue is no more res integra, in view of the order, dated 25.07.2011 made in W.P.(MD).No.3772 of 2008. In that case, after having referred to the legal position, including Rule 15(4) a learned Single Judge of this Court has held that such prior



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permission is not at all required to fill up an already sanctioned post. The learned Single Judge in paragraph No.5 has held as follows:-

“5. In view of the settled law by this Court, the stand taken by the respondent in not considering the case of the petitioner for granting approval of the petitioner is not sustainable in law, as on true interpretation of Rule 15, only conclusion which can be drawn is that for appointment to sanctioned post, no prior approval is necessary nor it can be a ground to deny the approval to appointment of a qualified person”.

and also relied upon the order of this Court dated 30.03.2022 in W.PNo.10265 of 2016, wherein this Court at para no.7 held thus:-

7. Mr.G.Sankaran, learned counsel for the petitioner would submit that in terms of the scheme of the Tamil Nadu recognised Private Schools Regulation Act and the Rules framed thereunder there was no statutory requirement to obtain prior approval before filling up the post of teaching staff against the sanctioned vacancy. In this case, the appointment of Tmt.G.Karpagavalli was done in terms of regulations and the selection was done by following the procedure contemplated under the regulations. The School Committee was vested with the competency to make appointment of teachers and Tmt.G.Karpagavalli was appointed by the committee so constituted. Therefore, there was nothing illegal that could be attached to appointment, for the authorities to deny approval to her appointment.



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5. The learned counsel for the petitioner placed further reliance on the order dated 27.06.2023 of this Court in W.P.No.18264 of 2019 and paragraph 6 of the order dated 30.06.2023 in W.P.No. 18179 of 2023, which reads thus:

6. The learned Additional Advocate General submitted that as against the judgment passed by the Division Bench of this Court in a Batch of writ appeals in W.A.(MD).No.76 of 2019 etc., the State Government has preferred an appeal before the Hon'ble Supreme Court in Special Leave to Appeal (C) No.15702 of 2021. It is further submitted that the Hon'ble Supreme Court stayed the judgment only in respect of Clause (i) of paragraph 95 of the said judgment. Further it is also brought to the notice of this Court that the Division Bench in paragraph 6 of the said judgment, has observed that, “no fresh appointment even in the sanctioned vacancy shall be made by any school which are managed by the Corporate Management”.

6. By relying on the judgments cited supra, the learned counsel for the petitioner submitted that in all the above cases, it has been held that there is no requirement for prior approval for appointing the sanctioned post in the school.

7. Counter affidavit dated 06.01.2021 has been filed by the 2nd respondent and it is relevant to extract the following paragraphs:-

6. It is respectfully submitted that in rule 15(4) (iii)(c) of the Tamil Nadu Recognized Private Schools Rules 1974, it is clearly



stated that in the case of appointment from any other school or direct recruitment the School Committee shall obtain the prior permission of the District Educational Officer in respect of Pre-Primary, Primary and Middle schools. The action of the petitioner in having filled up the vacant post without prior approval of the 2nd respondent is in violation of the said rule. At that time, there were many surplus teachers in the category of Secondary Grade post and the respondents were taking necessary steps to re-deploy the surplus teachers to the needy schools. If the petitioner had applied for permission before appointment of the said teacher, the respondent has to redeploy a surplus teacher from the school concerned to his school. The policy of the Government is to re-deploy the surplus teachers to other aided schools where vacancies arose and need to fill up the posts. Such policy of the Government was defeated by violation of the rule stated supra by the petitioner.

9. It is respectfully submitted that in accordance with the above guidelines and the orders contemplated in para (xi) of G.O.Ms.No.261 School Education [Pa.Ka.5(2)] Department dated 20.12.2018, the following deployment was also ordered by the 2nd respondent in his same proceedings.

Sl. No.	Name of the surplus Teacher and school in which working	Name of the School to which transferred
1.	D.Murugan, Secondary Grade Teacher, Government Aided Elementary School, N.Nayampkadi Gingee Block Gingee Educational District.	Government Aided Elementary School, Kilavampoondi Melmalayanur Block Gingee Educational District.



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It is also stated in the said proceedings of the 2nd respondent that 55 surplus Secondary Grade Teachers are working in Villupuram District and additional loss of funds are made to the Government towards the grant of the said surplus teachers.

8. The learned Additional Government Pleader reiterated the stand taken by the second respondent in the impugned order.

9. Heard both sides and perused the materials available on record.

10. The reason assigned in the operative portion of the impugned order dated 02.11.2020 for rejecting the request of the petitioner Management to sanction the appointment of Secondary Grade teacher is that there are surplus teachers. Yet another reason cited in the impugned order is that prior permission of the authorities is required for filling up a vacancy. The first reason cannot be accepted for the reason that it is trite that the educational authorities cannot reject the Management's proposal for appointment of a teacher on the ground of availability of surplus teachers. The second reason also cannot be countenanced since prior permission is not required in respect of an already sanctioned post.



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This view is fortified by the judgments of this Court as cited supra.

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11. In view of the above factual matrix of the case and the ratio laid down by this Court, this Court is of the considered view that the impugned order passed by the 2nd respondent in Na.Ka.No.895/Aa1/2020 dated 02.11.2020 is liable to be quashed and the same is hereby quashed.

12. In the result, the writ petition stands allowed and the respondents are directed to pass orders on the approval of appointment of Tmt.K.Annapoorni in the post of Secondary Grade Teacher in the sanctioned post in the petitioner school with effect from 01.08.2017 with all consequential and other attendant benefits, including the arrears of payment of salary from the date of appointment on 01.08.2017 within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently connected miscellaneous petition is also closed.

29.08.2023

dpq

Index : Yes/No

Speaking Order: Yes/No



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To

- 1.The Director of Elementary Education,
DPI Campus, College Road,
Chennai-600 006.
- 2.The District Educational Officer,
Villupuram District,
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- 3.The Block Educational Officer,
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J. SATHYA NARAYANA PRASAD, J.

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