



W.P.No.24304 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 21.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE P.B. BALAJI

W.P.No. 24304 of 2017

&

W.M.P.No. 25714 of 2017

B.S. Gomathi Janci Rani

..Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep by its Secretary, Department of School Education,
Fort St George,
Chennai – 9.

2.The Chief Educational Officer,
Cuddalore,
Cuddalore District.

3.The District Educational Officer,
Cuddalore.

4.The Correspondent,
Girls Christian Higher Secondary School,
Mel Pattambakkam,
Cuddalore,
Cuddalore District.

...Respondents



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PRAYER: This Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondents 1 to 3 to grant approval to the petitioner's appointment as sewing Teacher in the fourth respondent minority aided school from the date of initial appointment and to extend all benefits both service and monetary thereto.

For Petitioner : Mr. T.Dharani

For Respondents : Mr. M.Shahjahan
1 to 3 Special Government Pleader

For Respondent 4 : No Appearance.

ORDER

The petitioner seeks issuance of a Writ of Mandamus to direct the respondents 1 to 3 to approve the petitioner's appointment as a Sewing Teacher in the 4th respondent minority aided School from the date of initial appointment and to consequently extend all benefits both, service and monetary thereto.



2. The petitioner in the affidavit filed in support of the Writ Petition states that pursuant to the notification calling for aspirants to the post of Vocation Teacher in the 4th respondent School, the petitioner made an application. The petitioner was appointed as a Sewing Teacher on 16.11.2015 and she joined the School on 19.11.2015 in the existing vacancy created by one I.Baktha Metlida, having retired.

3. The 4th respondent in and by the proceedings dated 19.11.2015 has requested the 3rd respondent to approve the appointment of the petitioner with effect from 19.11.2015. The 3rd respondent returned the proposal of the 4th respondent and sought for material particulars and clarifications. The 4th respondent vide letter dated 18.10.2016 clarified all the points raised by the 3rd respondent and also sent the material particulars that were required. However, once again the 3rd respondent returned the proposal.

4. The petitioner's case is that her appointment was made not only on the basis of the vacancy that had arisen due to the retirement of



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the earlier Teacher who had retired on her Superannuation, the 2nd respondent has also declared one post for Sewing Teacher as sanctioned post continuously from the years 2011 – 2012 to 2015 - 2016. The petitioner therefore made a representation on 10.07.2017 to the 2nd and 3rd respondents seeking approval of her appointment with effect from 19.11.2015. As there is no action taken by the respondents 2 and 3, the petitioner had filed the present Writ Petition.

5. The 3rd respondent has filed a counter stating that the appointment was made against the Government Order dated 16.07.1990 and there being no sanctioned post in existence, the proposal of the 4th respondent was rightly returned. The petitioner therefore cannot seek issuance of Writ of Mandamus as there has been no violation of any legal right of the petitioner. As in G.O.Ms.No.991, Education dated 16.07.1990, the Government itself directed that the post of vocational instructor would be deemed to be abolished as and when incumbent retires. The 3rd respondent therefore prayed for the dismissal of the Writ Petition.



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6. Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondents.

7. In the course of the arguments, the learned counsel for the petitioner relied upon the Judgement of the Hon'ble Division Bench of this Court in ***W.A.(MD).No.1494 of 2017*** dated ***01.03.2018*** and the order of learned single Judge of this Court in ***W.P.No.2503 of 2020*** dated ***16.07.2021***. The Hon'ble Division Bench in the Judgement in ***W.A.(MD).No.1494 of 2017*** dated ***01.03.2018*** taking into account the fact that there were sufficient numbers of students, held that the course has to continue and the post of vocational instructor could not be declared surplus, virtually closing down the course itself, as there would be no teacher.

8. In ***W.P.No.2503 of 2020*** dated ***16.07.2021***, this Court relying on Rule 26 of the Tamil Nadu Private School Regulation Act and the Judgement of this Court reported in ***2012 (4) MLJ 198 – S.Rasheetha***



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Banu Vs. State of Tamil Nadu, rep. by its Secretary to Government,

Chennai and others, held that even when there is a fall in students strength and the post of Secondary Grade Teachers are rendered as surplus, the authorities are bound to grant approval for the appointment to such teachers who were absorbed in the approved vacancies and thereafter, either transfer them or re-deploy them to the other needy Schools.

9. The ratio laid down in the above Judgements also squarely apply to the facts of the present case. The petitioner was admittedly appointed in the vacant post created by her immediate predecessor attaining superannuation. The petitioner has also categorically mentioned in the affidavit which reads as follows:

“5. The petitioner herein passed Teacher Technical Course (TTC) and Tailoring in Diploma, and was appointed as Vocational Teacher in the 4th respondent school, a recognized aided school. The 4th respondent school is declared as a Christian Minority Educational



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Agency. It is further submitted that the 4th respondent school from its commencement the posts under question duly sanctioned and the posts as and when fell vacant were periodically filled up after obtaining due permission and sanction from the authorities concerned in accordance with relevant rules and the incumbents also enjoyed all the service and monetary benefits from and out of the aid granted by the Government. The appointment of Sewing mistress under dispute herein are made only against the vacancies arose due to retirement on attaining superannuation of previous Sewing mistress who served in 4th respondent school. The second respondent has also in the course of his Annual inspection had declared 1 post for sewing teacher for the year 2011 -2012, 2012-2013, 2014-2015 and 2015-2016 as sanctioned post. The second respondent at the instance of the petitioner school duly granted the permission to fill up vacancies arose recently and duly granted approval



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for the appointment duly made by the school committee.

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10. The 2nd respondent has also not disputed that the 2nd respondent has declared one post for Sewing Teacher as sanctioned post continuously for the academic years 2011 - 2012 to 2015 - 2016. In such view of the matter, the respondents ought to have adhered to Rule 26 of the Tamil Nadu Private School Regulation Act and appointed the petitioner and thereafter it was open to the respondents to transfer or re-deploy the petitioner to some other needy School. The reliance placed on G.O.Ms.No.991, Education dated 16.07.1990 not approving the appointment of the petitioner is clearly erroneous and against the rules and also the law laid down by this Court.

11. In view of the above, the Writ Petition is allowed and the petitioner's appointment as a Sewing Teacher to the 4th respondent minority aided School shall be approved by the respondents from the



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date of her initial appointment. Consequently, the connected miscellaneous petition is closed. No costs.

12. The respondents shall carry out the above exercise within a period of 4 weeks from the date of receipt of a copy of this order.

21.06.2023

Index : Yes / No
Internet : Yes / No
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To

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P.B. BALAJI, J.

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