



W.P. (MD).No.715 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 30.11.2023

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P. (MD).No.715 of 2021
and W.M.P(MD)Nos.596 and 597 of 2021

National College Higher Secondary School
Rep. by its Secretary

... Petitioner

Vs

1. The Director,
School Education Department, DPI Campus,
College Road, Chennai.
2. The Chief Educational Officer,
Office of Chief Educational Officer,
Madurai Road, Trichy-8.
3. The District Educational Officer
Office of District Educational Officer,
Old District Collectors Office Campus,
Cantonment, Trichy-1.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ Certiorarified Mandamus, calling for the records relating to the impugned staff fixation order dated 6.6.2019 in Na.Ka.No.7002/E1/2018 issued by the 2nd respondent for the year 2018-2019 and the staff fixation order dated .11.2019 signed on



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11.11.2019 in Na.Ka.NO.7000/A4/E2/2019, issued by the 2nd respondent for the year 2019-2020 is illegal and quash the same in so far as declaring 10 posts of non teaching staff as surplus and consequently direct the respondents 2 and 3 herein to grant approval for the appointment 10 posts of non teaching staff made by the petitioner school w.e.f. 25-5-2018 with all attendant and monetary benefits including the arrears of salary and allowance within the time limit fixed by this Court.

For Petitioner : Mr.AL.Kannan

For Respondents : Mr.P.Thambidurai
Government Advocate

ORDER

This writ petition was filed challenging the staff fixation order issued by the second respondent for the year 2018-19, through proceedings, dated 06.06.2019 and the staff fixation order for the year 2019-20, through proceedings, dated 11.11.2019, insofar as declaring 10 posts of non-teaching staff as surplus and for a consequential direction to the second and third respondents to grant approval for appointment of 10 posts of non-teaching staff made by the petitioner school w.e.f. 25.05.2018 with all attendant and monetary benefits.

2.The case of the petitioner is that the petitioner School is a recognized Private Government aided Non Minority Higher Secondary

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School. The petitioner School had a sanctioned strength of 14 non-teaching staff in the following manner.

<i>S.No.</i>	<i>Name of Post</i>	<i>Number</i>
1	Junior Assistant	3
2	Library Clerk	1
3	Record Clerk	1
4	Lab Assistant	1
5	Office Assitant	3
6	Sweeper	1
7	Watchman	1
8	Scavanger	1
9	Waterman	2
	Total	14

3.The further case of the petitioner is that the concerned candidates for the posts were appointed w.e.f. 25.05.2018 and necessary proposal was sent to the respondents seeking for approval on 28.05.2018. The second respondent through the impugned staff fixation order, dated 06.06.2019 declared 10 posts of non-teaching staff as surplus. This was done by relying upon the subsequent Government Order in G.O.Ms.No. 238, dated 13.11.2018.



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4.The proposal that was sent by the petitioner was initially returned by the second respondent and this was put to challenge in W.P(MD)No.10043 and 10052 of 2019. These writ petitions came to be allowed by an order, dated 16.10.2019 and the relevant portions are extracted hereunder:

“5. From the materials on record and typed set of papers filed in the writ petitions, it is seen that the proposal sent by the fourth respondent for approving the appointments of the petitioners was returned by the third respondent twice and subsequently, it was resubmitted by the fourth respondent after rectifying the queries raised by the third respondent. The third respondent after finding the same in order, forwarded the same to the second respondent. The second respondent, on erroneous consideration, returned the said proposal for raising certain queries when the third respondent after being satisfied with the proposal submitted by the fourth respondent is in order. From the typed set of papers, it is seen that the petitioners have filed all the documents.

6. For the above reasons, the impugned return order passed by the second respondent is quashed and the fourth respondent is directed to resubmit the proposal, within a period of two weeks from the date of receipt of a copy of this order along with documents to the second respondent through the third respondent. On such re-submission of proposal by the fourth respondent, the second respondent is directed to pass



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orders on the proposal, within a period of two weeks thereafter”

5.It was pursuant to the above order, the proposal was resubmitted to the second respondent. On such re-submission, the impugned proceedings, dated 11.11.2019 came to be issued. Thereby, the second respondent once again reiterated the same position of declaring 10 posts of non-teaching staff as surplus. The same has been put to challenge in the present writ petition.

6.The third respondent has filed a counter affidavit. The third respondent has justified the declaration of 10 posts as surplus by placing reliance upon G.O.Ms.No.238, dated 13.11.2018. According to the third respondent, the petitioner did not have sufficient student strength as mandated under the G.O. and therefore, 10 posts were rendered surplus. In view of the same, the third respondent has justified the impugned proceedings issued by declaring 10 posts of non-teaching staff as surplus.



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7.Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents.

8.The short issue that arises for consideration in the present case is as to whether the respondents will be entitled to apply G.O.Ms.No.238, dated 13.11.2018 retrospectively, while dealing with the proposals sent by the petitioner School for sanction of appointment to those posts that took place on 25.05.2018.

9.There is no dispute with regard to the fact that 14 posts of non-teaching staff were available with the petitioner School and the appointments were made in the vacant posts on 25.05.2018. While dealing with this, the second respondent and third respondent had taken into consideration the subsequent G.O.Ms.No.238, dated 13.11.2018 and had also taken into consideration the student strength as on 01.08.2018 and refused to grant sanction and had also rendered 10 posts of non-teaching staff as surplus.



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10.Yet another School coming within the same management also faced the similar issue, which was put to challenge before this Court in W.P(MD)No.17121 of 2020. This writ petition was allowed by an order, dated 18.06.2021 and the relevant portions are extracted hereunder:

“8.From the materials available on record, it is seen that in the petitioner School vacancy arose in the non-teaching posts during the year 2005, 2012 and 2015. The petitioner School could not fill up the said vacancy due to the ban order and various Government Orders. The petitioner School appointed one R.Vinothini as Office Assistant, K.Hema as Record Clerk and V.Dineshkumar as Office Assistant by resolution, dated 24.05.2018, by following due process of law in the vacancy that arose as per the staff strength fixed for the year 2017-18 due to the promotion and retirement of incumbents. The abovesaid three persons joined duty in the petitioner School on 29.05.2018 and are working in the petitioner School. When the petitioner School sent a proposal for approval on 30.05.2018, the same was returned by the respondents raising certain queries. The petitioner School, after rectifying various queries raised by the second respondent, re-submitted the proposal on 02.11.2018. The second respondent returned the proposal vide proceedings dated 18.07.2019, directing the petitioner School to submit the staff fixation order for the year 2018-19 along with the proposal for approval. The petitioner School once again re-submitted the proposal along with staff fixation order for the



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year 2018-19 on 26.07.2019. The second respondent again returned the same on the ground that approval of School Committee was obtained only upto 27.03.2013 and only after renewal of approval of the School Committee, the proposal can be considered. The above three persons appointed in the petitioner School filed W.P(MD)Nos.19, 21 and 30 of 2020 and this Court, by order, dated 28.01.2020, quashed the return order, dated 21.11.2019 and directed the second respondent to consider the proposal of the petitioner School, dated 24.07.2019, without insisting for renewal of the tenure of the School Committee. The second respondent, without complying the order of this Court, dated 28.01.2020, found out a new ground to reject the proposal of the petitioner relying on G.O.Ms.No.238, School Education (PA6(1)) Department, dated 13.11.2018, which was issued subsequent to the appointment of the above three persons and proposal submitted by the petitioner School. G.O.Ms.No.238, School Education (PA6(1)) Department, dated 13.11.2018, has no retrospective effect.

9.The petitioner School filled up vacancy arose in the year 2005, 2012 and 2015, as per the staff fixation order for the year 2017-18. When the vacancy arose in the petitioner School and when the petitioner School filled up the said posts, G.O.Ms.No.238, School Education (PA6(1)) Department, dated 13.11.2018, was not in existence. The said G.O, came into effect much later ie., on 13.11.2018. In the counter-affidavit, the respondents have admitted that non-teaching staff strength has to be fixed on the first day of August of every year based on the students strength.



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10. In view of the same, even for the year 2018-19, the second respondent cannot rely on G.O.Ms.No.238, School Education (PA6(1)) Department, dated 13.11.2018, which came into force only on 13.11.2018. Even when this Court considered the Writ Petitions in W.P(MD)Nos.19, 21 and 30 of 2020, filed by the individuals, the respondents have not relied on G.O.Ms.No.238, School Education (PA6(1)) Department, dated 13.11.2018. At that time, the respondents were insisting on renewal of approval of the School Committee.

11. From the materials placed on record, it is seen that the second respondent has returned the proposal on three occasions raising three different queries. Finally, after the order of this Court, dated 28.01.2020, directing the second respondent to pass orders on the proposal without insisting for renewal of the tenure of the School Committee, the second respondent rejected the proposal referring to G.O.Ms.No.238, School Education (PA6(1)) Department, dated 13.11.2018, which was not in force when the vacancy arose, the petitioner School filled up vacancy in the sanctioned post and submitted the proposal for approval on 30.05.2018.

12. Considering the above materials, it is clear that it is the intention of the second respondent is some how or other not to give approval for the appointments of three persons made by the petitioner School. The reason given by the second respondent in the impugned order is erroneous and is liable to be quashed.

13. In the result, the impugned order of the second respondent, dated 09.03.2020, is quashed. The respondents are directed to grant approval for the appointments of R.Vinothini



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as Office Assistant, K.Hema as Record Clerk and V.Dineshkumar as office Assistant made by the petitioner School with effect from 29.05.2018 (F.N) with all consequential monetary benefits and arrears of salary as per proposal, dated 30.05.2018 submitted by the petitioner School”.

11.Pursuant to the above order, the second respondent through proceedings, dated 23.09.2022 complied with the order passed by this Court and granted sanction for the appointments made.

12.The above order passed by the learned Single Judge has become final and the learned Single Judge had an occasion to deal with the very same issue as to whether G.O.Ms.No.238, dated 13.11.2018 had any retrospective effect. It was held that this G.O. cannot have a retrospective effect.

13.It will also be useful to place reliance upon the order passed in W.A.(MD)No.1037 of 2021, dated 06.12.2021. In this case, the scope of G.O.Ms.No.64, dated 03.04.2018 was taken into consideration. The School in that case had the sanctioned post of non-teaching staff of Gardener. An incumbent retired on 31.03.2018 and in that vacancy, yet



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another person was appointed on 30.05.2018. When a proposal was sent, it was rejected by quoting the G.O.Ms.No.64, dated 03.04.2018. While dealing with this issue, it was held that the vacancy in that case had fallen on 31.03.2018 and therefore, the said G.O.cannot be given as a retrospective effect and the approval cannot be denied while appointing a person to that vacant post. A review application in Rev.Appl(MD)No.54 of 2022 that was filed in the writ appeal was also disposed of by an order, dated 21.03.2022.

14.It is clear from the above, orders that were relied upon that Government Order passed in G.O.Ms.No.238, dated 13.11.2018 cannot have a retrospective effect. In the instant case, there is no dispute that the appointment was made on 25.05.2018, ie., much before the coming into force of G.O.Ms.No.238, dated 13.11.2018. That apart, this Court must also take into consideration the earlier order that was passed in W.P(MD)No.17121 of 2020, dated 18.06.2021, wherein, the same issue was considered with respect to another School coming within the same management. The order passed in that writ petition was also complied with by the second respondent.



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15.In the light of the above discussions, the impugned staff fixation orders, dated 06.06.2019 and 11.11.2019 issued by the second respondent for the years 2018-19 and 2019-20, are hereby quashed, insofar as declaring 10 posts of non-teaching staff as surplus. There shall be a direction to the second and third respondents to grant approval for the appointments made to 10 posts of non-teaching staff by the petitioner School w.e.f.25.05.2018, with all attendant and monetary benefits. This process shall be completed by the second and third respondents within a period of eight weeks from the date of receipt of copy of this order.

16.In the result, this writ petition is allowed with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

30.11.2023

NCC : Yes/No
Internet : Yes/No
Index : Yes/No
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To

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School Education Department, DPI Campus,
College Road, Chennai.
2. The Chief Educational Officer,
Office of Chief Educational Officer,
Madurai Road, Trichy-8.
3. The District Educational Officer
Office of District Educational Officer,
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N.ANAND VENKATESH, J.

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**ORDER IN
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