



W.P.(MD)No.1434 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.01.2023

PRONOUNCED ON : 09.05.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.1434 of 2023

and

W.M.P.(MD)Nos.1310 to 1312 of 2023

1.R.Rajesh
2.S.Ilakkiya
3.D.Chinniah
4.PL.Kulothungan

... Petitioners

VS.

1.The Commissioner,
Directorate of School Education,
DPI Campus, College Road,
Chennai-600 006.

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

3.The District Educational Officer,



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Pudukottai Education District,
Pudukottai.

4.The Secretary,
S.M.M.Aru.Alamelu Arunachalam
High School,
Panayapatti-622 406,
Pudukottai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order issued by the 3rd respondent in A.Thi.Mu.No.4355/Aa2/2020, dated 23.02.2021 and to quash the same and consequently, to direct the respondents 1 to 3 to approve the appointment of the petitioners 1 to 3 in the post of B.T.Assistant and 4th petitioner in the post of Physical Education Teacher in the 4th respondent School, from the date of appointment with all consequential and other attendant benefits including arrears of salary with interest within a time frame to be fixed by this Court.

For Petitioners	: Mr.G.Sankaran Senior Counsel for Mr.M.Deepak
For R1 to 3	: Mr.S.Saji Bino Special Government Pleader



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ORDER

This writ petition is filed for issuance of writ of Certiorarified Mandamus, to quash the impugned order dated 23.02.2021 of the 3rd respondent and consequently to direct the respondents 1 to 3 to approve the appointment of the petitioners 1 to 3 in the post of B.T. Assistant and 4th petitioner in the post of Physical Education Teacher in the 4th respondent School, from the date of appointment with all consequential and other attendant benefits including arrears of salary with interest within a time frame to be fixed by this Court.

2. The brief facts of the case are that the 4th respondent is a Private Aided Non-Minority School having standards from 6 to 10. The school was established in the pre-independence period that is in 1946 as Primary School and subsequently upgraded as Middle School and then upgraded as High School. The 4th respondent School appointed the petitioners after selection process by the



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selection committee and the proposals were forwarded for approval. The same was returned by the DEO, vide impugned order, dated 23.02.2021. Challenging the said order, the present writ petition is filed.

3. The petitioners 1 to 3 are possessing the basic qualification for B.T. Assistant post along with TET. The 4th petitioner is qualified in Bachelor of Physical Education and is eligible for appointment as Physical Education Teacher. In the School, vacancy arose for the post of B.T.Assistant (Science), due to the retirement of incumbent, namely A.Kanagaraj due to voluntary retirement on 11.10.2007. The post of Physical Education Teacher became vacant on 01.05.2011, due to the retirement of incumbent namely, M.Pandiyan. Another vacancy in the post of B.T.Assistant (Tamil) arose on 01.05.2013, due to the retirement of one Sethurajan on 13.04.2013. Consequent to the vacancy arose in the year 2007, 2011 and 2013, the 4th respondent School submitted several representations seeking permission to fill up the posts and the last representation



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was submitted on 01.11.2018. Consequently, the 4th respondent School has also forwarded the proposal to the 2nd respondent, vide proceedings, dated 13.06.2019, whereas, no orders were passed by the respondents.

4. In the meanwhile, another vacancy in the post of B.T.Assistant (Science) arose due to the promotion of the incumbent R.Nachiyar as Headmaster on 09.07.2018. Since already there is a post of B.T.Assistant (Science) in the School, a representation was submitted to the Department for conversion of Science B.T. as English B.T. On 25.02.2019. Consequently, the Director of School Education issued orders, dated 02.09.2019, for conversion. Yet another vacancy arose in the post of Secondary Grade Teachers due to the retirement of incumbent one Thillakkarasi on 31.01.2019. Consequently, the 4th respondent submitted a proposal to upgrade the said Secondary Grade Teacher post as B.T.Assistant (Maths) on 25.02.2019. As per G.O.Ms.No.100, dated 27.06.2003, the said proposal was submitted. However, no orders were passed. In such



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circumstances, 5 teaching posts remained unfilled for a long time. This was causing hardships to the School.

5. Thereafter, the 4th respondent has notified the vacancy in the employment exchange to sponsor the eligible candidates in accordance with roster, vide letter, dated 10.06.2020. The employment exchange has sponsored the list of candidates for four teaching posts except for the post of B.T.Assistant (Maths) since there is no qualified persons in SC(A), vide proceedings, dated 26.06.2020. For the post of B.T.Assistant (Maths), it is informed that the vacancy notified to other District Employment Exchange throughout the State. Consequently, the 4th respondent has conducted selection process for four teaching posts. In the selection process, petitioners 1 to 3 have been selected for the B.T.Assistant post for the subjects Science, English and Tamil respectively and the 4th petitioner was selected as Physical Education Teacher and they were appointed. The petitioners joined the respective posts and are working continuously till date. Thereafter, the 4th



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respondent School submitted to the proposal to approve the appointment. However, the same was returned, vide proceedings, dated 19.01.2021, by stating that the batch of cases in W.A.(MD)No.76 of 2019, is pending before this Court.

6. In the impugned order the respondents referred to G.O.Ms.No.165, dated 17.09.2019 and stated that the approval of appointment of B.T.Assistants can be considered only after deployment of surplus B.T.Assistants working in other schools in accordance with the said Government order.

7. The contention of the petitioners is that the petitioners as well as the 4th respondent School approached the official respondents by stating that teaching posts in 4th respondent School were not filled up and were kept pending for many years and the appointments were made only in the sanctioned posts. Moreover, G.O.Ms.No.165, dated 17.09.2019, was declared as inoperative and unenforceable as per the orders of this Court. Hence, the appointments are liable



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to be approved based on the existing Government orders. Therefore, the petitioners are seeking to issue a direction to the respondents to approve their appointment.

8. On instructions, the respondents submitted that even though the vacancies were kept unfilled for many years, the 4th respondent School has not submitted any proposal then and there to fill up the vacancy. In several fixation orders, the surplus posts were already indicated in the staff fixation order. For the academic year 2018-2019, the School was having strength of 244 and there are six sections. Even if it is considered that six Teachers are essential, the School is having nine Teachers as per the staff fixation. When the school was informed, while issuing the staff fixation order that there are surplus teachers in the School, the School ought not to have appointed any fresh teachers. Hence, when the permission was sought by the School to fill up the vacancy, the same was not granted to the School, since there were surplus teachers in the said School.



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Thereafter, the School without taking prior permission, has conducted a selection process, selected the candidates and appointed them in the year 2020. When the appointment order was issued, there was a stay in W.A.(MD)No.76 of 2019. Therefore, the said appointment orders were issued when the stay was in force. Therefore, the respondents claimed that the appointment of the petitioners are against the interim orders passed in W.A.(MD)No.76 of 2019. Hence, the respondents prayed to dismiss the writ petition.

9. Heard Mr.G.Sankaran, learned Senior Counsel appearing for the petitioner and Mr.S.Saji Bino, learned Special Government Pleader appearing for respondents 1 to 3 and perused the records.

10. It is seen from the staff fixation order issued for the academic year 2018-2019, the School is having only 244 students (for 6th standard-63, 7th standard-40, 8th standard-33, 9th standard-54 and 10th standard-54). Since in 6th

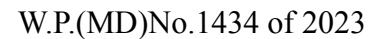


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standard there are 63 students, it was bifurcated into two sections. Therefore, the school is having only six sections, but the School is having 9 Teachers (including Middle School Headmaster). As far as the other B.T.Assistants are concerned, already, the School is having one B.T.Assistant (Science), therefore, one more B.T.Assistant (Science) is not essential based on the work load. In the staff fixation, one Secondary Grade Teacher was declared as surplus. In spite of the same, the 4th respondent School has unilaterally upgraded the said post as B.T.Assistant and has appointed one B.T.Assistant in the upgraded post. Therefore, the School is not entitled to fill up the said post. The School ought to have informed the authorities to pass deployment orders or deputation orders so that the surplus teaches would be posted in the said vacancy.

11. As far as the appointment of Physical Education Teacher is concerned, any School is entitled to Physical Education Teacher, if the student strength is more than 250 as per G.O.Ms.No.525 School Education dated 29.12.1997. For



12. Moreover all the four appointments of the petitioners were made when the interim order passed in W.A.(MD)No.76 of 2019, was in force. Moreover, in the final judgment of W.A.(MD)No.76 of 2019, the Honourable Division Bench of this Court has issued several directions. In one such direction, the official respondents therein were directed to pass deployment orders from the list of surplus teachers.



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13. The Grant-in-Aid Code has categorically stated that schools may be paid grant-in-aid subject to the orders and instructions issued by the government from time to time. When the order of approval was not granted, then as per Rule 6 the school is not entitled to claim grant-in-aid. Therefore, this Court is of the considered opinion that the plea that the said teacher was appointed and hence the school is entitled to grant-in-aid is rejected.

14. Moreover there are several judgments where it has been held that the grant-in-aid is not a fundamental right and it is not automatic. The Honourable Supreme Court has held in the case of State of Odisha and another Vs Anup Kumar Senapati and another (Civil Appeal No. 7295 of 2019) in paragraph No.8, that grant-in-aid cannot be claimed as matter of right merely on completion of the prescribed period and it is dependent upon fulfillment of various conditions. In the case of the state of Bihar Vs Sachindra Narayan (2019 3 SCC 803), the



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Hon'ble Supreme Court had held that the release of grant is in discretion of the grantor and cannot be forced by the grantee. In the case of the State of West Bengal Vs Subhas Kumar Chatterjee (2010 11 SCC 694) has held that no court can issue Mandamus directing the authorities to act in contravention of the rules as it would amount to compelling the authorities to violate law, such direction may result in destruction of rule of law. In the case of Maria Grace Rural Middle School Vs the Government of Tamil Nadu (2007 2 MLJ 497) the Hon'ble Division Bench had held that grant-in-aid is neither a fundamental right, nor a statutory right and it depends upon the economic capacity of the State. In the judgment dated 25.03.2021 in case of the Government of Tamil Nadu and others Vs the Correspondent in Review Application No. 180 of 2018 the Hon'ble Division Bench had held that the grant-in-aid is not automatic and the same depends on various factors. This review judgment is followed in the case of Sri Kumaragurubara Swamigal Middle School Vs the Government of Tamil Nadu in W.P.No.30796 of 2019 vide order dated 07.10.2021, the Hon'ble Court had held



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that the grant-in-aid is not automatic and the same depends on various factors. Therefore, this Court is of the considered opinion that the claim of the petitioners school cannot be entertained and the impugned order passed by the authority is legally sustainable.

15. Therefore, seeing from any angle this Court is of the considered opinion that the 4th respondent School ought not to have filled up the said post and ought to have informed the authorities to pass deployment orders or deputation orders, so that the surplus Teachers would be posted in the said vacancies.

16. The School is receiving grant-in-aid and is also having some public duty. The State is having more than 6000 surplus Teachers and the State Government is spending crores of rupees for paying salary to the surplus Teachers. Therefore, this Court declines to quash the impugned order. Hence, the writ petition is dismissed. No costs. Consequently, connected miscellaneous



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petitions are closed.

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

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To

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Directorate of School Education,
DPI Campus, College Road,
Chennai-600 006.
- 2.The Chief Educational Officer,
Pudukottai District,
Pudukottai.
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S.SRIMATHY, J

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