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WRIT APPEAL(MD)No.511 of 2023



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.07.2023

CORAM

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
AND
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

WRIT APPEAL(MD)No.511 of 2023
and
CMP(MD)No.5226 of 2023

1.The Chief Educational Officer,
HAK Road,
Tallakulam, Madurai.

2.The District Educational Officer,
District Educational Officer,
Melur, Madurai District.

: Appellants/Respondents

Vs.

T.S.Kasthuri

: Respondent/Petitioner

Prayer:

Writ Appeal has been filed under Clause 15 of Letters Patent to set aside the order, dated 04.01.2023 made in W.P.(MD)No.130 of 2023 on the file of this Court.

For Appellants

: Mr.D.Sadiq Raja

Additional Government Pleader

For Respondent

: Ms.K.Akalya

for Mr.M.Jerin Mathew



J U D G M E N T

(Order of the Court was made by **D.BHARATHA CHAKRAVARTHY, J.**)

This Writ Appeal is directed against the order of the learned Single Judge of this Court, dated 04.01.2023 made in W.P.(MD)No.130 of 2023, in and by which the learned Single Judge allowed the writ petition filed by the respondent herein. The respondent herein prayed to quash the impugned order of the first appellant, dated 22.12.2022 and to consequently, grant re-employment to the respondent till the end of the Academic year (2022-2023) and disburse all monetary and service benefits. By the said order impugned in the writ petition, the first appellant had refused to grant approval for re-employment of the respondent/writ petitioner, who was a Graduate Teacher in Science at the Government High School, Vandiyur, who retired on superannuation with effect from 31.12.2022 on the ground that there are surplus Science Teachers in Madurai District.

2. The case of the respondent/writ petitioner is that she was appointed as B.T. Assistant (Science) with effect from 07.11.2007 and in the year 2012, she was transferred to Government High School, Vandiyur



and she was due to retire on superannuation with effect from 31.12.2022.

She has applied for re-employment, but however by the order impugned in the writ petition, the same was rejected.

3. It is the further case of the petitioner that it is not in public interest to discontinue her services as the students would be affected. The very basis of the reasoning contained in the impugned order is unacceptable as there are contrary views, which are taken by this Court as to whether re-employment can be refused on the ground that the Teacher is surplus. This apart, it is her contention that until the retirement, the factum as to the declaration of post as surplus was never intimated to the petitioner or the school in which she was working. As a matter of fact, the calculation made by the appellants is erroneous and had there been an opportunity, the writ petitioner would have demonstrated that actually there were no surplus at all.

4. It was contended on behalf of the appellants that by virtue of the Judgment of the Hon'ble Division Bench of this Court in W.A.(MD)Nos.259 of 2020 etc., this Court has authoritatively pronounced that when there are surplus Teachers, Teachers, who attain the age of superannuation during the middle of the academic year will



not be entitled to re-employment. It is their further contention that when Teachers have been categorically declared as surplus by the communication of the Joint Director and when there was no objection whatsoever, which is raised, the petitioner is not entitled for re-employment and therefore, the impugned order rejecting re-employment is in order.

5. The learned Single Judge has considered the case of the parties and held in Paragraph No.8 that eventhough the Division Bench has held that surplus Teachers are not entitled for re-employment, in the present case, the petitioner is not a surplus Teacher and till the date of the writ petitioner's retirement, such declaration was not made and that the same was not communicated. Aggrieved by the same, the present Writ Appeal is filed.

6. Mr.D.Sadiq Raja, the learned Additional Government Pleader appearing on behalf of the appellants taking this Court to the communication of the District Educational Officer, Melur, dated 23.11.2022 would submit that it is factually erroneous to contend that the surplus is not intimated. He would further submit that the very exercise is done by way of an inspection in the school and due signatures have been



obtained in those inspections, based on which, the District-wise report is complied and the surplus is calculated. Therefore, he would pray that the order of the learned Single Judge is to be interfered with.

7. Per contra, Ms.K.Akalya, learned counsel representing Mr.M.Jerin Mathew, learned counsel appearing on behalf of the respondent would submit that even as per the communication, the Joint Director, dated 12.03.2022, a model method of calculation is mentioned in the table. Even calculating as per the same, the position would be as follows:

Medium	6 th Std.	7 th Std.	8 th Std.	9 th Std.	10 th Std.	Total
Tamil Medium students strength	29	31	22	28	24	134
Post eligible	1	1	1	1	1	5
English Medium students strength	37 (2 Sections)	24	16	20	21	118
Post eligible	2	1	1	1	1	6

Therefore, the very declaration of the writ petitioner as surplus is erroneous. In any event, the writ petitioner was not served with staff fixation worksheet so that she could not challenge the same.



8. We have considered the rival submissions made on either side and perused the material records of the case.

9. At the outset, the learned Single Judge himself has extracted the Judgment of the Hon'ble Division Bench of this Court in W.A.(MD)Nos.259 of 2020 etc., and has made clear about the legal position that in case of the Teachers being in surplus, the superannuating Teachers will not be entitled for re-employment till the end of the academic year. The only ground on which, the writ petition filed by the respondent was allowed is that the post was not declared as surplus and that such declaration was not communicated to the writ petitioner.

10. Firstly, the declaration of surplus posts is to be communicated only to the concerned school and not to every Teacher. A perusal of the proceedings of the District Educational Officer, Melur, dated 23.11.2022 it can be clearly seen that the post has been declared as surplus and the communication is addressed to the Headmaster, Government High School, Vandiyur. A detailed assessment in Form II has also been annexed to the said communication. In that view of the matter, the reasoning given by the learned Single Judge that the post was not



declared as surplus cannot be countenanced. It is also not mandatory to communicate such declaration individually to the Teachers and once it is communicated to the School, it is for the respondent/writ petitioner to have challenge the same in the manner known to law. In any event, even after the same was brought to the notice, the same was not challenged. So long as the declaration of the post as surplus remains unchallenged, the writ petitioner could not raise any grievance as to refusal of re-employment. In that view of the matter, we have no other option than to interfere with the order of the learned Single Judge.

11. In the result, this Writ Appeal stands allowed and consequently, the order of the learned Single Judge of this Court, dated 04.01.2023 in W.P.(MD)No.130 of 2023 is set aside and W.P.(MD)No.130 of 2023 shall stand dismissed. However, there shall be no orders as to costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [D.B.C., J.]

21.07.2023

NCC : Yes / No

Index: Yes/No

Internet: Yes/No

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AND
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