



W.A.(MD) No.1367 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.(MD) No.1367 of 2023
and
C.M.P.(MD)No.10555 of 2023

1.The Chief Educational Officer,
Nagercoil, Kanyakumari District.

2.The District Educational Officer,
Thuckalay,
Kanyakumari District.

: Appellants/Respondents 1 & 2

-vs-

1.M.S.Sreedhar,
Physical Education Teacher,
V.K.P.Higher Secondary School,
Colachel, Kanyakumari District.

: 1st Respondent/Writ Petitioner

2.The Correspondent,
V.K.P.Higher Secondary School,
Colachel, Kanyakumari District.

: 2nd Respondent/3rd Respondent

PRAYER: Writ Appeal has been filed under Clause 15 of Letters Patent to set aside the order, dated 20.09.2022 made in W.P.(MD)No.11297 of 2022 on the file of this Court.

For Appellants : Mr.D.Sadiq Raja
Additional Government Pleader

For R1 : Mrs.A.Amala



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JUDGMENT

[Judgment of the Court was made by D.BHARATHA CHAKRAVARTHY, J.]

This Writ Appeal is directed against the order of the learned Single Judge, dated 20.09.2022 made in W.P.(MD)No.11297 of 2022. The learned Single Judge had allowed the writ petition filed by the first respondent.

2. In the said writ petition, the first respondent had prayed to call for the records relating to the impugned order dated 16.12.2021 inasmuch as it refused to approve his appointment and consequently to approve his appointment and disburse the grant-in-aid towards the salary and other allowances with effect from 01.06.2018. The said writ petition was allowed by the learned Single Judge, aggrieved by which, the respondents have come on appeal before this Court.

3. The first respondent herein was appointed as the second Physical Education Teacher in the second respondent school with effect from 01.06.2018. Since the approval was not given, earlier writ petition in W.P. (MD)No.12675 of 2020 was filed in which a direction was given to pass orders on merits in accordance with law in respect of the proposal submitted by the second respondent's school. Upon such direction, an order was passed



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rejecting the grant of approval on the ground that in the entire District, there were 48 surplus physical education teachers. When the said order was again challenged, ultimately in W.A(MD)No.76 of 2019, this Court had directed to take the school as an unit while considering the necessity for appointment.

4. Thereafter, once again the first respondent considered the issue and by the order impugned in the writ petition dated 16.12.2021 held that as on date of the consideration for approval there were only 381 students in the school and as per the Government Order in G.O.Ms.No.525, if only the students strength is 550 and above, a second Physical Education Teacher can be appointed. Challenging the same, the writ petition was filed.

5. The learned Single Judge after considering the reasons mentioned in the impugned order, held that the student strength has to be taken as on the date of appointment ie., August 2018 and the subsequent fall in the strength can never be criteria to deny approval and allowed the writ petition. The learned Single Judge also held that the students studying in English Medium section shall also be taken into account for the purpose of calculating the strength in respect of Physical Education Teacher. Thus finding that the students strength was 699 in August 2018, the learned Single Judge allowed the writ petition. Aggrieved by the same, the present writ appeal is filed.



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6. Heard *Mr.D.Sadiq Raja*, the learned Additional Government Pleader appearing on behalf of the appellants and *Mrs.A.Amala*, the learned counsel appearing on behalf of the first respondent.

7. It is agreed by both sides learned counsels that both the issues that the strength of the students as on date of the appointment and not on the date of consideration of approval should be taken into account and that the English Medium students shall also be taken into account for the purpose of appointment of Physical Education Teacher have since been settled by the several orders of this Court. The learned Additional Government Pleader could not deny the said proposition and would fairly admit the said legal position.

8. In view thereof, this Writ Appeal is without any merits and is accordingly dismissed. No costs. The appellants and the second respondent shall comply with the directions of the learned Single Judge within a period of eight weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

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

23.08.2023

NCC : Yes / No
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