



W.P.(MD)No.11263 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:03.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.11263 of 2020

and

W.M.P(MD)No.9838 of 2020

A.Alagusundaram Memorial Middle School,
Rep. by its,
Secretary,
A.K.S.Manoharan

... Petitioner

Vs.

1.The District Educational Officer,
Madurai,
Madurai District.

2.The Block Educational Officer,
Madurai North,
Madurai.

3.V.Hema Ruckmani

... Respondents

Prayer:Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the impugned order made in Na.Ka.No.048/AA1/2020 dated 09.01.2020 passed by the first respondent and consequential impugned order made in Na.Ka.No.4848/AA1/2020, dated 25.07.2020 passed by the first respondent and quash the same.



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For Petitioner
For R-1 & R-2

: Mr.P.R.Prithiviraj
: Mr.S.Saji Bino,
Special Government Pleader

ORDER

This writ petition has been filed to quash the impugned order made in Na.Ka.No.048/AA1/2020, dated 09.01.2020, passed by the first respondent and consequential impugned order passed by the first respondent in Na.Ka.No.4848/AA1/2020, dated 25.07.2020.

2. The case of the petitioner is that the petitioner is the Secretary and Educational Agency of the petitioner school from 01.06.1982. The said school was aided by the Government from 01.06.1953. While the matter stood thus, the third respondent was appointed as a Secondary Grade Teacher on 28.06.2006. The third respondent submitted an application on 09.10.2019 seeking 'Voluntary Retirement from Service' on her own volition and gave prior notice as per Rule 56(3) of the Tamilnadu Government Fundamental Rules. The application of the third respondent was forwarded to the first respondent through the second respondent for approval.



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3. While being so, on 06.01.2020, the third respondent submitted a letter to the petitioner seeking withdrawal of the application seeking Voluntary Retirement and she forwarded a copy of the said letter to the official respondents also. Subsequently, the School Committee vide resolution, dated 08.01.2020, rejected the petitioner's request. The said decision was communicated to the third respondent on 09.01.2020 and she has also acknowledged the same. Subsequently, to the shock and surprise of the petitioner, the first respondent vide the impugned order dated 09.01.2020, permitted the third respondent to continue in service by virtue of the withdrawal letter submitted by the third respondent, dated 06.01.2020, which is in violation of Rule 56(3)(g) of the Tamil Nadu Fundamental Rules. Hence, challenging the same, the petitioner has filed this writ petition with the aforesaid prayer.

4. The learned counsel appearing for the petitioner would submit that admittedly the third respondent made application for Voluntary Retirement Service on 09.10.2019 and thereafter, the petitioner forwarded the same for approval of the first respondent and subsequently, pending approval before the first respondent, the third respondent made



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withdrawal application on 06.01.2020 and the same was rejected by the School Committee. However, the first respondent educational agency issued a direction to the third respondent to continue in service, which is contrary to the Fundamental Rules and hence, prays for allowing of the writ petition.

5. The learned Special Government Pleader appearing for the respondents 1 and 2, would submit that the District Educational Officers are vested with the powers of according approval for all the service matters in respect of teachers employed in schools as per G.O.Ms.No.101 School Education (Budget-1) Department, dated 18.05.2018. The orders of the first respondent is well within the competency of the first respondent with reference to the powers vested with him in respect of the service matters relating to the teachers employed in the aided schools according to G.O.Ms.No.101, dated 18.05.2018. The action of the school in having violated the orders of the first respondent is against the Rules. As per the guidelines issued in the G.O., referred to above, any action of the School Committee will come into effect only after it is approved by the competent authority. In the



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absence of approval of the competent authority, the orders become null and void and cannot be implemented by the management of aided schools. The petitioner school cannot cite a Rule which has been prescribed for Government Servants. Fundamental Rule has been prescribed for Government Servants and the same has no relevance in respect of teachers employed in aided schools and therefore, there is no illegality or infirmity in the order passed by the first respondent. If the petitioner is aggrieved by the order of the Department, it is open to the petitioner school management to prefer an appeal before the competent authority. However, without availing the appeal remedy, the petitioner school has directly approached this Court, which is not sustainable and hence, prays for dismissal of this writ petition.

6. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

7. Admittedly, the third respondent was appointed as Secondary Grade Teacher in the petitioner non-minority aided school on 28.06.2006. Her appointment was also approved by the educational agency.



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Subsequently, after rendering 13 years of service, the third respondent made an application for Voluntary Retirement Service on 09.10.2019 and the same was forwarded to the Educational Agency for approval in terms of G.O.Ms.101, dated 18.05.2018. It is admitted that any action taken by any private aided school, the same has to be approved by the first respondent. When the application submitted by the third respondent for Voluntary Retirement Service is pending before the Educational Authority, the third respondent made withdrawal application before the school before the school as well as Educational Agency.

8. This Court perused the resolution passed by the School Committee, which reveals that the appointment of the third respondent was made in a surplus post and she is the junior most teacher and accordingly, the withdrawal application of the third respondent was rejected vide resolution, dated 08.01.2020. Accordingly, the decision of rejection of application was forwarded to the first respondent. However, the Educational Agency not accepted the same and based on the withdrawal letter of the third respondent, issued a direction for continuity of service.



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9. The issue raised in this writ petition is whether the rejection order passed by the petitioner school is in the interest of institution or not.

10. The first respondent filed a detailed counter affidavit by categorically stating that the third respondent is entitled to continue in service. Admittedly, the petitioner institution is an aided non minority school and receiving grant-in-aid from the State Government and any action by the petitioner school has to be necessarily approved by the Educational Agency. However, the rejection order which was communicated to the third respondent is not in consonance with the educational agency. Further, unless the Educational Agency declare the third respondent's post as a surplus one, the petitioner school unilaterally taken a decision and rejected the withdrawal application submitted by the third respondent. Instead of taking appropriate action, the petitioner school rejected the withdrawal application submitted by the third respondent, which is not sustainable one. Moreover, the third respondent is entitled to withdraw her VRS application submitted by her before



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taking decision by the school authorities and by the Educational Agency.

The third respondent also made withdrawal application before the petitioner school as well as before the official respondents. Further, the decision taken by the petitioner school is not in terms of FR 56(3) (g) and hence, the first respondent properly considered the issue and passed the impugned order for continuity of service of the third respondent and the same does not warrant interference.

11. In the result, this writ petition is dismissed. No Costs.
Consequently, connected miscellaneous petition is closed.

03.01.2023

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Index:Yes/No

NCC:Yes/No

To:

- 1.The District Educational Officer, Madurai,
Madurai District.
- 2.The Block Educational Officer, Madurai North,
Madurai.



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M.DHANDAPANI, J.

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