



W.P(MD)No.6916 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P(MD)No.6916 of 2018

and

W.M.P(MD)Nos.6654 and 6655 of 2018

B.Rajesh

... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Secretary,
School Education Department,
Fort St.George,
Chennai -600 009.

2.The Director of School Education,
College Road,
Chennai - 600 006.

3.The Chief Educational Officer,
Thoothukudi,
Thoothukudi District.

4.The District Educational Officer,
Thoothukudi,
Thoothukudi District.

5.Karapettai Nadar Higher Secondary School,
Represented by its Secretary,
329, South Cotton Road,
Thoothukudi - 625001.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the



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proceedings of the fourth respondent in Na.Ka.No.2130/Aaa2/2017,
dated 23.02.2018.

For Petitioner : Mr.P.Pethu Rajesh
For R1 to R4 : Mr.V.Nirmal Kumar
Government Advocate
For R5 : Mr.K.Ragatheesh Kumar

ORDER

This Writ Petition has been filed against the proceedings of the fourth respondent in Na.Ka.No.2130/Aaa2/2017, dated 23.02.2018.

2. The case of the petitioner is that the petitioner is working as Physical Education Teacher in fifth respondent school. In the said school, there are 6th to 12th standards and more than 2572 students are studying. In the said school, three Physical Education Teachers are working and the petitioner is one among them. The petitioner learnt through records that on 01.06.1999, one post of Physical Education Teacher fell vacant. The fifth respondent submitted an application to the third respondent dated 19.07.1999 seeking permission to fill up the vacancy and the same was permitted by the third respondent vide proceedings dated 05.03.2001. In



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the said post, one A.Antony Bedwin Rajesh was appointed as the Physical Education Teacher with effect from 28.03.2001. In the mean time, while fixing the staff fixation for the year 2001 to 2002, the third respondent, vide his proceedings dated 18.10.2001, stated that out of three posts of Physical Education Teacher, one post become surplus for want of students' strength. However, the same was modified by the third respondent vide proceeding dated 29.05.2003 once again by refixing of the staff fixation and instead of three Physical Education Teachers, two posts were fixed. By proceeding dated 25.11.2022, three Physical Education Teachers were permitted to work in the fifth respondent School by the third respondent. The proposal sent by the fifth respondent for disbursement of grant-in-aid towards salary for the appointment of the Physical Education Teacher, by name A.Antony Bedwin Rajesh, was returned by the fourth respondent on 02.04.2001 stating that the said post is stated as surplus. The subsequent proposal was also returned by the fourth respondent.

3. Aggrieved by the same, the fifth respondent filed a Writ Petition in W.P.(MD)No.237 of 2009 before this Court. During pendency of the said Writ Petition, the said A.Antony Bedwin Rajesh relieved from his



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job on 28.11.2008. While disposing W.P.(MD) No.237 of 2009, this Court directed the respondents No.1 to 4 to approve one more Physical Education Teacher considering the strength of the fifth respondent School.

4. The petitioner was appointed as Physical Education Teacher in the fifth respondent school on 30.03.2017. As per the ratio fixed in G.O.Ms.No.525, School Education dated 29.12.1997, the School is eligible to have seven posts of Physical Education Teachers based upon the students' strength. But the Government sanctioned only three posts. The order passed by the Court in W.P(MD) No.237 of 2009 was not complied with.

5. The fifth respondent filed Cont.P(MD) No.2168 of 2017. During the pendency of the Contempt Petition, the fourth respondent passed an order approving the appointment of the petitioner as Physical Education Teacher with effect from 24.11.2017. Subsequently, by order impugned in this Writ Petition dated 23.02.2018, approval granted for appointment of the petitioner is cancelled by the fourth respondent. Aggrieved by the same, this Writ Petition is filed.



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6. Though this Writ Petition was admitted and rule nisi was ordered on 28.03.2018, no counter affidavit has been filed by the respondents 1 to 4 till date.

7. The learned counsel for the petitioner submits that the order impugned in this Writ Petition is passed in violation of principal of natural justice without giving any opportunity to the petitioner to put forth his case. Once approval is granted by the fourth respondent, it is the duty of the fourth respondent to issue notice to the fifth respondent school before cancelling the approval and sought to allow this Writ Petition.

8. The learned Government Advocate appearing for the respondents 1 to 4 submits that the petitioner was appointed in surplus post. He further contends that the order passed by this Court in W.P(MD) No.237 of 2009, dated 04.11.2016 is in respect of the issue with regard to the payment of salary to the Physical Education Teacher, by name, A.Antony Bedwin Rajesh and appointment of additional Physical Education Teacher on considering the students' strength. In the present issue, the petitioner was appointed as Physical Education Teacher only



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on 30.03.2017 and as such, his appointment is no way connected to the order passed by this Court in W.P(MD) No.237 of 2009 and sought to dismiss this Writ Petition.

9. Having heard the submissions of the respective counsels and upon careful consideration of the materials available on record, in the considered opinion of this Court, the order impugned in this Writ Petition is liable to be set aside on the ground that it is issued without providing any opportunity to the petitioner. Once approval is granted to appoint the petitioner as Physical Education Teacher, it is the duty of the fourth respondent to issue show cause notice to the petitioner calling for his explanation before passing the cancellation order. It is settled law that without affording opportunity to the aggrieved person, passing any final order is in violation of principal of natural justice. Admittedly, while issuing impugned proceeding, no notice is issued to the petitioner or no opportunity is provided to him to putforth his case before the Respondent No.4. Behind the back of the petitioner, the impugned order is issued, which is not sustainable in the eye of law.



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10. Accordingly, this Writ Petition is allowed and the impugned order passed by the fourth respondent in Na.Ka.No.2130/Aaa2/2017, dated 23.02.2018, is hereby set aside.

11. No costs.

12. Consequently, connected Miscellaneous Petitions are closed.

31.08.2023

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No
CM/Indu

To

- 1.The Secretary,
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Fort St.George,
Chennai -600009.
- 2.The Director of School Education,
College Road,
Chennai - 600 006.
- 3.The Chief Educational Officer,
Thoothukudi,
Thoothukudi District.
- 4.The District Educational Officer,
Thoothukudi,
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BATTU DEVANAND, J

CM/Indu

Order made in
W.P(MD)No.6916 of 2018

Dated :31.08.2023