



W.P.(MD)No.11924 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.11924 of 2016

and

W.M.P.(MD)Nos.9124 and 9125 of 2016

1.C.Bright Gnanaraj

2.D.David Mariaraj

... Petitioners

vs.

1.The Chief Educational Officer,
Office of the CEO,
Tirunelveli.

2.The District Educational Officer,
Cheranmadevi @ Tirunelveli.

3.The Secretary,
Balaiya Marthandam Higher Secondary
School,
Avaraikulam.

4.The Head Master (In charge),
Concordia Higher Secondary School,
Vallioor-627 117,
Tirunelveli District.



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5.Elizabeth Paulin

... Respondents

(R5 is impleaded, vide Court order, dated 24.04.2023, in W.M.P.(MD)No.9509 of 2016 in W.P.(MD)No.11924 of 2016)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for records on the file of the 1st respondent in proceedings Na.Ka.No.10040/A-2/2015, dated 16.06.2016 and to quash the same as arbitrary, illegal and unjustified.

For Petitioners	: Mr.S.Kadarkarai
For R1 and 2	: Mr.V.Om Prakash Government Advocate
For R4	: Mr.R.Govindaraj
For R5	: Mr.G.Prabhu Rajadurai

ORDER

This writ petition is filed for writ of Certiorari, to quash the proceedings, dated 16.06.2016 of the 1st respondent as arbitrary, illegal and unjustified. The impugned order is passed deploying the petitioners from 4th respondent school to 3rd respondent school.



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2. The petitioners 1 and 2 are working as Secondary Grade Teachers in the 4th respondent School from 08.06.1998 and 24.08.1998 respectively. The Government issued G.O.No.155, School Education Department, dated 03.10.2002, wherein the services of a batch of B.T. Assistants / Tamil Pandits, having B.Ed., qualifications appointed from 11.07.1995 to 19.05.1998 were granted approval, after completion of one month Child Psychology Training. Thus, the services of two such B.T. Assistants, namely, J.Elizabeth Paulin and A.Shella Grace, who were appointed in the 4th respondent School as Secondary Grade Teachers, were regularized from 01.06.2003. Based on the wrong interpretation of another G.O.No.413, Finance (PGC) Department, dated 04.11.2010 relating to extension of pension benefits, the School has placed the petitioners below the said two teachers, even though they were regularized subsequent to the petitioners.



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3. There was contemplation to pass deployment orders owing to depleting students' strength. The petitioners apprehended that by overlooking the seniority of those two Graduate Secondary Grade Teachers, the school would pass deployment orders thereby deploy the petitioners, hence had filed W.P.(MD)No.12668 of 2011. This Court, vide order, dated 09.11.2011, restrained the respondents 2 and 4 from deploying the petitioners, in the event of deployment, due to fall in the students' strength and the said interim injunction is still in force. In order to escape from contempt initiated against the 3rd respondent in the matter of filling up of certain identified vacancies, the 1st respondent hurriedly issued the impugned order, deploying the petitioners to the 3rd respondent school, against the vacancies identified for Graduate Teachers and directed the 2nd respondent to relieve the petitioners. Since the petitioners are qualified as Secondary Grade Teachers only and in as much as the interim order of injunction granted by this Court is still in



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force, the petitioners were deployed to the 3rd respondent school through the impugned order. Hence, the legal notice, dated 27.06.2016, was issued. And also filed the present writ petition challenging the impugned deployment orders.

4. At the time of admission, this Court has granted an interim stay thereby staying the deployment order. The 2nd respondent has filed a counter affidavit along with the vacate stay petition. It is stated in the counter that at the time of admission during lunch motion on 04.07.2016, on instructions received from the District Elementary Educational Officer, it was reported before the Court that the 1st respondent was unaware of the interim order passed in W.P.(MD)No.12668 of 2011, dated 09.11.2011, wherein the same petitioners were benefitted by the interim injunction restraining from deploying these petitioners. In this background, an order of interim stay was granted in W.P.(MD)No.11924 of 2016.



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5. In the earlier writ petition, the Chief Educational Officer was not a party and it was filed by the petitioners in W.P.(MD)No.12668 of 2011 with a prayer to direct the management to prepare attendance register from the month of October 2011 on the basis of the seniority with reference to the date of regularization of service as well as respondents 3 and 4 and forbear the 2nd respondent, i.e., the educational authorities from deploying them in the event of fall in student strength. The Teacher namely P.David, Secondary Grade Teacher working in the 4th respondent School has also filed W.P.(MD)No.12530 of 2016, with a prayer to direct to redeploy the Secondary Grade Teacher posts which are surplus in the 4th respondent School through seniority. But the deployment orders were not challenged by the School. The staff fixation is made following the Right to Free Education, Act. As per the staff fixation, till the academic year 2014-2015, the School was having 645 students from 6th standard to 12th standard and the same is detailed



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hereunder:

Standard	Pupils	Teachers						
6	51	SC	BT	PG	PET	Vocational	Drawing	
7	42							
8	73	4	10	8	1	2	1	
	166							
Total	-----							
9	102							
10	149							
11	131							
12	97							
	479							
Total	-----							

The staff fixation for the academic year 2015-2016 the School was having 585 students from 6th standard to 12th standard. The break up details is as under:



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Standard	Pupils	Teachers						
6	41	SC	BT	PG	PET	Vocational	Drawing	
7	55							
8	49	3	10	8	1	2	1	
	145							
Total	-----							
9	107							
10	104							
11	131							
12	98							
	440							
Total	-----							

6. The respondents 7 and 8 in W.P.(MD)No.12530 of 2016 were appointed as Secondary Grade Teachers on 21.06.1996 (Selvi Stella Grace) and 05.06.1997 (Elizabeth Pauline). They were B.T. qualified Teachers but appointed as Secondary Grade Teachers. They were granted approval after completing Child Psychology training. The Teachers service records states that the said Selvi Stella Grace and Elizabeth Pauline were appointed in the year 1996 and 1997 and were



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regularized from 2003 onwards. The said Teachers service records is extracted hereunder:

Secondary Grade Teachers	Qualification	Date of Appointment	Child Psychology	Date of Regularization
a) P.David	Diploma in Teacher Training M.A., M.Ed.,	19.12.1997	-	19.12.1997
b) Bright Gnanaraj	Diploma in Teacher Training B.A., B.Ed.,	08.06.1998	-	08.06.1998
c) David Mariaraj	Diploma in Teacher Training.	24.08.1998	-	24.08.1998
d) Selvi Stella Grace	M.A., M.Ed.,	21.06.1996	01.06.2003	01.06.2003
e) Elizabeth Pauline	B.Sc., B.Ed.,	05.06.1997	01.06.2003	01.06.2003

7. The deployment orders are passed as per the rules and regulations in order to deploy the surplus teachers and in order to give adequate working period for the Teachers and hence there is nothing



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strength in the year 2016-2017 ought to be taken into account to consider whether the deployment order is correct or not.

10. The contention of the petitioners is that two Teachers were appointed as early as 1996 and 1997 but they were regularized only after completion of Child Psychology in the year 2003. Hence the said two teachers service ought to be considered from the date of regularization i.e. from 2003 onwards and place them as junior most. If they are placed as junior, then the said two teachers ought to be deployed in case of surplus. But the School has taken their appointment from 1996-1997 (the petitioner appointment is 1998) and has kept them as senior. The school has taken the prior service of the said teachers based on G.O.No.413 dated 04.11.2010. The said G.O. is having limited applicability and the same is passed to calculate the prior service for calculating the pensionary benefits.



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11. On perusal of the G.O.Ms.No.413, it is seen it is issued for limited purpose of granting pensionary benefits. The prior service shall be taken calculating pensionary benefits. As far as G.O.Ms.No.155 is concerned it has stated that the prior service cannot be taken for the purpose of fixation of salary, for granting selection grade, special grade and the scheme of incentive increment for higher education is not applicable for the said persons, the said service cannot be taken for granting promotion. In G.O.No.155, School Education Department, dated 03.10.2002, categorically states that for pensionary benefits also, the said service prior to the Child Psychology training cannot be taken into account at all. However, while considering the validity of G.O.Ms.No. 155 in Pallivasal case, the Hon'ble Division Bench of this Court held that the said period can be taken for granting pensionary benefits alone. As far as the other benefits are concerned, it was not granted. This has been confirmed by a subsequent judgment of the Hon'ble Division Bench in



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Sundaravel Raj case filed in W.A.74 of 2015 and 957 of 2016, dated 21.03.2018, wherein it has been held that the employees are not entitled to selection grade and special grade by counting the period of service prior to the Child Psychology training. But either the G.O.Ms.No.155 or the Pallivasal case / Sundaravel Raj case it has not stated that said service cannot be taken for fixation of seniority for transfer or deployment orders.

12. Moreover, the issue of seniority is within the domain of Minority Institutions and it may be fixed within the Corporate Management schools or within the school. If any order is passed directing the school to fix seniority, then it would amount to interfering in the internal management of minority institutions and the same is against the rights guaranteed under the constitution. For these reasons, the claim raised by the petitioners cannot be entertained.



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13. Based on the interim orders, the petitioners have served in the same post in Concordia Higher Secondary School itself. Based on the staff fixation order for the present academic year, if surplus teachers are there the official respondents are at liberty to pass appropriate orders. The teachers or the school are not having any rights to challenge the said deployment orders since the government is issuing such orders to accommodate the teachers in the needy place. If the surplus teachers are not deployed, then the said teacher will not have sufficient periods for taking classes and the said teacher would while away the time but would get salary without work, the same cannot be permitted. Therefore, the writ petition is devoid of merits. Hence, the writ petition is dismissed.

14. The learned Counsel appearing for the petitioner submitted that the issue can be addressed atleast for the present academic year 2022-2023, since there is increase in the students' strength. It is seen that the School has filed an appeal before the Chief Educational Officer,



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Tirunelveli, to refix the staff strength for the academic year 2022-2023 claiming wrong students' strength was mentioned in the staff fixation order. A plea was raised by the School that the educational authorities are directing the P.G. Assistants to take class for 9th and 10th standards, if they are not having any appropriate classes/ period and the same is erroneous. The respondents are passing orders based on G.O.Ms.No.573 Education Department, dated 20.03.1978, but the said G.O.Ms.No.573 is not applicable because after passing G.O.Ms.No.525 School Education (D1) Department dated 29.12.1997, G.O.Ms.No.573 is merged with G.O.Ms.No.525. This plea of the School cannot be entertained because whenever there is less number of classes/periods for the Teachers, the service of the P.G. Assistants can be utilized and they shall be permitted to take classes for 9th and 10th standards as well. Whenever proper classes/periods are not available for B.T. Assistants, they can take classes for 6th, 7th and 8th standards in the place of Secondary Grade Teachers and



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this is permissible in law. Therefore, that plea cannot be entertained. If any other issue is raised, the Chief Educational Officer can consider the same. The CEO is also directed to ascertain the correct number of students and pass appropriate orders in the appeal. Based on the order, if any surplus Teachers are available and if there is any needy School, following W.A.(MD)No.76 of 2019, the Chief Educational Officer, is directed to pass deployment order within a period of two weeks from the date of receipt of a copy of this order.

15. With the above said observation, the writ petition is dismissed.

No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No

Internet : Yes

NCC : Yes / No

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To

- 1.The Chief Educational Officer,
Office of the CEO,
Tirunelveli.
- 2.The District Educational Officer,
Cheranmadevi @ Tirunelveli.



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