



W.P.(MD)No.18494 of 2016

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

<i>Judgment Reserved On</i>	<i>Judgment Pronounced On</i>
27.03.2023	10.11.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No. 18494 of 2016

and

W.M.P.(MD)Nos. 13384 & 13385 of 2016

The Correspondent,
Saint Antony's R.C. Aided Elementary School,
Monnayampatty,
Vallampudur (Post),
Thanjavur District - 613 401

... Petitioner

Vs.

1. The Director of Elementary Education,
College Road,
DPI Campus,
Chennai - 600 006
2. The District Elementary Educational Officer,
Office of the DEEO,
Thanjavur - 613 001.
3. The Additional Assistant Elementary Educational Officer,
The Office of the AAEEEO,
Thanjavur Rural,
Thanjavur District - 613 001.



W.P.(MD)No.18494 of 2016

WEB COPY

4. N.Vijaya

.... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorari*, calling for the records relating to the impugned proceeding issued by the 2nd respondent DEEO in Na.Ka.No.4691/A4/2013, dated ...09.2016, deploying the 4th respondent N.Vijaya, as Secondary Grade Teacher to the petitioner's school and quash the same.

For Petitioner : Mr.K.Ragatheeshkumar, for
Mr.T.Cibi Chakroborthy

For Respondents : Mr.V.Om.Prakash,
Government Advocate, for R-1 to R-3

ORDER

This writ petition has been filed to quash the impugned order, dated 12.09.2016. Through the impugned order, the respondents have deployed the 4th respondent, N.Vijaya, as Secondary Grade Teacher to the petitioner's school, since she was declared as surplus in the School where the petitioner is serving.

2. Heard Mr.K.Ragatheeshkumar, for Mr.T.Cibi Chakroborthy, the Learned counsel appearing for the Petitioner, Mr.V.Om.Prakash, the Learned



W.P.(MD)No.18494 of 2016

WEB COPY

Government Advocate appearing for the respondents 1 to 3 and perused the material documents available on record.

3. The brief facts as stated in the affidavit is that the petitioner's school namely, Saint Antony's R.C. Aided Elementary School, Monnayampatty is one among the several Recognized Aided Educational institutions established and administrated by the R.C. Diocese at Thanjavur. The said Diocese was registered in the name and style of “The Diocese of Tanjore Society” bearing registration No.S.No.8/1958. The said Society has established for administrating education institutions for the welfare of the Catholic Christian Minority Community and it is governed under Article 30(1) of the Constitution of India. The school is a fully Aided Minority institution having students’ strength of 97. As per the staff fixation order for the year 2015-2016 the sanctioned strength is one Headmistress and one secondary grade teacher. Totally, two teachers. As per students’ strength, the school is eligible for one additional post. Under the management of the educational agency of the petitioner's school there are many teachers working in surplus post in other schools. Hence, the education agency had requested the respondents to permit the management to deploy such teachers working in surplus



W.P.(MD)No.18494 of 2016

WEB COPY

within the management, where there is less students' strength, including the petitioner's school. The respondents have not permitted the education agency to deploy such teachers. However, all of sudden, the 2nd respondent, vide proceedings, dated 11.02.2016 issued modified deployment order deploying one Krishnaveni, a Secondary Grade Teacher from Sree Konganeswara Vidyasala Aided Primary School, Thanjavur to the petitioner's school. The said order directs the 3rd respondent to issue directions in respect of relieving the said teacher and has also directed the petitioner's school to absorb the teacher on the same day.

4. The contention of the petitioner's school is that the said teacher had already been deployed to one St. Antony's Primary School, Pasubathi Kovil, Papanasam. The Correspondent refused to accept the teacher since the deployment is from outside the minority management. In view of the same, a modified deployment order was passed by the 2nd respondent / District Education Officer. Based on the same, the Assistant Educational Officer has also issued the modified deployment order, vide order, dated 12.02.2016 deploying the said Krishnaveni to the petitioner's school.



W.P.(MD)No.18494 of 2016

WEB COPY

5. The said Sree Konganeswara Vidyasala Aided Primary School, is under another education agency and it is outside the corporate management of the petitioner's school. The second respondent with high-handedly appointed under the pretext of deployment to the petitioner's minority school is highly illegal. Hence, the petitioner's school has protested against illegal proceedings and the said teacher had not joined the petitioner's school. Hence the petitioner's school has submitted a representation dated 22.03.2016. In the meanwhile, the 2nd respondent has issued a Show Cause Notice, vide proceedings, dated 26.02.2016 and also directed to submit an explanation why proceedings cannot be initiated under The Tamil Nadu Recognized Private Schools (Regulation) Act and the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977 and stoppage of grant-in-aid to the petitioner's school. Since the respondents have not revoked the deployment order, the petitioner's school is before this Court.

6. Pending writ petition, the respondents have passed proceedings on 23.11.2016, whereby one Xavier, Secondary Grade Teacher who was working in



W.P.(MD)No.18494 of 2016

WEB COPY

St. Thomas Elementary school, Pattukottai was transferred to St. Antony's R.C. Aided Elementary School, Thanjavur and the said Xavier is continuing in the said post. As far as the Vijaya is concerned, she was deployed to another school and there also she was not accommodated, but finally she was accommodated in Kandamangalam, Thiruvaiyar Saragam. The said proceeding was passed on 07.04.2017 and the said Vijaya is continuing in the said post until now. The learned counsel appearing for the petitioner submitted that since the impugned order was cancelled and subsequently, the said Vijaya was transferred to some other school, nothing survives for adjudication and prayed to dispose the writ petition.

7. Even though, nothing survives for adjudication, this Court is inclined to record certain facts in the issue of surplus, approval of appointment and deployment orders.

8. The G.O.Ms.No.525 School Education (D1) Department dated 29.12.1997 was passed to fix ratio of teacher and students, then to issue staff fixation order for each academic year. While fixing staff fixation, if there is any



W.P.(MD)No.18494 of 2016

WEB COPY

surplus teacher due to reduction in students' strength, then the said G.O. is granting protection to the existing teacher and directed the government to continue paying salary to the teacher who is declared surplus teacher. Also specifically granting power to the Director of Elementary Education and Director of School Education to issue transfer orders or deployment orders. Even though the said G.O. has granted power to pass transfer / deployment orders whenever surplus teachers are available after staff fixation orders are passed, but the schools started claiming to approve the fresh appointment of teachers too. Moreover, the minority schools are entitled to appoint their own teachers without getting prior permission, hence the minority schools started appointing fresh teachers and claimed to approve the teachers. When the same was denied, the schools approached this Court and this Court referring to the said portion of the G.O. wherein it has granted power to pass deployment orders, has directed to grant approval and after granting approval also directed the authorities to pass the transfer order or deputation order thereby the surplus teachers are transferred to needy school. At the cost of repetition, the said G.O. has directed to pass deployment orders of surplus teachers when the teachers are declared as surplus after staff fixation order is passed based on G.O.Ms.No.525 norms. But this has



W.P.(MD)No.18494 of 2016

WEB COPY

been taken advantage of and the schools appointed fresh teachers and they were approved and deployed.

9. When the surplus teachers' strength was increased beyond control, the government resisted to the orders to grant approval. In one such case when the official respondents resisted to grant approval, the Court had observed that the Directors ought to have passed an order by transferring the surplus Teachers, but the Directors have not passed any such orders or taken any steps to deploy the surplus teachers, therefore the Court has held that since the authorities have not passed any transfer orders or deputation orders, the authorities cannot deny approval of appointment to the new teachers by citing surplus teachers. The relevant portion of the order passed by the Hon'ble Division Bench in W.A. (MD)Nos. 639 of 2015 etc., dated 17.06.2015 in the case of the Director of Elementary Education, Chennai and two others Vs B.Infanse and another and the relevant portion is extracted here under:

"5.Indisputably, the posts, in which, the writ petitioners have been appointed, are sanctioned by the Education Department, after assessment, in terms of G.O.Ms.No.525, School Education(D1) Department, dated 29.12.1997. Eligibility of the writ petitioners, is not disputed. Dates of



W.P.(MD)No.18494 of 2016

WEB COPY

appointment of the teachers, is also not disputed. Earlier, when the request of the teachers working in TDTA Primary and Middle Schools, Puliangudi, Tirunelveli District, for approval, was denied, on the ground that they were redeployed by the District Elementary Educational Officer, Tirunelveli, Writ Petitions have been filed. Vide common order in W.P.No.10352, 10350 and 10351 of 2006, dated 08.12.2006, they were allowed. The District Elementary Educational Officer, Tirunelveli, has filed Writ Appeals as against the common order dated 08.12.2006 and that the same were dismissed, by separate orders in W.A(MD)No.205 of 2007 dated 09.06.2007, W.A(MD)No.194 of 2007 dated 09.06.2007 and W.A(MD)No.292 of 2007 dated 02.08.2007, respectively. As the orders made in the abovesaid Writ Appeals are similar in nature, suffice to extract one such order, which is as follows:-

Order made in W.A(MD)No.205 of 2007 dated 09.06.2007 "This writ appeal is filed against the order dated 08.12.2006 made in W.P.Nos.10350 to 10352 of 2006, wherein the relief of issuance of a writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the District Elementary Educational Officer, Tirunelveli in passing redeployment order by construing that there are certain excess teachers with reference to G.O.Ms.No.525 School Education (D1) Department dated 29.12.1997. The said G.O. was the subject matter of the Full Bench decision in the case of Director of Elementary Education Vs. S. Vigila reported in [2006(5) CTC 385], wherein it was held as follows:.



W.P.(MD)No.18494 of 2016

WEB COPY

"Keeping in view the various relevant aspects, we feel that G.O.Ms.No.525 dated 29.12.1997 should be interpreted in the following manner:

(1) The ratio of students-teacher strength as indicated in the G.O. should be primarily considered by taking each individual standard/section as a unit.

(2) The minimum strength of teachers required obviously should not fall below the number of Standards/Section in a school. In other words, if there are five standards, obviously the minimum number of teachers should be five, out of which one would be the Headmaster.

(3) If the students' strength in a particular Standard exceeds 60, at that stage, an additional section is required to be created requiring the sanction of a second teacher and the strength reaches 100, the post of a third teacher is required.

(4) Even after maintaining the aforesaid ratio by taking into account the students' strength of each individual standard and additional section, as the case may be, by keeping in view the teacher-students ratio 1:40 of the entire school if the teachers strength is required to be increased, the same has to be allowed, but in no case, the teachers' strength should be less than the number of standards including the additional sections. If more teachers are thus sanctioned keeping in view the over all strength of the school, the authorities of the school should create additional section in respect of any particular Standard



WEB COPY

according to the need and convenience keeping in view the standard of education. This requirement is not only in respect of Aided Schools or Government Schools, but also in respect of any Private Recognised School. In other words, this ratio is to be maintained for any school which requires recognition.

(5) It would be obviously open to the Government to formulate appropriate norms in consonance with the above observation and provisions of the Constitution."

That Full Bench decision has been followed by the learned Single Judge, incidentally, who was also a party to the Full Bench and the redeployment order has been set aside. In the above stated factual matrix of the issue, when the law is settled by the Full Bench, we are of the view that filing of an appeal by the Authority is nothing but an exercise in futility. Hence this Writ Appeal is dismissed. Consequently, connected M.P.No.3 of 2007 is also dismissed. No costs."

6.As stated supra, inasmuch as appointments of the writ petitioners were made against sanctioned posts in the respective schools, observations made in the W.A.No.70 of 2012 dated 13.03.2012, granting permission to the District Elementary Educational Officer, Tirunelveli, to take steps, to deploy excess teachers, from the schools under the same management, cannot be a ground, to deny approval of appointments of the writ petitioners, as Secondary Grade Teachers in the schools, in which, they were appointed. When the school management sends



W.P.(MD)No.18494 of 2016

WEB COPY

a proposal for approval of the teachers, the educational authorities have to consider, as to whether such teachers have been appointed against sanctioned posts and whether they are qualified for such appointment. Rule of reservation wherever applied is also verified. On the above aspects, there is absolutely no quarrel by the educational authorities.

*7. When a specific question was posed to the learned Special Government Pleader, as to whether appointment of Mr. S. Austin Jeba Solomon, a teacher in TDTA Primary and Middle Schools Devarulam Pastorate, Thirunelveli District / 1st respondent in W.A.(MD) No.70/2012 was approved or not, notwithstanding the observation made by the Hon'ble Division Bench in the above appeal, filed by the State, the answer was in the affirmative and therefore, it is evident that even after the said observations, the department had chosen to approve the appointment of the said teachers. **For another question posed to the learned Special Government Pleader as to whether the department had taken steps to redeploy the excess teachers, as observed, the answer was in the negative.** Thus in the absence of any steps being taken by the department and when appointments of the writ petitioners are against sanctioned posts, in the respective schools and considering the fact that the department itself had chosen to approve the appointment of one Mr.S. Austin Jeba Solomon, on its own, party respondent in W.A. No. 70 of 2012, wherein the abovesaid observations were made., this Court*



W.P.(MD)No.18494 of 2016

WEB COPY

is of the view that the writ petitioners are entitled for approval of their appointments as Secondary Grade Teachers. At

8.It is now more than four years, since the observations were made in W.A(MD)No.70 of 2012 dated 13.03.2012. It is also be noted that every year as per G.O.MS.NA.525, School Education(D1) Department, dated 29.12.1997, staff fixation is done, in each school, by educational authorities, on the basis of teacher-pupil ratio. No materials have been placed before this Court, as to the staff fixation done in the subsequent years, from 2012 onwards, in the schools, in which, surplus was noticed. If the existence of surplus staff continued in the subsequent years, the department ought to have taken action only, as against the said schools and redeployment could have been done then and there. But from the submission of the learned Special Government Pleader, it is evident that no steps were taken, for all these four years. If in the subsequent years, staff fixation in the schools, in which excess was noticed, had already been approved, then the educational authorities are bound by such orders."

From the above judgment it is evident that the reason for directing to grant approval is that the respondents are not passing deployment orders by invoking the power granted in G.O.Ms.No.525 and the specific observation is that since the respondents have not taken steps or not inclined to pass any deployment orders, the Courts have left with no other option to grant approval and to pass the



W.P.(MD)No.18494 of 2016

WEB COPY

deployment orders.

9. But here is the case, where the respondents have passed deployment order, but the minority institution had vehemently resisted the deployment orders and the respondents have passed five deployment orders to different schools and the said Vijaya could not be accommodated in any of the aided schools, especially aided minority schools. There are several such cases, inspite of deployment orders the aided institutions both minority and non-minority schools have refused to accept such deployment orders on one pretext or other.

10. This has led to huge surge of surplus teachers to the tune of 6000 teachers in the State. Sill the Government is struggling to pass deployment orders. The government may have social responsibility, but the schools also have social responsibility to accept the deployment / transfer of teachers without murmur and they cannot protest such transfer or deployment orders for any reason.



W.P.(MD)No.18494 of 2016

WEB COPY

11. This Court is recording this, in order to curb and to tackle the surplus issue. With these observations, this Writ Petition stands dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes / No
Internet : Yes
ksa

10.11.2023

To

1. The Director of Elementary Education,
College Road,
DPI Campus,
Chennai - 600 006
2. The District Elementary Educational Officer,
Office of the DEEO,
Thanjavur - 613 001
3. The Additional Assistant Elementary Educational Officer,
The Office of the AAEEEO,
Thanjavur Rural,
Thanjavur District - 613 001.



WEB COPY



W.P.(MD)No.18494 of 2016

S.SRIMATHY, J

ksa

**Order made in
W.P.(MD)No.18494 of 2016**

10.11.2023