



W.P(MD)No.29191 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.29191 of 2023

D.Gnana Theeba Rani

... Petitioner

Vs.

1. The Chief Educational Officer,
Virudhunagar District.

2.The District Educational Officer,
Srivilliputhur,
Virudhunagar District.

3.The Correpndent,
C.M.S.Higher Secondary School,
Srivilliputhur
Virudhunagar District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ in the nature of writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the 1st respondent in his proceedings in Na.Ka.No. 7197/A7/2023 dated 27.09.2023 and quash the same and direct the respondents to approve the petitioner's appointment as prevocational instructor tailoring with effect from 12.02.2022 with salary and confer all the consequential benefits.



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For Petitioner : Mr.V.Panneer Selvam

For Respondents : Mr.N.GA.Natraj
Government Advocate

ORDER

The present Writ Petition has been filed by a Sewing Teacher challenging the order passed by the 1st respondent herein wherein the appointment of the writ petitioner was not approved.

2. According to the learned counsel appearing for the petitioner, the petitioner was appointed as Sewing Teacher on 12.02.2020. When the proposal was sent for approval, the first respondent herein rejected the said proposal on the ground that there are less than 250 students in the said school and therefore, the post of Sewing Teacher has been declared as surplus without a teacher. In such circumstances, the 1st respondent has rejected the proposal for approving the appointment of the writ petitioner. The said order is under challenge in this Writ Petition.



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3. The learned counsel appearing for the petitioner contended that the Sewing Teacher is a single post and therefore, it could not be declared as surplus even if the student's strength is below 250.

4. The learned counsel appearing for the petitioner had relied upon the judgment of the Hon'ble Division Bench of this Court in W.A.(MD)No.81 of 2022 dated 02.03.2023 in support of his contention.

5. Per contra, the learned Government Advocate appearing for the respondents contended that when the students' strength falls below 250, the school is not eligible for appointment of a Sewing Teacher and therefore, he prayed for sustaining the order passed by the 1st respondent herein.

6. The only issue that arises for consideration is whether a single sanctioned post in an aided school could be declared as



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surplus, even when the students' strength had fallen from the prescribed level.

7. A learned Single Judge of this Court in a judgment in W.P. (MD)No.1352 of 2015, dated 11.04.2018, in paragraph 33, has held as follows:

“33.Considering all these principles as emerged from the judgments cited supra, if the same are fit in the facts and circumstances of this case, it can be easily concluded that the petitioner’s school is having the necessary strength for the purpose of having one special teacher as Sewing Mistress, even though the over all students strength may be less than the prescription made by the Government under the relevant Government Order. Such reduction in strength may exist to the authorities to reduce the staff strength in general teaching area, such as, Secondary Grade Teacher and B.T. Assistants, but, not the special teacher, because the special teacher in Sewing subject is the single post and also the said



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subject is one of the compulsory subject for the girl students, who are studying VI to VIII standard at the petitioner's school.”

8.The said judgment was followed by another learned Single Judge of this Court in W.P.(MD)No.1321 of 2020, dated 19.02.2020. Paragraph 6 of the said order reads as follows:

“6.What requires to be noted here is the object of the State to promote the welfare and well being of the school children and when the post itself is a single sanctioned post and it has been held that such surplus post would arise in the school where there is a single sanctioned post, relying upon the minimum prescribed strength of 250 students, as a reason for denying the approval sought for, cannot be appreciated. Effectively what the Department would venture is, to deny the right of education to such girl students, particularly, in a specialized academic field of tailoring, which may be pertinent and essential requirement for a girl student.”



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9. The judgment of the learned Single Judge of this Court in W.P. (MD)No.1321 of 2020 was challenged in an appeal by the State in W.A. (MD)No.81 of 2022. The Hon'ble Division Bench was pleased to dismiss the said appeal on 02.03.2022 and in paragraph No.4, it has been held follows:

“4.Having heard learned advocates for the respective parties and having considered the material placed on record, we find that this matter needs to be decided on pure question of fact. It is not in dispute that, the teacher whose approval was asked for was a tailoring teacher. There was only one teacher for that subject. The appointment was made by the school management on the retirement of one teacher looking after that subject. In this factual background, we find that denial of approval to the said appointment by the State Authorities can not be justified in any W.P.(MD)No. 12015 of 2022 manner. Direction by the learned Single Judge in this peculiar facts, does not call for any interference.....”



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10. If the issue of surplus Teachers arises, when the students strength comes down in a particular academic year, the other classes may be handled by the general Teachers, namely, Secondary Grade Teachers or B.T.Assisants, as the case may be, by adjusting the work among themselves. However, when a Vocational Teacher is declared as surplus, no other Teacher would be in a position to handle the said subject. Therefore, when a single post is sanctioned for a specialist subject, the same cannot be declared to be surplus in view of falling in students strength. That apart, the issue of surplus, which is pointed out by the authorities is that the students strength in some other schools within the corporate management have fallen down. Even in those schools, it is only a single sanctioned post. Therefore, the presence of those Teachers in those schools cannot be cited as surplus in order to reject the approval of the present candidate.

11. In view of the judgments of learned Single Judges and confirmed by the Hon'ble Division Bench, as stated supra, the



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order impugned in the Writ Petition is set aside. The respondent authorities are directed to approve the appointment of the writ petitioner as Sewing Teacher with effect from 12.12.2020 with all attendant benefits. The entire exercise shall be completed within a period twelve weeks from the date of receipt of a copy of this order.

12. In the result, this Writ Petition is allowed. No costs.

Consequently, connected miscellaneous petition is closed.

13.12.2023

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

To

1. The Chief Educational Officer,
Virudhunagar District.

2. The District Educational Officer,
Srivilliputhur,
Virudhunagar District.



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R.VIJAYAKUMAR, J.

CM

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