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W.P.No.10521 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2024

CORAM

THE HON'BLE **MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P.No.10521 of 2024

and

WMP.Nos.11531 & 11532 of 2024

T.John Shibu Manick

... Petitioner

Vs.

1. The State of Tamil Nadu
Rep by its Principal Secretary.
Department of School Education.
Fort St. George,
Chennai - 600 009.
2. The Director of Elementary Education,
College Road, Chennai - 600 006.
3. The District Elementary
Educational Officer,
Udhagamandalam,
Nilgiris District - 643 006.
4. The Block Educational Officer,
Coonoor Range,
Nilgris District - 643 101.



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5. The Correspondent
C.S.I Primary School
Parkside,
Coonoor Range - II,
Nilgris District - 643 238

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a WRIT OF CERTIORARIFIED MANDAMUS calling for the records relating to the impugned order passed by the 3rd respondent Elementary District Elementary Educational Officer in Na. Ka. No. 264/Aa2/2022 dated 19.04.2023 (as signed), QUASH THE SAME, and further DIRECT the 3rd and 4th respondents to approve the petitioner's appointment as Secondary Grade Teacher in the 5th respondent- school with effect from the date of his appointment viz., 17.01.2018, and release salary and all attendant benefits with effect from the said date.

For Petitioner : Ms. H.Mary Sowmi Rexi

For Respondents : Mrs.S.Mythreye Chandru
Special Government Pleader [Edn.]

ORDER

This Writ Petition is filed challenging the impugned order dated 19.04.2023 in which the respondents have refused to approve the petitioner's appointment as a Secondary Grade Teacher.

2. The petitioner's case is that pursuant to the promotion of one



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Suganthi, with effect from 04.02.2017, in the resultant vacancy, the petitioner was appointed as a Secondary Grade Teacher from 17.01.2018. When the proposal was sent for approval, originally it was returned on the ground that within the same management, there are surplus posts available. When the same was represented by the Management, once again the very same ground was raised in the pretext of G.O. Ms. No. 165 dated 17/02/2019. Challenging the same, the petitioner had earlier filed a Writ Petition in W.P.No.15853/2021. The said Writ Petition was allowed by quashing the said order, directing the school to resubmit the proposal, and directing the respondents to consider and pass fresh orders in light of the earlier judgment of this Court in W.P.No.3194 of 2020. The dictum of the earlier judgment in W.P.No.3194 of 2020 is that G.O.Ms.165, dated 17.02.2019 is applicable only prospectively, and therefore, it does not apply to the appointment made before the said date. However, by an impugned order, they have rejected the appointment once again for the same reasons, i.e., the surplus posts have been available under the same management.

3. The Writ Petition is resisted by the respondents by filing a detailed counter affidavit. As per the counter affidavit, under the same management, there are four surplus teachers available in Coimbatore, one surplus teacher in



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Nilgiris, and two surplus teachers in Tiruppur, all of which relate to the years 2017–2018. Therefore, when the surplus teachers are available under the same management, without accommodating the said surplus teachers, no fresh appointment could have been undertaken. In this case, unilaterally, the respondents filled the vacancy. Now that steps have been taken to redeploy the teachers, the order was passed. Therefore, it is prayed that the Writ Petition be dismissed.

3.1. It is also their further case that subsequently, in SLP.No.21983/2022, it was held that it would be open for the education department to pass appropriate orders. Therefore, it is now proposed to redeploy teachers to the said school, and therefore, this appointment cannot be approved.

4. Heard *Ms H. Mary Sowmi Rexi*, the learned counsel for the petitioner and *Mrs S.Mythreye Chandru*, the learned Special Government Pleader.

5. The learned counsel for the petitioner, taking this Court to the earlier order would submit that for the very same reasons, earlier the proposal was returned. When the same was challenged and the Writ Petition was allowed



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by this Court, the respondents could not once again state the same reasons and reject the case just because this Court has said that the respondents shall consider the proposal. Secondly, she would submit that the issue in question is no longer *integra*. The entire issue relating to the redeployment of surplus teachers all culminated in the case of ***The Secretary to Government, Government of Tamil Nadu, School Education Department, and others Vs.Iruthayua Amali and another*** reported in ***2021 SCC OnLine Madras 1285*** and in ***Iruthaya Amali's case (cited supra)***, even though G.O.Ms.165, dated 17.02.2019, was declared to be inoperative, still issued the directions by directing the respondents to adhere to the time schedule granted in the said judgment. In the appeal preferred in SLP(Civil).No.15702/2021 an order dated 16.02.2024 has also been passed, in which the direction given by the Hon'ble Supreme Court is contained in paragraph No. 4, which is extracted as follows:

"4. The suggestion made by the two senior counsel to this Court is to relegate the parties to the pending proceedings in the Madras High Court. It is however submitted that the Division Bench should limit itself to the core direction given in sub-clause (1) of paragraph 95 of the impugned judgment dated 31.03.2021 in the Writ Appeal (MD) No. 76 of 2019 and need not be concerned with the other aspects in the earlier judgment



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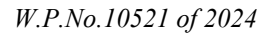
(31.3.2021)."

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6. Therefore, the other things are governed by the said judgment and the judgments which are rendered by this Court following the said dictum. According to her, a Division Bench of this Court [to which I am also one of the party] has considered the very same issue in W.A.(MD) No. 1557 of 2023, where under paragraph No.14, the court has considered the very same issue and ultimately held that when the vacancies were to be identified and uploaded in the Web portal and redeployment exercise has to be carried out, and when the exercise has not been carried out, the same cannot be retrospectively carried out by the respondents, and when there is the inability on the part of the respondents to carry out the said exercise retrospectively, then approval cannot be refused.

7. The learned counsel would also rely upon two judgments of two Coordinators of the Single Benches of this Court in W.P.No.303 of 2023 and W.P.No.18549 of 2022. In all these cases, under identical facts and circumstances, the courts directed the grant of approval of appointment. Therefore, she would pray that the Writ Petition may be allowed.

8. Opposing the said arguments, the learned special government



Even at the relevant point in time, the students strength is low and when the surplus teachers are available without even getting any prior approval, the appointment is unilaterally made. The same was swiftly returned by the authorities, duly mentioning the reason. Even though the said order was set aside by this Court, this Court once again remitted the matter back to the respondents.

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10. I have heard the rival submissions made by either side and perused the materials record available in this case.

11. The matter concerning the fixation of excess teacher strength and redeployment was the subject of protracted litigation before this court. Ultimately, by referring to all the earlier judgments, the directions were given in **Iruthaya Amali's case** (cited supra). After **Iruthaya Amali's case**, the rules have also been specifically framed. So there is no doubt about the current situation. However, this matter pertains to the appointment of the year 2018. Admittedly, the institution is a minority institution, by the judgment of this Court in ***Government of Tamil Nadu, Department of School Education v. J. Remila***, passed in **W.A. (MD) No. 1350 of 2017**, dated **14.11.2017** prior approval need not be obtained before making the appointment. Therefore, it cannot be right on the part of the respondents to contend that the appointment was made without prior approval.

12. Secondly, when the appointment is made, the same is returned by mentioning the very same reason for the surplus in the endorsement dated 31.05.2018. When the same was challenged by the petitioner before this Court in W.P.No.15853/2024, the same was allowed by this Court. Therefore,



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the respondents resubmitted the proposal, which was again rejected on the grounds of G.O.165 dated 11.02.2019. The second order of rejection dated 30.10.2019 was put to challenge by the petitioner in W.P. No. 15853/2021, and this court had considered the matter on merits in favour of the petitioner. It is necessary to extract paragraphs 7 to 9 of the said order, which read as follows:

"7. The prayer as sought for in the instant writ petition is squarely covered by the judgment of this Court dated 18.4.2022 in W.P.No.3194 of 2020, etc. Batch case [B.Kurinjimalaron vs. The State of Tamil Nadu rep. by its Secretary, Education Department, Fort St. George, Chennai-9] wherein this Court held as follows:

"9. On perusal of the judgment of the Division Bench of this Court in the aforesaid Batch of cases and also the G.O.Ms.No.165 issued by the School Education Department, dated 17.9.2019, both the judgment as well as G.O.Ms.No.165 are prospective in nature. The appointments made by the School Management in the instant writ petitions are prior to the issuance of G.O.Ms.No.165 dated 17.9.2019 and proposals for the said appointments were also forwarded to the educational authorities prior to the issuance of G.O.Ms.No.165 dated 17.9.2019. Therefore, there is no legal impediments for the respondents to accord approval to the appointment made by the School Management in the instant writ petitions.



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10. Having regard to the rival submissions of the parties, taking note of the judgment passed by the Division Bench of this Court in a Batch of Writ Appeals in W.A.(MD) No.76 of 2019, etc., G.O.Ms.No.165 issued by the School Education department, dated 17.9.2019 will not prohibit the educational authorities to approve the appointments made by the School Management in the instant writ petitions since the proposals for approval of appointments made by the School Management were forwarded to the educational authorities prior to the issuance of G.O.Ms.No.165 dated 17.9.2019. Therefore, this Court is of the view that the respondent department without considering the G.O.Ms.No.165 dated 17.9.2019 in proper perspective and passed the impugned order rejecting the proposals submitted by the School Management. Therefore, the impugned orders passed by the respondent department are liable to be quashed.

11. Accordingly, the impugned orders passed by the respondent department in the aforesaid writ petitions are quashed and remitted to the Chief Educational Officers/District Educational Officers concerned, to consider and pass an order of approval of the appointments made by the School management, provided the said proposals satisfies all the norms prescribed for such appointments and as per the Rules, as expeditiously as possible preferably within a period of 12 weeks from the date of receipt of copy of the order. It is made clear that those who are appointed to the post of Secondary Grade Teacher/B.T. Assistant/Middle Grade Assistant prior to the issuance of G.O.Ms.No.165 dated 17.9.2019



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and also, the proposals for approval of such appointments were also forwarded to the educational authorities prior to the issuance of G.O.Ms.No.165 dated 17.9.2019 alone are entitled to the relief granted hereinabove.”

The aforesaid judgment is squarely applies to the facts of the present case.

8. On perusal of the records, reveals that the 4 th respondent-School has submitted the proposal prior to the aforesaid Government Order in G.O.Ms.No.165, School Education [Tho.Ka.2(1)] Department, dated 17.09.2019. Therefore, the said proposal of the 4 th respondent-school seeking approval of the appointment of the petitioner would be considered, if otherwise eligible. The learned counsel appearing for the 4 th respondentSchool undertakes that the 4 th respondent-School would resubmit the said proposal, within the time as specified by this Court.

9. In the light of the judgment cited supra, this Court is inclined to pass orders as follows:- (i) The impugned Letter in Na.Ka.No.1518/A2/2019, dated 30.10.2019 issued by the 2 nd respondent, is quashed. (ii) The 4 th respondent-School is directed to resubmit the said proposal before the 2 nd respondent, within a period of two weeks from the date of receipt of a copy of this order. (iii) On such proposal received by the 2 nd respondent, the 2 nd respondent is directed to consider the said proposal in the light of



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the judgment of this Court dated 18.4.2022 in W.P.No.3194 of 2020, etc. Batch case [B.Kurinjimalaron vs. The State of Tamil Nadu rep. by its Secretary, Education Department, Fort St. George, Chennai-9] and pass appropriate orders on merits and in accordance with law, as early as possible, within a period of twelve weeks thereafter.
"

13. Therefore, I am of the view that the matter is decided by the judgment inter-parties, and it is not now open to the respondents to once again reject the proposal on the said same ground of surplus. Originally, the first return was in the express name of surplus, and the second return was also the issue of surplus by mentioning G.O.No.165 and when the respondents are directed to pass orders on the proposal, it cannot be now once again rejected on the self-same grounds. A very similar issue was dealt with by the Division Bench judgment of W.A.(MD). No.1557/2023 and in Paragraph No.14, it was held that it is impossible to carry out the exercise which is directed by the Division Bench in ***Iruthaya Amali's case (cited supra)*** retrospectively for the year 2019 and it has been held that in the absence of such an exercise of redeployment at the appropriate time, approval of the appointment cannot be refused by keeping on saying that there are excess posts.



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14. As rightly contended by the learned counsel for the petitioner, the very same issue has been considered and ordered in favour of the management in WP.No.18549 of 2022 as well as in W.P.No.302/2023. Therefore, when the issue has been decided inter parties and there is no interim order in the appeal filed by the respondent, subject to the outcome of the said appeal, the respondents have no other option than to approve the appointment of the petitioner. Apart from the fact that the respondents have chosen to prefer an appeal, they have also chosen to comply with the order by considering the proposal that was resubmitted by the petitioner. Therefore, in such circumstances, when the said order is put to challenge, this Court is bound to consider the same on its merits and answer the same in accordance with the law.

15. The petitioner, who was appointed in the year 2018, cannot be now non-employed or sent out of employment at this belated point in time, especially when the judgment is decided inter parties. Even if there is excess as of date, the respondents have to approve the appointment of the petitioner and thereafter for the current year, as of 01.08.2024, they can always determine the surplus following the law. And when they determine the



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surplus, this order cannot be taken advantage of by the management. As per student strength for the current academic year, the respondents will be entitled to determine the surplus and accordingly redeploy any teacher, including the petitioner, following the rules.

16. In view thereof, this Writ Petition is allowed on the following terms:

- (i) The respondents are directed to approve the appointment of the petitioner with effect from 07.01.2018 and disburse all the arrears due to the petitioner within 12 weeks from the date of receipt of a copy of this order;
- (ii) It would be open for the respondents to make a reassessment of the surplus for the current academic year as per the rules as of 01.08.2024 and redeploy the petitioner or other teacher(s) under the rules.
- (iii) No costs. Consequently, the connected miscellaneous petitions are closed.

27.06.2024

Neutral Citation :Yes

jrs



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To

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State of Tamil Nadu,
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College Road, Chennai - 600 006.
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D.BHARATHA CHAKRAVARTHY, J.

jrs

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