



W.P.No. 7187 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2024

CORAM

THE HONOURABLE Mr.JUSTICE C.KUMARAPPAN

W.P.No. 7187 of 2020
and
W.M.P. No. 8583 of 2020

V.Devapriya

... Petitioner

Vs.

1. The Director of School Education,
D.P.I. Compound,
Nungambakkam, College Road,
Chennai – 600 006.
2. The Chief Education Officer,
Kanchipuram.
3. The District Educational Officer,
St. Thomas Mount @ Chromepet,
Chennai.
4. C.S.I. St. Thomas Higher Secondary School,
Rep. by the Correspondent, R.Gladwin Gabriel,
No. 47, Butt Road, St. Thomas Mount,
Chennai – 600 016.

... Respondents



W.P.No. 7187 of 2020

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the third respondent in his proceedings O.Mu. No. 1642/A2/2018 dated 14.02.2019 and quash the same and consequently direct the third respondents to approve the petitioner appointment in the post of vocational teacher (Computer Science) from the date of her initial appointment (i.e. 07.06.2018) with all service and monetary benefits.

For Petitioner : Mr. R.S.Anandan

For Respondents : Mrs. E.Ranganayaki,
Additional Government Pleader
(for R1 to R3)

No appearance (for R4)

ORDER

The instant writ petition has been filed with a prayer for issuing a Certiorarified Mandamus, to quash the order of the third respondent dated 14.02.2019.

2. The learned counsel for the petitioner would contend that the petitioner was appointed by the fourth respondent/School as a Vocational



W.P.No. 7187 of 2020

Teacher (Computer Science) on 07.06.2018, in the vacant place arising due to the retirement of one S.H. Vasanthakumari. The learned counsel for the petitioner further contended that, the petitioner has all the required qualification for the post. Based upon her qualification, she was appointed by the fourth respondent, and the proposal for approval of her appointment was sent by them to the first respondent on 12.09.2018. However, it is the contention of the learned counsel for the petitioner that, the said proposal was returned erroneously citing some judgment of this Court. It is further contended by the learned counsel for the petitioner that the petitioner was appointed to a sanctioned post in a minority institution. Therefore, it is incumbent upon the first respondent to give approval to the said appointment, as the petitioner has all the required qualification. Hence, prayed to allow this Writ Petition.

3. However, the said contention was objected by the learned Government Advocate appearing for the first to third respondents, and would contend that the post in which the petitioner was appointed is a part-time post, and that the Vocational Teacher (Computer Science) post is not attached to the School and the person specific. Hence, it is the contention of



W.P.No. 7187 of 2020

the learned Additional Government Pleader that the direction of Government to resume the said post is perfectly in order and does not warrant any interference, as a concomitant no approval could be issued in favour of the petitioner. Hence, he prayed to dismissed this Writ Petition.

4. I have given anxious consideration to the submissions made on either side.

5. The short point emerging for consideration is, whether the rejection of approval, is in consonance with settled legal principles. It is an admitted fact that the petitioner was appointed to a sanctioned post as per the staff fixation order, wherein, the Government had sanctioned one teaching post for Computer Science. The learned counsel for the petitioner submitted that the said post was held by one S.H. Vasanthakumari, until her voluntary retirement till 31.05.2018, and that only after her voluntary retirement, the petitioner was appointed to the sanctioned vacant post on 07.06.2018. Therefore, when there is a sanctioned post, it is mandatory on the part of the Government to approve the appointment, if the proposed candidate is otherwise qualified.



W.P.No. 7187 of 2020

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6. In this regard, the learned counsel for the petitioner relied upon the judgment of this Court passed in W.P. No. 9539 of 2019 [***E.Saral vs. The Director of School Education***], wherein, in an identical case, this Court directed the Government to give approval for the appointment. The learned Single Judge in the above cited judgement, also relied upon the judgment of the Division Bench of this Court in ***The Government of Tamil Nadu vs. P.Vivekanandan*** (W.A. Nos. 887 and 888 of 2018, dated 02.01.2019), and the relevant portions are extracted hereunder:-

“7. The learned Single Judge relied on the Judgment of the Division Bench of this Court in W.A.(MD).No.652 of 2013 in State of Tamil Nadu and others vs. The Correspondent, St.Joseph's Malankara Shyrian Catholic Higher Secondary School, which held that nowhere it has been stated that the sanction posts, which have been declared surplus, on account of death or resignation of existing teachers, will be resumed by the Government.

8. Even though the learned Single Judge has quoted a relevant portion of the said judgment, at the risk of repetition, few paragraphs are once again been quoted, as hereunder:-

"4.The issue as to whether a person appointed in a



W.P.No. 7187 of 2020

sanctioned post by a minority school can be denied approval of appointment was considered by a Division Bench of this Court in W.A.(MD) No.16 of 2011, dated 25.1.2011, wherein in paragraph Nos.(3) to (5), it is held thus:-

3) Learned counsel appearing for the first respondent submits that one of the special teacher post (Sewing) became vacant and in the said vacancy, the first respondent was appointed from 15.7.2004 and she is serving in the second respondent school all these years. Learned counsel for the first respondent also submitted that the said sanctioned post is in existence and the appellants neither declared the said post as surplus nor resumed the post till date from the second respondent school. To prove the availability of the post, the staff fixation orders of the school is filed. The reason stated by the District Elementary Educational Officer for rejecting the request for approval was that there is reduction of student strength. The very same issue was considered by the Division Bench in W.A.No.1263 of 2001, by order dated 22.1.2004, wherein this Court has held that if a person is appointed in a sanctioned post, the approval cannot be rejected and if there is a fall in strength and the post become surplus after granting approval to the post, the



W.P.No. 7187 of 2020

said teacher along with the post could be transferred/deployed to a needy school. The same is the view taken by the learned Single Judge in this case by relying upon the various other judgments.

(4) The learned counsel for the first respondent also submitted that an identical case was allowed by the learned Single Judge in W.P.No.7218 of 2008 by order dated 4.8.2009 and without filing an appeal against the said order, the said order was implemented by the very same second appellant in <http://www.judis.nic.in> this appeal by order dated 18.9.2009. (5) The said fact is also not disputed by the learned Special Government Pleader appearing for the appellants.

5. Applying the said judgment to the facts of the present case, there is no error in the order passed by the learned Single Judge."

9. It has been brought to our notice that Special Leave Petition has been filed against the said judgment, being Special Leave to Appeal (C)No.-----/2014 in CC.No(s).13000/2014, and that the same has been dismissed by the Hon'ble Supreme Court, by the order dated 25.08.2014.

10. It is also brought to our notice that the School Education Department, for the years 2003 - 04 and 2008 -



W.P.No. 7187 of 2020

09, has sanctioned two posts of Vocational Instructors in Accountancy and Auditing, been held by the writ petitioners, as the sanctioned strength for the Arunachalam Higher Secondary School, Thiruvettar, Kanyakumari District.”

7. As per the above proposition, it is abundantly clear that whenever a post is sanctioned to a minority institution, and if any vacancy arises, they have got every right to appoint a suitable person, provided the person to be appointed must have the required valid qualification. But in the case in hand, despite the application submitted by the Management, as on date, the Government did not consider the same, thereby putting her in great hardship.

8. Even while looking at the impugned order, it is not an order of rejection, but rather, the respondents sought some clarification. This Court is of the *prima facie* view that the fourth respondent's proposal for the appointment of the petitioner to the post of Computer Science Teacher appears to be valid in law as there is vacancy for the post of Computer Science Teacher. However, considering the fact that the first to third respondent want some more clarification from the fourth respondent/School,



W.P.No. 7187 of 2020

instead of issuing any positive direction to the authority, it would be appropriate to issue mandamus to consider the explanation to be submitted by the fourth respondent/School in a time bound manner, to decide the appointment of the petitioner to the said post.

9. Hence, this Court directs the fourth respondent to submit the required clarification to the first respondent. On submission of such clarification, the first respondent is directed to pass appropriate orders, according to it's own merits, within a period of four weeks from the date of receipt of a copy of this order.

10. With the above observations, this Writ Petition is disposed of. Consequently, the connected Miscellaneous Petition is closed. No costs.

04.10.2024

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Index : Yes/No

Speaking order /Non Speaking Order

Neutral Citation : Yes/No



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W.P.No. 7187 of 2020

To

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W.P.No. 7187 of 2020

C.KUMARAPPAN, J.

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W.P.No. 7187 of 2020

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