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W.A.No.2172 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2024

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
AND

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

W.A.No.2172 of 2021

1. The Director of School Education
College Road, Nungambakkam
Chennai – 6.
2. The Chief Educational Officer
Nagercoil, Kanyakumari District.
3. The District Educational Officer
Thuckalay, Kanyakumari District. .. Appellants

Vs.

1. M.Alphonsal
2. The Correspondent
St. Francis Xavier Higher Secondary School
Manguzhy, Neyyoor – 629 802
Kanyakumari District. .. Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 20.07.2018 in W.P.No.2349 of 2008.

For Appellants : Mr.U.M.Ravichandran
Special Government Pleader

For Respondents : Mrs.P.Mahalakshmi
for R1

Mr.P.Godson Swaminath
for M/s.Issac Chambers
for R2



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JUDGMENT

(Judgment of the Court was made by S.M.SUBRAMANIAM, J.)

The writ order dated 20.07.2018 in W.P.No.2349 of 2008 is under challenge in the present writ appeal.

2. It is not in dispute between the parties that the appointment of the first respondent was approved by the Competent Authority of the Education Department in the year 2007. The respondent claims that he was appointed by the Aided School Management in the year 2001.

3. The learned counsel for the first respondent would submit that the School Management submitted a proposal, but there was a delay on the part of the Authorities in finalizing the proposal. In the writ petition earlier filed, directions were issued to dispose of the proposal and even then, it was not considered. Finally, the proposal was considered and approval was granted in the year 2007. Therefore, the approval must be granted with retrospective effect from the date on which the first respondent was initially appointed by the School Management.



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3. The learned counsel for the School Management/second respondent would submit that there were surplus Teachers in the School during the relevant period. The surplus Teachers in their School cannot be taken into consideration, since the permission to transfer did not exist during the relevant point of time. Though these issues are now streamlined, the issue of surplus Teachers existed during the relevant point of time when the first respondent was appointed by the School Management was not addressed

4. *Mr.U.M.Ravichandran*, learned Special Government Pleader would submit that a proposal was submitted and the Authorities conducted an inspection and found that surplus Teachers were working in the Schools run by the very same Diocesan, therefore, the Diocesan Management should have initiated action to transfer the surplus Teachers to other Schools, so as to avoid financial loss to the State Exchequer. Without taking any action to accommodate the surplus Teachers, the Management appointed new Teachers and submitted proposal seeking approval. In the event of granting retrospective approval, the financial implications on the State Exchequer would be huge.



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5. We are of the considered opinion that surplus Teachers were working during the relevant point of time in the Schools administered by the same Diocesan. That being so, action should have been taken to accommodate those surplus Teachers in other Schools. It is not made clear whether any proposal to accommodate these surplus Teachers to other Schools are submitted before the Competent Authority of the Education Department or not. In the absence of any such proposal, the approval granted prospectively from the year 2007 cannot be faulted.

6. Though the School Management appointed the first respondent in the year 2001, the Authorities granted approval from the year 2007 on the ground that surplus Teachers were working under the same Management. This reason cannot be countenanced. Thus, we are of the considered opinion that the learned Single Judge has erred in forming an opinion that approval of appointment ought to have been granted from the year 2001 along with the salary.



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7. The Competent Authorities of the Education Department are expected to be cautious while granting approval. In the present case, they have rightly granted approval from the year 2007, since surplus Teachers were working prior to the year 2007.

8. That being so, the order dated 20.07.2018 in W.P.No.2349 of 2008 is set aside, and the writ appeal stands allowed. There shall be no order as to costs. Consequently, C.M.P.No.13715 of 2021 is closed.

(S.M.S., J.) (C.K., J)
12.07.2024

Neutral Citation:Yes/No

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S.M.SUBRAMANIAM, J.
AND
C.KUMARAPPAN, J.
(drm)

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