



W.A.No.36 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2024

WEB COPY

CORAM

THE HON'BLE Mr. JUSTICE R.SURESH KUMAR
AND
THE HON'BLE Mr. JUSTICE K.KUMARESH BABU

W.A.No.36 of 2019
and
C.M.P.No.318 of 2019

The Director of School Education,
Saram, Government of Puducherry,
Puducherry.

... Appellant

Vs.

1.M.Josphine Amla Juliva,
Working as Primary School Teacher,
Fathima Higher Secondary School,
Puducherry.

2.The Fathima Higher Secondary School,
Represented by its Secretary,
Archdiocesan Board of Education,
Puducherry.

3.The Principal,
Fathima Higher Secondary School,
Puducherry.

... Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent Act, praying
to set aside the order dated 22.09.2017 made in W.P.No.12689 of 2010.

For Appellant : Mr.R.Syed Mustafa



WEB COPY



W.A.No.36 of 2019

For Respondents : Mr.J.James for R1

: Mr.Father Xavier Arulraj
Senior Counsel for R2 & R3

JUDGMENT

(Judgment of the Court was delivered by R.SURESH KUMAR, J.)

This intra-Court appeal has been directed against the order passed by the Writ Court dated 22.09.2017 made in W.P.No.12689 of 2010.

2. The 1st respondent herein was the writ petitioner who claimed to have been initially appointed as a Secondary Grade Teacher at the 2nd and 3rd respondent School on consolidated pay.

3. The qualification earned by the writ petitioner Teacher is B.Com. B.Ed. Insofar as such qualification of the writ petitioner Teacher to hold the post of Secondary Grade Teacher is concerned, the then Recruitment Rules governing these teachers is the rule of the year 1998 issued in G.O.Ms.No.32 dated 30th April, 1998. The said rule hereinafter referred to 'RR 1998' in fact has been made under proviso to Article 309 of the Constitution.

4. As per the said rule, in Rule 8 the qualification to hold the post



W.A.No.36 of 2019

of Secondary Grade Teacher has been mentioned as follows:

“8.Educational and other qualifications required for direct recruits.

Essential.

A pass in Higher Secondary Course or equivalent with not less than 50% marks in aggregate together with SGTs Training Certificate or D.T.Ed. Training Certificate offered by recognised institution. The minimum academic qualification for admission to the above Training Certificate Course should be Higher Secondary (12th) and the course should be of two years duration. Working knowledge of the regional language.

Desirable:

A Degree with a Degree in Teaching of a recognised University.”

5. Therefore, it was the understanding of the School Teacher as well as the stakeholders concerned that, if a person is having the qualification of Diploma in Teacher Education after completing the +2 that can be the qualification to be appointed as a Secondary Grade Teacher to hold the said post. Equally if a person is having a degree and a B.Ed. degree after completing the +2 that also can be a qualification to hold the post of Secondary Grade Teacher which in fact is a desirable



W.A.No.36 of 2019

qualification.

WEB COPY

6. Therefore, based on the said understanding the writ petitioner Teacher was appointed or engaged by the 2nd and 3rd respondent School as a Secondary Grade Teacher with effect from 1998, of course on consolidated pay from the School Management based on which the Teacher had been working all along.

7. When that being so, in the year 2003 the Government of Puducherry had come forward to issue a fresh Recruitment Rules, of course under proviso to Article 309 of the Constitution by issuance of G.O.Ms.No.136 dated 11th November 2003. This rule would be called hereinafter in short as 'RR 2003'.

8. Under the RR 2003 the qualification to hold the post of Secondary Grade Teacher again has been mentioned in Rule 8 which reads thus:

“8.Educational and other qualifications : (i) A pass in Higher Secondary School or its equivalent with 50% marks in aggregate; and
(ii) Diploma in Teacher Education or Certificate in Basic Teacher's Training of



WEB COPY



W.A.No.36 of 2019

duration of not less than 2 years offered by an institution recognized by the National Council for Teacher Education. The minimum academic qualification for admission to the Diploma in Teacher Education or Certificate in Basic Teacher's Training should be Higher Secondary or its equivalent; and

(iii) Should have studied the particular regional language (Tamil/Telugu/ Malayalam) as one of the subjects up to Secondary level or studied Diploma in Teacher Education/ Certificate in Basic Teacher's Training in the relevant Medium of regional language.

Note : The Educational qualification for Primary School Teachers for Schools with medium of Instruction in French shall be:-

- (i) Brevet Elementaire de Francais;
- (ii) Higher Secondary with 50% marks in aggregate; and
- (iii) Diploma in Teacher Education or Certificate in Basic Teacher's Training of a duration of not less than two years offered by an Institution recognized by National



WEB COPY



W.A.No.36 of 2019

Council for Teacher Education. The minimum academic qualifications for admission to the Diploma in Teacher Education or Certificate in Basic Teacher's Training should be Higher Secondary or its equivalent.”

9. Therefore, one difference between RR 1998 and RR 2003 is that, the desirable qualification of a degree and B.Ed. degree available in RR 1998 has been removed under RR 2003. Resultantly, only those who had the qualification of Diploma in Teacher Education alone could be appointed as a Secondary Grade Teacher in the Schools run by the Government as well as the Schools run by the Private Managements getting aid from the Government.

10. Only under the said circumstances, since a post of Secondary Grade Teacher which is a vacant sanctioned post in the 2nd and 3rd respondent School in the year 2006 an appointment had been made in the year 2006 by the School Management, such an appointment had been made to the writ petitioner Teacher as a Secondary Grade Teacher in the 2nd and 3rd respondent School. This time the payment is not by way of



W.A.No.36 of 2019

consolidated pay but it is a payment for the sanctioned vacancy with aid from the Government.

11. After making the said appointment the School in fact had forwarded the proposal on 04.07.2006 to the Director of School Education, Puducherry which in fact has been placed before the Selection Committee constituted in this regard by the Puducherry Government. The Committee had a meeting on 25.07.2006 for evaluating the qualification and to make a recommendation to fill up the vacant teaching post in Fathima Higher Secondary School in Puducherry i.e. 2nd and 3rd respondent School.

12. The Committee, in the said meeting held on 25.07.2006, as per the minutes recorded, having evaluated the qualification of the writ petitioner Teacher along with three other Teachers who also had been equally appointed or promoted in the 2nd and 3rd respondent School, has made the following recommendation.

“On Scrutiny of the proposal, though Tmt.Josephine Amala Julina and Tmt.Marline Antoinette have not fulfilled the requisite educational qualification as per R.R. they have been appointed on consolidated basis before the amendment



WEB COPY



W.A.No.36 of 2019

of the existing R.R. The Committee recommended for their appointment as PSTs.”

13. The said recommendation made by the Selection Committee having been accepted by the Puducherry Government, order to that effect by way of Memorandum dated 01.08.2006 was issued by the Director of School Education, Government of Pondicherry, where, the following approval has been given insofar as the appointment made to the writ petitioner as a Secondary Grade Teacher in the 2nd and 3rd respondent School which reads thus:

“Based on the recommendations of the School Selection Committee, the Correspondent/Headmaster, Fatima Higher Secondary School, Pondicherry is informed that

- *Thiru. A. Alphonse, Primary School Teacher is promoted and posted as School Assistant Gr.II in the scale of pay of Rs.5500-175-9000 with immediate effect.*
- *Tmt. M. Josephine Amala Julina and Tmt. M. A Marlin Antoinette are appointed as Primary School Teacher in the scale of pay of Rs.4500-125-7000 with immediate effect.*

2. *A copy of the appointment order in respect of*



W.A.No.36 of 2019

Tmt.M.Josephine Amala Julina and Tmt.M.A.Marlin Antoinette as Primary School Teacher along with Medical Fitness Certificate obtained from RMO, Govt. General Hospital, Pondicherry may be sent to this Directorate for record.”

14. Thereafter it seems that the Director of Education, Government of Puducherry has come forward to send some communication in the year 2006 to the School stating that, since there has been excess teachers available in the School, no further appointment in the School Assistant Grade II or Secondary Grade Teachers category shall be made.

15. In this context, since there has been a quarrel between the School Management and the Director of School Education as to the Teacher-Pupil ratio and the students strength of the School at various point of time vis-a-vis the Teachers working in the 3rd respondent School, the Government has not released the salary payable to the Teacher i.e. the writ petitioner/1st respondent herein.

16. Only at that juncture, the writ petitioner/1st respondent had moved the said writ petition in W.P.No.12689 of 2010 before the Writ Court seeking a prayer of mandamus directing the 1st respondent i.e. the



W.A.No.36 of 2019

Director of School Education, Puducherry to pay salary to the petitioner as stated in the appointment order dated 01.08.2006 with arrears of salary with effect from 01.08.2006 with interest at the rate of 18% per annum.

17. The said writ petition having been heard was allowed by the learned Judge through the order impugned dated 22.09.2017 that is how this writ appeal has been directed at the instance of the Puducherry State.

18. Heard Mr.R.Syed Mustafa, learned Special Government Pleader appearing for the Puducherry State who would state that, even though the RR 1998 prescribes the qualification of Secondary Grade Teacher as the essential qualification merely because it has been stated in the said RR 1998 with B.Ed. qualification is a desirable qualification, it cannot be taken as an essential qualification, therefore without such essential qualification of Secondary Grade Teacher training if any Teacher is appointed as a Secondary Grade Teacher that appointment is an illegal appointment, therefore such an appointment cannot be approved.

19. The learned Special Government Pleader would also submit that, nevertheless since appointment had been made in the year 2005 or 2006 as claimed by the Teacher as well as the School afresh in the



W.A.No.36 of 2019

sanctioned post for getting the salary by way of aid, in the meanwhile since the RR 1998 itself has been replaced by a fresh RR i.e. RR 2003 under which the very desirable qualification itself has been removed, therefore, the only essential qualification as per the RR 2003 is Diploma in Teacher Education after completing the +2 which is the essential qualification without which if anybody is appointed as a Teacher as Secondary Grade Teacher, certainly such kind of appointment cannot be made and therefore, the Teacher concerned is not entitled to seek for any salary.

20. That apart, the learned Special Government Pleader would further submit that, at one point of time by several communication the School Management had come forward to state that, there are excess Teachers available in the School, therefore no approval can be given to this kind of appointment that was made by the School Management at one point of time.

21. Only because of these contentions as well as the lack of qualification attached with the writ petitioner who claimed to have been appointed in the year 2005 in a sanctioned post, the Teacher has not been



W.A.No.36 of 2019

paid the salary, therefore that decision taken by the Puducherry Government is to be sustained. Without considering these aspects in proper perspective since the learned Judge has allowed the said writ petition and directed the 1st respondent to give immediate effect to the order dated 01.08.2006 the impugned order need to be interfered with, he contended.

22. On the other hand, Mr.J.James, learned counsel appearing for the writ petitioner Teacher has relied upon the said communications viz., the evaluation and minutes recorded by the Selection Committee appointed by the Director or the Puducherry Government in its meeting held on 25.07.2006. The relevant portion of the said recommendation has already been extracted herein above, where, the learned counsel would rely upon the recommendation made by the Committee stating that, after evaluating the qualification that was holding by the writ petitioner Teacher only such a recommendation since has been made by the Committee and having accepted the same, approval since has been given by the Puducherry Government i.e. Director of School Education dated 01.08.2006 the said order still holds good. The Teacher since has been working all along in the 3rd respondent School, she is very much entitled



W.A.No.36 of 2019

to get the salary from the Government and therefore the prayer sought for in the writ petition since has been considered and ordered by the Writ Court, of course rightly, it requires no interference, therefore the learned counsel appearing for the writ petitioner seeks indulgence of this Court to dismiss the present appeal.

23. Almost in support of the said contention raised by the learned counsel appearing for the writ petitioner Teacher, Mr.Father Xavier Arulraj, learned Senior Counsel appearing for the 2nd and 3rd respondent School has submitted that, even before the RR 2003 comes into force appointment had been made, of course on consolidated pay in the year 1998 and thereafter in the year 2005 or 2006 since appointment had been made which have been evaluated and approved by the Puducherry Government through the order dated 01.08.2006 the Government cannot refuse the salary payable to the writ petitioner Teacher.

24. The learned Senior Counsel would further submit that, insofar as the Teacher-Pupil ratio as well as the pupil strength in the School is concerned, it is a fluctuating one, every academic year the pupil strength



W.A.No.36 of 2019

would get changed, therefore depending upon the pupil strength the Teacher-Pupil ratio has to be fixed. Moreover, in Puducherry every academic year no such teaching staff being fixed based on the pupil strength in a particular academic year.

25. Therefore, the learned Senior Counsel would contend that, the past few years of pupil strength in the School concerned, according to the pupil strength, the Teachers including the present Teacher who is the 1st respondent is very much required to be employed at the 2nd and 3rd respondent School, therefore the Teacher cannot be expected to be transferred to any other needy School in case if the Government comes forward to release the salary, therefore the learned Senior Counsel wants the Teacher to be retained at the 2nd and 3rd respondent School based on the pupil strength.

26. We have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

27. No doubt, the writ petitioner/1st respondent was having the qualification of B.Com. degree and B.Ed. degree, whether this qualification is a higher qualification than the essential qualification of



W.A.No.36 of 2019

Secondary Grade Teacher is no more *res integra* as that issue has been resolved by a Division Bench of this Court long years back. The Division Bench has held that the Secondary Grade Teacher qualification is a special qualification or a different qualification, for which the B.Ed. qualification cannot be equated. Therefore, in the State of Tamil Nadu when a similar issue had been come up, the Division Bench as a one time solution had directed the Government of Tamil Nadu to send all those Teachers who had been appointed in Secondary Grade Teacher post with B.Ed. qualification to take a Child Psychology Training, accordingly the Teachers who had been given the Child Psychology Training only, their appointment had been approved. However their appointment earlier made has not been disturbed and they were permitted to continue to work.

28. Be that as it may, insofar as the State of Puducherry is concerned, with regard to the appointment of Secondary Grade Teacher in 1998 a rule has been framed called 'RR 1998'. The relevant portion of the rule has already been extracted herein above, where, the qualification of Higher Secondary pass and the Secondary Grade Teacher has been made as a qualification. That apart, as a desirable qualification that, a degree with a degree in Teaching of a recognised University also had



W.A.No.36 of 2019

been mentioned.

WEB COPY

29. Since the desirable qualification had been mentioned in the RR 1998, the School as well as the stakeholders concerned were of the view that if either the qualification of Diploma in Teacher Education or a degree in Education can be the qualification to hold the post of Secondary Grade Teacher, accordingly the Teacher was appointed in the year 1998 at the 3rd respondent School.

30. However, in order to resolve the issue the Government has come forward to make a fresh rule by issuance of RR 2003, of course under the proviso to Article 309 of the Constitution, where, in Rule 8 the desirous qualification of a degree and a degree with education has been removed. Therefore, the only essential qualification to hold the post of Secondary Grade Teacher is +2 pass with the Diploma in Teacher Education course.

31. This was mainly argued by the learned Special Government Pleader appearing for the appellant stating that, when this rule has come into effect from 2003 and when appointment was made either in 2005 or



W.A.No.36 of 2019

2006 insofar as the writ petitioner/1st respondent is concerned, how such an appointment could be made, therefore such an appointment is an illegal appointment.

32. The answer to the said argument made by the learned Special Government Pleader is available in the very same documents emanated from the very same Government Order, which we have already quoted herein above. The first document is the recommendation made by the Selection Committee dated 25.07.2006 where they, consciously, after having evaluated the qualification of the Teacher concerned recommended the Government to approve the appointment. The said recommendation having been accepted, approval order had been given on 01.08.2006.

33. Thereafter no express order has been passed by the State Government or the Director of School Education at any point of time varying, modifying or cancelling the order of approval given by the Director of School Education dated 01.08.2006. Therefore the 01.08.2006 approval order insofar as the writ petitioner is concerned, it still holds good.



W.A.No.36 of 2019

WEB COPY

34. When that being so, the Teacher since has been served for all these years in the 3rd respondent School and such appointment also had been approved from 01.08.2006, certainly atleast from that date the Teacher concerned is entitled to get salary which is payable to the Secondary Grade Teacher concerned as per the pay fixation made already by the Puduchery Government.

35. Therefore, we have no hesitation to hold that the writ petitioner /1st respondent is entitled to get the salary atleast from 01.08.2006 the date on which approval order has been issued by the Puducherry Government.

36. Moreover, the Teacher since had been working in the 3rd respondent School which is one of the aided School such an aid can be given by the Puducherry Government and accordingly the salary can be paid to the Teacher also.

37. With regard to the issue raised by the appellant side that, this Teacher may be an excess Teacher, therefore the Teacher can be deputed to some other School is concerned, the plea raised by the Senior Counsel



W.A.No.36 of 2019

appearing for the 3rd respondent School is that, as per the present pupil strength of the School, the Teacher cannot be considered to be an excess Teacher.

38. This controversy is not the subject matter in this appeal as this can be resolved based on the available records as of now for which the School can very well place all the records to establish that, as per the pupil strength the Teacher can be considered as a required Teacher and not an excess Teacher in the 3rd respondent School and if any such records produced by the School concerned, it is open to the appellant/ Director of School Education to consider those documents and accordingly take a conscious decision in accordance with law.

39. In view of the aforesaid discussion, we feel that there is no error on the part of the learned Judge who allowed the said writ petition through the impugned order, therefore we feel that the said impugned order is to be sustained for the reasons stated by the learned Judge in the order itself apart from additional reasons that we have given in this order, accordingly this writ appeal is disposed of with the following orders.

(i) That the order passed by the learned Judge which is



W.A.No.36 of 2019

WEB COPY

impugned herein is sustained, accordingly this writ appeal has to be rejected hence it is rejected.

(ii) As a sequel, there shall be a direction to the appellant to calculate the salary arrears payable to the 1st respondent/writ petitioner with effect from 01.08.2006 as a Secondary Grade Teacher at the 3rd respondent School and such arrears shall be calculated and be paid to the Teacher within a period of two months from the date of receipt of a copy of this judgment.

(iii) Insofar as the issue with regard to the excess Teacher and based on which whether the Teacher is to be subjected to transfer to some other needy School is concerned, it is open to the 3rd respondent School to produce all the relevant records to substantiate their contention that, the Teacher should be retained at the 3rd respondent School based on the pupil strength. If any such records or documents are filed immediately by the School Management, the same shall be considered objectively by the Director of School



W.A.No.36 of 2019

WEB COPY

Education, Puducherry Government after giving an opportunity of being heard to the School Management and thereafter a decision can be taken on merits and in accordance with law.

40. With these observations and directions, this Writ Appeal is disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[R.S.K., J.] [K.B., J.]
08.03.2024

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
Sgl

R. SURESH KUMAR, J.
and
K.KUMARESH BABU, J.

Sgl



W.A.No.36 of 2019

To

WEB COPY

- 1.M.Josphine Amla Juliva,
Working as Primary School Teacher,
Fathima Higher Secondary School,
Puducherry.
- 2.The Fathima Higher Secondary School,
Represented by its Secretary,
Archdiocesan Board of Education,
Puducherry.
- 3.The Principal,
Fathima Higher Secondary School,
Puducherry.

W.A.No.36 of 2019

08.03.2024