



W.P.(MD).No.2720 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.06.2024

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.2720 of 2021

The Secretary,
T.K.R.Government Aided Middle School,
Manojippa Street,
Thanjavur,
Represented by its Secretary
B.Vijayan.

... Petitioner

Vs.

1.The Directorate of School Education,
DPI Campus, College Road,
Chennai-600 006.

2.The Chief Educational Officer,
Thanjavur District,
Thanjavur.

3.The District Educational Officer,
Thanjavur.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the rejection order passed by the 3rd respondent in O.Mu.No.0517/A2/2019, dated 30/09/2019 and quash the same as illegal and arbitrary and in consequence thereof, direct the respondents 1 to 3 to grant approval for the appointment of



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Vidhya, as full time vocational Teacher (tailoring) and grant all services benefits including the salary from the date of her appointment.

For Petitioner : Mr.P.Ganapathi Subramanian

For Respondents : Mr.M.Sarangan
Additional Government Pleader

ORDER

The present writ petition has been filed to call for the records of the rejection order passed by the 3rd respondent in O.Mu.No.0517/A2/2019, dated 30/09/2019 and quash the same as illegal and arbitrary and in consequence thereof, direct the respondents 1 to 3 to grant approval for the appointment of Vidhya, as full time vocational Teacher (tailoring) and grant all service benefits including the salary from the date of her appointment.

2. The petitioner school is a non-minority Government Aided Middle School. On 20.02.2017, one Mrs.Renuka Bai who worked as full time Vocational Teacher (Tailoring) retired voluntarily from the service of the petitioner school due to her son's health condition. Subsequently, vide proceedings, dated 09.04.2019, the 3rd respondent had also granted permission to the petitioner school to fill up the post of full time Vocational Teacher (Tailoring). The school committee of the petitioner school having invited



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applications from eligible candidates to fill up the above said vacancy had called for applications through school notice board, District Employment Exchange and also by publishing advertisement in Dhina Thanthi on 02.08.2017. Following which, the school received applications from 8 persons, for whom interview was conducted on 27.08.2017, among them one Mrs.Vidhya was found eligible to the said post and was declared as successful candidate as she fulfilled all the norms of the Government. Following which, the petitioner school issued an order of appointment to Mrs.Vidhya on 27.08.2017. She joined as full time Vocational Teacher (Tailoring) in the petitioner school on 28.08.2017 and her appointment order along with necessary documents were forwarded to the 3rd respondent for approval on 28.08.2017. However, the said proposal was rejected by the impugned order. Challenging the same, this writ petition came to be filed.

3. The learned counsel appearing for the petitioner submitted that the impugned order came to be passed for the reason that wide publication was not made by the petitioner school before making the said appointment, despite the school having called for applications through the sponsorship of District Employment Exchange, by displaying in the school notice board as well as



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publishing advertisement regarding the selection in Dhina Thanthi on 02.08.2017. Hence, the ground on which the impugned order came to be passed is *per se* illegal and he pressed for quashing the impugned order and allowing the writ petition.

4. The 3rd respondent has filed a counter and the learned Additional Government Pleader submitted that the advertisement must contain the number of vacancies of the post called for and ought to have been published in two newspapers of local language. He further submitted that the size of the advertisement is also very smaller and the students strength has declined in due course of time from 100 in 6th to 8th standards. On such condition, the post of Vocational Instructor cannot be permitted, since the strength has been reduced to 74 in the year 2019-20. In view of the same, the impugned order need not be interfered with and he pressed for dismissal of the writ petition.

5. Heard the learned counsels on either side and perused the material records.

6. It is pertinent to record that the school possessed a total strength of 100 students on the date of appointment and relying upon the judgment passed



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by the Hon'ble Division Bench of this Court in ***W.A.No.108 of 2019, dated 31.01.2019 (The State of Tamil Nadu, represented by its Secretary, Education Department & Others Vs. Y.Thangababy & another)*** wherein a similar issue has been dealt with and the relevant portion of which is extracted hereunder:

“8. Short issue involved in this case is that if the students strength reduces, after the post is approved, then such posts be filled up, if a vacancy arises or not. This issue is no longer res integra. This Court, in W.A.No.1263 of 2001, by judgment dated 22/1/2004, observed as under:-

“4. Fixation of teachers strength is governed by G.O.Ms.No.525, School Education (D1) Department dated 29/12/1997. As per the said Government Order, a School is entitled to one teacher for the average attendance of 40 students taken in the month of August of the academic year. As we already pointed out, there is no dispute that the appellant – School was sanctioned six posts of Secondary Grade Teachers for the academic year 1999 – 2000 which was fixed on the basis of the average attendance of students taken in the month of August, 1999. It is also not in dispute that a teacher by name C.Vasanthal was appointed within the sanctioned strength of six Secondary Grade Teachers. Proposals were also sent on 28/12/1999. In the circumstances, we cannot find fault with the appellant School in appointing C.Vasanthal as Secondary Grade Teacher, as admittedly the appellant had the sanctioned teachers strength on the date of appointment. The approval, which was sought, is rejected solely on the ground of subsequent development viz., the fixation of the teachers strength for subsequent academic years 2000 – 2001 and 2001 – 2002 on the basis of average attendance of students taken during August 2000 and August 2001. The fall or reduction in the students strength for



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the subsequent year/years cannot be ground to deny the right of the appellant to appoint a teacher as against the sanctioned strength for the previous years. What has been done in this case, by the impugned order, is exactly the reliance placed on the subsequent re-fixation of the sanctioned strength of teachers for the academic year 2000 - 2001 which, in our considered view, is impermissible in law. When the Government, being the finding authority, is entitled to consider the average attendance of students before sanctioning the teachers, equally the management is also entitled to appoint the teachers as against the sanctioned strength based on the average attendance of students taken during August, 1999. Though it is the case of the respondent that the appellant had boosted the attendance of the students, the same is sought to be supported only on the basis of the inspection carried on 6/1/2000 and 3/4/2000 and on the basis of the attendance of the students on those days and not with reference to the average attendance of August, 1999.

5. In that view of the matter, we find it every merit in the grievance of the appellant School for approval of the appointment of C.Vasanthal as Secondary Grade Teacher for the academic year 1999 – 2000. In that view, we do not find any justification to hold that the subsequent development or re-fixation of sanctioned strength could be a ground for denying the right of the appellant to appoint the teacher as against the sanctioned strength for the previous academic years. Accordingly, we set aside the order of the learned Single Judge and direct the respondent to accord approval for the appointment of C.Vasanthal made on 20/2/1999 and prosed on 28/12/1999. We make it clear that this approval will enure the benefit to the said teacher only for the academic year 1999 – 2000. In view of the subsequent development, the said teacher shall be considered as surplus and is entitled to be dealt with in accordance with the Government orders in vogue.”



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9. This Court, by judgment, dated 1/2/2011, in W.A.No.703 of 2009, {1. The District Elementary Educational Officer, Tirunelveli and another Vs. 1. J.Banu and another}, held as under:- “

“6. The learned counsel appearing for the first respondent submitted that one of the Special Teacher post of Vocational Instructor in Tailoring became vacant and in the said vacancy, the first respondent was appointed with effect from 30/4/2008 and she is serving in the second respondent school all these years. The learned counsel also submitted that the said sanctioned post is in existence and the appellants neither declared the said post as surplus nor resume the post till date from the second respondent school. To prove the availability of the post, staff fixation order 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 a Division Bench of this Court in W.A.No.1263 of 2001 and by judgment dated 22/1/2004, the Division Bench held that if a person is appointed in a sanctioned post, the approval of appointment cannot be rejected and if there is fall in strength and the post become surplus, after granting approval of the post, the said teacher along with post could be transferred/deployed to a needy school. The same is the view taken by the learned Single Judge in this case.

9. In the light of the Division Bench decision cited supra, as well as the availability of post, where the first respondent is appointed in the second respondent school, there can be no impediment for the appellants to approve the appointment of the first respondent with effect from 30/4/2008 and disburse her salary and other benefits, if she is found qualified. No ground is made out to interfere with the order passed by the learned Single Judge.” (emphasis supplied)



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The Constant view therefore is that reduction in students cannot be a reason to request approval of the appointment of a teacher against a sanctioned post.

10. In view of the above mentioned judgment, there is no merit in the writ appeal and the same is dismissed. Appellants are directed to approve the appointment of the first respondent, with effect from 11/8/2008, within a period of three weeks, from the date of receipt of a copy of this order.”

7. Fully fortified by the said judgment and being satisfied that the petitioner school has duly called for 8 candidates for interview after adopting the procedures mandated for appointment of teachers and that the subsequent fall in student strength will not affect the appointment of Mrs.Vidhya, I am of the considered view that the impugned order should be quashed. Accordingly, the impugned order passed by the 3rd respondent in O.Mu.No.0517/A2/2019, dated 30/09/2019 is quashed and the 3rd respondent is directed to grant approval to the appointment of Mrs.Vidhya as full time Vocational Teacher (Tailoring) and grant all service benefits including the salary from the date of her appointment.



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8. With the above direction, this Writ Petition is allowed. No costs.

07.06.2024

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

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To

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Chennai-600 006.
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L.VICTORIA GOWRI, J.

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