



W.A.(MD) No.1020 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.11.2024

CORAM:

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
and
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR**

W.A.(MD)No.1020 of 2023

and

C.M.P(MD)No.7809 of 2023

1.The Chief Educational Officer,
O/o. The Chief Educational Office,
Thoothukudi District,
Thoothukudi.

2.The District Educational Officer,
O/o.The District Educational Office,
Kovilpatti,
Thoothukudi District.

... Appellants / Petitioners 1&2

-Vs-

1.S.Senthil Ganesan

.. 1st Respondent/Writ Petitioner

2.The Correspondent,
Raja Higher Secondary School,
Ettaiyapuram,
Kovilpatti Education Department,
Tuticorin District.

.. 2nd Respondent/3rd Respondent



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Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 02.09.2022, passed in W.P.(MD)No.13846 of 2020, on the file of this Court.

For Appellants : Mr.V.Om Prakash
Additional Government Pleader

For Respondents : Mr.H.Mohammed Imran
for R1

: No appearance
for R2

J U D G M E N T

[Judgment of the Court was made by **RMT.TEEKAA RAMAN, J.**]

The writ petition has been filed seeking to quash the proceedings of the 1st respondent therein in Mu.Mu.No.7631/A32020 dated 27.08.2020 and consequently to direct him to approve the appointment of the writ petitioner as B.T.Assistant (Tamil) with effect from 14.02.2019 in the third respondent school with all attendant and monetary benefits in the light of the order passed by the 1st respondent vide his proceedings in Mu.Mu.No.



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53/A3/2019 dated 30.01.2019.

2. In a batch of writ petitions, while disposing of by a common order dated 02.09.2022, the learned Single Judge has observed as follows:

“In the light of the aforesaid decisions, a minority school would be entitled to appoint a teacher by converting a sanctioned post and thus, the reasons for rejection in this regard in the present writ petitions, wherever applicable, are liable to be set aside.

4.5. g) Minority school has a right to upgrade the sanctioned post:

In the case of the Chief Educational Officer, Tirunelveli and another Vs. S.Josephin Vijaya and another passed in W.A. (MD)No.1497 of 2017, dated 14.12.2017, the minority school had appointed a teacher as a B.T.Assistant in the sanctioned post of Secondary Grade Teacher. The Division Bench held that, when the Secondary Grade Teacher in a sanctioned post had retired on reaching the age of superannuation, the post automatically gets upgraded into that of a B.T.Assistant. Agreeing with the findings of the learned Single Judge, the Hon'ble Division Bench in S.Josephin Vijaya's case (supra) had held that, such conversion by upgradation, was permissible. Following the decision in S.Josephin Vijaya's



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case (supra), I had passed orders in the case of A.Franklin Raj Vs. The Chief Educational Officer, Tirunelveli and others in W.P.(MD)No. 10963 of 2020, dated 29.06.2022, by holding as follows:

“4.Insofar as reference to GO.Ms.No.144, School Education Department, dated 04.07.2008 is concerned, the Division Bench of this Court in the case of the Chief Educational Officer, Tirunelveli and another vs. S.Josephin Vijaya and another passed in W.A.(MD)No.1497 of 2017 dated 14.12.2017 has held that when a secondary grade teacher retires on superannuation, the post of secondary grade teacher “automatically” stands upgraded into that of a Graduate Teacher as per G.O.Ms.No. 79, Secondary Education (U-1) Department, dated 14.06.2002. 5.In view of such automatic upgradation, the Authorities cannot insist for prior permission of their approval for upgradation of the sanctioned post. As a matter of fact, such a claim for permission would only be a futile exercise. Thus, both the reasons cited by the first respondent for rejection of the proposal, cannot be sustained.”



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Thus, a minority school would have a right to upgrade the sanctioned post and hence, the reasons assigned in these writ petitions, wherever applicable, cannot be sustained.

5. Insofar as the writ petitions relating to appointment of teachers in “non-minority educational institutions” are concerned, it is seen that in all these cases, the appointment of the teachers were made after prior permission of the Educational Authorities, which is a mandatory precondition. However, the reasons adopted by the respondents for rejecting the proposal for approval of the appointments of these non-minority institutions, are the same as that of the reasons adduced by them for the minority institutions, which reasonings have been discussed in the earlier portion of this order. In view of the prior permission obtained by them and the reasons adopted by the respondents being unsustainable, in view of the various decisions of this Court discussed above, the orders of rejection made in the cases of these non-minority schools also, cannot be sustained.”

W.P.(MD)No.13846 of 2020: *Accordingly, the impugned order dated 27.08.2020, on the file of the first respondent is quashed. Consequently, there shall be a direction to the concerned Educational Authorities to forthwith pass orders, approving the appointment of the petitioner to the post of B.T.Assistant (Tamil), in the third*



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respondent school with effect from 14.02.2019, together with all service and monetary benefits, in the light of the order passed by the 1st respondent vide his proceedings in Mu.Mu.No.53/A3/2019 dated 30.01.2019 within a period of four (4) weeks, from the date of receipt of a copy of this order.”

3. Aggrieved against the said order, the State is on appeal before this Court.

4. Heard Mr.V.Om Prakash, learned Additional Government Pleader appearing for the appellants and Mr.H.Mohammed Imran, learned counsel appearing for the first respondent/writ petitioner.

5. The learned Additional Government Pleader raised two objections that there are 16 surplus teachers in the District of Thoothukudi and there is an order of interim direction passed by the Division Bench of this Court in W.P.No.31575 of 2019 dated 08.11.2019 that when the surplus



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teachers are available, there should not be any appointment. Further, he would contend that School authorities has not preferred any appeal.

6. The learned counsel for the contesting respondent/writ petitioner relied upon the judgment of the Division Bench of this Court made in **W.A(MD)No.1381 of 2023** dated 28.08.2023 [*The Director of School Education, DPI Campus, College Road, Chennai-6 and others v. Prathiba and other*], wherein on similar set of facts, however, with regard to the Maths subject, the Division Bench of this Court has negatived both the points raised by the Government as in the present case, ie., merely because there is a surplus in the District, that cannot be a ground for rejection of the approval of application and the Government having given prior approval for the school and after obtaining the prior permission, the school authorities have appointed the first respondent and hence, rejected the appeal preferred by the Government.



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7. Thus, the learned counsel for the first respondent/writ petitioner would contend that the decision of this Court in the above said Prathiba case is squarely covered the dispute in this case. On the service matrix of the present case, we find that there was a vacancy in BT Assistant (Tamil) in the second respondent School and they have already applied for the prior permission. On 30.01.2019 prior permission was accorded by the Government. Thereafter, on the strength of the prior permission given by the Government, it appears that the second respondent school has appointed the person first respondent/writ petitioner on 14.02.2019 and hence, we find that the pre-condition for appointment of the person for non-minority private aided school has been duly complied with. The other contention raised by the State that there are surplus teachers in the Thoothukudi District does not flow water in view of the decision of the Division Bench cited supra and hence, we find that both the points are already covered by the Division Bench judgment. Hence, there is no merits in this writ appeal.



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8. Accordingly, this writ appeal stands dismissed with a direction to the authorities to regularise the appointment of the first respondent/writ petitioner within a period of eight(8) weeks from the date of receipt of a copy of this order. No Costs. Consequently, connected miscellaneous petition is closed.

[T.K.R., J.] [N.S., J.]

19.11.2024

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

PJL

To
1.The District Collector,
Theni District.

2.The Thasildhar,
Uthamapalayam Taluk,
Theni District.



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AND
N.SENTHILKUMAR, J.

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