



W.A.(MD)No.1692 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 30.08.2024

PRONOUNCED ON : 24.09.2024

CORAM

**THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN
AND
THE HON'BLE MR.JUSTICE J.SATHYA NARAYANA PRASAD**

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and

C.M.P.(MD)No.7247 of 2021

1.The State of Tamil Nadu,
represented by its Secretary,
Department of School Education,
Fort St.George, Chennai – 09.

2.The Director of School Education,
College Road, Chennai – 06.

3.The Chief Educational Officer,
Kanyakumari District at Nagercoil.

4.The District Educational Officer,
Thuckalay, Kanyakumari District.

... Appellants

VS

1.M.Elda Mary

2.The Correspondent,
St.Ignatius Higher Secondary School,
Karumpani – 629 251, Kanyakumari District.

...Respondents



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PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order of this Court dated 17.12.2019 passed in W.P(MD)No.21331 of 2015.

For Appellants :Mr.M.Senthil Ayyanar
Government Advocate
For R1 :Mr.S.Xavier Rajini

JUDGMENT

(Judgment of this Court was delivered by **C.V.KARTHIKEYAN, J.**)

The 1st to 4th respondents in W.P.(MD)No.21331 of 2015 aggrieved by the order of the learned Single Judge dated 17.12.2019 by which order, the learned Single Judge had allowed the Writ Petition, have filed the present Writ Appeal.

2.W.P(MD)No.21331 of 2015 had been filed by the first respondent herein, M.Elda Mary, Sewing Mistress (Craft Teacher), St.Ignatius Higher Secondary School, Karumpani, Kanyakumari District, in the nature of a Certiorarified Mandamus calling for the records relating to the proceedings issued by the fourth respondent in the Writ Petition/fourth appellant herein,



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District Educational Officer, Thuckalay, Kanyakumari District, in Na.Ka.No.4255/Aa2/2012 dated 07.02.2013 declining to approve her appointment as Sewing Mistress (Craft Teacher) and to quash the same and to direct the said fourth respondent to approve her appointment as Sewing Mistress (Craft Teacher) with effect from 02.04.2012 with all attendant benefits including arrears of salary and allowances in St.Ignatius Higher Secondary School, Karumpani, Thuckalay, the Correspondent of which had been impleaded as fifth respondent in the Writ Petition/second respondent herein.

3.In order to facilitate better understanding of the facts and for conducive narration, we shall refer the parties as they were referred in the Writ Petition.

4.It is the case of the Writ Petitioner that one Tmt.T.Biatrose Mary was working as Sewing Teacher in St.Ignatius Higher Secondary School, Karumpani, Thuckalay, Kanyakumari District, a minority educational institution and retired on 31.05.2005 on attaining the age of superannuation. In the staff fixation order for the academic year 2005-06, the said post was



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declared as 'surplus without Teacher'. The School had however appointed L.Maria Brose on 02.06.2005. Her post was not approved. She was relieved from the said School to join a Government School from 01.04.2012. The Writ Petitioner, M.Elda Mary was appointed as Sewing Teacher on 02.04.2012. The School then submitted a proposal on 23.08.2012 to the District Educational Officer to approve her appointment and to disburse the grant-in-aid.

5.The District Educational Officer/the fourth respondent in the Writ Petition by an order dated 07.02.2013 declined to approve the Writ Petitioner's appointment claiming that the post was not sanctioned as per the staff fixation order for the academic year 2012-13. However, the School resubmitted the proposal stating that the post of Sewing Mistress and Craft Teacher are one and the same and that the nomenclature of the Craft Teacher had been changed as Sewing Teacher with effect from 12.11.2003 and that the said post had been sanctioned to the School from the date of its establishment.



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6.It was under those circumstances that the Writ Petition had been filed to call for the records and quash the order dated 07.02.2013 passed by the fourth respondent in the Writ Petition/District Educational Officer, Thuckalay, Kanyakumari District.

7.A learned Single Judge of this Court by order dated 17.12.2019 had observed that a perusal of the staff fixation orders for the years 2011-12, 2012-14 (2012-13) and 2014-15 indicate that St.Ignatius Higher Secondary School, Karumpani, Thuckalay, Kanyakumari District, was eligible for one post of Sewing Mistress and that the post was a sanctioned post from the date of establishment of the School. The learned Single Judge also observed that the post of Sewing Mistress and Craft Teacher are one and the same as per Annexure-V and V-A of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974, and that there was no reason to deny the approval of the Writ Petitioner's appointment as Sewing Mistress, which according to the learned Single Judge was made in a sanctioned post.

8.In view of the aforesaid observations, the learned Single Judge had allowed the Writ Petition and set aside the order of the fourth respondent in



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the Writ Petition dated 07.02.2013 and directed approval of the appointment of the Writ Petitioner as Sewing Mistress (Craft Teacher) from the date of her appointment and to disburse her salary including arrears of salary and allowances with all attendant benefits.

9.The 1st to 4th respondents in the Writ Petition in their grounds of Writ Appeal had primarily stated that initially the appointment to the post of Carpenter/Woodcraft/Agriculture/Weaving/Music/Tailoring were banned from 1992 and no Teachers were allowed to be appointed in a Special Teacher category in all Government Schools, aided non minority and aided minority School. Subsequently, by G.O.Ms.No.132, School Education Department, dated 27.04.1998, the ban was lifted to the Government Schools for the post of Music and Tailoring. It had been mentioned that the post could be sanctioned, if the strength of the student is 250 or more. The Teachers, who had already been appointed, were however granted job protection. It had been stated that thereafter, subsequent appointments had not been approved. It was also stated that a Sewing Teacher could be appointed, if the School has a student strength of 250 and more. It had thus been contended that the appointment of the Writ Petitioner could not be



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approved and that the order in the Writ Petition should be set aside.

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10.Heard arguments advanced by Mr.M.Senthil Ayyanar, learned Government Advocate appearing for the appellants and Mr.S.Xavier Rajini, learned Counsel appearing for the first respondent.

11.The facts had been narrated above. The Writ Petitioner had been appointed as Sewing Mistress in St.Ignatius Higher Secondary School, Karumpani, Thuckalay, Kanyakumari District, on 02.04.2012, consequent to the joining of the previous Teacher in a Government School. The fact that the post of Sewing Teacher had been approved in the said School right from its establishment has not been specifically denied or disputed by the respondents in the Writ Petition. They however contended that in the academic year 2012-13 on the previous incumbent having appointed in the Government School, the post was declared as 'surplus without Teacher'. It had thus been contended that since the Writ Petitioner had been appointed on 02.04.2012, her appointment could not be approved. However, she having been appointed on 02.04.2012, her case falls under the academic year 2011-12 and not 2012-13.



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12. So far as the staff fixation for the year 2011-12 is concerned, the strength of the School was 302. In the proceedings of the District Educational Officer, dated 27.09.2011 in Na.Ka.No.4384/Aa2/2011, it had been very clearly stated that the strength of the students was 302 and that one post of Sewing Teacher/Tailoring Teacher had been approved and sanctioned.

13. This effectively belies the arguments of the fourth respondent in the Writ Petition/District Educational Officer that the Writ Petitioner's appointment could not be approved, since in the academic year 2012-13, that particular post had been declared as 'surplus without Teacher'. That particular order runs contrary to the proceedings of the very same fourth respondent/District Educational Officer, dated 27.09.2011 in Na.Ka.No. 4384/Aa2/2011, wherein, the very same official had stated that the strength of the students in the School was 302 and that one post of Sewing Teacher/Tailoring Teacher had been approved and sanctioned.



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14. We are not able to understand as to how the fourth respondent in the Writ Petition had placed reliance on the staff for the academic year 2012-13 when the Writ Petitioner had been appointed on 02.04.2012 in the academic year 2011-12. The order impugned in the Writ Petition dated 07.02.2013 of the District Educational Officer is therefore bad in law for having overlooked the proceedings of the very same official dated 27.09.2011 with respect to the very same School/St. Ignatius Higher Secondary School, Karumpani, Thuckalay, Kanyakumari District. As a matter of fact, the insistence of the fourth respondent/District Educational Officer that a particular student strength should be maintained has no rational at all and such a stand had been struck down by this Court in successive judgments delivered, which are as follows:

(1) In ***W.A.(MD)No.675 of 2024*** in the case of ***The Chief Educational Officer, Virudhunagar District and others vs D.Gnana Theeba Rani and another***, dated 15.04.2024, wherein, a Division Bench of this Court had held as follows:

“8. The post of Pre-Vocational Instructor is a stand alone post, that has been sanctioned for the second respondent School and that the single post in the subject Sewing is compulsory for



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the girl students. Without a single Teacher, the girl students cannot be thought in the said subject. Even when there is any vacancy in staff fixation strength, it can be done only in respect of Teachers for general subjects and that it could be adjusted between Secondary Grade Teacher, BT Assistant and PG Assistant, but, however, in so far as the special Teachers are concerned, particularly, like the post of Sewing Teacher, Physical Instructor and so on, these posts are sanctioned only due to the fact that atleast single Teacher is compulsorily required to teach the students on the special subjects. Therefore, the contention that since students strength had fallen below 250 in number and therefore, even the single post could be rendered as surplus, cannot be accepted for the simple reason that without any Teacher for the special subjects, the girl students, who are studying in the School, cannot be thought, which has been taken note of by several orders by the other Division Benches and invariably directions have been issued to the State to approve those posts, which has been filled up in the sanctioned post.

(2)In W.A.(MD)No.2136 of 2021 in the case of *The Secretary to Government, Department of School Education and three others vs S.Anurebecca and another*, dated, 22.12.2021, a Division Bench of this Court had held as follows:

“4.G.O.Ms.No.619 Education (M2) Department dated 23.06.1993 provides for appointment of a physically challenged person as a Sewing Teacher and the first respondent/writ petitioner is eligible for the said post. To be noted is that the said post of Sewing Teacher is a sanctioned post and it will not lapse on the retirement or promotion of an incumbent. Even if the students strength had fallen short of the prescribed number, when there is a sanctioned post, the same cannot be taken away. The Sewing Teacher or Craft Teacher are said to be sanctioned post only for the purpose of developing the vocational skills of the



students, particularly the girl students. The job of the Sewing Teacher is to impart training with respect to tailoring as it better suits the school students to enhance the employment capabilities in the later part of their life.”

(3)In **W.A(MD)No.81 of 2022**, in the case of ***the State of Tamil Nadu and others vs The Correspondent***, dated 02.03.2022, a Division Bench of this Court had held as follows:

4. Having heard learned advocates for the respective parties and having considered the material placed on record, we find that this matter needs to be decided on pure question of fact. It is not in dispute that, the teacher whose approval was asked for was a tailoring teacher. There was only one teacher for that subject. The appointment was made by the school management on the retirement of one teacher looking after that subject. In this factual background, we find that denial of approval to the said appointment by the State Authorities can not be justified in any manner. Direction by the learned Single Judge in this peculiar facts, does not call for any interference. Other issues which may have larger implication are not arising in this appeal and therefore need not be gone into.”

(4)In **W.A.(MD)No.1207 of 2015** in the case of ***the State of Tamil Nadu and others vs S.Renganayagi and another***, dated 23.08.2016, a Division Bench of this Court had held as follows:

“11. Therefore, we have absolutely no hesitation whatsoever to dismiss the writ appeal. We may take this opportunity to add one other reason. Admittedly, there are large number of girl students pursuing various courses in the School



concerned. May be their strength may have fallen short of the number of 250 prescribed, as necessary for sanction of a post. But however, the State, as a wise policy, has sanctioned such posts to the Schools, so that, the vocational skills can be imparted to the girl students. In the instant case, the vocation training sought to be imparted related to tailoring an avocation which better suits the girl students, to enhance their employment capabilities in the later part of life.”

(5)In **W.A.(MD)No.844 of 2024** in the case of ***The State of Tamil Nadu and others vs the Correspondent, St.Joseph's Middle School***, dated 05.06.2024, a Division Bench of this Court had held as follows:

“8.Admittedly, the first respondent School had appointed one T.Arockia Mary Felci as Sewing Mistress on 10.07.2019 in the sanctioned vacancy. When the proposal for seeking approval of the appointment was submitted by the first respondent School, the fourth respondent has rejected the proposal on the ground that there are surplus Sewing Teachers in other Schools, which has been declared as surplus as students strength has fallen below the prescribed level. The learned Judge rightly by taking note of the orders passed by the Division Bench had allowed the Writ Petition and directed the authorities to approve the appointment of the Teacher appointed by the first respondent School. We do not find any fault with the orders passed by the Writ Court, which has been passed following the decision arrived at by the Division Bench. In view of the same, the order of the Writ Court needs no interference and accordingly, the Writ Appeal is dismissed. However, there shall be no orders as to costs.”

(6)In **W.A.(MD)No.228 of 2023**, in the case of the ***District Educational Officer Cheranmahadevi vs Anden Helena and another***,



dated 22.08.2024, a Division Bench of this Court had held as follows:

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“2.Though it is vehemently contended that the students strength does not permit appointment of a Sewing Teacher since it is below 250, we are unable to accede to the submission of the learned Special Government Pleader because this Court had repeatedly held that in a case of a single Teacher that too a Sewing Teacher in a Girls School which is held to be mandatory, the students strength does not really count. While doing so, the Division Bench of this Court in Chief Educational Officer, Virudhunagar District and another vs. D.Gnana Theepa Rani and another(W.A(MD)No.675 of 2024, dated 15.04.2024), has held as follows:

“8.The post of Pre-Vocational Instructor is a stand alone post, that has been sanctioned for the second respondent School and that the single post in the subject Sewing is compulsory for the girl students. Without a single Teacher, the girl students cannot be thought in the said subject. Even when there is any vacancy in staff fixation strength, it can be done only in respect of Teachers for general subjects and that it could be adjusted between Secondary Grade Teacher, BT Assistant and PG Assistant, but, however, in so far as the special Teachers are concerned, particularly, like the post of Sewing Teacher, Physical Instructor and so on, these posts are sanctioned only due to the fact that atleast single Teacher is compulsorily required to teach the students on the special subjects. Therefore, the contention that since students strength had fallen below 250 in number and therefore, even the single post could be rendered as surplus, cannot be accepted for the simple reason that without any Teacher for the special subjects, the girl students, who are studying in the School, cannot be thought, which has been taken note of by several orders by the other Division Benches and invariably directions have been issued to the State to approve those posts, which has been filled up in the sanctioned post.”

3. In view of the above categorical pronouncement of the



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Division Bench wherein the judgment of another Division Bench State of Tamil Nadu and others vs S.Ranganayagi and another (W.A(MD)No.1207 of 2016) is relied on, we do not see any reason to interfere with the order of the learned single Judge. The writ appeal fails and it is accordingly, dismissed. The appointment of the first respondent shall be approved and all monetary benefits shall be paid to her within a period of twelve weeks from the date of receipt of a copy of this order. No Costs. Consequently, connected Miscellaneous Petition is closed."

15.In view of the consistent and categorical pronouncements referred supra, we hold that the contention of the respondents in the Writ Petition/appellants herein that the Writ Petitioner had been appointed to a post which had been declared as 'surplus without Teacher' does not hold water and had been correctly struck down by the learned Single Judge. We find no reason to differ from the reasons adduced by the learned Single Judge. More over for the academic year 2011-12, the very same official/District Educational Officer had stated that St.Ignatius Higher Secondary School, Karumpani, Thuckalay, Kanyakumari District, had student strength of 302 and a sanctioned post of Sewing Teacher/Tailoring Teacher in the said School. The impugned order in the Writ Petition dated 07.12.2013 had been passed without application of mind and without reference to the said proceedings of the same official.



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16. In view of the above, the Writ Appeal stands dismissed. We direct that the directions of the learned Single Judge must be complied with within a period of eight weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[C.V.K., J.] & [J.S.N.P., J.]
24.09.2024

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

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AND

J.SATHYA NARAYANA PRASAD, J.

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Judgment made in
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24.09.2024