



W.A.(MD)No.675 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 15.04.2024

CORAM

**THE HON'BLE MR.JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE G.ARUL MURUGAN**

**W.A(MD)No.675 of 2024
and
C.M.P.(MD)No.4966 of 2024**

1.The Chief Educational Officer,
Virudhunagar District.

2.The District Educational Officer,
Srivilliputhur, Virudhunagar District.

... Appellants

vs

1.D.Gnana Theeba Rani

2.The Correspondent,
C.M.S.Higher Secondary School,
Srivilliputhur, Virudhunagar District.

...Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order of this Court dated 13.12.2023 passed in W.P(MD)No.29191 of 2023.



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For Appellants : Mr.M.D.Sadiq Raja
Additional Government Pleader
For R1 :Mr.V.Panneer Selvam

JUDGMENT

(Judgment of this Court was delivered by **G.ARUL MURUGAN, J.**)

The Writ Appeal is filed challenging the order, dated 13.02.2023 passed in W.P.(MD)No.29191 of 2023, whereby, the Writ Petition was allowed by quashing the orders of the first respondent, dated 27.09.2023 and the the appellants were directed to approve the Writ Petitioner's appointment as Pre-Vocational Instructor (Tailoring) with effect from 12.02.2022 with all monetary and consequential benefits.

2.The brief facts involved in the appeal is that the Writ Petitioner, who was qualified and passed Technical Teachers Certificate Course in Sewing Needle Work and Dress Making and Embroidery, was appointed as Pre-Vocational Instructor (Tailoring) on 11.02.2020, when one post of Pre-Vocational Instructor (Tailoring) became vacant in the second respondent School due to the retirement of Mr.K.Samuvel on 31.03.2019. The second



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respondent has forwarded the proposal to the first appellant through the second appellant on 17.03.2020 for approval. Even though queries were raised and returned on 01.07.2020, the same was complied on 25.07.2020. However, the first appellant, by order, dated 29.07.2022, rejected the proposal on the ground that the post was rendered surplus, as the students strength has to be above 250 between 6th standard and 8th standard. The order was challenged by the first respondent in W.P(MD)No.21742 of 2022 and by order, dated 30.11.2022, the impugned order was quashed and since on the date of appointment, the post was not rendered surplus, the application was directed to be re-submitted and the first appellant was directed to pass appropriate orders on merits. But, however, when the proposal was forwarded, the first appellant did not pass any orders, which resulted in filing of a Contempt Petition in Cont.P(MD)No.1816 of 2023 and the first appellant once again, by impugned order, dated 27.09.2023, rejected the proposal for approving the appointment of the first respondent. The impugned order was challenged before the Writ Court and by order, dated 13.12.2023, the Writ Court allowed the Writ Petition by quashing the impugned order, dated 27.09.2023 and directed the appellants to approve the Writ Petitioner's appointment. Assailing the order passed by the Writ



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Court, the State has preferred the above appeal.

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3.The learned Additional Government Pleader appearing for the appellants argued that in view of G.O.Ms.No.132, School Education, dated 27.04.1998, the Government sanctioned Sewing post apart from regular Teachers only in the Schools, which have the strength of more than 250 girl students. The said benefit was extended to the private aided Schools vide G.O.Ms.No.104, School Education, dated 12.07.2002 and therefore, no vacancy of Sewing Teachers could be filled in any School, where the strength of the girl students is below 250 in numbers. The learned Additional Government Pleader contended that when the post was sanctioned for Sewing Teacher only for the Schools having the strength of girl students of more than 250 and if any appointment is made in breach of the Government Orders in the post of Sewing Teacher, even when the number of students is below the strength fixed by the Government, then granting approval for the same would be against the policy decision of the State.



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4.The learned Additional Government Pleader further contended that when the post itself has been declared as surplus, the Writ Petition filed for seeking approval without challenging the staff fixation by which, the post was declared as surplus, is not maintainable and the School cannot make any appointment in the post, which is not available to them in staff fixation. The learned Additional Government Pleader further relying on the judgment passed by this Court in W.A.(MD)No.320 of 2023, dated 20.11.2023 contended that declaration of surplus is made only in respect of the junior most teaching and non-teaching staff in the School and such administrative exigency, which is incidental to service, would not provide an absolute right for an employee to claim a particular place or post and therefore, in view of the same, the order passed by the learned Judge by quashing the impugned order with the consequential direction cannot be sustained, he contended.

5.Mr.V.Panneer Selvam, learned Counsel appearing for the first respondent submitted that when the first respondent is qualified and have been appointed as Pre-Vocational Instructor (Tailoring) in the sanctioned post in the second respondent School and atleast three Division Benches have already concluded that the post of Vocational Instructor or any single



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post of Physical Education Teacher cannot be declared as surplus and hence, the learned Judge has rightly followed the decision and allowed the Writ Petition, which needs no interference. The learned Counsel also contended that the Government have complied with all the orders in respect of similarly placed Teachers, who were appointed for the single post and therefore, the present appeal filed by the State cannot be sustained.

6.Heard the learned Counsels on either side and perused the materials available on record.

7.Admittedly, the petitioner, who is qualified to be appointed as Sewing Teacher, had been appointed to the post of Pre-Vocational Instructor (Tailoring) in the sanctioned post in the second respondent School on 11.02.2020. In the sanctioned post, the erstwhile Teacher, Mr.K.Samuvel, attained superannuation on 31.03.2019, whereby, the post became vacant and the first respondent/Writ Petitioner was appointed as Pre-Vocational Instructor. The second respondent School had forwarded the proposal to the first appellant through the second appellant on 17.03.2020 for approval, which came to be rejected by an order, dated



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29.07.2022. In fact, the rejection was on the ground that the post was rendered surplus in the staff fixation report for 2019-20 and also the students strength fallen below 250 between 6th standard and 8th standard. In the earlier Writ Petition filed by the petitioner in W.P.(MD)No.21742 of 2022, by an order, dated 30.11.2022, the order rejecting the approval of the appointment was quashed and a direction was issued to re-submit the proposal and the first appellant was directed to pass appropriate orders on merits on the proposal re-submitted. But, however, the same was not complied with and when a Contempt Petition was filed, again, by impugned order, dated 27.09.2023, the first appellant has rejected the proposal on the very same ground.

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



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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.

9.In fact, in a similar situation, where the approval of appointment was rejected on the ground that the strength of the School has fallen below 250 students, a learned Single Judge, by order, dated 19.02.2020 in W.P. (MD)No.1321 of 2020, allowed the Writ Petition directing the appellants to approve the appointment on the ground that when the post itself is a single sanctioned post, denying approval on the ground that the post has been declared as surplus and the students strength has fallen below 250, cannot



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be sustained. The State had preferred appeal in W.A(MD)No.81 of 2022 and the Division Bench, by order, dated 02.03.2022 was pleased to dismiss the appeal by observing that the post, which was sought to be approved, was for Tailoring Teacher and the appointment was made by the School in the sanctioned post on the retirement of one Teacher, who was working in that post. The learned Judge has allowed the Writ Petition, which is assailed in the present Writ Appeal by relying on the judgment of the Division Bench referred supra, which cannot be found fault with.

10.In yet another Writ Appeal in W.A(MD)No.1207 of 2016, in the case of ***The State of Tamil Nadu and others vs S.Ranganayagi and another***, the Division Bench, by order, dated 23.08.2016, also dismissed the appeal preferred by the State by holding that even though the student strength fallen below 250, but, however, when the post to which the Teacher has been appointed, is a sanctioned post and when the vocation training, which is a special subject, is sought to be imparted relates to Tailoring, which better suits the girl students to enhance their employment capabilities in the later part of their life, which is a wise policy of the State in view of the welfare and wellbeing of the girl child, which is a paramount



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consideration in the case of this nature, the order has been passed.

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11.Further, another Division Bench in W.A.(MD)No.1090 of 2021, dated 15.06.2021, in the case of *The State of Tamil Nadu and others -vs- V.Shyni*, dismissed the appeal preferred by the State by holding that due to the importance of the physical education being imparted to the students and assuming that there is a fall in students strength, it cannot be justifiable and reasonable to declare the single post of Physical Education Teacher as surplus on the ground that there is a fall in students strength.

12.In the instant case, when admittedly, the first respondent has been appointed as Pre-Vocational Instructor/Sewing Teacher in the stand alone post that too in the vacancy that arose due to the retirement of erstwhile Teacher in the sanctioned post, the special Teacher for the Pre-Vocational Instructor cannot be rendered as surplus only on the ground that the students strength has fallen short of 250, when the subject of Sewing has to be necessarily thought for the girl students for their avocation of life and particularly, when the earlier Writ Petition has been allowed by quashing the order, which was passed rejecting the approval, necessarily the present



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impugned order passed on the very same grounds cannot be sustained, which has been rightly interfered with by the learned Judge by taking note of the several orders passed by other Division Benches.

13.For all the above reasons and further when the Government had thought it fit to comply with the orders in other cases and the posts of Special Teachers have been granted approval, the present Writ Appeal preferred by the State cannot be sustained and the order passed by the learned Judge needs no interference at the hands of this Division Bench. Accordingly, this Writ Appeal stands dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

[R.S.K., J] & [G.A.M., J]
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Judgment made in
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