



W.A.(MD)No.536 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 01.04.2024

PRONOUNCED ON : 30.04.2024

CORAM

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

**W.A(MD)No.536 of 2024
and
C.M.P.(MD)No.4121 of 2024**

1.The Chief Educational Officer,
O/o.the Chief Educational Officer,
Madurai, Madurai District.

2.The District Educational Officer,
O/o.The District Educational Officer,
Madurai, Madurai District.

... Appellants

VS

1.K.K.Lavanya Lakshmi

2.The Correspondent,
Sourashtra Girls Higher Secondary School,
Theppakulam, Madurai District.

...Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 22.04.2021 passed in W.P(MD)No.7772 of 2021.



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For Appellants : Mr.D.Sadiq Raja
Additional Government Pleader
For R1 : Mr.N.S.Karthikeyan

JUDGMENT

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

The Writ Appeal is directed against the order, dated 22.04.2021, passed in W.P.(MD)No.7772 of 2021, wherein, the Writ Petition was allowed and the appellants were directed to pass orders on the proposal to be re-submitted by the second respondent School in respect to approval of the appointment of the first respondent as B.T.Assistant (Social Science).

2.The first respondent was appointed to the post of B.T.Assistant (Social Science) on 01.07.2019 in a sanctioned vacant post in the second respondent aided School in view of the vacancy caused on account of retirement of erstwhile Teacher T.R.Usha. Pursuant to the appointment of the first respondent on 01.07.2019 in the sanctioned vacancy, the second respondent School submitted a proposal on 19.07.2019 to the second appellant for approval of the appointment. The proposal for approval came



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to be rejected by an order of the second appellant, dated 20.05.2020 on the ground that the post can be filled up only from the surplus Teachers available, as per the proceedings of the first appellant in No.9537/A4/2019, dated Nil.12.2019.

3.The first respondent challenged the rejection of the proposal in W.P.(MD)No.7772 of 2021 and the learned Judge, after finding that though there are surplus Teachers in other subjects, as there was admittedly, no surplus Teacher in the post of B.T.Assistant (Social Science) in the second respondent School and further, the second respondent School being a single management School and further G.O.(Ms)No.165, School Education (tho.Ka.2(1)) Department, dated 17.09.2019, was also made inoperative, allowed the Writ Petition and directed the second respondent School to re-submit the proposal and issued a consequential direction to the appellants herein to process the application for granting approval of the appointment of the first respondent as B.T.Assistant (Social Science). Assailing the order passed by the Writ Court, the appellants preferred the above Writ Appeal.



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4.The learned Additional Government Pleader appearing for the appellants argued that since already four surplus Teachers are there in the second respondent School, any one of the surplus Teachers can be appointed and while so, the appointment of the first respondent in the post of B.T.Assistant (Social Science), by the second respondent School is wrong and further, the first respondent could not have been appointed in the vacancy on 01.07.2019, in view of the ban orders issued by this Court on 09.04.2019, based on which, G.O.(Ms)No.165, dated 17.09.2019 was issued. The learned Additional Government Pleader further contended that in view of the order, dated 31.03.2021, in ***W.A.(MD)No.76 of 2019 and batch***, in the case of ***the Secretary to Government, Government of Tamil Nadu and others vs Iruthaya Amali and another***, relying on Para 95(v), the appointment of the first respondent in the vacancy of the second respondent School, when there were surplus Teachers available, is not sustainable and therefore, rightly the proposal seeking for approval of the appointment of the first respondent was rejected.

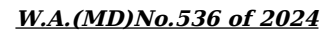
5.The learned Additional Government Pleader further contended that even though the second respondent is an aided School, the Government is



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always having a right and entitled to refuse the aid, if the second respondent School management failed to comply with the instructions issued by the Department under Section 14 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and Rule 6 of the Tamil Nadu Minority Schools (Recognised) and Payment of Grant Rules, 1977. As the second respondent School should have filled up the vacancy from among the available surplus Teachers, the appointment of the first respondent in the post of B.T.Assistant (Social Science), is in breach of Government Orders and therefore, the order passed by the Writ Court is not sustainable and sought for allowing the Writ Appeal.

6.Per contra, the learned Counsel for the first respondent contended that when the first respondent was, admittedly, appointed in the sanctioned vacant post, as B.T.Assistant (Social Science), by the second respondent School and also, admittedly, when no surplus Teacher was available in the post of B.T.Assistant (Social Science), the contention of the appellants that one among the surplus Teachers ought to have been appointed for filling up the vacancy, is without any basis and not sustainable. The learned Counsel further contended that, in fact, G.O.(Ms)No.165, dated 17.09.2019, was



8. Admittedly, the first respondent was appointed to the post of B.T. Assistant (Social Science) in the sanctioned vacant post in the second respondent School on 01.07.2019, in view of the vacancy caused due to the retirement of erstwhile Teacher, T.R. Usha. Pursuant to the appointment, the second respondent School had submitted a proposal on 19.07.2019 seeking for approval of the appointment, which came to be rejected by the order of the second appellant on the ground that when surplus Teachers were available, the appointment of the first respondent, ignoring the surplus Teachers, is not correct.



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9.It could be seen that the surplus Teachers mentioned by the appellants only relates to the post of other subjects and admittedly, there was no such surplus Teacher available for the post of B.T.Assistant (Social Science). The second respondent School is also not a corporate management and it is a stand alone institution and when no surplus Teacher was available in respect of the sanctioned post of B.T.Assistant (Social Science), the second respondent School has appointed the first respondent to the post and sought for approval of the appointment.

10.In fact, in W.A.(MD)No.76 of 2019 and batch cases, when the issue of rejection or return of the proposal in respect of approval of the appointment of the Teachers on the ground of requirement of passing the Teachers' Eligibility Test and on the ground of obtaining a certificate certifying that there is no excess Teachers in any of the Schools run by the educational agency, initially, by an interim order, dated 09.04.2019, a ban was imposed from making any fresh appointments, based on which, the Education Department, had come out with an order in G.O.(Ms).No.165, School Education, dated 17.09.2019, whereby, any fresh appointment, even



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in the sanctioned vacancy, was restrained to be filled up by corporate management, unless the entire surplus Teachers are re-deployed. However, subsequently, by an order, dated 20.09.2019, G.O.Ms.No.165, School Education, dated 17.09.2019, was suspended by the orders of the Division Bench.

11. When the above referred W.A.(MD)No.76 of 2019 and batch cases were taken up for final hearing, the Division Bench, wherein, one of us (Justice R.Suresh Kumar) is a party, by judgment, dated 31.03.2021, declared G.O.Ms.No.165, School Education, dated 17.09.2019 as inoperative and issued a set of directions, which have also been upheld by the orders of the Hon'ble Supreme Court.

12. The submission of the appellants that in view of G.O.(Ms)No.165 and the earlier ban orders imposed through the interim order of this Court, the appointment of the first respondent to the post of B.T.Assistant (Social Science) in the second respondent School cannot be approved, is not sustainable, in view of the fact that immediately on passing of G.O.(Ms)No. 165, School Education, dated 17.09.2019, the Government Order was



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suspended by interim orders of the Division Bench on 20.09.2019 and later, by the final judgment, dated 31.03.2021, G.O.(Ms)No.165, School Education, dated 17.09.2019 has been held inoperative. Therefore, the submission of the learned Additional Government Pleader relying on G.O. (Ms)No.165, stands rejected.

13.The other submission of the appellants by relying on para 95(v) of the order of the judgment of the Division Bench in W.A(MD)No.76 of 2019 and batch, is that the appointment of the first respondent in the second respondent School is not justified, as the same cannot be done before the surplus Teachers identified in all other Schools under the same corporate or joint Management are re-deployed and only after exhausting the re-deployment process, the School shall be free to make appointment afresh from open market. Para 95(v) of the above judgement is extracted hereunder:

“(v) Like that insofar as aided minority institutions are concerned, if it is a stand alone institution, their right of appointing a teacher in a vacancy within the sanctioned strength for the academic year 2021-22 shall not be affected because of the identified excess teachers in other schools. At the same time, even if the school is a minority institution, however being administered by a joint management or corporate management, in respect of those schools, even though vacancy arose within the sanctioned



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strength of such school or schools under corporate management or joint management, those vacancies shall not be filled up unless the excess staff identified in all other schools under the same corporate or joint management are exhausted fully and only after exhausting the redeployment process on all excess teachers identified in the group of schools under the same corporate management, they shall be free to make appointment afresh from open market in the vacancy if any still, within the sanctioned strength."

14.As referred earlier, admittedly, the second respondent School is a stand alone institution and is not a joint management or any corporate institution. In the stand alone institution of the second respondent School, it is the case of the appellants that there are four surplus Teachers already available and the second respondent School is only entitled to appoint any one of the surplus Teachers to the vacant post. This argument of the appellants cannot be accepted for the simple reason that when B.T.Assistant (Social Science) is a sanctioned post and admittedly, the sanctioned post became vacant due to the retirement of erstwhile Teacher, T.R.Usha and further, there was no surplus Teacher available in the post of B.T.Assistant (Social Science), even though when surplus Teachers are available in respect to other posts, the appointment of the first respondent to the post of B.T.Assistant (Social Science) cannot be found fault with and if at all there are excess Teachers available in respect of other subjects, it is for the



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appellants to re-deploy the identified surplus Teachers to any other School, if the concerned post is not vacant. Further, even in Para-95(v) of judgment of the Division Bench, it has been clearly held that insofar as the aided minority Schools are concerned, if it is a stand alone institution, their right of appointing a Teacher in a vacancy within the sanctioned strength shall not be affected because of the identified excess Teachers in other Schools and only if the School is being administered by a joint management or corporate management, only in respect of those Schools, even though vacancy arose within the sanctioned strength of such Schools, those vacancy shall not be filled up unless, the excess staff identified in all other Schools under the same Corporate or joint management are exhausted fully by re-deploying them.

15.As it has been held that the second respondent School is a stand alone linguistic minority institution and there was no surplus Teacher available for the post of B.T.Assistant (Social Science) and the first respondent have been appointed only in the sanctioned vacant post of B.T.Assistant (Social Science), the learned Judge has rightly interfered with the orders passed by the appellants and have directed the second respondent



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School to re-submit the proposal to the appellants and a consequential direction was issued to the appellants to pass orders on the proposal for approving the appointment of the first respondent, which cannot be found fault with and accordingly, sustained.

16.Resultantly, the Writ Appeal stands dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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

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Internet :Yes/No
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AND

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Judgment made in
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