



W.A.(MD) No.207 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Judgment Reserved on 22.07.2024	Judgment Pronounced on 29.07.2024
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CORAM

JUSTICE N.SESHASAYEE

and

JUSTICE P.VADAMALAI

W.A.(MD) No.207 of 2019

and

C.M.P.(MD) No.1706 of 2019

- 1.The District Elementary Educational Officer,
Sivagangai, Sivagangai District.
- 2.The Assistant Elementary Educational Officer,
Kalayarkovil,Sivagangai District. ... Appellants/Respondents 1 and 2

Vs

- 1.S.Lorudhmary ...1st Respondent/Writ Petitioner
- 2.The Correspondent,
R.C.Middle School,
Aandichiorani,
Sivagangai District ...2nd Respondent/3rd Respondent



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Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 19.03.2018 passed in W.P.(MD) No.13813 of 2013.

For Appellants : Mr.D.Sadiq Raja
Additional Government Pleader
For R1 : Mr. I.G.Ivyn
for M/s.Isaac Chambers

JUDGMENT

(Judgment was delivered by N.SESHASAYEE, J.)

This appeal is directed by the respondents in W.P(MD)No.13813 of 2013 against the proceedings of the 2nd appellant, dated 28.03.2013, cancelling the order of re-employment of the first respondent in the second respondent school, which carried conviction with the learned single Judge.

2. The short facts are as below:

- a) The 1st respondent herein was working as a Secondary Grade Teacher in the 2nd respondent school. She superannuated on 28.02.2013. In terms of G.O.(Ms.)No.1643 Education (H.2) Department, dated 27.10.1988, she sought re-employment till the end of the academic year i.e 31.05.2013. The 2nd respondent, being a school run by a minority



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Corporate Management, it permitted the same. Since the school was an aided minority school, as required, the school forwarded its proposal to the authorities concerned for their approval.

- b) On 12.03.2013, the 2nd appellant had passed a conditional order and approved the proposal for re-employment of the 1st respondent, but subjected it to the conditions of staff fixation for the school for the academic year 2012-2013.
- c) On 18.03.2013, the first appellant herein passed staff fixation order for the 2nd respondent school for the academic year 2012-2013 and had determined that the school had at least two surplus teachers based on the teachers-students ratio.
- d) Subsequently, on 28.03.2013, the 2nd appellant issued a revised proceedings cancelling the re-employment of the 1st respondent.
- e) All the same, the 1st respondent continued in service till 31.05.2013.

Subsequently, some time in August 2013, she laid the present Writ Petition challenging the proceedings of the 2nd appellant dated 28.03.2013. The appellants however did not file any counter before the learned Single Judge.



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3. The learned single Judge vide order dated 18.03.2018 has taken note of couple of earlier authorities and found that when a teacher is not otherwise disqualified for re-employment, cancellation of the same is not tenable. This order of the learned single Judge is now under challenge.

4. Heard both sides. The learned Additional Government Pleader made the following submissions:

- It is settled that re-employment of a teacher, who superannuates in the middle of the academic year, is not intended for the benefit of the teacher concerned, but for the benefit of the students since students should not suffer without a teacher in the middle of the academic year.
- The law is too firmly entrenched that no teacher has vested right to seek re-employment. Set in the context of the law so settled, if the order of the 2nd appellant dated 12.03.2013 is considered, it is not an unconditional order that was passed and the 1st respondent or both the respondents have accepted the terms of re-employment.



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- Having accepted the same and having chosen not to challenge the same, it is not given either to the 1st respondent or both the respondents to challenge the order implementing the conditions so stipulated based on an objective parameter as could be gathered from the staff fixation proceedings of the 1st appellant dated 18.03.2013.

5. Per contra, the learned counsel for the 1st respondent submitted that:

- G.O.(Ms.)No.1643 dated 27.10.1988 has stipulated only two conditions for re-employment of a superannuated teacher. They are: a) that the character and conduct of the teacher concerned should be satisfactory; and b) that the teacher should be physically fit to continue in service.
- Indisputably, these two conditions are satisfied, and it is precisely for this reason that the 2nd appellant had thought it fit to issue the order of re-employment. However, the condition which the 2nd appellant had imposed is contrary to G.O.(Ms) No.1643 dated 27.10.1988 since subjecting re-employment to staff fixation proceedings is not



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contemplated under the said Government order.

6. Replying the same, the learned Additional Government Pleader submitted that after the Right of Children to Free and Compulsory Education Act, 2009, (henceforth referred to as 'the RTE Act') had come into force, the statute takes care and it becomes obligatory for the authorities to determine teachers-students ratio and fix the teaching and non-teaching staff based on the statute and there can never be an estoppel against the statute.

7. The learned counsel for the 1st respondent would now urge this Court that indeed the Government has become conscious of the RTE Act and need to introduce an additional condition for re-employment only much later when it came out with G.O.(Ms.)No.261 School Education Department, dated 20.12.2018, which imply that even though the RTE Act had come into force some nine years prior to the said Government Order, the Government thought it fit to apply G.O.(Ms.)No.1643 Education (H.2) Department, dated 27.10.1988, for considering the cases of re-employment.



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8.1 Rival submissions are carefully considered. When once it is conceded that no teacher, who retires in the middle of the academic year, has a vested right to seek re-employment, then the twin criteria stipulated in G.O. (Ms.)No.1643, Education Department, dated 27.10.1988, should not be construed as prescribing the eligibility criteria for seeking re-employment, something the counsel for the first respondent tried to canvass. The conditions pertaining to character of the teacher and his or her physical fitness, if considered as criteria for seeking re-employment, then every teacher who possess them can seek reemployment in terms of G.O.1643, and that will seemingly result in creating a vested right in every teacher who seeks reemployment.

8.2 The ideal understanding of these conditions would be to construe them as prescribing the suitability-test which the teacher might have to pass if the authority considers the case of the superannuating teacher for re-employment. The authority has to consider: (a) whether the welfare of the students (and not the teacher) requires that a teacher, even though superannuated in the middle of the academic year, should be retained for the rest of the academic



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year; and (b) if it so required, whether the super annuated teacher is suitable for re-employment. It is not at point (a) that the authority considers the character or fitness of the teacher, but at the point (b). In other words, merely because a teacher's character and fitness levels are good that does not *ipso facto* imply that the teacher should be re-employed. If it is considered otherwise, then it will operate at point (a), and tend to create a vested right in the teacher to seek re-employment which will be contrary to the settled understanding that no teacher has a vested right to seek re-employment.

8.3 If the basic premise that re-employment of a superannuated teacher is support of the welfare of the students and not that of the teacher is accepted, then it becomes necessary to ascertain how the welfare of the students could be determined? The answer is straight forward: whether a refusal to re-employ a teacher will hamper, or adversely affect the education of the students during the reminder of the academic year. If it is not likely to affect then there is hardly any need for re-employing a teacher. Here comes the need for staff fixation. If there are more teachers, then refusal to re-employ a teacher may not affect the students, since there will be other teachers who



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could still take care of the interest of the students.

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8.4 Therefore, whether in terms of staff fixation under the RTE Act, or even otherwise, if there are surplus teachers who are available to fill up the space left by a superannuated teacher, re-employment need not be given, not because the teacher in question is not suitable, but because the students' welfare will not be in peril since there are other teachers to take care of it. It is not a choice but a duty which is cast on the authority to approach the issue of re-employment in the manner explained, and the staff fixation proceedings in the context is merely an objective-aid to the decision making process of the authority. After all in the cases of the aided schools, there is an issue of payment out of public finance, and it cannot be wasted where it is not required to be spent. In that sense G.O.261, dated 20.12.2018 is only an express instruction given to the authority, but even *dehors* the same, the authority is under a duty to ascertain whether the welfare of the students require re-employment.

8.5 The only possible exception that may be contemplated to the rule of



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availability of surplus teachers as a ground for refusal for re-employment of a superannuated teacher could be where the superannuated teacher has been handling classes for S.S.L.C or Plus 2, where the students would be taking their final examination. In this case, the students may have been accustomed to a certain method of teaching of a particular teacher, and if that teacher superannuates in the middle of the academic year, then the S.S.L.C and Plus 2 students may have to adjust themselves to the frequency of another teacher in a critical year in their curriculum, and it may put some pressure on the children. However, it is a matter in which the Government is required to take a call.

9. The impugned proceedings of the 2nd appellant dated 12.03.2013 should be understood in the backdrop of what is enunciated above. Accordingly, if there are surplus teachers available in the second respondent school, then refusal to re-employ the first respondent for the remainder of the academic year will not affect the welfare of the students. Since the 2nd appellant did not have an objective-aid at the point of time when he passed his order of re-employment, he correctly made it conditional and subjected it to staff fixation



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proceedings. What if the 2nd appellant had the data before hand and refused approval to the re-employment of the first respondent? Could the first respondent then insist that she be re-employed? Now, when on 18.03.2013, the first appellant had found that the second respondent school had surplus teachers, the 2nd appellant, vide his proceedings dated 28.03.2013, had promptly cancelled his earlier proceedings. How can the action of the 2nd appellant in the context be declared bad in law?

10. Turning to the first respondent as well as the 2nd respondent school, both knew that the re-employment of the former had been approved only subject to the conditions stipulated therein. Without a murmur, they have accepted it. And, it was not put to challenge at any time before the expiry of the academic year either. The first respondent, having taken a conscious decision to accept a conditional order of re-employment is estopped from disputing the condition when the facts supporting the condition are found not to her convenience. This Court may not aid any over ambitious pursuits of litigants.

11. There is very little option left with this Court than to hold that the



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impugned proceedings of the 2nd appellant dated 28.03.2013 is legally sustainable, more so when the 1st respondent had accepted the re-employment and also chose not to act on the order of the 2nd appellant dated 12.03.2013 before expiry of her term of re-employment.

12. In conclusion, this appeal deserves to be allowed and the same is allowed. The order dated 19.03.2018 passed in W.P.(MD) No.13813 of 2013 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

(N.S.S., J.)

(P.V.M., J.)

29.07.2024

NCC : Yes/No

Index : Yes/No

Internet : Yes

CM

To,

1.The District Elementary Educational Officer,
Sivagangai, Sivagangai District.

2.The Assistant Elementary Educational Officer,
Kalayarkovil,Sivagangai District.



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N. SESHASAYEE, J.
and
P.VADAMALAI, J.

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Pre-delivery Judgment made in
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and
C.M.P.(MD) No.1706 of 2019

29 .07.2024