



W.P.(MD).No.12779 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.03.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.12779 of 2022

M.Antony Cruzrajan

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort St. George,
Chennai-600 009.
- 2.The Commissioner of School
Education,
College Road,
Chennai-600 009.
- 3.The Chief Educational Officer,
Nagarcoil, Kanyakumari District.
- 4.The District Educational Officer,
Thukalay, Kanyakumari District.
- 5.The Correspondent,
St.Lawrence Higher Secondary School,
Madathattuvillai, Villukuri-629 180,
Kanyakumari District.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the 3rd respondent in Na.Ka.No.3708 / A2 / 2004 dated 05.04.2018 the consequential order of the 4th respondent DEO in O.Mu.No.1343/a3/2018 dated 03.09.2019 quash the same and further direct the respondents herein to approve forthwith the appointment of petitioner as Middle Grade Graduate Teacher in the 5th respondent school namely, St.Lawrence Higher Secondary School, Madathattuvilai, w.e.f., 14.06.2002 to 01.06.2004 and disburse the grant-in-aid towards his salary and allowances w.e.f., the said date with all attendant benefits.

For Petitioner : M/s.A.Amala

For R-1 to R-4 : Mr.N.Ramesh Arumugam,
Government Advocate

ORDER

The present writ petition has been filed seeking direction to quash the impugned proceedings dated 05.04.2018 and the consequential order of the 4th respondent dated 03.09.2019 and further direct the respondents herein to approve forthwith the appointment of petitioner as Middle Grade Graduate Teacher in the 5th respondent school namely, St.Lawrence Higher Secondary School, Madathattuvilai, w.e.f., 14.06.2002 to 01.06.2004 and disburse the



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grant-in-aid towards his salary and allowances w.e.f., the said date with all attendant benefits.

2. The brief facts which are necessary for the disposal of this Writ Petition is as follows:-

(i) The 5th respondent school is a Minority Educational Institution. The petitioner is now working as BT Assistant Maths in the 5th respondent School. One post of Middle Grade Graduate Teacher in the 5th respondent school fell vacant on 01.06.2002, due to the retirement of previous incumbent namely S.J.M. Glori Bai on 31.05.2002. In the said vacancy, the 5th respondent school found the petitioner to be fully eligible and appointed the petitioner as Middle Grade Graduate Teacher w.e.f., 14.06.2002 F.N, as per G.O. Ms. No. 79 School Education (UI) Department dated 14.06.2002. In the year 2002, the State Government, taking note of the fact that such Secondary Grade teachers (with Teacher Training Certificates / Diploma in Teacher Education) were not qualified enough to handle the advanced syllabi prescribed for the Middle School Sections (namely standards 6, 7 & 8), evolved the policy of appointing Graduate Teachers in those posts. G.O Ms. No. 79 (Secondary Education - U1)



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dated 14.06.2002 came to be issued in that regard. The posts of Secondary Grade teachers were decided to be upgraded into Graduate Teachers w.e.f., 01.06.2002. After the petitioner's appointment, the 3rd respondent CEO settled the staff fixation for the academic year 2002-2003, wherein he had sanctioned with 19 posts of Secondary Grade teacher. Under such circumstances, the 5th respondent school submitted the proposal to the 4th respondent DEO on 14.12.2002 requesting to approve the petitioner's appointment as Middle Grade Graduate teacher and disburse grant-in-aid towards his salary. Meanwhile the 3rd respondent CEO while fixing the staff fixation for the year 2003 - 2004 had rendered one post of Secondary Grade teacher as surplus without teacher vide proceedings dated 29.10.2003. On receipt of the copy of the staff fixation for the year 2003-2004, the 5th respondent school submitted a representation to the 3rd respondent CEO vide letter dated 02.12.2003, informing that the one post of Secondary Grade teacher is declared as surplus without teacher while the petitioner has been appointed as Middle Grade Graduate teacher on 14.06.2002 on discharging his duty without break. Hence, rendering of one post of Secondary Grade post as surplus without teacher is untenable and unwarranted. However, there was no response from the 3rd respondent CEO.



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(ii) Hence, this school once again submitted another representation dated 30.12.2003, informing the CEO that rendering of one post of Secondary Grade teacher as surplus without teacher is wrong and untenable. However, without any application of mind to the explanation submitted by the 5th respondent school, the 3rd respondent vide proceedings dated 04.01.2004, upheld the order of staff fixation stating that the staff strength is fixed based on the [G.O.Ms. No. 525, School Education Department, dated 29.12.1997](#). While so, the 4th respondent DEO, vide proceedings dated 05.02.2004, informed that with regard to the approval of the appointment of the BT Assistant in the Secondary Grade vacancy, the CEO had sought for permission from the Director of School Education, as per G.O. Ms. No. 79 and in case of all the other conditions being fulfilled it would be considered. Aggrieved by the order passed by the 3rd respondent CEO in rendering one post of Secondary Grade teacher as surplus without teacher in the staff fixation for the academic year 2003-2004 and the subsequent proceeding of the CEO dated 04.01.2004 upholding the said staff fixation, the 5th respondent school approached the Principal Bench of this Court in [W.P.No. 10302 of 2004](#) and this Court was pleased to stay the staff fixation of the year 2003-2004 in W.M.P. (MD). No. 12018 of 2004 dated 19.04.2004.



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The 5th respondent school was constantly approaching the 3rd and the 4th respondents requesting to approve the petitioner's appointment, for which they required the school to wait till the disposal of the writ petition in WP. No. 10302 of 2004.

(iii) On 16.08.2017, this Court was pleased to dispose of the aforesaid writ petition with the direction that in view of the change in circumstances, due to the enactment of RTE Act, without quashing the impugned order the 3rd respondent was directed to fix the staff strength based on the strength of the students in the petitioner school, as per the provisions of RTE Act, within a period of eight (8) weeks from the date of receipt of a copy of the said order. Following which, the 5th respondent school submitted a detailed representation to the 3rd respondent DEO vide letter dated 09.03.2018, requesting to approve the petitioner's appointment. However, the 3rd respondent CEO vide impugned proceedings dated 05.04.2018, rejected the request of the 5th respondent school informing that there was no necessity to change the staff fixation for the academic year 2003 - 2004.



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(iv) The 5th respondent school immediately submitted a detailed representation to the 4th respondent DEO vide Letter dated 24.02.2018, requesting to approve the petitioner's appointment w.e.f., 14.06.2002 as he was appointed as per the staff fixation for the academic year 2002 - 2003. The 5th respondent school in yet another letter dated 11.05.2018, informed the 3rd respondent CEO that as the department delayed in approving the appointment of the petitioner made as per the staff fixation for the year 2002-2003, the school had accommodated the petitioner in another vacancy which arose in the year 2004-2005. Thereafter, the said appointment was approved by the respondents and the petitioner is continuing to work without any break. For the period from 14.06.2002 to 31.05.2004, though the petitioner had worked in the sanctioned vacancy, the same was not approved. The 4th respondent DEO without any application of mind on the request of the 5th respondent school, vide consequential impugned proceedings, dated 03.09.2019, returned the proposal seeking to approve the petitioner's appointment, citing the proceeding of the CEO informing that the staff fixation for the year 2003-2004 cannot be changed and hence no action can be taken in the said proposal.



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(v) Hence, challenging the impugned proceedings issued by the 3rd respondent dated 05.04.2018 and the consequential order of the 4th respondent DEO vide proceeding dated 03.09.2019 denying to approve the appointment of the petitioner as Middle Grade Graduate, this writ petition came to be filed.

3. The learned Counsel appearing for the petitioner submitted that it is a well settled law that when a teacher is appointed in the regular sanctioned vacancy, when such post became surplus in the subsequent year due to fall in student strength, the said teacher's appointment has to be approved and later deployed to the needy school. Though the petitioner was appointed in the academic year 2002 -2003, the respondents are mechanically denying the approval of the petitioner stating that the said post was declared as surplus in the subsequent academic year, that is, 2003-2004. The petitioner was appointed as Middle Grade Graduate teacher on 14.06.2002 in the retirement vacancy of the previous incumbent S.J.M.Glori Bai on 31.05.2002. The respondents failed to consider that the post of secondary grade teacher was very much available in the staff fixation settled by the CEO for the year 2002-2003 and that the petitioner was working as Middle Grade Graduate teacher in the sanctioned



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vacancy without salary from the date of his appointment, that is, 14.06.2002 in the regular sanctioned vacancy to till 01.06.2004. On that basis, he pressed for allowing the writ petition.

4. Per contra, the learned Government Advocate has filed a counter affidavit and submitted that the contention of the petitioner that one post of Middle grade Graduate Teacher post became vacant on 01.06.2002 is incorrect. In fact, the post which became vacant on 01.06.2002 on the retirement of previous incumbent on 31.05.2002 is the post of Secondary grade teacher. The Government of Tamil Nadu issued instructions, vide G.O.Ms.No.79 dated 14.06.2002 for appointing B.Ed. qualified teachers in the place of Secondary Grade teachers by classifying them as Middle Grade Graduate Teacher. A provision was also made to grant one increment in addition in the scale of Secondary Grade Teacher post. The Government order further provided that the Chief Educational Officer/District Educational Officer shall distribute the post on the basis of strength and sections of the school in standards VI to VIII. However, it is not understood, how the petitioner has placed reliance on these instructions as these do not apply to aided schools and the same is applicable



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only to Government Schools. Accordingly the appointment of the petitioner as Middle grade Graduate Teacher itself in the 5th respondent school is irregular.

5. In view of the said position, the appointment of the petitioner as Middle Grade Graduate teacher with effect from 14.06.2002 as requested by the 5th respondent school was not approved. That apart, in the meantime, the staff fixation of the year 2003-2004 was settled by the Chief Educational Officer, vide proceedings dated 29.10.2003, in which one post of Secondary Grade Teacher was declared as surplus without teacher and accordingly the appointment of the petitioner was not admissible. In the circumstances, the appointment of the petitioner as Middle Grade Graduate Teacher itself is illegal. Hence, the earlier appointment which was against the provisions was not approved. As the appointment of the petitioner was pending due to the irregular appointment and in the circumstances that in the fixation of staff for the year 2003-2004 was done and one post of Secondary Grade Teacher was identified as surplus without teacher, the petitioner cannot claim for approval with effect from 14.06.2002 as Middle Grade graduate teacher. On the said



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basis, the learned Government Advocate pressed for dismissal of the Writ Petition.

6. Heard, the learned Counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents 1 to 4. Carefully perused the materials available on record.

7. A careful perusal of the impugned proceedings dated 05.04.2018 and 03.09.2019 would reveal that pursuant to the final order passed by this Court in W.P.No.10302 of 2004, vide order dated 16.08.2017, the 5th respondent School had submitted a proposal seeking approval of the petitioner's appointment vide its letter dated 09.03.2018. This Court, by its order, dated 16.08.2017 had directed the 3rd respondent to redo the staff fixation based on the strength of the students in the 5th respondent school as per the provisions of RTE Act, considering the change in circumstances within a period of eight weeks from the date of receipt of a copy of the said order. The 3rd respondent considering the direction of this Court in W.P.No.10302 of 2004, G.O.Ms.No.525 of the School Education Department, dated 29.12.1997 and the Right to Education



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Act, 2009 passed the impugned order dated 05.04.2018, rejecting the claim of the 5th respondent school seeking approval of the petitioner's appointment on the following grounds: Right to Education Act, 2009 came with effect from 01.04.2010. Hence, for the academic year 2003-2004 staff fixation was conducted on the basis of G.O.Ms.No.525, School Education Department, 29.12.1997 on the teacher and student ratio of 1:40 in terms of the aforesaid G.O, thereby rendering one Secondary Grade Teacher post as surplus without teacher.

8. In view of the same, the question of correcting the staff fixation done during the year 2003-2004 would not arise. Following which, the 4th respondent DEO passed the consequential impugned order, dated 03.09.2019 denying to approve the appointment of the petitioner as Middle Grade graduate teacher. None of the contentions of the learned Government Advocate that the petitioner was appointed in a vacancy which had arisen due to the retirement of a Secondary Grade Teacher and hence, the appointment of the petitioner as Graduate Teacher in the vacancy of the Secondary Grade Teacher by upgrading the said post in terms of G.O.Ms.No.79 of the School Education Department,



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dated 14.06.2002 is irregular, in view of the fact that the said G.O. was applicable only to the Government Schools, are found either in the impugned order of the 3rd respondent or in the consequential order of the 4th respondent dated 03.09.2019. The only basis of the impugned order of rejecting the 5th respondent's application seeking approval to the petitioner's appointment with effect from 14.06.2002 is that, in the terms of the staff fixation for the academic year 2003-2004, one post of Secondary Grade Teacher has been rendered as surplus without teacher. Accordingly, the appointment of the petitioner in the said post came to be negated in the impugned order.

9. The short points to be decided is that:

(i) whether G.O.Ms.No.79 of the School Education Department dated 14.06.2002 is applicable only to the Government Schools and not to the Aided Schools?

(ii) Whether a teacher could be appointed in a regular sanctioned vacancy of Secondary Grade Graduate Teacher, when such post has become surplus in the subsequent year due to falling students strength?



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10. This Court in the case of ***R.C.Susai Higher Secondary School .vs. The Government of Tamil Nadu represented by its Secretary to School Education Department and others in W.P.No.18044 of 2011 by its order dated 21.03.2012*** has dealt with a case of appointment of a teacher in a religious minority school and the relevant portion of the said is applicable to the facts and circumstances of this case is extracted as follows:

“28. With regard to the averments vide para 3 of the affidavit, it is submitted that prior to 1.6.2003 teachers possessing Higher Secondary and T.S.L.C./Diploma in Teacher Education were handling classes I to VIII and they were teaching all the subjects, namely Tamil, English, Mathematics, Science and Social Science for students. Government considered that the secondary Grade Teachers were not able to handle the subjects in English, Mathematics and Science for classes VI, VII and VIII in Middle schools, High Schools and Higher Secondary **Schools under all kinds of managements** as the syllabus has been revised and hence the quality of education at the primary level is affected. Keeping this in view Government passed vide [G.O.Ms.](#) No. 79, School Education dated 14.06.2002, wherein it was ordered that from the academic year 2002-2003 wherever a vacancy of Secondary Grade teacher post arises on account of retirement or resignation or due to promotion of for any other reason, Middle Graduate Teacher



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posts shall be created in phased manner in lieu of such Distin vacant Secondary Grade teacher posts and with effect from 01.06.2002 B.Ed. Qualified teacher would be appointed with Secondary Grade Teacher scale of Pay with an advance increment.”

The discussion of this Court as mentioned supra would make it clear that the G.O.Ms.No.79 of the School Education Department, dated 14.06.2002 is applicable to all kinds of management.

11. The Hon'ble Division Bench of this Court in the case of W.A.No. 1155 of 2020 dated 15.02.2023 has dealt with a similar case and the relevant portion is extracted as follows:

*“15. We can justify the order of the learned Single Judge based on this alone. However, even on the next question as to whether the Authorities will have the power to refuse approval to an appointment made to a sanctioned post, in view of the judgment of the Division Bench in **Meada Vs. The Secretary to Government and others made in W.A.(MD).No.628 of 2014**, the answer has to be a firm no. Paragraph 7 of the said judgment reads as follows:-*

7. It is a well settled legal principle that if a person is appointed in a sanctioned post, the approval of



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appointment cannot be rejected and if there is fall in strength and the post become surplus, after granting approval for the post, the said teacher along with post could be transferred/ deployed to a needy school.

16. Therefore, once a teacher is appointed to the sanctioned post, the Government cannot refuse approval.”

12. Fully fortified by the judgment of the Hon'ble Division Bench of this Court extracted supra, I am of the considered view that once a person is appointed in a sanctioned vacancy the approval of the appointment cannot certainly be rejected in view of the fall in strength of students in the following academic year. Even if the said post becomes vacant after granting approval to the post, the said teacher along with post could be transferred or deployed to a needy school under the same corporate management.

13. That apart, I have no hesitation to hold that the mandates of G.O.Ms.No.79 of the School Education Department, dated 14.06.2002 is applicable both to the Government and aided Schools. Hence, the upgradation of the Secondary Grade Teacher vacancy which had arisen due to the retirement



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of the previous incumbent namely S.J.M. Glori Bai on 31.05.2002 into a Middle Grade Graduate Teacher post by the 5th respondent School thereby appointing the petitioner in the said post cannot be termed irregular in view of the fact the aforesaid G.O. is applicable to the aided schools as well.

14. Accordingly, the impugned proceedings issued by the 3rd respondent, vide proceedings dated 05.04.2018 and the consequential order of the 4th respondent vide proceedings dated 03.09.2019 is quashed and consequently, this Court direct the respondents to approve forthwith the appointment of the petitioner as Middle Grade Graduate Teacher in the 5th respondent School with effect from 14.06.2002 to 01.06.2004 and disburse the grant-in-aid towards the petitioner's salary and allowances with effect from said date.

15. Accordingly, this Writ Petition stands allowed. No costs.

04.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
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- 1.The State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort St. George,
Chennai-600 009.
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Education,
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L.VICTORIA GOWRI, J.

Sml

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