



W.P.(MD)No.14517 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.07.2024

CORAM

THE HONOURABLE MS JUSTICE R.N.MANJULA

W.P.(MD)No.14517 of 2024

Hindu Primary School,
rep., by its Manager & Correspondent,
Pandithankurichi, Pathai (Post),
Kalakad, Tirunelveli District.

... Petitioner

Vs.

1.The Director of Elementary Education,
Chennai.

2.The District Education /Officer (Elementary),
Valliyoor, Tirunelveli.

3.The Block Education Officer-II,
Kalakad, Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the impugned proceedings in Mu.Mu.No.2589/A1/2023 dated 05.04.2024 of the second respondent and to quash condition No.2 in so far filling up of single Management School of Kalakad Block and direct the respondent to approve the appointment of Mr.Devavaram Gnana Johnson as Secondary Grand Teacher with effect from 14.06.2023 without insisting for T.E.T and to disburse all other attendant benefits.



W.P.(MD)No.14517 of 2024

For Petitioner : Mr.J.David Ganesan
For Respondents : Mr.T.Amjad Khan
Government Advocate

ORDER

By consent of both sides, this writ petition is taken up for final disposal at the admission stage itself.

2. Heard Mr.J.David Ganesan, learned counsel appearing on behalf of the petitioner and Mr.T.Amjad Khan, learned Government Advocate, who takes notice for the respondents.

3. The petitioner School has appointed one S.Devavaram Gnana Johnson as Secondary Grade Teacher in the vacant place caused due to the promotion of one S.Devavaram Selva Jeberson as Headmaster. Thereafter, the petitioner School has sent a proposal to the Government seeking approval of S.Devavaram Selva Jeberson as Headmaster. However, the Government has approved the appointment of S.Devavaram Selva Jeberson as Headmaster, subject to the following conditions:-

- (i)The promotee has to confirm his T.E.T qualification;
- (ii)The vacancy that arose due to his promotion should be



W.P.(MD)No.14517 of 2024

filled up only by way of deploying the surplus teachers available in the Kalakad Union.

(iii)The details as to whether the other teachers working in same school has relinquished promotion to the post of Headmaster has to be furnished.

4. Aggrieved by the same, the petitioner has filed this writ petition challenging the order dated 05.04.2024 passed by the second respondent in Mu.Mu.No.2589/A1/2023 and quash the condition No.2 insofar filling up of vacancy of Secondary Grade Teacher from surplus teachers of single Management School of Kalakad Block and direct the respondent to approve the appointment of Mr.Devavaram Gnana Johnson as Secondary Grand Teacher with effect from 14.06.2023 without insisting for T.E.T and to disburse all other attendant benefits.

5. The petitioner School is the Minority Aided School. Time and again, it is held that the rule mandating deployment of surplus is not applicable to the Minority School. The law is well settled that for the appointment made to the minority institution, T.E.T qualification is not essential. So, the issue raised in this writ petition is no longer a *res integra*, in view of the earlier order passed in



W.P.(MD)No.14517 of 2024

this regard in W.P(MD).No.7479 of 2024 dated 17.04.2024. The relevant

portion of the said order is extracted hereunder for better appreciation:

“5. The learned counsel for the petitioner also submitted that the Government Order in G.O.Ms.No.165 dated 17.09.2019 has been kept inoperative in W.A. (MD).No.76 of 2019 batch dated 31.03.2021 in the case of The Secretary to Government Government of Tamil Nadu School Education Department, Fort St. George, Chennai – 9 vs Iruthaya Amali and the relevant portion of the order is extracted hereunder:

“95. In view of the aforesaid discussions, we are inclined to pass the following orders in this batch of cases :

.....

(o) In view of the aforesaid, the G.O.Ms.No. 165, School Education [Tho.Ka.2(1)] Department, dated 17.09.2019 is hereby declared to be inoperative.”

6. The petitioner's appointment has been made prior to the order dated 31.03.2021 passed in W.A.(MD).No.76 of 2019 batch. Hence, the petitioner School gets the advantage of getting approval of the appointment of Sunitha as B.T.Assistant Maths. Therefore, the respondents cannot decline the approval of the appointment for the



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W.P.(MD)No.14517 of 2024

reasons of TET eligibility or for deployment of the alleged surplus.

*7. In view of the above stated reasons, this Writ Petition is **allowed** and the impugned order dated 08.09.2020 is set aside. The respondents 3 and 4 are directed to consider and pass orders regarding approval of appointment of Sunitha as B.T.Assistant Maths with effect from 01.08.2017. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.”*

6. Equally, the Rule mandating the deployment of surplus also will not applicable to the petitioner's School, because of its Minority status. It is also well settled in the judgment of this Court in W.P(MD).No.26891 of 2022 dated 25.04.2022 , wherein it has been held as follows:

*“5. Further, the issue has been dealt at length by the Hon'ble Division Bench of this Court in **W.A.(MD).No.76 of 2019 batch dated 31.03.2021** in the case of **The Secretary to Government Government of Tamil Nadu School Education Department, Fort St. George, Chennai – 9 vs Iruthaya Amali**. The relevant portion is extracted hereunder.*



W.P.(MD)No.14517 of 2024

“95. In view of the aforesaid discussions, we are inclined to pass the following orders in this batch of cases :

.....

(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 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."

6. Admittedly, the third respondent School is a stand alone minority institution. In such case, as per the Judgment cited supra, surplus teachers theory is not applicable to them. Therefore, the impugned order is liable to be set aside.



W.P.(MD)No.14517 of 2024

7. In view of the above stated reasons, this Writ Petition is disposed of and the impugned order of the second respondent dated 20.11.2021 is set aside. The first respondent is directed to consider and pass orders regarding the approval of appointment of the petitioner as Drawing Teacher in the third respondent School with effect from 01.06.2018. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed. “

7. At this juncture, the learned counsel for the petitioner submitted that the proposal dated 02.05.2024 sent by the School seeking approval of the appointment of Devavaram Gnana Johnson as Secondary Grade Teacher is pending without consideration.

8. In view of the aforesaid reasons, the Writ Petition is disposed of and the first and second conditions mentioned in the impugned order dated 05.04.2023 are hereby set aside. However, the petitioner School is expected to comply with the condition No.3 of the impugned order and the petitioner School is directed to submit a fresh proposal for approval of one S.Devavaram Gnana Johnson as Secondary Grade Teacher. On receipt of the same, the respondents are directed to consider and pass orders on its own merits and in accordance



W.P.(MD)No.14517 of 2024

with law within a period of six weeks from the date of receipt of a copy of this

order. No costs.

03.07.2024

NCC:yes/no

Index:yes/no

Rmk

To

- 1.The Director of Elementary Education,
Chennai.
- 2.The District Education /Officer (Elementary),
Valliyoar, Tirunelveli.
- 3.The Block Education Officer-II,
Kalakad, Tirunelveli District.



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W.P.(MD)No.14517 of 2024



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W.P.(MD)No.14517 of 2024

R.N.MANJULA, J.

Rmk

W.P.(MD)No.14517 of 2024

03.07.2024