



W.P.(MD)No.18013 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.10.2024

Pronounced on : 24.10.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD)No.18013 of 2024

G.Manuel Ayyadurai

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St. George, Chennai - 600 009.

2.The Director of School Education,
College Road, Chennai - 600 009.

3.The Chief Educational Officer,
Tirunelveli, Tirunelveli District.

4.The District Educational Officer,
(Secondary Education),
Tirunelveli, Tirunelveli District.

5.The Correspondent,
T.D.T.A.High School,
Melaseval - 627 452,
Tirunelveli District.

...Respondents



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PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 4th respondent District Educational Officer in Na.Ka.No.634/a1/2022, dated 31.05.2023 quash the same, and further direct respondent 3rd respondent Chief Educational Officer to approve forthwith the appointment of the petitioner as Junior Grade BT Assistant Science in the 5th respondent school namely TDTA High School, Melaseval, w.ef. 12.08.2008 and to disburse the grant-in-aid towards his salary for the period from 12.08.2008 to 31.12.2009 and further from 16.10.2007 (date of re-joining after revocation of suspension) onwards and other attendant benefits.

For Petitioner : M/s.A.Amala

For Respondents : Mr.N.Satheesh Kumar
Additional Government Pleader
for R1 to R4

* * * * *

ORDER

The instant writ petition has been filed by a BT Assistant(Science) Teacher appointed to the fifth respondent school, challenging the order passed by the fourth respondent, wherein the request of the petitioner to approve his appointment has been rejected on 31.05.2023, primarily on the ground that Secondary Grade post has been upgraded as BT Assistant without prior permission from the authorities.



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A) The facts leading to the filing of the writ petition are as follows:-

2.The petitioner herein was appointed as BT Assistant(Science) Teacher on 12.08.2008. The Management has sent a proposal for approval of his appointment. By way of proceedings dated 07.08.2009, the proposal was returned by the fourth respondent on the ground that there are several teaching and non-teaching surplus staff within the corporate Management and therefore, the present appointment of the writ petitioner cannot be approved. Challenging the same, the petitioner had filed W.P.(MD)No.9125 of 2009. This Court by an order dated 23.10.2017 has allowed the writ petition and directed the fourth respondent herein to pass appropriate orders on merits and in accordance with law within a period of four weeks thereafter.

3.Due to dispute within the Management, the petitioner herein was placed under suspension by an order dated 01.09.2009 on the ground that the petitioner was appointed by an in-competent person. The petitioner has challenged the same in W.P.(MD)No.9117 of 2009. Pending writ petition, the order of suspension was revoked by the Management w.e.f.01.09.2009 itself, by way of order dated 13.10.2017. Recording the same, W.P.(MD)No.9117 of 2009 was dismissed as infructuous.



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4. At the time of revoking the order of suspension, the Management has regularised the period of suspension and permitted the petitioner to join w.e.f. 16.10.2017. Thereafter, the Management had resubmitted the proposal on 01.11.2017 for approving the appointment of the writ petitioner w.e.f. 12.08.2008. By way of proceedings dated 21.11.2017, the said proposal was returned by the authorities on the ground that the Management cannot cancel the order of suspension with retrospective effect from 01.09.2009. In case, if any proposal is submitted to approve the appointment w.e.f. 16.10.2017, the same could be considered.

5. Acceding to the request of the authorities, the Management herein had sent a proposal to the authorities seeking to approve the appointment of the writ petitioner with effect from the date on which the petitioner was re-appointed namely 16.10.2017. This proposal was rejected by the authorities on 06.04.2018 on the ground that there are surplus Secondary Grade Teachers in the corporate Management, as per the staff fixation order for the academic year 2017-2018 and therefore, the request of the Management for upgrading the Secondary Grade Teacher post to that of BT Assistant is not legally permissible.



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6. On 05.06.2018, the Management has addressed a communication to the authorities seeking to re-fix the staff fixation, so that the petitioner's appointment could be approved. This request was rejected by the educational authorities by way of proceedings dated 13.07.2018, reiterating their earlier order dated 06.04.2018.

7. The Management has addressed a communication on 07.08.2018, again requesting the authority to approve the appointment of the writ petitioner w.e.f. 12.08.2008. There were some communications between the Management and the authorities for production of certain documents. Final orders were passed by the fourth respondent on 29.06.2020, wherein the authorities had refused to forward the proposal of the Management citing certain defects. Thereafter, the petitioner herein has sent a representation through the Management, to the authorities 17.02.2020 seeking approval of his appointment from 12.08.2008. Since the representation was not considered, the petitioner had filed W.P. (MD)No.5018 of 2020, seeking a mandamus to grant approval. This Court by an order dated 07.01.2022 had directed the authorities to consider the representation of the writ petitioner dated 17.02.2020 and pass orders on merits and in accordance with law within a period of twelve weeks from the date of receipt of a copy of this order.



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8. Thereafter, the petitioner has sent another representation on 05.04.2022 to the educational authorities. The Management has sent a reminder letter on 20.04.2022 to the fourth respondent. In compliance of the order of this Court, the fourth respondent had forwarded his opinion to the third respondent on 13.06.2022 to the effect that the petitioner's appointment cannot be approved on the ground that the petitioner's appointment is not as per the Government orders. Thereafter, the instant impugned order has been passed on 31.05.2023, wherein the request of the petitioner has been rejected on the ground that the Secondary Grade Teacher post has not been upgraded to the post of BT Assistant after obtaining prior permission from the authorities. This impugned order is under challenge in the present writ petition.

B) Contentions of the learned Counsels appearing on either side are as follows:-

9. According to the learned Counsel appearing for the writ petitioner, the petitioner's suspension order dated 01.09.2009 has already been revoked by the Management and therefore, the authorities have to approve the appointment of the writ petitioner w.e.f. 12.08.2008. She further contended that whenever the Secondary Grade Teacher, who is taking classes for 6th standard to 8th standard, retires the said vacancy has to be filled up only by appointing a BT Assistant by way of upgradation, in view of G.O.Ms.No.79, School Education Department,



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dated 14.06.2002. Therefore, obtaining prior permission from the authorities for upgradation does not arise.

10.The learned Counsel appearing for the writ petitioner has further contended that this Court has already set aside the order wherein the authorities have held that there are surplus teachers in the corporate Management in the year 2008-2009 in W.P.(MD)No.9125 of 2009. Therefore, the issue of surplus cannot be raised by the authorities again. Once the appointment of the writ petitioner is made to the year 2008, the surplus has to be ascertained only on the basis of the academic year 2008-2009, and not based upon the academic year 2017-2018, wherein he had only rejoined the service after revocation of suspension. She had further contended that the authorities have not properly appreciated the fact that the suspension order was revoked from the date of his suspension and therefore, he should be considered to be continued his employment from the date of his appointment. Therefore, the authorities cannot look into the staff fixation order for the academic year 2017-2018. She had further contended that since the petitioner had rejoined the service on 16.10.2017, the same cannot be construed to be a fresh appointment and therefore, the question of considering the staff fixation order for the academic year 2017-2018 does not arise. Hence, she prayed for allowing the writ petition.



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11.Per contra, the learned Additional Government Pleader appearing for the respondents had contended that the authorities have rejected the proposals submitted by the Management by way of proceedings dated 07.08.2009 on the ground that there are surplus Secondary Grade Teachers within the corporate Management. Though this order was put to challenge by the writ petitioner in W.P.(MD)No.9125 of 2009 and the same was allowed, there was a direction to pass appropriate orders on merits and in accordance with law. Therefore, the findings of the authorities relating to surplus Secondary Grade Teacher was not set aside and there was no positive direction from the Court to approve the appointment of the writ petitioner.

12.The learned Additional Government Pleader appearing for the respondents had further contended that the order passed by the authorities on 06.04.2018 rejecting the proposals submitted by the Management on the ground that there are surplus Teachers in the academic year 2017-2018 has not been challenged. On the other hand, the Management had only requested for re-fixation of the staff strength. He further pointed out that once again, a rejection order was passed on 29.06.2020 and the said order was also not challenged by the Management. What could not be achieved by the



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Management cannot indirectly be achieved by the concerned teacher by restarting the litigation by sending representations. Hence, he prayed for dismissal of the writ petition.

13.I have carefully considered the submission made on either side and perused the materials available on record.

C) Discussion:

14.The facts captured above will clearly indicate that the authorities have rejected the proposals submitted by the Management for approving the appointment of the writ petitioner for the first time on 07.08.2009 citing that there are surplus Secondary Grade Teachers within the corporate Management. Though this order was challenged in W.P.(MD)No.9125 of 2009 and the writ petition was allowed, there was no positive direction to approve the appointment. In fact the authorities were only directed to consider the proposal on merits and in accordance with law. Therefore, the issue relating to the surplus Secondary Grade Teachers within the corporate Management in the academic year 2008-2009 was not decided.



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15.The petitioner's Management had resubmitted the proposal to the authorities on 01.11.2017(after revocation of suspension) wherein the Management has requested for approving the appointment w.e.f.12.08.2008. This proposal was also rejected by the authorities on 21.11.2017 citing that the Management cannot revoke the order of suspension with retrospective effect. In case, if the Management has forwarded the proposal to approve the appointment with effect from the date of revocation of suspension, the same could be considered. Accepting the said direction, the Management has submitted the proposal on 15.03.2018 to approve the appointment of the writ petitioner w.e.f. 16.10.2017. For the third time, the authorities have rejected the proposal by way of proceedings dated 06.04.2018 on the ground that there are surplus Teacher even in the academic year 2017-2018 and therefore, the post of Secondary Grade Teacher cannot be upgraded as BT Assistant. It could be seen from the records that this order has not been challenged either by the Management or by the Teacher concerned.

16.After the order dated 06.04.2018, the Management had only requested the authorities to reconsider the staff fixation order for the year 2017-2018, so that the petitioner could be accommodated. This request was also rejected by the authorities on 13.07.2018 reiterating their order dated 06.04.2018. This



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order was also not challenged either by the Management or by the Teacher concerned.

17. Without challenging the above said order, the Management started sending letter on 07.08.2018 seeking approval for the appointment of the writ petitioner on 12.08.2008. This request was returned by the authorities seeking various information. The information was furnished by the Management on 07.09.2019. Again on 29.06.2020, the authorities have rejected the request on the ground that how the Management could revoke the suspension order after a period of eight years from the date on suspension and regularise the said period of suspension. Additionally, the petitioner has also sent a representation on 17.02.2020 to the authorities. Considering the proposal of the Management as well as the representation of the writ petitioner dated 17.02.2020, an order was passed by the authorities on 29.06.2020 rejecting the proposal on the ground that how the Management had revoked the order of suspension after a period of eight years from the date of suspension and how the period of suspension was regularised. This order has not been challenged either by the Management or by the writ petitioner.



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18. Even though the petitioner's representation dated 17.02.2020 was considered by the authorities while passing order dated 29.06.2020, suppressing the said order, the petitioner has filed W.P.(MD)No.5018 of 2020, seeking a mandamus to dispose of his representation dated 17.02.2020. The writ petition was disposed of on 07.01.2022 directing the authorities to pass orders on merits and in accordance with law within a period of twelve weeks from the date of receipt of a copy of this order.

19. After the order of the Writ Court in W.P.(MD)No.5018 of 2020, the petitioner has sent another representation on 05.04.2022 and the Management has sent a representation on 20.04.2022. Considering all these representations and in compliance of the order of this Court, an order was passed by the fourth respondent herein indicating the fact that he is not in a position to grant approval to the appointment of the writ petitioner w.e.f 12.08.2008 and forwarded his opinion to the third respondent after marking a copy to the Management. This order has also not been challenged by the Management.

20. On 12.12.2022, the petitioner has sent another representation and the Management has addressed a communication on 16.12.2022 to the authorities. Finally, the order impugned in the writ petition was passed on 31.05.2023



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rejecting the request of the writ petitioner on the ground that the petitioner's request for approval of appointment cannot not be granted citing the fact that without getting prior permission from the authorities, the Secondary Grade Teacher post cannot be upgraded as BT Assistant. This order is under challenge in the present writ petition.

21. Several orders have been passed by the authorities rejecting the proposals submitted by the Management and at one point of time, the Management had stopped their efforts to get approval to the appointment of the writ petitioner. Thereafter, the writ petitioner has joined the relay race and has restarted the issue by sending a fresh representation and approached this Court for disposal of the representation, suppressing the fact that his representation was considered and rejected by the authorities by an order on 29.06.2020.

22. The learned Counsel appearing for the writ petitioner had relied upon G.O.Ms.No.79, School Education Department, dated 14.06.2002 and contented that whenever vacancies arise to the post of Secondary Grade Teacher by way of retirement or resignation or promotion or otherwise, the said post shall be filled up only by the Middle Grade Graduate Teacher instead of Secondary Grade Teacher. In the present case, the petitioner was appointed to a vacancy created



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by the Voluntarily retirement of one N.Devaraj Daniel and therefore, according to the learned Counsel appearing for the writ petitioner, the upgradation of Secondary Grade Teacher post to that of BT Assistant is automatic and no prior permission is required.

23.The learned Counsel appearing for the writ petitioner has also relied upon the order passed by this Court in W.P.(MD)No.17955 of 2023 wherein this Court has held that the upgradation is automatic and no prior permission from the educational authorities is required.

24.The educational authorities have rejected the approval of the writ petitioner initially in the year 2009 citing that there are surplus Secondary Grade Teachers in the corporate Management for the academic year 2008-2009. The authorities have rejected the request of the Management for considering the appointment of the writ petitioner w.e.f.16.10.2017 again citing that there are surplus Secondary Grade Teachers in the academic year 2017-2018 within the corporate Management. Though the Management made an attempt by way of communication dated 05.06.2018 to refix the staff strength for the academic year 2017-2018, the same was rejected by the authorities by way of proceedings dated 13.07.2018. Therefore, it is clear that the availability of surplus teachers



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in the corporate Management in the academic year 2008-2009 and in the academic year 2017-2018 is not in dispute.

25. When there are surplus Secondary Grade Teachers, when a non-surplus Secondary Grade Teacher retires/promoted, the said vacancy has to be used to accommodate the surplus Secondary Grade Teacher. Without accommodating the surplus Secondary Grade Teacher, the retired vacancy cannot be upgraded as BT Assistant relying upon G.O.Ms.No.79, School Education Department, dated 14.06.2002. If the upgradation is treated as automatic, the surplus would never get erased and the Management would continue to appoint new teachers relying upon automatic upgradation. This would amount to permitting the Management to make fresh appointments despite the fact that there are surplus teachers within the Management. Therefore, the proposition laid down by this Court relating to automatic upgradation of Secondary Grade Teacher post as BT Assistant, is applicable only in cases where there are no surplus Secondary Grade Teachers in the concerned school or within the corporate Management.

26. In the present case, admittedly, there are surplus teachers in the academic year 2008-2009 and in the academic year 2017-2018. In such an



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event, the petitioner cannot rely upon G.O.Ms.No.79, School Education Department, dated 14.06.2002 and claim automatic upgradation without accommodating the surplus teachers. Therefore, the authorities were right in rejecting the request for approval of the petitioner's appointment on the ground that when surplus Secondary Grade Teachers are available, the petitioner cannot be appointed by upgrading one of the Secondary Grade Teacher posts as BT Assistant.

27.In view of the above said deliberations, there are no merits in the writ petition. Accordingly, this writ petition stands dismissed. No costs.

24.10.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No

RJR



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To

1.The Secretary,
Department of School Education,
Fort St. George, Chennai – 600 009.

2.The Director of School Education,
College Road, Chennai – 600 009.

3.The Chief Educational Officer,
Tirunelveli, Tirunelveli District.

4.The District Educational Officer,
(Secondary Education),
Tirunelveli, Tirunelveli District.



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R.VIJAYAKUMAR, J.

RJR

Pre-delivery order made
in
W.P.(MD)No.18013 of 2024

24.10.2024