



W.P.(MD).No.20737 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.03.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.20737 of 2022
and W.M.P(MD)No.15022 of 2022

Emelda Rani

... Petitioner

Vs.

1. The District Educational Officer,
The Office of the District Elementary Educational Officer,
Madurai District

2.The District Elementary Educational Officer,
The Office of the District Elementary Educational Officer,
Thallakulam, Madurai District.

3.The Block Educational Officer,
The Office of the Block Educational Officer,
Alanganallur Block,
Madurai District.

4.The Correspondent,
R.C Primary School,
Mariammalkulam,
Thanichiyam (via),
Madurai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned proceedings dated 03.2017 in Mu.Mu.No.



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1019/AA4/2017, on the file of the 2nd respondent and the consequential proceedings dated 03.12.2018 in Na.Ka.No.625/A2/18 on the file of the 3rd respondent and quash the same directing the respondents to accord approval to the appointment of the petitioner, Sr.Emelda Rani working as Secondary Grade Assistant in the 4th respondent R.C.Primary School, Mariammalkulam, Thanichiyam, Madurai District w.e.f 03.08.2017 and release salary with all monetary and service benefits.

For Petitioner : Mr.S.Savarimuthu
For R1 to R3 : Mr.M.Sarangan
Additional Government Pleader

ORDER

Mr. M.Sarangan, learned Additional Government Pleader takes notice for the respondents 1 to 3.

2. The petitioner was appointed as the Secondary Grade Assistant in the 4th respondent School with effect from 03.08.2017 in a vacancy which has arisen out of the promotion of one Mr.M.Vincent Jeyaraj on 31.01.2017. The 4th respondent School is an aided minority school receiving grant-in-aid from the Government being administered by the Corporate management/R.C Diocese of Madura. Pursuant to the said appointment, the proposal for approval of appointment of the petitioner as the Secondary Grade Assistant in the said



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school with effect from 03.08.2017 was forwarded to the authorities on 02.02.2018. The staff fixation of the said school for the academic year 2017-18 clearly revealed the eligibility of the said post from the records issued by the competent educational authorities. The 3rd respondent forwarded the said proposal to the 1st respondent.

3. The 1st respondent vide impugned proceedings in Mu.Mu.No. 1019/AA4/2017 dated Nil.03.2017 accorded approval to the relieving order for promotion of the previous incumbent Mr.Vincent Jeyaraj with the condition that the said vacancy should not be filled up since there is one surplus. But in fact, there was no surplus in the school at that period of time. Consequently, the 3rd respondent vide impugned proceedings in Na.Ka.No.625/A2/18 dated 03.12.2018 returned the proposal seeking approval of appointment of the petitioner on the basis of the condition imposed in the proceedings of the 1st respondent dated Nil.03.2017. Challenging both the proceedings, the present Writ Petition came to be filed.



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4. Mr.Savarimuthu, learned counsel for the petitioner placed the staff fixation with respect to the 4th respondent school issued by the District Educational Officer, Madurai vide proceedings No.5855/DB1/2017 dated Nil.02.2018 and submitted that, during the academic year 2017-18, there was no surplus in the 4th respondent school. Interestingly, the staff fixation of the authorities itself would reveal the availability of yet another sanctioned vacancy. Despite the availability of sanctioned vacancy in terms of their own staff fixation itself, the manner in which the impugned order came to be passed mentioning that there is a surplus in the 4th respondent school is bad in the eye of law. In view of the same, the learned counsel prayed for quashing the impugned orders and consequently allowed the Writ Petition.

5. Per contra, the 1st respondent filed a counter affidavit. Mr.Sarangan, learned Additional Government Pleader submitted that aid is not the fundamental right of the 4th respondent management and the same cannot be automatic. The Government is always entitled to disburse the aid and approve the appointments, if the same is not made in terms of the relevant regulation rules and Act. Though the orders impugned in this Writ Petition were passed by



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the respondents 1 and 3 during the year 2017-2018 respectively, the petitioner has challenged the same after a period of 5 years in the year 2022 without explaining the reason behind the delay and laches. Maintainability of the Writ Petition itself would defeat the case of the petitioner. That apart, it is only the 4th respondent school which ought to have challenged the impugned proceedings and the petitioner as an appointee is not entitled to challenge the said proceedings.

6. Further, the learned Additional Government Pleader submitted the copy of a letter dated 19.02.2024 sent to him annexed with the details of the Secondary Grade Teachers working in the Middle School under the management of R.C Corporate Management which is in the form of a tabulation furnished by the District Educational Officer, Primary Education, Madurai. Relying upon the same, the learned Additional Government Pleader contended that during the academic year 2017-2018, there had been 21 surplus teachers in R.C Diocese of Madurai Corporate Management and without exhausting the entire surplus teachers in the Corporate Management, the 4th respondent school ought not to have made an appointment afresh from the open market and on



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that ground, this Writ Petition has to be dismissed. The learned Additional Government Pleader relied upon the judgment of the Hon'ble Division Bench of this Court in W.A(MD)No.320 of 2023 dated 20.11.2023 and reiterated that the 4th respondent school cannot appoint any teacher afresh unless and until the Corporate management had fully exhausted the available surplus in their management.

7. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents.

8. The date of appointment of the petitioner as Secondary Grade Assistant is 03.08.2017 and she has been appointed during the academic year 2017-2018. The staff fixation of the 4th respondent school would clearly reveal that there was no surplus as on 23.03.2018 in the 4th respondent school. However, there was an available sanctioned Secondary Grade Teacher vacancy during that academic year 2017-2018. Having arrived at a staff fixation there is an available Secondary Grade Teacher in the said school and that there is no surplus in the said school, the 1st respondent vide impugned proceedings



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accorded approval to the relieving order for promotion of the previous incumbent imposing a condition that the said vacancy which had arisen due to the promotion should not be filled up since there is one surplus. Following which the 3rd respondent had returned the proposals seeking approval of the appointment of the petitioner on the same ground. This would show the mindlessness of the respondent authorities, who have passed those impugned orders without referring to their own staff fixation with respect to the 4th respondent school vide proceedings in Na.Ka.No.5855/ஆ1/2017 dated Nil.02.2018

9. In WP(MD)No.13424 of 2014 dated 12.04.2023, this Court has held that grant of approval of appointment has been denied by the respondents only for want of exhaustion of surplus teacher in the same corporate management by deploying them to needy schools, avoiding fresh appointments. Relying upon the said order, the learned Additional Government Pleader submitted that even in this case without exhausting available 21 surplus teachers in the corporate management, the 4th respondent school has appointed the petitioner afresh as



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the Secondary Grade Teacher in a vacancy which had arisen due to the promotion of the erstwhile incumbent.

10. The learned Additional Government Pleader has relied upon yet another judgment of the Hon'ble Division Bench of this Court in W.A(MD)No. 861 of 2021 dated 30.04.2024, wherein the Hon'ble Division Bench of this Court has approved the return of approval for appointment by the respondent authorities. The relevant portion of that judgment is extracted herein under:

“16. In our considered view, the said judgment in the case of T.Kingsly Nirmala cannot be applied to the case of the first respondent herein as we have pointed out distinguishing factors, which have emanated in the case of the first respondent. That apart, one of the proceedings, which was impugned in the writ petition, is dated 21.05.2012 and the second appellant returning the proposal for approval of the appointment of the first respondent, wherein a direction has been given to the Corporation Management to submit all details form after accommodating all the surplus teachers in the schools under their control. Therefore, the judgment in W.A.No.648 of 2020 cannot be applied to the facts and circumstances of the case on hand”.



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11. The Hon'ble Division Bench of this Court in W.A(MD)No.887 of 2018 vide its order dated 02.01.2019 has considered the similar issue and passed a favorable order to the school and the relevant portion of the order is extracted as under:

“11.In view of the fact that there are two sanctioned posts and that the issue is settled by the judgment of the Hon'ble Division Bench of this Court, as quoted supra, there is no merit in the instant writ appeals and the same stands dismissed”

12. In yet another case in W.A(MD)No.108 of 2019 dated 31.01.2019, the Hon'ble Division Bench of this Court has referred the judgment dated 01.02.2011 in W.A.No.703 of 2009 (The District Elementary Educational Officer, Tirunelveli and another Vs.1.J.Banu and another), wherein it has been held as follows:

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



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13. In the instant case, the vacancy had arisen in the year 2017. The appointment was made with effect from 03.08.2017 and the proposal was forwarded to the respondent authorities during the academic year 2017-2018. The learned Additional Government Pleader Mr.Sarangam has circulated the copy of a letter dated 19.02.2024 sent to him annexed with the details of the Secondary Grade Teachers working in the Middle School under the management of R.C Corporate Management which is in the form of a tabulation furnished by the District Educational Officer, Primary Education, Madurai and the details have been collected through assessment. Such an exercise of assessing surplus teachers, who were available during the academic year 2017-2018 currently is quite impossible, as held by the Hon'ble Division Bench of this Court in W.A(MD)No.1557 of 2023 by its order dated 21.09.2023. The relevant portion of the judgment in W.A(MD)No.1557 of 2023 is extracted as follows:

“18. The impossibility of retrospective or retro active application of directions in a Judgment has been considered by the Hon'ble Supreme Court of India in Goan Real Estate Construction Limited and Another -Vs- Union of India⁶ and it is specifically held in paragraph 31 that the Judgment should be read in the context and its entirety and the observations should not be applied



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out of context. In paragraph 39 it is held that the nature of directions should be considered to give prospective effect. In paragraph 34 it is held that whenever a new norm is established the ability to retrospectively effectuate the new rule should be considered. Thus, applying the dictum, it can be seen that the Division Bench had consciously did not nullify the appointments pending approval”.

14. The exercise of fixing the staff retrospectively for the year 2017-2018 in the year 2024 is quite impossible. That apart, the respondent authorities themselves have given a staff fixation stating that there is no surplus in the 4th respondent school during the academic year 2017-2018. Accepting the contention of the learned Additional Government Pleader even assuming that there had been surplus in the corporate management during the academic year 2017-2018, I hereby quash the impugned orders and remand back the matter to the 2nd respondent directing him to forthwith grant approval to the appointment of the petitioner as Secondary Grade Teacher in the 4th respondent school and thereafter deploy the junior most Secondary Grade Teacher in the 4th respondent school to the needy school along with the post to any other school under their management, if so advised.



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15. Accordingly, this Writ Petition is disposed of. No costs.
Consequently, connected miscellaneous petition is closed.

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

To

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L.VICTORIA GOWRI, J.

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