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W.P(MD).No.24267 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 04.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.24267 of 2023

and

W.M.P(MD)Nos.20451, 20449 & 22547 of 2023

The Correspondent,
Ponniah Higher Secondary School,
Tiruchirappalli-620 001,
Tiruchirappalli District.

....Petitioner

Vs

- 1.The State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort St.George, Chennai-600 009.
- 2.The Director of School Education,
College Road, Chennai-600 006.
- 3.The Chief Educational Officer,
Trichy, Trichy District.
- 4.The District Educational Officer,
Trichy, Trichy District.
- 5.The Correspondent,
Sengunthar Higher Secondary School,
Thuraiyur, Trichy District.
- 6.S.Sathiyabama

...Respondents



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Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Ceriorari, to call for the records relating to the impugned proceedings of the 3rd respondent CEO in Na.Ka.No.7300/Aa4/2022, dated 09.06.2023, quash the same as illegal and void.

For Petitioner : Mr.K.Ragatheesh Kumar
For M/s.Isaac Chambers

For R1 to R4 :Mr.N.Ramesh Arumugam
Government Advocate

ORDER

The present writ petition has been filed to call for the records relating to the impugned proceedings of the 3rd respondent CEO in Na.Ka.No. 7300/Aa4/2022, dated 09.06.2023, quash the same as illegal and void.

2. The petitioner school is one among the several recognized educational institutions established and administered by the congregation of the Syrian Orthodox Christian Priests, namely Society of the Order of the Sacred Transfiguration, Mount Tabour. However, the petitioner school is the only school functioning in Tamil Nadu under the said society. One post of B.T Assistant (Tamil) in the said school fell vacant on 01.10.2018 due to the voluntary retirement of then incumbent J.Jospin Lumina Mary on 30.09.2018. In that vacancy, the school appointed a fully qualified candidate, namely



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P.Kadhar Ahmed as B.T Assistant (Tamil) on 10.10.2018. While the school submitted the proposal to District Educational Officer to approve his appointment as B.T Assistant (Tamil) on 08.01.2019, for certain reasons, he resigned on 04.07.2022. As such the post of B.T Assistant (Tamil) fell vacant again on 05.07.2022. While the management was taking steps to fill up the post as per the rights available to the minority school, the order of deployment, dated 09.06.2023 of deployment of the 6th respondent to the petitioner school in the said vacancy came to be passed. Challenging the same, this writ petition has been filed.

3. The learned counsel for the petitioner submitted that the matter in hand is no more *res integra* and the same has already been dealt with by the Hon'ble Division Bench of this Court in a batch of cases in W.A(MD)No.76 of 2019, dated 31.03.2021, in which compendium of schedule has been issued in this regard. In which, the Hon'ble Division Bench has categorically held that as far as stand alone minority institutions are concerned, their right of appointing a teacher in a vacancy within the sanctioned strength shall not be affected because of the identified excess teachers in other schools. In view of the same, the deployment of the 6th respondent to the petitioner school is *per se* illegal and hence, sought for allowing the writ petition.



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4. Per contra, the learned Government Advocate appearing for the official respondents has filed a counter and vehemently submitted that it is an admitted fact that, when a post of B.T Assistant (Tamil) has fell vacant in the petitioner school, the 3rd respondent had deployed the 6th respondent teacher, namely Sathiyabama from the 5th respondent school to the petitioner school and the schedule of compendium relied upon by the learned counsel for the petitioner is not applicable to the facts and circumstances of this case. As far as the said judgment of the Hon'ble Division Bench is concerned, the compendium of schedule in paragraph no.95 (f) (ix) would be relevant to the facts and circumstances of this case, wherein it has been clearly mandated that after making redeployment process, if still excess staffs are available, the Education Department shall take further effort to be redeployed to a needy school beyond the corporate management concerned. Adopting the said directive, considering the fact that the petitioner school is a needy school this deployment order came to be passed.

5. He further submitted that this Hon'ble Court in yet another case in W.P(MD)No.2579 of 2023, dated 09.02.2023, has dealt with a similar case and has held that a perusal of the judgment of the Division Bench in W.A(MD)No.76 of 2019 makes it clear that as per clause 9, after making this redeployment process, if still excess staff are available, the Education



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Department can take further effort and those excess teachers still available at the hands of the Education Department could be redeployed to a needy school beyond the corporate management concerned i.e., to any school located in the same educational district or revenue district and even beyond which if still excess staff are available, they can be redeployed to any school beyond the revenue district after getting the choice of such teacher concerned and the same shall be completed for every year. It was further observed in the said order that on the basis of the Division Bench judgment in W.A(MD)No.76 of 2019, the redeployment order passed transferring the surplus teachers from the mother unit to the petitioner school cannot be interfered with. Relying on the said order, the learned Government Advocate submitted that the impugned order passed by the 3rd respondent need not be interfered.

6. Per contra, the learned counsel for the petitioner submitted that an appeal has been preferred as against W.P(MD)No.2579 of 2023 in W.A(MD)No.1869 of 2023 and the said appeal was withdrawn at the instance of the appellant in the aforesaid writ petition. However, he placed before the Court the order passed by the Hon'ble Division Bench in W.A(MD)No.552 of 2023 pertaining to the same school, namely St.Joseph Higher Secondary School, Somarasampettai, Tiruchirappalli, in which the order impugned in W.P(MD)No.2579 of 2023, dated 25.01.2023 was also dealt with. That apart,



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similar orders came to be passed by the Hon'ble Division Bench of this Court in a batch of writ appeals including W.A(MD)No.552 of 2023 where the Division Bench of this Court while dealing with the issue of deployment of surplus teachers to needy schools, has categorically held that the directives of the compendium of schedule in Iruthaya Amali's case in paragraph no.95 (v) would be applicable to the case of deployment in minority schools.

7. Heard the learned counsels on either side and perused the materials available on record.

8. The petitioner in the instant case is a minority stand alone school administered by the congregation of the Syrian Orthodox Christian Priests, namely Society of the Order of the Sacred Transfiguration, Mount Tabour. No doubt, the respondents have deployed the 6th respondent in a vacancy which had arisen due to the resignation of one B.T Assistant (Tamil) post by one Kadhar Ahmed. As per the contentions of the learned Government Advocate, in terms of the order passed by the learned Single Judge of this Court in W.P(MD)No.2579 of 2023, the deployment of the 6th respondent has been made by the respondent authorities in the needy school i.e., petitioner school and there is no illegality in the same and the said impugned order of deployment has to be sustained. However, a specific distinction has been



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made between the deployment of surplus teachers to the needy schools and the deployment of surplus teachers to minority stand alone schools in *Iruthaya Amali's* case by the Hon'ble Division Bench of this Court in clause 95 (v) of the said judgment and the same is extracted as follows:

“95.(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.”

9. The impugned proceeding which is challenged in W.P(MD)No.2579 of 2023 is Na.Ka.No.7300/A4/Aa4/2022, dated 25.01.2023. Though the said writ petition preferred by St.Josephs Higher Secondary School, Somarasampettai, Tiruchirappalli was dismissed and the writ appeal which



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was preferred as against the same was later withdrawn by the said school, the same impugned proceeding was dealt with by the Hon'ble Division Bench of this Court in a batch of writ appeals including W.A(MD)No.552 of 2023, wherein it is held that the directives issued in paragraph no.95 (v) of the judgment in Iruthaya Amali's case has to be followed in the case of deployment of surplus teachers and the relevant portion of which is extracted as follows:

“37.The learned Additional Advocate General appearing on behalf of the State made a submission that the directives issued in Paragraph No.95(v) of the judgment in Iruthaya Amali's case have been followed by the respondents in the order impugned in the Writ Petition dated 25.01.2023. It is contended that the appellant School is a corporate minority institution and a teacher from other school was deployed depriving the right of the teacher, who was already appointed. Since the respondents have already given an undertaking that the directives issued in Iruthaya Amali's case will be followed, the case of the appellant is also to be re-considered afresh in the light of the directions issued in Iruthaya Amali's case.

38.In the present writ appeal, the teacher was found surplus and consequently, the competent authority transferred the teacher to the other school, where vacancy was available. As we have elaborately discussed in the aforementioned paragraphs, mere declaration of surplus and transferring a teacher to the available vacancy would not cause violation of service conditions. Place or



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post can never be claimed as an absolute right. Thus, the case of the appellant is to be reconsidered with reference to the present position and based on the directions and the observations made in the present Judgment.”

10. In view of the above said discussion, I am of the considered view that even in the case in hand, the deployment came to be passed by the 3rd respondent under the guise of deploying the 6th respondent in the capacity of surplus teacher to the petitioner school considered as needy school by the 3rd respondent. However, it was also placed on record by the learned Government Advocate that since this writ petition came to be filed, in the mean while, the 6th respondent has already been deputed to another school vide proceedings of the 3rd respondent, dated 18.07.2023, that is, to the Government Higher Secondary School at Thuraiyur. In view of the same, considering the fact that this writ petition has been filed challenging the deployment order of the said 6th respondent to the petitioner school and she has already been deputed to some other school and also adopting the directives of the Hon'ble Division Bench of this Court in clause 95 (v) of *Irudhaya Amali's* case, I am not hesitant to hold that the impugned order passed by the 3rd respondent deploying the 6th respondent to a stand alone minority institution is *per se* illegal. In view of the same, the impugned order, dated 09.06.2023 is quashed.



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

Consequently, connected Miscellaneous Petitions are closed.

04.01.2024.

Internet : Yes

Index : Yes/No

NCC : Yes/No

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To

- 1.The Secretary,
The State of Tamil Nadu,
Department of School Education,
Fort St.George, Chennai-600 009.
- 2.The Director of School Education,
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L.VICTORIA GOWRI, J.

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