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W.A(MD)No.208

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.03.2024

CORAM :

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

W.A(MD)No.208 of 2017
and
CMP(MD)Nos.2128 and 2129 of 2017

1. The Director of Elementary Education,
DPI Campus, College Road,
Chennai- 600 006.

2. The District Elementary Educational Officer,
Thanjavur District,
Thanjavur.

3. The Assistant Elementary Educational Officer,
Thanjavur District,
Thanjavur.

... Appellants

vs.

1. R.Jacintha
2. The Correspondent,
TELC Middle School,
Manambuchavady,
Thanjavur-613 001.

... Respondents

Appeal filed under Clause 15 of Letters Patent, against the order dated
22.09.2015 in W.P(MD)No.17176 of 2015.

For Appellants	: Mr.D.Sadiq Raja, Additional Government Pleader
For R1	: Mr.F.Deepak
For R2	: No appearance

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J U D G M E N T

(Judgment of the Court was made by V.BHAVANI SUBBAROYAN, J.)

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Challenging the order dated 22.09.2015 made in W.P(MD)No.17176 of 2015, the Educational authorities have filed this appeal.

2. The 1st respondent/writ petitioner was appointed as Secondary Grade Assistant Teacher in the 2nd respondent school on 06.03.1996 and was promoted as Tamil Pandit from 02.06.2014 and further promoted as B.T. Assistant in Tamil with effect from 02.06.2014 in the sanctioned vacancy. The 2nd respondent school sent a proposal to the 2nd appellant for approval of the said promotion as B.T. Assistant (Tamil) but the same was rejected by order dated 23.02.2015, stating that four posts of B.T Assistants including Tamil Pandit are stated to be surplus for the year 2012-2013 and 2013-2014 and therefore, 1st respondent's promotion cannot be approved. Challenging the same, the 1st respondent filed writ petition contending that middle schools namely, Standards VI to VIII are handled only by B.T Assistant Grade Teachers and as per G.O.Ms.No.525, School Education (D1) Department, dated 15.12.1997 as interpreted in the judgment reported in **2006(5) CTC 385 (Director of Elementary Education, Chennai Vs. S.Vigila)**, there must be one teacher for each standard/section. The learned Single Judge finding force in the contentions of the 1st respondent, allowed the writ petition setting aside the order refusing to approve her promotion as B.T. Assistant and directed the appellants to

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consider the proposal afresh on the basis of G.O.Ms.524 dated 29.12.1997 as interpreted by this Court in the above mentioned judgment. Hence, this writ appeal.

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3. Though the appellants raised various grounds in the memorandum of appeal, today, when the writ appeal was taken up for hearing, learned Additional Government Pleader appearing for the appellants submitted that the direction of the Writ Court cannot be complied in view of the judgment of this Court in **W.A(MD)No.76 of 2019 etc., batch dated 31.03.2021 [Government of Tamil Nadu and two others vs. Iruthaya Amali and another]**, wherein, it has been held that G.O.Ms.No.525, School Education (D1) Department, dated 15.12.1997 and its interpretation in the judgment reported in 2006(5) CTC 385 (Director of Elementary Education, Chennai Vs. S.Vigila) is nullified by the subsequent enactment of Right of Children to Free and Compulsory Education Act, 2009 and consequential G.O.Ms.No.231. He further submitted that subsequently the 1st respondent has also been reverted to the post of Secondary Grade Teacher and she is working in the said capacity in the 2nd respondent school, as such, nothing survives in the writ appeal for adjudication.

4. The relevant portion of the judgment made in W.A(MD)No.76 of 2019 etc., batch dated 31.03.2021 reads as follows:-

"20. It is the further stand of the Government that, the Government issued G.O.Ms.No.

231, School Education (C2) Department, dated 11.08.2010, where the teacher-pupil ratio has

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*been fixed as 1:30. In this context, it is the stand of the State Government that, since the Full Bench Judgment in Vigila's case gave interpretation to G.O.Ms.No.525 in the year 2006, the RTE Act came into effect in the year 2009, therefore, what are all the G.Os issued and Rules issued by the Government subsequent to issuance of RTE Act alone shall prevail. Therefore the effect of the Full Bench Judgment is nullified by the subsequent enactment of RTE Act and the consequential G.O.Ms.No.231. **Therefore the student-pupil ratio as has been fixed either under G.O.Ms.No.525 or as has been interpreted by the Full Bench in Vigila's case cannot be considered to be a valid legal prescription in view of the RTE Act and the subsequent Government Orders in this regard.***

21. Apart from the aforesaid stand taken by the Government, it has also taken the stand that, it is the right and duty of the Educational authorities to identify the excess staff in aided school and the same can be redeployed by the school or management concerned and in this context, very particularly in the schools run by Corporate Management in respect of filling up of a vacancy in a particular school, before doing the same, the Corporate Management shall look into the fact that, whether excess staff working in any of the school under the same management are available and if such excess staff are available and identified, after getting a prior permission from the State Government, those excess staff shall be appointed in the needy school of the same management by way of redeployment and unless and until such exercise is fully exhausted by the same Management or Corporate Management, no fresh appointment from open market shall be permitted.

5. We find force in the aforesaid submissions. As on date, the prayer of the 1st respondent cannot be considered since G.O.Ms.No.525 and the effect of the Full Bench Judgment in S.Vigila's case which interpreted the said G.O, are nullified by the subsequent enactment of RTE Act and the consequential G.O.Ms.No.231 as held by this Court in W.A(MD)No.76 of 2019 etc., batch. Further, it is stated by the learned Additional Government Pleader that since the 1st respondent is reverted to the post of Secondary Grade Teacher, nothing survives in this appeal.



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6. Thus, recording the submission made by the learned Additional

Government Pleader, this Writ Appeal is closed. No costs. Consequently, connected

miscellaneous petitions are closed.

(V.B.S., J.)

(K.K.R.K., J.)

12.03.2024

Index : Yes / No

Neutral Citation : Yes / No

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