



W.A(MD)No.836 of 2017

WEB COPY **BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 07.03.2024

CORAM:

**THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN**

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Savariyappa Udayar Memorial
Higher Secondary School,
Rep.by its Manager & Correspondent,
Savarimuthu Lourdhu Nagar,
Royappanpatti-626 526,
Theni District.

...Appellant/Petitioner

Vs.

1.The Chief Educational Officer,
Theni, Theni District.

2.The District Educational Officer,
Uthamapalayam,
Theni District.

....Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order made in W.P(MD)No.10494 of 2008, dated 20.08.2014.

For appellant : Miss.M.F.Rooshi Mass for
Mr.T.Cibi Chakraborty

For Respondents : Mr.D.Sadiq Raja
Additional Government Pleader



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JUDGMENT

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

This Intra Court appeal is directed against the order passed by the writ Court, dated 20.08.2014 in W.P(MD)No.10494 of 2008.

2. The writ petitioner is a Private Aided Higher Secondary School. In that school, at the level of +1 and +2 standards, there was also vocational stream subjects taught. One of the vocational subjects taught was Commerce and Accountancy. This course was commenced in the year 1984. There were two Post Graduate Assistants in the subject Commerce, in respect of this course in the said school, which was sanctioned duly by the Education Department. One such Post Graduate Assistant was Mr.Rangesan. Mr.Rangesan was dismissed from service in the year 1995 and that was challenged by him before this Court by way of writ petition. That writ petition was allowed and he was ordered to be reinstated into service. Accordingly, in the year 2004, he was reinstated into service. As regards the other sanctioned post, one Mr.Selvaraj was working as Commerce Teacher. Thus, in the academic year 2004-2005, there were two



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teachers as Post Graduate Assistants in Commerce in the school of the petitioner.

The Educational Authorities found, on going by the students' strength, that one Post Graduate Assistant in Commerce was surplus. Accordingly, a Staff Fixation Order was passed. Therefore, Mr.Selvaraj was redeployed to a different school in Kanyakumari District and that order was also challenged again by Mr.Selvaraj and Management before this Court. That writ petition was allowed by this Court and the order of redeployment was set aside with a further direction to the Educational Authorities to reconsider the objections of the petitioner. Accordingly, the objections were considered and finally the Chief Educational Officer, by his proceedings in Na.Ka.No.A3/4252/2008, dated 11.09.2008 rejected the objections in respect of redeployment. Challenging the said order, the writ petitioner has filed the writ petition.

3. The learned Single Judge dismissed the writ petition as there was no merit at all.

4. Aggrieved against the order of dismissal, the writ petitioner has filed the present writ appeal.



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5. The learned counsel appearing for the appellant would submit after the termination of Mr.Rangesan, for want of students, the vocational courses in Commerce and Accountancy was closed. The said course was not conducted from 1997-1998 onwards. After Mr.Rangesan was reinstated into service, a proposal was submitted to the Director of School Education seeking sanction for restarting the said course namely the vocational course in Commerce and Accountancy. The Director of School Education by his proceedings in Na.Ka.No. 13436/W4/W12/2004 dated 03.12.2004, while granting sanction for one group namely Group-II (Physics, Chemistry and Biology) he did not give any fresh sanction for the vocational course in Education had stated that in respect of the courses, which were already under progress, as per the Government Letter No.46, dated 14.05.2004, no fresh sanction need be issued by the Education Department. Relying on the same, the learned counsel would submit that since the said course, was not, though conducted from the year 1997-1998, the post was not surrendered. Thus, according to him, the post sanctioned continued to be in existence. Though the post was not filled up, in 2004, since Mr.Rangesan has to be reinstated in service, believing that fresh sanction was required, a proposal was



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submitted to the Director of School Education. Subsequently, in the Staff Fixation Order also, the said post has been mentioned as an aided post.

6. The learned counsel for the appellant further submitted that the learned Single Judge ought to have seen that the appellant's school has already granted with 2 posts of PG Assistant Commerce on 16.10.1984. The appellant's school requires 2 posts of PG Assistant in Commerce subject to conduct commerce and vocational groups. The learned Single Judge ought to have seen that the School has work load of 30 periods per week for PG Assistant Commerce and hence, the School is Eligible to hold 2 post of PG Assistant in Commerce. The impugned order issued by first respondent is not correct by holding the second post as surplus. It amounts to violation of 'Doctrine of Estoppels'. The respondent cannot reduce the staff strength without proper notice to the appellant school.

7. The learned Additional Government Pleader appearing for the respondents would submit that from the year 1997-1998, the vocational course in commerce and Accountancy was not conducted and it was abandoned. The post was not actually surrendered, because, there was no occasion, since Mr.Rangesan



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was under the orders of dismissal. Once the course was abandoned, the post automatically lapsed. In the year 2004, after Mr.Rangesan was reinstated, a proposal was submitted, for starting the said course and for sanctioning of the said course. The Director of School Education said that the course which was in vogue to continue, it requires no sanction. The post in question, since the course was abandoned in the year 1997-1998, the post was also lapsed in the year 1997-1998. Further, from the year 2004, as against the said post, salary was not paid by the Government at all. The post is only a self-financing post and therefore, the writ appeal deserves to be dismissed.

8. It is seen from the records that during the academic year 1997-98, the vocational course in Commerce and Accountancy was abandoned by the petitioner's school. Though technically, the post of Post Graduate Assistant in Commerce relating to the said course was not surrendered, it should be deemed that the post also lapsed. Had the post been held by any other teacher in the year 1997-98, certainly the Education Department would have redeployed him to some other school. Since Mr.Rangesan was already dismissed, there was no occasion for the Education Department to pass a fresh order of redeploying the said post.



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In the year 2004, when Mr.Rangesan was reinstated and the classes were again started, the petitioner's school ought to have obtained fresh sanction of Post Graduate Assistant in Commerce to teach classes for the said students. Admittedly, in the case on hand, the post of Post Graduate Assistant in Commerce was not in force in the year 2004, since the said post was lapsed in the year 1997-1998. After reinstatement of Mr.Rangesan, there were two Post Graduate Assistants in Commerce. Mr.Selvaraj, Junior most man was redeployed to a different school in Kanyakumari District. Of course, the said order was challenged before this Court and this Court has set aside the said order with a direction to consider the objection made by the petitioner and that was considered and the impugned order was categorically stated that after the restarting of the course in the year 2004-2005, the post of Post Graduate Assistant in Commerce was neither revived nor fresh sanction was obtained. The post was treated only as self-financed post all through. Accordingly, the petitioner's school restarted the course in the year 2004-2005 and hence, the petitioner is not entitled any grant from the Government as it is a self-financed course. The salary and other benefits to be paid by the institution and not by the Government as it is a self financed course.



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9. It is seen from the typed set of papers that the Headmistress of the school sent a letter to the District Educational Officer, Theni asking for sanctioning of the post for the year 2004-2005. Accordingly, the District Educational Officer has stated that for the said post, only one post was sanctioned and others are deployed surplus. The appellant later seeking permission for starting the vocational course, accordingly, they have also given an undertaking before the authorities that they will not claiming any claim or grant from the Government and both the undertaking be incorporated. Now, the appellant filed the writ petition asking for this prayer.

10. In view of the above, the learned Single Judge has rightly dismissed the writ petition and there is no ground to interfere with the order of the learned Single Judge. Accordingly, the writ appeal is dismissed. No costs.

[V.B.S.,J.] [K.K.R.K.,J.]
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Index : Yes / No
Internet : Yes / No
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V.BHAVANI SUBBAROYAN, J.



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and
K.K.RAMAKRISHNAN,J.

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