



W.P.No.12239 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.01.2025

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.12239 of 2020

and

W.M.P.Nos.15005 and 15006 of 2020

S.Kiruba Keller

...Petitioner

-Vs-

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

2.The Chief Educational Officer,
Chennai Educational District,
Egmore, Chennai-600 008.

3.The District Educational Officer,
Central Chennai,
Saidapet, Chennai-600 015.

4.The Correspondent,
C.S.I.Monahan Girls Higher Secondary School,
Royapettah, Chennai-600 014. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Certiorari, to call for the records relating to the impugned notice issued by the 3rd



W.P.No.12239 of 2020

respondent in Na.Ka.No.01094/Aa2/2020 dated 13.07.2020 and to quash the same.

WEB COPY

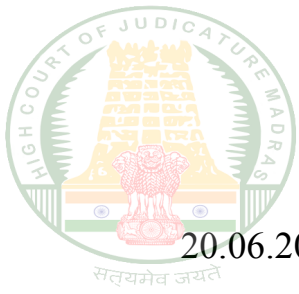
For Petitioner : Mr.S.Nedunchezhiyan

For Respondents 1 to 3 : Mr.T.M.Rajangam
Government Advocate

ORDER

This writ petition is filed for issuance of a Writ of Certiorari, to call for the records relating to the impugned notice issued by the 3rd respondent in Na.Ka.No.01094/Aa2/2020 dated 13.07.2020 and to quash the same.

2. The case of the petitioner is that she is qualified with B.Sc.,(Computer Science), B.Ed., and M.Sc., (Information Technology). The 4th respondent school is a Government Aided School sanctioned with teaching posts including one post of Vocational Instructor (Computer Science). The post of Computer Science Teacher become vacant due to retirement of incumbent Tmt.Ranjani on 31.05.2014, for which, the petitioner was selected and appointed vide appointment order dated 19.06.2014, followed by the order of appointment of 4th respondent dated 20.06.2014 and the petitioner joined in the service on the same day on

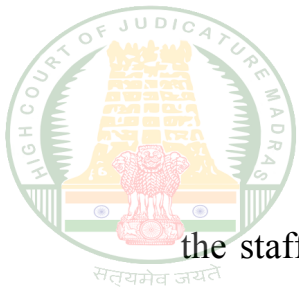


W.P.No.12239 of 2020

20.06.2024 (F.N.). The proposal was forwarded by the 4th respondent school to the 3rd respondent and the 3rd respondent issued orders dated 18.08.2016 approving the appointment of the petitioner in the post of Computer Science Teacher with effect from 20.06.2024 with assessment of salary grant in the scale of pay of Rs.9300-34800+466 GP.

3. The 3rd respondent issued the impugned proceedings dated 13.07.2020 in the form of Show Cause Notice by referring to the proceedings by the department dated 28.08.2003 as per which if a vacancy arose to the post of Vocational Instructor due to retires, resigns, dies or left for another job, it should be surrendered to the department on that basis, the approval of appointment granted in favour of the petitioner with effect from 20.06.2024 vide order dated 18.08.2016 is liable to be cancelled and accordingly the petitioner and the 4th respondent school directed to offer explanation within 15 days. Aggrieved over the same, the petitioner has come forward with the present writ petition.

4. The learned Senior Counsel appearing for the petitioner would submit that the post of Computer Science Teacher is a sanctioned post as per



W.P.No.12239 of 2020

the staff fixation order for the year 2014-15, 2015-16. In the year 2016-17, the post of Computer Science Teacher was stated to be surrendered after the retirement of previous incumbent Tmt.Ranjani vide order dated 30.09.2016. Whereas, it has been immediately corrected and a Corrigendum was issued vide proceedings of the 2nd respondent dated 19.12.2016 by restoring the post of Computer Science Teacher in the year 2016-17 staff fixation order.

5. The learned Senior Counsel would further submit that the Computer Science course remains to be ongoing course even for the present academic year and there are 57 students in 11th Standard and 38 students in 12th Standard facing public examination. While so, the impugned proceedings in the form of show cause notice is against the ratio already rendered by the orders of this Court and it remains to be arbitrary exercise of power and the same is unsustainable.

6. The learned Senior Counsel would further submit that the Chief Educational Officer/2nd respondent herein has issued a proceedings in Na.Ka.No.7270/A6/2016 dated 30.09.2016 by which he has informed the Registrar/Secretary of the 4th respondent school that permission was granted



W.P.No.12239 of 2020

to appoint Teacher in the 4th respondent school for the Academic Year 2016-

WEB COPY

7. The Chief Educational Officer / 2nd respondent herein has issued letter to the Correspondent/Secretary of the 4th respondent school vide Na.Ka.No.9272/A6/2019 dated 24.01.2020 granting permission to fill up the vacancy for the Academic Year 2019-20.

8. As per the staff fixation for the period 2019-20, one post is sanctioned for vocational Teacher (Computer Science) and it is a sanctioned post as per the 2nd respondent. He further submitted that in the Division Bench Judgment of this Court in W.A.(MD).No.652 of 2013 in State of Tamil Nadu v. The Correspondent, St.Joseph's Malankara Shyrian Catholic Higher Secondary School and also further reported in the judgment of the Division Bench of this Court in W.A.Nos.887 and 888 of 2018 dated 02.01.2019 in the case of The Government of Tamil Nadu rep.by its Secretary to Government, Chennai and others v.P.Vivekanandan, **held that when there is a post available in Vocational Instructor, as per staff fixation order, the approval order made in the sanctioned post cannot be denied. Even if any objection in strength and if the post become surplus**

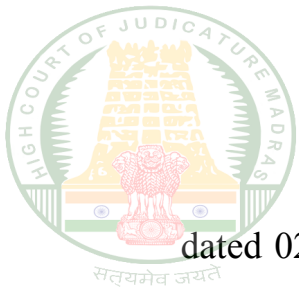


W.P.No.12239 of 2020

and after granting approval, the said Teacher along with the post could be transferred/deployed to a needy school. It is further held by this Court in the orders passed in W.P.(MD).No.13965 of 2015 dated 01.12.2016, followed number of judgments that the approval to the appointment made against a sanctioned vacancy cannot be denied, citing the proceedings of the Director, dated 28.08.2003. It is further held that once there is a sanctioned post and so long as there is a necessity to maintain the teacher pupil ratio and as long as the recognition for the course continue with sufficient student strength the question of surrendering the post does not arise at all.

9. The learned Senior Counsel would further submit that at the time of admission of the writ petition, this Court was pleased to pass order of interim stay on 07.09.2020 and the same is in force till date and no vacate stay petition has been filed by the respondents.

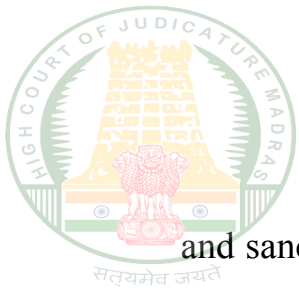
10. The learned Senior Counsel would further submit that the proceedings dated 28.08.2003 has already held unsustainable as per the judgment of Division Bench of this Court in W.A.Nos.887 and 888 of 2018



W.P.No.12239 of 2020

dated 02.01.2019 and in the judgment in W.A.(MD).No.1494 of 2017 dated 01.03.2018 as well as the orders passed in W.P.No.13965 of 2015 dated 01.02.2016 followed in the orders in W.P.No.30313 of 2017 dated 09.01.2019. Hence, the impugned Show Cause Notice issued by the 3rd respondent on the same basis is ex-facie in violation to the settled proposition of law as held in number of judgments of this Court and therefore, the same is liable to be set aside. Hence, the petitioner has filed this writ petition before this Court.

11. The learned Government Advocate appearing for the respondents 1 to 3 would submit that the petitioner school is a minority school run and administered by the CSI Diocese. It is aided by the Government of Tamil Nadu as a minority educational institution and is governed by the provisions of the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules 1977 and Tamil Nadu Recognised Private Schools Act, 1973 and Rules 1974 framed thereunder. The Government of Tamil Nadu was pleased to issue instructions in G.O.Ms.No.1719 Education Department dated 14.09.1978 for running vocational course in Higher Secondary Schools as a part of the curriculum



W.P.No.12239 of 2020

and sanction was accorded among others for the creation of post of part time Vocational Instructors at the rate of 2 for each Vocational Course. Since part time instructors were submitting frequent representations to absorb them in the regular stream, the Government of Tamil Nadu was pleased to issue G.O.Ms.No.712 Education (HS) Department dated 28.05.1990 wherein sanction was accorded initially to the creation of 800 posts of Vocational Instructors who were serving as Part time Vocational Instructors in Higher Secondary Schools in the scale of pay of Rs.1400-40-1600-50-2300-60-2600 to teach Vocational Education on various subjects with effect from 01.04.1990 so as to absorb the fully qualified double part time vocational instructors on regular basis. The Government also increased the remuneration of remaining double part time vocational instructors from Rs.800/- to Rs.900/- per month from 01.04.1990.

12. The learned Government Advocate would further submit that the Government decided to constitute a Committee to go into the issue and to review the entire concept of vocationalisation in Higher Secondary Schools and the regularization to be done on the report of the Committee. The Committee was constituted in G.O.Ms.No.1486 Education Department dated



W.P.No.12239 of 2020

05.11.1990. The Government of Tamil Nadu was pleased to issue

G.O.Ms.No.967 Education where by 587 posts of Vocational Instructors in the scale of pay of Rs.1400-40-1600-50-2300-60-2600 to teach vocational education in various subjects so as to absorb the fully qualified double part time instructors on regular basis with effect from 16.10.1992 and the posts sanctioned will be for a period of 3 years. Thereafter, the Director of School Education vide Proceedings 186489/W26/III/89 dated 30.11.1992, wherein direction was issued to the Chief Educational Officers concerned to issue appointment orders to the fully qualified double part time vocational instructors working under all managements under their jurisdiction. It was clearly stated that the posts now sanctioned distributed are only to absorb the double part time teachers who were working as on 15.10.1992 and that the Chief Educational Officers were to be held responsible for the entire process of absorption of double part time teachers into full time teachers. It was also instructed that if any teacher who has left the services either before 15.10.1992 or after 15.10.1992 the post sanctioned on behalf of him should be surrendered to Director and it should not be utilized on behalf of anybody else.



W.P.No.12239 of 2020

13. The learned Government Advocate would further submit that

the appointment of the petitioner was erroneously approved by the 3rd respondent based on the proposals submitted by the 4th respondent school.

It is pertinent to note that the post of vocational instructor was created to absorb the part time individuals working as part time vocational instructors and on becoming vacant, the post will be considered to have been lapsed and no new appointment should be made on that post. As the 3rd respondent wrongly approved the appointment of the petitioner and it was noticed that the approval was given erroneously and consequently necessary notice was issued by the 3rd respondent to the 4th respondent school management as to why the approval given for the appointment of the petitioner with effect from 20.06.2014 should not be cancelled and why action should not be taken to resume back the order erroneously issued by the 3rd respondent.

14. He would further submit that in view of the policy decision of the Government the incumbents working in part time posts of vocational instructors, were given time scale of pay under regular stream with effect from 01.04.1990. As per G.O.Ms.No.991, Education Department dated 16.07.1990, it was specifically instructed not to make any fresh appointments



W.P.No.12239 of 2020

of part time instructors (Vocational), not to convert any single part time teacher into double part time teacher or vice versa without obtaining specific orders of Director in this regard. Based on G.O.Ms.No.991, Education Department, dated 16.07.1990, the post of Vocational Instructor cannot be filled up after 16.07.1990 and if any post falls vacant, such post will automatically cease to function. As per G.O.Ms.No.128 School Education Department, dated 12.06.2007, a High-Level Committee on Vocational Education was constituted to review the present status of the Vocational Education Courses offered in Higher Secondary Schools in the state and to revamp the Vocational Education in accordance with the present day requirements. It was specifically instructed not to appoint any teacher at that stage till the revised system of Vocational Education was fully finalized.

15. The learned Government Advocate would further submit that the petitioner's school is governed by the provisions of Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977. Under Section 14(i)(ii) of the Act, the Government subject to availability of the funds and the norms and conditions specified in the Grant-in-aid code of Tamil Nadu Government Education will pay to the Private School any grant or other



W.P.No.12239 of 2020

financial assistance. Under Rule 15(1) of the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977, the number of teachers employed in a private school shall not exceed the number of posts sanctioned by the Director of School Education, from time to time, with reference to the academic requirements teacher-pupil ration and overall financial consideration.

16. He would further submit that the petitioner's school should have discontinued the course which was permitted to continue till the existing incumbent retires or the post becomes vacant for other reasons. It is submitted that as a policy decision, the vocational stream was discontinued and hence the G.O.Ms.No.9 dated 06.01.2009 is applicable to the existing post also and should have been allowed to lapse. However, when the post became vacant, the prior permission of the Government should have been obtained in terms of G.O.Ms.No.9 School Education (VE) Department, dated 06.01.2009, explaining the need for the post to the school. The action of the 4th respondent school in having filled up the post is against the rules and is not sustainable in law.



W.P.No.12239 of 2020

17. Heard the learned counsel on both sides and perused the materials available on record.

18. In the case on hand the petitioner was appointed as Vocational Instructor (Computer Science) on 20.06.2014 and it is a sanctioned post in the 4th respondent school, which is a Government Aided School. **Thereafter, the proposal was forwarded by the 4th respondent school to the 3rd respondent and the 3rd respondent issued order dated 18.08.2016 approving the appointment of petitioner in the post of Computer Science Teacher with effect from 20.06.2014 with assessment of salary grant in the scale of pay of Rs.9300-34800+4600 G.P. The 3rd respondent has granted approval to the appointment of the petitioner in the sanctioned post and it cannot be said that the approval has been wrongly given or approved by the 2nd respondent, which is unsustainable in law. The 3rd respondent has issued letter vide proceedings Na.Ka.No.7270/A6/2016, dated 30.09.2016 to the Registrar/Secretary to the 4th respondent School to appoint the vacant post of teachers and not teaching staff and as per staff fixation for the Academic Year 2016-17. Thereafter the 3rd respondent has issued another proceedings in Na.Ka.No.9272/A6/2019,**



W.P.No.12239 of 2020

dated 24.01.2020 for granting appointment to the post of Teacher and non-teaching staff for the year 2019-20 and as per the staff fixation for the Academic Year 2019-20, one post is sanctioned post in Vocational Teacher (Computer Science). Hence, it is crystal clear and evident that the post in Computer Science for which the petitioner was appointed in the year 2014 is a sanctioned post and the contention of the respondents that the proposal sent by the 4th respondent School for approving the appointment of the petitioner has been wrongly approved by the 3rd respondent is unsustainable and untenable in law.

19. This Court in various judgments in Writ Appeals and orders in Writ Petitions have held that the appointment against the sanctioned vacancy cannot be denied by stating the proceedings of the Director dated 28.08.2003. As per the staff fixation for the period 2019-20, one post is sanctioned for vocational Teacher (Computer Science) and it is a sanctioned post as per the 2nd respondent. In the Division Bench Judgment of this Court in W.A.(MD).No.652 of 2013 in State of Tamil Nadu v. The Correspondent, St.Joseph's Malankara Shyrian Catholic Higher Secondary School and also further reported in the



W.P.No.12239 of 2020

judgment of the Division Bench of this Court in W.A.Nos.887 and 888 of

WEB COPY

2018 dated 02.01.2019 in the case of The Government of Tamil Nadu

rep. by its Secretary to Government, Chennai and others

v.P.Vivekanandan, held that when there is a post available in Vocational

Instructor, as per staff fixation order, the approval order made in the

sanctioned post cannot be denied. Even if any objection in strength and

if the post become surplus and after granting approval, the said Teacher

along with the post could be transferred/deployed to a needy school. It is

further held by this Court in the orders passed in W.P.(MD).No.13965 of

2015 dated 01.12.2016, followed number of judgments that the approval

to the appointment made against a sanctioned vacancy cannot be denied,

citing the proceedings of the Director, dated 28.08.2003. In another

judgment in W.P.(MD).Nos.1469 and 1470 of 2019 dated 31.01.2019, in

the case of Lovisal Roselin and another and The Secretary to

Government, Department of School Education, Fort St.George, Chennai

and others, this Court allowed the writ petition and set aside the

impugned orders. It is further held that once there is a sanctioned post

and so long as there is a necessity to maintain the teacher pupil ratio and

as long as the recognition for the course continue with sufficient student



W.P.No.12239 of 2020

strength the question of surrendering the post does not arise at all.

WEB COPY

20. It is also pertinent to note that at the time of admission of the writ petition, this Court has granted interim stay on 07.09.2020 and the same is in force till date and no vacate stay petition has been filed by the respondents.

21. In view of the factual matrix, this Court is of the considered view that the 3rd respondent has granted approval to the appointment of the petitioner in the sanctioned post of Vocational Teacher (Computer Science) and it cannot be stated that the approval has been wrongly given or approved by the 2nd respondent, which is unsustainable in law. Therefore, the impugned notice issued by the 3rd respondent in Na.Ka.No.01094/Aa2/2020 dated 13.07.2020 is liable to be quashed and accordingly, the same is quashed.

22. In the result, this writ petition is allowed with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.



W.P.No.12239 of 2020

10.01.2025

WEB COPY

Index : Yes

Internet: Yes

Speaking / Non Speaking order

Neutral Citation Case: Yes / No

ssn

To

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

2.The Chief Educational Officer,
Chennai Educational District,
Egmore, Chennai-600 008.

3.The District Educational Officer,
Central Chennai,
Saidapet, Chennai-600 015.

4.The Correspondent,
C.S.I.Monahan Girls Higher Secondary School,
Royapettah, Chennai-600 014.

J.SATHYA NARAYANA PRASAD, J.,

ssn



WEB COPY



W.P.No.12239 of 2020

**W.P.No.12239 of 2020
and
W.M.P.Nos.15005 and 15006 of 2020**

10.01.2025