



W.A(MD)Nos.559 and 560 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.10.2024

Pronounced on : 20.01.2025

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**W.A(MD)Nos.559 and 560 of 2022
and
C.M.P.(MD)Nos.4875 and 4877 of 2022**

B.Siva Sankari ... Appellant in W.A.(MD)No.559 of 2022/
Petitioner in W.P.(MD)No.18856 of 2017

R.Tamil Selvi ... Appellant in W.A.(MD)No.560 of 2022/
Petitioner in W.P.(MD)No.18857 of 2017

-vs-

- 1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St.George, Chennai - 600 009.
- 2.The Director of Elementary Education,
College Road,
Chennai - 600 006.
- 3.The District Elementary Educational
Officer, R.M.S.Road, Madurai.
(Now redesignated as the District
Educational Officer, Usilampatti,
Madurai District.)
- 4.The Assistant Elementary Educational
Officer, Usilampatti,
Madurai District - 625 532
(Now Redesignated as the Block
Educational Officer, Usilampatti,



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Madurai District.)

5.The Correspondent,
TELC Middle School,
Peraiyur Road, Usilampatti,
Madurai District - 625 532.

... Respondents in both writ
appeals / Respondents

PRAYER in W.A.(MD)No.559 of 2022: Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 19.05.2022 in W.P.(MD)No. 18856 of 2017.

PRAYER in W.A.(MD)No.560 of 2022: Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 19.05.2022 in W.P.(MD)No. 18857 of 2017.

In Both Writ Appeals:

For Appellant : Mr.G.Thalaimutharasu
For R-1 to R-4 : Mr.R.Baskaran,
Additional Advocate General,
Assisted by,
Mr.S.P.Maharajan,
Special Government Pleader
For R-5 : Mr.K.R.Laxman

COMMON JUDGMENT

[Judgment of the Court was made by L.VICTORIA GOWRI, J.]

These writ appeals are filed against the order dated 19.05.2022 passed by the learned Single Judge of this Court, dismissing the writ petitions filed by the respective writ petitioners, namely, B.Siva Sankari and R.Tamil Selvi, challenging the impugned staff fixation made by the



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respondent authorities with respect to TELC Middle School, Peraiyur road, Usilampatti, Madurai District, and further seeking to direct the respondent authorities to approve the appointment of the respective writ petitioners in the aforesaid TELC Middle School as Secondary Grade Teachers.

2.One Secondary Grade Teacher post fell vacant on 13.01.2010 in the 5th respondent school due to the resignation of the then incumbent, one V.Veni on 12.01.2010 and in the said vacancy B.Siva Sankari was appointed on 01.07.2010. The school submitted a proposal to DEEO on 13.07.2011, requesting to approve the appointment. Another post of Secondary Grade Teacher fell vacant on 02.07.2010 due to the transfer of the then incumbent, one M. Rajeshwari, on 01.07.2010, to another school under the same management, namely, Y.M.C.C Middle School, Madurai. In that vacancy, the school appointed one R.Tamil Selvi as Secondary Grade Teacher with effect from 02.07.2010. The school submitted the proposal on 13.07.2011, requesting to approve the appointment of one R.Tamil Selvi.

3.In the meanwhile, the second respondent / DEEO without approving the appointment of the appellants herein, finalized the staff fixation for the 5th respondent school for the academic years 2009-2010 and 2010-2011 on 13.12.2010, in which one post of Secondary Grade Teacher was rendered as surplus for the academic year 2009-2010. However, for the academic year 2010-2011, two posts of Secondary Grade Teachers



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were rendered surplus in the 5th respondent school. Hence, the 5th respondent school submitted a representation requesting the 2nd respondent to re-consider and re-fix the staff strength on 07.01.2011. Since the 5th respondent school's proposal to approve the appointment of the appellants herein was kept pending by the second respondent, the appellants herein filed the writ petitions in W.P.(MD)Nos.18856 and 18857 of 2017 respectively, challenging the staff fixation dated 13.12.2010 and further praying to direct the District Elementary Educational Officer to approve the appointment of the appellants / petitioners as Secondary Grade Teachers with effect from their date of appointment. Relying upon the full bench judgment in the case of **Director of Elementary Education vs. Thirumathi. S.Vigila reported in 2006 5 CTC 385**, the learned single judge dismissed the writ petitions for the reason that when the posts are declared as surplus, the school is not entitled to fill up the posts and concluded that the appointments of both the teachers are not in accordance with law by the impugned order dated 19.05.2022.

4.The impugned staff fixation for the academic years 2009-2010 and 2010-2011 was finalized by the second respondent by proceedings dated 13.12.2010. In the said proceedings for the academic year 2009-2010, one Secondary Grade Teacher post has been rendered surplus, and for the academic year 2010-2011, two Secondary Grade Teacher posts have been rendered as surplus. Challenging the said staff fixation, the 5th respondent



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school filed a writ petition in W.P.(MD)No.7698 of 2014 and this Court, by order dated 20.08.2019, disposed of the aforesaid writ petition, and the operative portion of the same is extracted as follows:

“The inspection report of the District Elementary Educational Officer regarding the Fixation of Staff strength is sought to be quashed in the present writ petition. Further, a direction is sought for to direct the third respondent to approve the appointments of B. Siva Sankari as Secondary Grade Teacher with effect from 01.07.2010 and R.Tamilselvi as Secondary Grade Teacher with effect from 02.07.2010.

2.The teachers, who were appointed by the writ petitioner management, were not considered for grant of approval on account of the fact that there was no adequate student strength for the purpose of sanctioning the staff. The student strength as well as the required number of staffs were ascertained by the competent authorities in the inspection report and the said inspection report of the academic year 2010-11, is under challenge in the present writ petition.

3.Even at that point of time, two surplus teachers were identified. However already eight years lapsed and the current student strength is to be assessed with reference to the current academic year inspection report and accordingly, the writ petitioner / management can claim staff strength as per the Government orders in the matter of students-teachers ratio. Accordingly, the respondents shall verify the current academic year inspection report of the petitioner's school and fix the staff strength based on the Government orders and accordingly, take all necessary actions to implement the policy of the Government, in the matter of students-teachers ratio.



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4.In this view of the matter, the impugned inspection report of the year 2010-11, which is relevant on significance, on account of the efflux of time and the staff strength is to be fixed based on the current inspection report and all necessary actions shall be taken by the respondents to fix the staff strength based on the student strength as per the Government orders.”

5.In the meanwhile, it is understood that the writ petitions against which these appeals are filed, that is, the writ petitions in W.P.(MD)Nos. 18856 and 18857 of 2017 were taken up for hearing by this Court, and this Court on 28.01.2020 passed an order, and the relevant portion of the same reads as follows:

“It is seen that the fifth respondent school had earlier filed a writ petition in W.P(MD) No.7698 of 2014 challenging the staff fixation of their school for the year 2010-2011, which renders two posts of Secondary Grade Teacher as surplus. This Court by an order dated 20.08.2019, had directed the respondents to verify the current academic year inspection report of the fifth respondent school and fix the staff strength in accordance with law, who also states that due to efflux of time, the inspection report of the year 2010-2011 was not relevant and therefore, the staff strength is to be fixed based on the current inspection report.

2.It is stated by the learned Government Advocate that pursuant to the order dated 20.08.2019, the respondents are now processing to fix the staff strength of the fifth respondent school for the current academic year.



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3. Since the petitioners herein, who are Secondary Grade Teachers in the fifth respondent school also seek approval of their appointment with effect from the year 2010 itself, it would be appropriate to await the outcome of any decision to be taken by the respondents pursuant to the earlier order of this Court dated 20.08.2019. In this background, there shall be a direction to the third respondent herein, which post is now said to have been redesignated as District Educational Officer, Usilampatti, Madurai District, to comply with the directions of this Court passed in W.P(MD) No.7698 of 2014, on or before 15.02.2020. While determining the staff strength, the respondents shall consider the staff strength reflected in the grant-in-aid proposal for the year 2010-2011, which has been countersigned by the Assistant Elementary Educational Officer on 02.02.2011. The petitioners are also at liberty to supply a copy of the said proposal to the third respondent herein.

4. The learned Government Advocate is directed to file a report covering the compliance of this order.

5. Post the matter on 20.02.2020 under the caption for orders.”

6. Thereafter, both the writ petitions were posted for orders on 20.02.2020. Pursuant to the order passed by this Court in the aforesaid writ petitions on 28.01.2020, directing the District Educational Officer, Usilampatti, Madurai district, to comply with the directions of this court passed in W.P.(MD)No.7698 of 2014 on or before 15.02.2020, the District Educational Officer, Usilampatti by proceedings in Na.Ka.No.3304 / Aa3 / 2018 dated NIL.03.2020 signed as 03.03.2020 finalized the staff fixation



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for the academic year 2019-2020 rendering two posts of Secondary Grade Teachers as surplus and concluded that the approval of the petitioners in the post of Secondary Grade Teacher in the 5th respondent school cannot be considered. However, it is understood that the writ petitions in W.P. (MD)Nos.18856 and 18857 of 2017 were later taken up for hearing during 2022, and the impugned order of the learned single judge that the 5th respondent school ought not to have appointed the two posts of Secondary Grade Teachers when the same were declared as surplus came to be passed. The learned single judge in para 4 of the impugned order has observed that W.P.(MD)No.7698 of 2014 filed by the school was pending as on 19.05.2022 when the writ petitions came up for hearing.

7.A careful perusal of the order passed by this court in W.P.(MD)No. 7698 of 2014 and W.P.(MD)Nos.18856 and 18857 of 2017 would reveal that in both cases, the counsel for the petitioner was one and the same. Hence, it can be precisely understood that while arguing the cases in W.P. (MD)Nos.18856 and 18857 of 2017, the learned counsel for the petitioners in the writ petitions therein, failed to bring to the notice of this Court as to the disposal of W.P.(MD)No.7698 of 2014 on 20.08.2019. That apart, it could also be understood that the consequential order pursuant to the order passed by this Court in W.P(MD)No.7698 of 2014 dated 20.08.2019 passed by the District Educational Officer, Usilampatti, by proceedings dated nil.03.2020, rejecting the school's proposal to approve the



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appointment of the petitioners in the post of Secondary Grade Teachers was also not brought to the notice of the learned single judge at the time of arguments in W.P.(MD)Nos. 18856 and 18857 of 2017 dated 19.05.2022 by the learned counsel for the petitioners therein. Neither the appellants herein nor the 5th respondent school have challenged the aforesaid consequential order of the District Educational Officer, Usilampatti, by proceedings in Na.Ka.No. 3304 / Aa3 / 2018 dated nil.03.2020 signed on 03.03.2020. Now, the appellants have filed these writ appeals through another counsel.

8.We directed the respondent authorities to file the complete details as to the staff fixation with respect to the 5th respondent school from the academic years 2010-2011 to 2023-2024 and the same was duly filed by the District Educational Officer, Usilampatti, on 24.09.2024, and the relevant portion of the same is extracted as follows:

Name of the school			TELC Middle School, Peraiyur Road, Usilampatti.		
S.No.	Academic Year	Strength of students	Strength of Secondary Grade Teachers	Required Secondary Grade Teachers as per G.O.	Surplus posts with teachers
1.	2010-2011	133 + 321	15	13	2



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2.	2011-201 2	149+349	15	14	1
3.	2012-201 3		14	14	0
4.	2013-201 4	169+371	14	14	0
5.	2014-201 5	0	14	14	0
6.	2015-201 6	151+204	14	9	5
7.	2016-201 7	220+269	12	12	0
8.	2017-201 8	333+290	12	13	0
9.	2018-201 9	276+168	12	11	1
10.	2019-202 0	198+186	12	8	4
11.	2020-202 1	224+199	12	8	4
12.	2021-202 2	255+228	12	8	4
13.	2022-202 3	242+292	12	12	0
14.	2023-202 4	156+235	11	11	0

9.It can be understood that both the appellants herein, from the date of their appointment are continuing to serve in the school for the past more than 14 years. According to the details submitted by the District



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Educational Officer, Usilampatti, dated 24.09.2024, it could be understood that there were no surplus in the 5th respondent school during the academic years 2012-2013, 2013-2014, and 2014-2015. However, during the academic year 2015-2016, five Secondary Grade Teacher posts were rendered surplus by the respondent authorities. Further during the academic years 2016-2017 and 2017-2018, there were no surplus teachers in the 5th respondent school. Unfortunately, during the academic years 2018-2019, one teacher was rendered surplus and during 2019-2020, four teachers were rendered surplus.

10.It was precisely during this period on the basis of the order passed by this Court in W.P.(MD)No.7698 of 2014 dated 20.08.2019, this Court directed the respondent authorities to consider the school's proposal for approval of the appellants as Secondary Grade Teachers on the basis of the staff fixation for the current academic year, that is, 2019-2020. Since four teachers were rendered surplus with respect to the 5th respondent school during the academic year 2019-2020, the District Educational Officer, Usilampatti, rejected the school's proposal for approving the appointment of the appellants as Secondary Grade Teachers. Without considering the order passed by this court in W.P.(MD)No.7698 of 2014 dated 20.08.2019 and the order passed by this Court in the very same writ petitions in W.P.(MD)Nos.18856 and 18857 of 2017 dated 28.01.2020, the learned single judge dismissed the writ petitions in W.P.(MD)Nos.18856



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and 18857 of 2017 on 19.05.2022. The District Educational Officer, Usilampatti, has already rejected the proposal of the 5th respondent school seeking approval of the appellants' appointment as Secondary Grade Teachers by proceedings dated nil.03.2020. The said order was also not brought to the notice of the learned single judge.

11. Interestingly, the details submitted by the District Educational Officer, Usilampatti, would reveal that even during the academic years 2020-2021, four teachers were rendered surplus. Further on 2021-2022, four teachers were rendered surplus. However, during the academic years 2022-2023 and 2023-2024, there are no surplus teachers in the 5th respondent school. This particular aspect was brought to the notice of this Court by the learned counsel for the petitioners, and he required this Court to set aside the impugned order of the learned single judge and direct the respondents to approve the appointment of the appellants with effect from the year 2012-2013 from the period, when there was no surplus in the 5th respondent school. It was also understood and verified with the Special Government Pleader appearing for the District Educational Officer, Usilampatti, that all through the academic years from 2011-2012 to 2023-2024, the staff fixation was made by the DEEO / DEO Usilampatti, only taking into account the strength of the appellants herein.



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12.Hence, considering the fact that the appointments of the appellants herein were made as early as during the academic year 2010-2011 and the fact that the appellants are continuing to serve in the 5th respondent school as Secondary Grade Teachers till date, we are careful enough to observe that we cannot negate the orders passed by this Court in W.P.(MD)No.7698 of 2014 dated 20.08.2019 and in the same writ petitions, that is, W.P.(MD)Nos.18856 and 18857 of 2017 dated 28.01.2020. Only pursuant to the aforesaid orders, the consequential rejection order refusing to approve the appointment of the appellants herein as Secondary Grade Teachers in the 5th respondent school came to be passed by the District Educational Officer, Usilampatti, by proceedings dated Nil.03.2020. The said order is also not challenged either by the appellants herein or by the 5th respondent school. We cannot at the same time undermine the fact that the appellants have continued to serve the schools from the date of their appointment, that is, during the academic year 2010-2011 till date without salary with the fond hope of getting approved in the post of Secondary Grade Teachers. We are also conscious to the fact that since 2010-2011, the respondent authorities, more particularly the DEEO-DEO, Usilampatti, had finalized the staff fixation process of the 5th respondent school only by taking into account the strength of the students as well as the teachers, inclusive of the appellants herein.



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13.It can also be understood that only due to the pendency of the writ petitions filed by the appellants / writ petitioners before this Court, the respondent authorities did not take a final call in the proposal submitted by the 5th respondent school seeking approval of the appellants herein till 03.03.2020, pursuant to the interim orders passed by this Court in W.P.(MD)Nos.18856 and 18857 of 2017 dated 28.01.2020 and the final order passed in W.P.(MD)No.7698 of 2014 on 20.08.2019. We are of the considered opinion that when the writ petitions in W.P.(MD)Nos.18856 and 18857 of 2017 taken up for final disposal, the learned Single Judge dismissed the aforesaid writ petitions on 19.05.2022, without going into the details of the final order passed by this court in W.P.(MD)No.7698 of 2014 and interim orders passed in the same writ petitions, namely, W.P. (MD)Nos. 18856 and 18857 of 2017 dated 28.01.2020.

14.Carefully considering the dismissal of the writ petitions by impugned order dated 19.05.2022 by the learned Single Judge, and recording the fact that the staff fixation for the academic years 2022-2023 and 2023-2024 for the 5th respondent school has been finalized by the District Educational Officer, Usilampatti, without rendering even a single teaching post, more particularly Secondary Grade Teacher posts as surplus with respect to the 5th respondent school, on the basis of the report filed by the District Educational Officer, Usilampatti, dated 24.09.2024, before this Court, we hereby direct the 5th respondent school to forthwith submit a



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fresh proposal seeking approval of the appellants herein as Secondary Grade Teachers in the 5th respondent school. The District Educational Officer, Usilampatti, on receipt of the same, is further directed to approve the appointment of the appellants herein as Secondary Grade Teachers in the 5th respondent school from the academic year 2022-2023, taking into account the long service rendered by them as Secondary Grade Teachers in the 5th respondent school without salary and the fact that from the year of their appointment during the academic year 2010-2011, till the current academic year staff fixation has been made by the DEEO/DEO, Usilampatti District, from time to time, only including the strength of the appellants herein.

15. Accordingly, the writ appeals are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

[R.S.M., J.]

[L.V.G., J.]

20.01.2025

NCC :Yes/No
Index :Yes/No
Internet: Yes
Sml

To

1. The State of Tamil Nadu,
Rep. by its Secretary,
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