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M.Benela Jayarathy Vs. 1.The District Elementary Educational

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Court : Chennai

Decided On : Jul-04-2014

Judge : .R.Mahadevan

Appellant : M.Benela Jayarathy

Respondent : 1.The District Elementary Educational

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

04. 07.2014 CORAM THE HONOURABLE MR.JUSTICE.R.MAHADEVAN W.P(MD)No.14975 of 2010 **** M.Benela Jayarathy ... Petitioner Vs 1.The District Elementary Educational Officer, Tuticorin District, Tuticorin. 2.The Additional Assistant Elementary Educational Officer, Sathankulam, Tuticorin District. 3.The Correspondent, T.D.T.A. Schools, Kadatchapuram, Tuticorin District. ... Respondents This Writ Petition has been filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the second respondent in his proceedings in Na.Ka.No.47/AA1/2010 dated 27.04.2010 and quash the same and direct the respondents to approve the appointment of the petitioner and Secondary Grade Teacher from 11.11.1998 and pay salary to the petitioner upto 16.11.2005 and confer all the consequential benefits. !For petitioner : Mr.V.Paneer Selvam ^For R.1&2 : Mr.J.Gunaseelanmuthiah Government Advocate For R.3 : No appearance ******* :

ORDER

This Writ Petition has been filed praying for a Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the second respondent in his proceedings in Na.Ka.No.47/AA1/2010 dated 27.04.2010 and quash the same and direct the respondents to approve the appointment of the petitioner and Secondary Grade Teacher from 11.11.1998 and pay salary to the petitioner upto 16.11.2005 and confer all the consequential benefits.

2. The short facts for disposal of this Writ Petition is set out hereunder:- On account of a vacancy caused in the third respondent school, due to the promotion of one Suseela, the petitioner came to be appointed as a Secondary Grade Teacher in the third respondent school, on 11.11.1998. While approaching the respondents for approval of the said appointment, it was rejected on the ground that it would be considered after the redeployment of surplus teachers in T.D.T.A. management schools. In the meantime, the petitioner got appointment in the Panchayat Union School, Masarpatti, Tuticorin District, where, she joined on 17.11.2005. It is also averred in the affidavit that the persons who were appointed along with the petitioner and got appointment in the Panchayat Union School have been permitted to have the benefit of counting those services. It is further averred in the affidavit that the issue has been settled by a Full Bench of this Court declaring that each section is entitled to have a teacher. As per the view of the Full Bench, 1:40 is applicable for each section. Pursuant to the said judgment, the petitioner as well as management had put forward necessary papers to the respondents requesting the respondents to consider and approve the appointment of the petitioner from 11.11.1998 to 16.11.2005.

3. The learned counsel appearing on behalf of the petitioner submits that the Hon'ble Division Bench has upheld G.O.Ms.No.525, Education Department, dated 29.12.1997, in the year 2001, till such time, the appointments made as per the old Government order have been approved, because of the interim order granted by this Court. Even as per the latest Government order, which has now been ultimately interpreted by the Full Bench of this Court, the petitioner is entitled for approval. Inspite of the fact that the petitioner fulfills the eligibility criteria, the

respondents have rejected the claim of the petitioner. Hence, the petitioner is before this Court, for the relief stated earlier. He further submits that the issue in question has been elaborately dealt with by this Court and this Court approved the claim of the respective school and since the petitioner also stands in a similar footing, there is no justification to thwart the claim of the petitioner.

4. Mr.J.Gunaseelanmuthiah, learned Government Advocate vehemently argued that when the third respondent knowing fully well that there is a surplus post, they unilaterally appointed the petitioner in the place of a surplus teacher, without getting approval from the respondents and therefore, as per the Government Rules in force, the grant is not permissible, as per Rule 6(2) of the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977. But, for the mistake committed by the third respondent school, the Government cannot be made liable, besides, for the irregular appointment, without getting prior approval, like the case of the petitioner, it would affect the public exchequer and therefore, viewed from any angle, the impugned order is sustained in the eye of law.

5. I have carefully considered the submissions made on either side. A similar issue came up for consideration before this Court and the Full Bench of this Court in the decision made in W.A.No.313 of 2006 dated 4.11.2006 reported in 2006

(5) CTC385(para

23) (Director of Elementary Education, Chennai-6 and others v. S.Vigila and another) held as follows, ".23. Keeping in view the various relevant aspects, we feel that G.O.Ms.No.525, dated 29.12.1997 should be interpreted in the following manner:

(1) The ratio of students-teacher strength as indicated in the G.O. Should be primarily considered by taking each individual standard/section as a unit.

(2) The minimum strength of teachers required obviously should not fall below the number of Standards/Section in a school. In other words, if there are five standards, obviously the minimum number of teachers should be five, out of which one would be the Headmaster.

(3) If the students' strength in a particular Standard exceeds 60, at that stage, an additional section is required to be created requiring the sanction of a second teacher and the strength reaches 100, the post of a third teacher is required.

(4) Even after maintaining the aforesaid ratio by taking into account the students' strength of each individual standard and additional section, as the case may be, by keeping in view the teacher-students ratio 1:40 of the entire school if the teachers strength is required to be increased, the same has to be allowed, but in no case, the teachers' strength should be less than the number of standards including the additional sections. If more teachers are thus sanctioned keeping in view the over all strength of the school, the authorities of the school should create additional section in respect of any particular Standard according to the need and convenience keeping in view the standard of education. This requirement is not only in respect of Aided Schools or Government Schools, but also in respect of any Private Recognized School. In other words, this ratio is to be maintained for any school which required recognition. It would be obviously open to the Government to formulate appropriate norms in consonance with the above observation and provisions of the Constitution.".

4. The rejection of approval of similar teacher on the ground that in some other Schools of this Management excess teachers are available and the petitioner's appointment cannot be approved unless the excess teachers are deployed to a needy vacancy was considered by this Court in the order made in W.P.No.4372 of 2006, by order dated 01.09.2006, wherein, this Court repelled such stand taken by the respondents. The said order was followed in W.P.Nos.10350 to 10352 of 2006, order dated 08.12.2006. The said order passed in W.P.No.10351 of 2006 was challenged in W.A.292 of 2007 and the same was dismissed by the Division Bench on 02.08.2007. The orders in W.P.Nos.10350 & 10352 of 2006 were also confirmed in W.A.No.194 of 2007 and W.A.No.205 of 2007, dated 09.06.2007. The said orders were also implemented. 6. In view of the said settled position, there is no justification to deny the approval sought for by the petitioner, as the petitioner was appointed in the sanctioned vacancy and the school in which she was appointed is eligible to post the petitioner as Secondary Grade Teacher and she is fully qualified for being appointed in the said post.

7. In the light of the above, the impugned order dated 27.04.2010 passed by the second respondent is set aside and the respondents are directed to approve the appointment of the petitioner from the date of her appointment, ie.11.11.1998 to 16.11.2005, and grant salary and also other monetary benefits, as applicable to the petitioner. Such exercise should be done by the respondents, within a period of four weeks from the date of receipt of a copy of this order. With the above direction, this writ petition is allowed. No costs. 04.07.2014 Index :Yes/No Internet :Yes/No To 1.The District Elementary Educational Officer, Tuticorin District, Tuticorin. 2.The Additional Assistant Elementary Educational Officer, Sathankulam, Tuticorin District. R.MAHADEVAN,J.

ssm W.P(MD)No.14975 of 2010 04.07.2014

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