

(2012) 12 MAD CK 0116

In the Madras High Court

Case No : Writ Petition (MD) No. 3221 of 2009 and M.P. (MD) No's. 1 to 3 of 2009

The Correspondent, Nehru Middle School

APPELLANT

Vs

The Director of Elementary Education, The District
Elementary Education Officer and The Additional Assistant
Elementary Educational Officer

RESPONDENT

Date of Decision : 21-12-2012

Acts Referred:

Citation : (2013) WritLR 354

Hon'ble Judges : K. Ravichandrabaabu, J

Bench : Single Bench

Advocate : Issac Mohanlal, for the Appellant; R. Anandaraj, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K. Ravichandrabaabu, J.—The petitioner challenges the order of the 2nd respondent declaring two posts of Secondary Grade Teacher as surplus and consequently seeking for a direction to the 2nd respondent to approve the appointment of one Mr. Shanthi as Secondary Grade Teacher with effect from 28.04.2008 and disburse the salary and other monetary benefits. The case of the petitioner is that the petitioner's School is a recognised and aided private School. It was established as a Primary School in the year 1920 and later on upgraded as Middle School in the year 1956. The petitioner School is offering education from Standard I to VIII. The total students strength was 194 and there were five teachers working in the institution, out of whom one is Headmaster and another one is B.T. Assistant and three are Secondary Grade Teachers. As per G.O.Ms. No. 525, (School Education), dated 29.12.1997, a new ratio of 1:40 was adopted for fixation of the teachers strength. According to the above said norms, the School is entitled to have eight Secondary Grade Teachers on the basis of the students strength and the number of standards/classes. However, only six Secondary Grade Teacher posts were sanctioned so far. The 2nd respondent,

while fixing the staff strength for the academic year 2008-2009, had shown only 4 teachers as eligible to the petitioner's School as per the G.O.Ms. No. 525 and consequently, declared the other two Secondary Grade Teacher posts as surplus. In so far as the said two posts of Secondary Grade Teachers are concerned, which are declared as surplus, one became vacant on 2.06.2006 on account of the promotion of the incumbent as Headmaster. In respect of the other Secondary Grade post, the same became vacant on 07.12.2007 on account of retirement of the incumbent. The 2nd respondent also gave permission to fill up the said post through his proceedings, dated 27.03.2008. Accordingly, the petitioner's School appointed one Mr. Shanthi as Secondary Grade Teacher with effect from 28.04.2008. The proposal for approval of such appointment was sent to the 2nd respondent. The 3rd respondent recommended the proposal through his proceedings, dated 23.12.2008. However, the 2nd respondent, without considering the recommendation made by the 3rd respondent, returned the proposal by stating that the appointment was made in the post, which was rendered surplus. The said rejection order passed by the 2nd respondent is challenged in this writ petition along with the staff fixation order made by the 2nd respondent for the academic year 2008-2009.

2. The second respondent filed a counter affidavit, wherein it is stated that the District Elementary Educational Officer, Sivagangai, through his proceedings, dated 09.01.2009 had fixed the staff strength of the petitioner's School for the year 2008-2009 by reducing the number of Secondary Grade Teacher posts from 4 to 2. Therefore, the appointment of the said Mr. Shanthi as Secondary Grade Teacher could not be approved, since such appointment was made in a post, which was resumed and surrendered to the Director of Elementary Education. Prior permission under Rule 15(4)(ii) of the Tamil Nadu Private Schools (Regulations) Rules, 1974 was granted on 27.03.2008 for making appointment through "Direct Recruitment". But the management appointed the said teacher on 28.04.2008 without analysing as to whether sufficient strength will be continued in the next academic year. Therefore, the approval for appointment was denied on the basis of the students strength in the academic year 2008-2009. The management of the petitioner's School seeks one post for each standard separately irrespective of the strength, whereas, as per the G.O.Ms. No. 525, the petitioner's School is not entitled to have 8 teachers. As per the said G.O., minimum of two Secondary Grade Teachers upto the strength of 80 would be sanctioned for Elementary School and for every addition strength of 40 students, one post of Secondary Grade post would be sanctioned i.e., the 3rd post at 101, 4th post at 140 and 5th of post at 180 and so on. The same norm is to be followed to Middle School also. Therefore, two posts were declared surplus taking note of the total strength of the students.

3. The learned counsel appearing for the petitioner submitted that when the appointment of the said teacher Mr. Shanthi was made on 28.04.2008, there was sufficient strength of students requiring six posts and the said person was also appointed within the sanctioned strength of six posts, the respondents cannot

deny the approval of the said appointment. Moreover, the very 2nd respondent had given permission to fill up the said post, by his proceedings, dated 27.03.2008. Consequently the appointment was made on 28.04.2008. Therefore, now they cannot turn around and say that the post was declared as surplus and hence the appointment cannot be approved.

4. The learned counsel further submitted that when the said G.O. No. 525 came up for consideration before the Hon''ble Full Bench of this court, the said G.O. was interpreted by the Hon''ble Full Bench to the effect that minimum strength of teachers required should not fall below the number of standards/sections in a School.

5. It is also contended by the learned counsel for the petitioner that the fall in strength, even assuming in the subsequent years, cannot be a ground to deny the approval of the appointment, when it was made within the sanctioned strength during the previous years.

6. The learned counsel for the petitioner in support of those submissions relied on a decision reported in 2006(5) CTC 385 [FB] and an unreported decision made in W.A. No. 1263 of 2001, dated 22.01.2004.

7. Per contra, the learned Government Advocate appearing for the respondents submitted that the petitioner's School is not entitled to appoint a person in a post, which was resumed and surrendered to the Director of School Education and consequently, the rejection order passed is perfectly valid.

8. It is also submitted by the learned Government Advocate that staff fixation done to the petitioner's School for the relevant period is in accordance with G.O. No. 525 only.

9. Heard the learned counsels appearing for the respective parties.

10. In this case, the petitioner's School is a private aided Middle School seeks to challenge the staff fixation order for the academic year 2008-2009 and also seeks for the approval of the appointment of one Mr. Shanthi as Secondary Grade Teacher with effect from her date of appointment, namely 28.04.2008.

11. From the perusal of the staff fixation order passed for the petitioner's School for the year 2007-2008, it is seen that six teaching posts, including four Secondary Grade Teachers were sanctioned to the petitioner's School. Thus, when a vacancy arose in the post of Secondary Grade Teacher, the School wanted to fill up the said post and sought permission from the second respondent. By his proceedings, dated 27.03.2008, the 2nd respondent gave such permission to the petitioner's School to fill up the said vacancy subject to certain conditions. Consequent upon such permission granted by the 2nd respondent, the petitioner's School appointed one Mr. Shanthi as Secondary Grade Teacher on 28.04.2008 and she also joined the petitioner School. When a proposal was sent by the School on 28.04.2008 for approval of such appointment, the 3rd respondent through his proceedings, dated 23.12.2008, by

taking note of the students strength as on 19.11.2008, recommended the proposal for approval. In spite of such recommendation made by the 3rd respondent, the 2nd respondent rejected the proposal on the ground that while fixing the staff strength for the academic year 2008-2009, two Secondary Grade Teacher posts were declared surplus and therefore, a person appointed in the surplus post cannot be approved. I fail to understand as to how the 2nd respondent is justified in rejecting the claim of the petitioner.

12. Admittedly, the petitioner's School was sanctioned with six teachers posts, out of which four are Secondary Grade Teachers at the relevant point of time. When an appointment was made within the sanctioned strength, which also was made in pursuant to the permission granted by the 2nd respondent, the same cannot be held as an invalid appointment on the ground that the staff fixation done subsequently for the academic year 2008-2009 that too in the month of January 2009 declared two Secondary Grade posts as surplus. In effect, the approval is rejected taking note of the fall in the student strength in the subsequent academic year. Even the counter affidavit filed by the 2nd respondent also indicates that the rejection was made only on the ground that the management appointed the said person without analysing as to whether sufficient strength will be continued in the next academic year.

13. In my considered view, this contention of the second respondent is totally unjustifiable on the simple reason that when the petitioner's School has appointed the said teacher within the sanctioned strength that too after getting permission from the second respondent, the approval of such appointment cannot be denied on the ground that there was a fall in strength in the subsequent years.

14. At this juncture, the unreported judgement of the Hon'ble Division Bench made in W.A. No. 1263 of 2001, dated 22.01.2004 is relevant to be quoted, wherein, it has been held as follows:-

The fall or reduction in the students strength for the subsequent year/years cannot be a ground to deny the right of the appellant to appoint a teacher as against the sanctioned strength for the previous years. What has been done in this case, by the impugned order, is exactly the reliance placed on the subsequent re-fixation of the sanctioned strength of teachers for the academic year 2000-2001 which in our considered view, is impermissible in law, when the Government being the funding authority/is entitled to consider the average attendance of students before sanctioning the teachers, equally the management is also entitled to appoint the teachers as against the sanctioned strength based on the average attendance of students taken during August, 1999.

Thus, from the reading of the above said judgement of the Hon'ble Division Bench of this court, the stand taken by the 2nd respondent has necessarily to be rejected.

15. The learned counsel for the petitioner further contended that the School is

entitled to have eight teachers, in view of the fact that it has eight standards. In support of such contention, the learned counsel relied on the Full Bench judgement. A perusal of the decision of Hon''ble Full Bench would certainly justify the contention of the petitioner. In the decision of the Hon''ble Full Bench made in 2006(5) CTC 385 = 2007-1-L.W.402 in the case of Director of Elementary Education, Chennai-6 and others vs. S. Vigila, at para 23, it is stated as follows:-

23. Keeping in view the various relevant aspects, we felt 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.

16. Therefore, as per the interpretation given by the Hon''ble Full Bench in the above judgement, the School is entitled to have eight teachers, even otherwise. The contra stand taken by the second respondent is totally against the law declared by the Hon''ble Full Bench as well as the ratio laid down by the Hon''ble Division Bench in the unreported judgement made in W.A. No. 1263 of 2001, dated 22.01.2004.

17. Considering all these facts and circumstances and also by following the law laid down by the Hon''ble Full Bench as well as the Division Bench as referred to supra, I find every merit in the writ petition. Accordingly, the writ petition is allowed and the impugned proceedings are set aside and consequently, the respondents are directed to re-fix the staff strength of the petitioner's school for the academic year 2008-2009 as per the decision of the Hon''ble Full Bench and consequently to approve the appointment of the said Mr. Shanthi, Secondary Grade Teacher from the date of her appointment and pay the salary and other monetary benefits to the said teacher within a period of eight weeks from the date of receipt of a copy of this order.

Consequently, connected Miscellaneous Petitions are closed. No costs.