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Writ Appeal No.3731 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.11.2023

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE G.ARUL MURUGAN**

**Writ Appeal No.3731 of 2019
and C.M.P.No.23703 of 2019**

1. The Government of Tamil Nadu, rep. By its,
Secretary to Government,
School Education Department,
Fort St. George, Chennai – 9.
 2. The Director of Elementary Education,
College Road, Chennai – 6.
 3. The District Elementary Educational Officer,
Tuticorin, Tuticorin District.
 4. The Additional Assistant Elementary Educational Officer,
Tiruchendur Range, Tiruchendur and Post,
Tuticorin District.
- ... Appellants

Vs

Arokia Annai Middle School,
Adailakapuram, Tuticorin District,
Rep. By its Correspondent,
Rev.Fr. Antony Jagadeesan

... Respondent



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PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 10.11.2010 made in W.P.No.2324 of 2005 by allowing the writ appeal.

For Appellants : Mr.K.V.Sajeev Kumar
Special Government Pleader
For Respondent : Mr.K.Sathish Kumar
for Ms.P.Mahalakshmi

JUDGMENT

(Judgment of the Court was delivered by R.SURESH KUMAR,J.)

This appeal has been directed against the order passed by the Writ Court dated 10.11.2010 made in W.P.No.2324 of 2005.

2. The respondent school was established in the year 1968 as a Primary School i.e., for Ist standard to Vth standard. It was an aided school, teaching staffs were allotted and the school had been functioning. In the year 1988, the school has been upgraded into Middle school adding classes from VIth to VIIIth standards, for which since there was a need of appointment of teachers for handling classes from VIth to VIIIth standards, in respect of which, sanction was sought for, which was



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rejected by the first appellant i.e., Government vide order dated

17.11.2004, which has been wrongly mentioned as 12.11.2003. In the

said order, the following has been stated by the first appellant:

"பார்வை ஒன்றில் கண்டுள்ள தங்கள் விண்ணப்பத்தில் தங்கள் பள்ளிக்கு 6 முதல் 8 வகுப்புகளுக்கு நிதி உதவி அளித்து தற்சமயம் நிதி உதவியுடன் 1 முதல் 5 வகுப்புகளில் பணிபுரிந்து வரும் 9 ஆசிரியர் பணியிடங்களையும் 1 முதல் 8 வகுப்புகளுக்கு நிர்ணயம் செய்து ஆணையருமாரும், இதனைத் தொடர்ந்து தாங்கள் சென்னை உயர்நீதிமன்றத்தில் தொடுத்துள்ள உரிமைப் பேராணை வழக்கில் (எண்.29998/03) இம்மனு மீது 5 மாத காலத்திற்குள் ஆணை வெளியிடுமாறு அறிவுறுத்தப்பட்டுள்ளது.

2. இந்நிலையில், பணியிடம் வழங்கக் கோரும் தங்களின் விண்ணப்பம் பரிசீலிக்கப்பட்டதில் அரசாணை (நிலை) எண்.525 பள்ளிக் கல்வி நாள் 29.12.97ன் படி தங்கள் பள்ளியில் மாணவர் விகிதாச்சாரம் ஏற்புடையதாக இல்லாத காரணத்தால் தங்களது கோரிக்கையை ஏற்பதற்கில்லை என்பதைத் தங்களுக்கு தெரிவித்துக் கொள்ளப் பணிக்கப்பட்டுள்ளேன்."

3. Challenging the said order, the writ petition had been filed. The said writ petition was heard and decided by the learned Judge, where the learned Judge having taken note of the import of G.O.Ms.No.525, School



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Education Department, dated 29.12.1997 as well as the Full Bench

Judgment of this Court in the case of ***Director of Elementary Education, Chennai and Ors. Vs. S.Vigila*** reported in ***2006 (5) CTC 385*** has held that insofar as the teacher pupil ratio of the school concerned from classes VIth to VIIIth, minimum teachers are required to be employed for handling classes from VIth to VIIIth standards.

4. In fact this position had been considered and the District Elementary Educational Officer by his letter dated 14.04.2004 had recommended to that effect to the Director, who in turn to the Government that the additional teachers for handling classes from VIth to VIIIth standards can be considered.

5. Despite the recommendation having been made by the District Level officer and despite the legal position that has been reiterated by the Full Bench of this Court in the judgment cited supra, which considered the validity of G.O.Ms.No.525, School Education Department, dated 29.12.1997, the first respondent still had chosen to reject the plea of the school by stating the reason that the teacher pupil ratio is not in consonance with the G.O.Ms.No.525, School Education Department, dated 29.12.1997 and therefore, that was rejected.



6. The said order having been considered was found to be unsustainable by the learned Judge, who allowed the said writ petition.

7. Assailing the said order, the learned Special Government Pleader appearing for the appellants would contend that, at the time of recognition/approval was sought for by the school i.e., upgraded from elementary school to middle school, one of the conditions that was imposed by the competent authority that, for the upgraded classes, the Government will not give any additional grant, when such a condition had been imposed, *de-hors* of such condition and against such condition whether the school can seek for additional grant for sanctioning of additional teaching faculty for handling classes from VIth to VIIIth standards was a question that was not considered by the learned Judge. Therefore, on that ground at least the impugned order before the Writ Court was to be sustained. Further, it has not been considered in proper perspective, hence the impugned order is liable to be interfered with, the learned Special Government Pleader contended.

8. However, Mr.K.Sathish Kumar, learned counsel appearing for the respondent school would submit that at the time of giving approval or



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recognition for upgradation of the school in the year 1988, no such condition has been imposed, which had been specifically averred in the affidavit filed in support of the writ petition. Moreover, he has submitted that the order dated 17.11.2004 (12.11.2003) has not stated the said reason as has been projected by the learned Government Pleader, therefore the impugned order before the Writ Court for the one and only reason that is not in consonance with G.O.Ms.No.525, School Education Department, dated 29.12.1997 with regard to the teacher pupil ratio was considered and has been found to be unsustainable by the learned Judge of-course correctly. Therefore, the learned counsel appearing for the respondent school seeks indulgence of this Court to sustain the said order of the learned Judge by dismissing the writ appeal.

9. We have considered the said rival submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

10. If at all any such conditions had been imposed at the time of grant/recognition or approval for upgradation of the school, even assuming such a condition has been imposed that would not take away



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the right of the school to seek for such a sanctioning of the additional posts because under the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973, such a provision has been brought in not to give grant any more for new schools or starting of new classes or upgradation of the classes only later on and as on 1988, the prevailing position was that wherever there is an aided school, where additional classes are started or the schools are upgraded, that school is entitled to get grant because it is on need basis the schools are being upgraded and such upgradation once is approved by the competent authority of the Education Department, it goes without saying that the upgradation or expansion of the school for additional classes is for sanctioning of the intake for which, the additional staff strength also shall be given by the Government. This position has been changed only later on when amendment has been made in the Act, prior to which the legal position was that the school was entitled to get such a grant. Therefore, assuming that if there has been any such conditions imposed at the time of grant of approval of the upgradation of the school that would not any way take away the right of the school to seek for such a grant and the school being the Minority school such a right is always protected before the amendment.



WEB COPY 11. That apart, insofar as the order dated 17.11.2004(12.11.2003) is concerned, in that order as has been extracted herein above no such reason has been stated. The only reason stated was that the teacher pupil ratio of the school is not in consonance with G.O.Ms.No.525, School Education Department, dated 29.12.1997.

12. However, the fact remains that, on upgradation of the school there were three classes added i.e., from VIth to VIIIth standards hence, as per the G.O.Ms.No.525 as well as the full bench judgment as referred to above in respect of each of the classes at least one teacher must be provided, therefore, if these three classes added, three more additional teachers definitely to be provided i.e., the import of G.O.Ms.No.525 as well as the full bench judgment, therefore, since that has been relied upon by the learned Judge, that approach of the learned Judge also cannot be questioned.

13. Moreover, on 14.04.2004, the District Level Officer i.e., District Elementary Educational Officer has sent a recommendatory report for sanctioning of additional teaching staffs that has also not been



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properly considered either by the Director of Elementary Education or by the Government, therefore, that aspect also since has been pointed out by the learned Judge and for all these reasons since he has allowed the writ petition through the impugned order, we do not find any error in the said approach of the learned Judge and the conclusion reached by the learned Judge.

14. Resultantly, this appeal has to fail and accordingly, it is dismissed. No costs. Connected miscellaneous petition is closed.

15. The needful as indicated above as per the direction of the learned Judge in the impugned order if all has not been so far been complied with, the same shall be complied with within a period of three(3) months from the date of receipt of a copy of this order.

(R.S.K.,J.)

(G.A.M., J.)

28.11.2023

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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