



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 30.06.2023

Pronounced on : 18.07.2023

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)No.14028 of 2023

and

WMP(MD)Nos.11852 & 11853 of 2023

The Secretary / Correspondent,
Sethupathi Higher Secondary School,
No.2, North Veli Street,
Madurai District.

... Petitioner

v.

- 1.The State of Tamil Nadu,
Rep.by its Secretary,
Department of School Education,
Fort St.George,
Chennai – 600 009.
- 2.The Director of School Education,
College Road, Chennai – 600 009.
- 3.The Chief Educational Officer,
Madurai District.
- 4.The District Educational Officer,
Madurai, Madurai District.

... Respondents



Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari to call for the records relating to the impugned staff fixation issued by the third respondent Chief Educational Officer for the academic year 2022-23 in the petitioner school vide proceedings in Na.Ka.No.9966/A5/2022 dated 01.02.2023, and the consequential proceedings in Na.Ka.No.9966/A5/2022 dated ... 04.2023 insofar as it excludes counting of student in entire English Medium sections in High School level for assessing staff strength under grant-in-aid scheme and thereby renders 4 BT Assistant as surplus, quash the same.

For Petitioner : Mr.M.Isaac Mohanlal, Senior Counsel
for Mr.K.Ragatheesh
For Respondents : Mr.N.Satheeskumar,
Additional Government Pleader

ORDER

Heard the learned Senior Counsel for the writ petitioner and the learned Additional Government Pleader for the respondents.

2.The petitioner is an aided non-minority school. The Chief Educational Officer, Madurai issued staff-fixation order dated 01.02.2023 holding that three B.T.Assistants and one Tamil language teacher have been rendered surplus. The petitioner lodged their objections and sought reconsideration. It was rejected on 24.04.2023. Challenging the same, the present writ petition came to be filed.



3.The learned Senior counsel assailed the impugned orders on the following grounds:-

a) The staff-fixation is not in consonance with the order dated 31.03.2021 made in W.A.(MD)No.76 of 2019 etc. batch. The authorities have proceeded on the premise that the said order passed by the Hon'ble Division Bench has been stayed. It is not so. Clause (i) of the directions alone has been stayed. The rest of the judgment including the other directions are still holding good.

b) The compendium of schedule prescribed by the Hon'ble Division Bench was not adhered to.

c) The students' strength in English medium sections was not taken into account.

d) The State is following two language policy and in view of the statutory scheme underlying the RTE Act, it is immaterial whether education is imparted in Tamil or English medium. The rights of the students guaranteed under the RTE Act have been infringed.

e) G.O.Ms.No.525 School Education Department dated 29.12.1997 has not been properly applied.

f) The authorities failed to take note of Government Letter No. 33160/D1/99 dated 17.09.1999 and erred in reducing the number of Tamil language Pandits sanctioned for the petitioner-school.



The learned Senior Counsel reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and grant relief as prayed for.

4.The learned Additional Government Pleader appearing for the respondents submitted that the impugned staff-fixation is legally sustainable and that interference is not warranted. He contested every submission made by the learned Senior counsel appearing for the petitioners. He also responded to the insistence by the petitioner's Senior counsel that counter affidavit should be filed by the State. According to him, counter affidavit is required only if there are disputed questions of fact. The figures set out in the staff-fixation proceedings have not been challenged. If there is any computational error, the jurisdictional CEOs have been authorised to revisit the issue. Since I found merit in this stand, I took up the matters for final hearing based on the materials on record. There was yet another reason. Interim orders were granted at the admission stage on the specific understanding that the petitioners would be ready for final hearing on the notified date.

5.I carefully considered the rival contentions and went through the materials on record. I must observe at the outset that the Hon'ble Division Bench in W.A.(MD)No.76 of 2019 etc. batch was seized, inter-alia, of the issue



of including the students' strength in English medium sections. It was answered in favour of the managements. The order of the Hon'ble Division Bench was put to challenge in SLP(C)No.15702 of 2021. On 14.03.2022, the Hon'ble Supreme Court stayed the order of the Hon'ble Division Bench insofar as the directions contained in clause (i) are concerned. Before another Division Bench, it was argued that the direction contained in clause (i) alone was stayed and that there is no stay of the operation of the entire judgment and that the Hon'ble Apex Court has not passed orders stating that the High Court shall not proceed with similar cases that are pending before it on account of the pendency of the aforesaid SLP (Paragraph No.6 of the order dated 27.04.2022 in W.A.(MD)No.1177 of 2022). Swayed by the said submission, the writ appeal filed by the State was dismissed. The decision in favour of the writ petitioner was made subject to the outcome of SLP (C)No.15702 of 2021. This order was questioned in SLP(C) No.12693 of 2022. The Hon'ble Apex Court stayed the entire judgment made in W.A.(MD)No.1177 of 2022 on 22.07.2022. It is for this reason, I am not in a position to accept the primary contention advanced by the learned Senior counsel appearing for the petitioners. In any event, it is not open to me to interpret the interim order passed by the Hon'ble Supreme Court. The issue has to be necessarily approached without the aid of the judgment in W.A.(MD)No.76 of 2019 etc. batch.



6. Some of the aided private schools including the petitioner were permitted to have one English medium section for each of the standards from VI to X. A comprehensive policy in this regard was formulated by the State Government vide G.O.Ms.No.148 School Education Department dated 20.07.2018. The operative portion of the Government Order is as under:-

“6.மேலே தெரிவிக்கப்பட்ட நிலையில், தற்போது, ஆங்கில வழி கல்வி முறைக்கு பெற்றோர்கள் மற்றும் மாணவர்களிடையே பெருமளவில் வரவேற்பு காணப்படுவதாலும், உதவி பெறும் பள்ளிகளில் தற்போது மாணவர்கள் எண்ணிக்கை பெருமளவில் குறைந்து கொண்டு வரும் நிலையிலும், அரசு பள்ளிகளில் ஆங்கில வழிக் கல்வி பிரிவுகள் நடத்த அரசால் அனுமதி அளித்து ஆணைகள் வெளியிடப்பட்டுள்ள நிலையில், உதவி பெறும் பள்ளிகளுக்கும் இப்பலனை விரிவுப்படுத்தி, மாணவர்களின் நலனை கருத்தில் கொண்டு, ஆங்கிலவழி கல்விப் பிரிவு துவங்குவது குறித்து கொள்கை முடிவெடுத்து, கீழ்க்கண்ட நிபந்தனைகளின் அடிப்படையில், அரசு உதவி பெறும் உயர்நிலை / மேல்நிலைப் பள்ளிகளில், ஆங்கிலவழிப் பிரிவு துவங்க அனுமதி அளிக்கலாம் என முடிவு செய்து அவ்வாறே அரசு ஆணையிடுகிறது.

(i) ஆங்கிலவழிப் பிரிவு கோரும் பள்ளிகளில் தற்போது ஒப்பளிப்பு செய்யப்பட்டுள்ள தமிழ்வழிப் பிரிவுகளிலிருந்து மட்டுமே ஆங்கிலவழிப் பிரிவுகள் பிரித்து நடத்தப்பட வேண்டும்.

(ii) ஆங்கிலவழிப் பிரிவு கோரும் பள்ளிகளில் 50% பிரிவுகள் கண்டிப்பாக தமிழ்வழிப் பிரிவுகளாக இருக்க வேண்டும்

(iii) அரசாணை (நிலை) எண்.110, பள்ளிக் கல்வி (இ1) துறை, நாள் 29.05.2008-ல் தெரிவிக்கப்பட்டுள்ளவாறு அரசு நிதியுதவி பெறும் பள்ளிகளில் 6 முதல் 12ஆம் வகுப்பு வரை பயிலும் மாணவ / மாணவியர்களிடமிருந்து ஆண்டு ஒன்றிற்கு தற்போது வசூலிக்கப்படும் ஆங்கில வழி கற்பிப்பு கட்டணம் (English Medium Tuition Fee) தொடர்ந்து வசூல் செய்யப்படவேண்டும்;



(iv) மேற்குறிப்பிட்ட கட்டணத்தை தவிர ஆங்கிலவழி பிரிவுகளில் பயிலும் மாணவர்களிடம் எத்தகைய கட்டணமும் வசூலிக்கக் கூடாது;

(v) இதனால் அரசுக்கு கூடுதல் செலவினம் ஏதும் ஏற்படக்கூடாது;

(vi)இத்தகைய பள்ளிகளில் ஆங்கில வழிப் பிரிவு நடத்துவதற்கான உள்கட்டமைப்பு வசதிகள் மற்றும் இதர வசதிகள் போதுமான அளவில் உள்ளதா என்பது உறுதிப்படுத்தப்பட வேண்டும்;

(vii) ஆங்கிலவழிப் பிரிவு துவங்கக் கருதும்போது இத்தகைய பள்ளிகளில் ஆங்கில வழியில் கல்வி போதிக்கும் திறன் பெற்ற ஆசிரியர்கள் உள்ளனரா என்பது குறித்து உறுதிப்படுத்தப்படவேண்டும்;

மேலும், இதே நிபந்தனைகளின் அடிப்படையில் தொடக்கக் கல்வி இயக்குநரின் கட்டுப்பாட்டின்கீழ் உள்ள உதவிபெறும் தொடக்க / நடுநிலைப் பள்ளிகளிலும் பள்ளிவாரியாக ஆய்வு செய்து, உரிய அனைத்து தகுதிகளும் நிறைவு பெற்றுள்ள நிலையில், ஆங்கில வழிப்படப்பிரிவு தொடங்குவதற்கும், சம்பந்தப்பட்ட துறை தலைவர்கள் அளவிலேயே பரிசீலித்து உரிய ஆணை வழங்க அனுமதி அளித்தும் அரசு ஆணையிடுகிறது.”

Unlike earlier, the aided schools have now been permitted to have more than one English medium section. But there is a ceiling. The learned AGP contended that on a proper reading of clause 6(i) of the G.O Ms.No.148 dated 20.07.2018, one can conclude that the English Medium sections will have to be carved out of Tamil Medium sections. In other words, there cannot be fresh addition or creation of English Medium sections over and above the existing Tamil Medium sections. I cannot endorse the said argument of the respondents. Any instrument that comes up for interpretation has to be read as a whole. Clauses cannot be understood in isolation. The overall context has to be borne



in mind. The government had already permitted the petitioner to have an additional English section long back. Clause 6(ii) states that in schools seeking permission to have English Medium sections, 50% must be Tamil Medium sections. If the argument of the respondents is accepted, it would mean that the students presently being imparted education in Tamil Medium will be compulsorily migrated to the English Medium sections. That would result in an absurd situation. On the other hand, if the revised policy of the government is understood in the light of Clause 6(ii), one can conclude that the government's intention is to ensure that there is a broad parity in the number of students studying in Tamil Medium and English Medium.

7.I also find force in the contention of the learned Additional Government Pleader that prior permission must be obtained before opening additional English medium sections. The learned Senior counsel appearing for the petitioner contended that such prior permission is not required. I do not agree. This is for the reason that G.O.Ms.No.148 dated 20.07.2018 employs the expression “can be permitted”. This obviously cannot be a general permission. Each institution will have to apply individually. The position has been amply clarified vide proceedings bearing Mu.Mu.No.17440/H/F/G/2018 dated 03.08.2018 issued by the Director of Elementary School Education, Chennai.



Copy of the proceedings dated 02.08.2019 granting such permission in favour of Child Jesus Girls High School, Mulagumoodu, was placed before me as one such instance.

8. Since the petitioner has been running English medium sections for more than 45 years, I would not hold the failure on the part of the petitioner to obtain permission in terms of G.O.Ms.No.148 dated 20.07.2018 against the petitioner. I would rather test the issue on merits. The relevant parameters are as follows: a) G.O.Ms.No.525 dated 29.12.1997, b) Government Letter No. 33160/D1/99 dated 17.09.1999, c) G.O.Ms.No.148 dated 20.07.2018 and d) the teaching hours and number of periods per day.

9. The students' strength in classes VI to X in Tamil medium and English medium in the petitioner-school are as follows:-

Class	Tamil Medium	English Medium
VI	35	78
VII	54	122
VIII	52	153
IX	205	168
X	146	170
Total	492	691



10. It has already been held that the number of English medium sections cannot exceed the number of Tamil medium sections in that standard. There can be a maximum of 50 students in a section. Once this number exceeds, there must be two sections. Once the students' strength exceeds 85, there must be three sections. The fourth section has to be opened, if the number of students in that standard exceeds 120. This is the position that obtains up to standards VIII. When it comes to IX and X standards, one section can accommodate up to 60. The second section has to be opened if there are 61 to 100 students. Third section has to be opened if the students' strength is 101 to 140.

11. Applying the above parameters, for standard VI, the petitioner can have one Tamil medium section. Therefore, English medium section also has to be one. In Class VII, there can be two Tamil medium sections. English medium sections also should be two. For Standard VIII, it should be the 2:2. For standard IX, there can be five Tamil medium sections. Since there are only 168 students studying in English medium, the number of Sections will be four. For class X, there can be three Tamil medium sections with corresponding number of English medium sections. The sanctioned teachers' strength will have to be computed on the basis that there are 19 sections in all.



12.G.O.Ms.No.525 School Education Department dated 29.12.1997

states that for standards VI to VIII, the teacher-pupil ratio of 1:40 will be followed. However, following the introduction of the RTE Act, this has become 1:35. Since there are only 35, 54 and 52 students studying in standards VI to VIII respectively in Tamil medium, the school can have ten sanctioned teachers for the said standards including the English medium. There are 205 and 146 students studying in standards IX and X respectively in Tamil medium. G.O.Ms.No.525 School Education Department dated 29.12.1997 states for the standards IX and X, the teacher-pupil ratio 1:40 will be followed. If the students' strength is up to 80, the number of posts sanctioned will be one headmaster and 2 BT Assistants. The third post will be sanctioned if the strength exceeds 60 and additional sections will be permitted in the slab of 40. The petitioner is entitled to 17 BT Assistants for the said standards including English medium.

13.G.O.Ms.No.525, dated 29.12.1997 states that if the total number of sections in standards VI to X is 11 and above, 3 language teacher posts will be sanctioned. It has already been noted that there are only 10 sections in Tamil medium and therefore, only corresponding number of English medium sections will be permitted. Thus there are totally 27 sections. The petitioner will be entitled to only 3 language teachers (Tamil).



14. In the impugned staff-fixation, the petitioner has been sanctioned 16 BT Assistants. It has already been held that the petitioner is entitled to 27 B.T Assistants. But only 16 posts have been shown as sanctioned. This falls short by 11. To this extent, the staff-fixation warrants interference.

15. The learned Senior counsel for the petitioner relies on the Government Letter No.33160/D1/99 dated 17.09.1999. It states that if there are more than 3 language teachers working in a high school, the posts need not be cancelled. In this case, on an application of G.O.Ms.No.525 dated 29.12.1997, the petitioner is entitled to only 3 language teachers. In the staff-fixation, the petitioner has been permitted to have four language teachers. Only one has been rendered surplus. The post has not been surrendered. I do not find any violation of the Government Letter.

16. As per the Schedule to the RTE Act 2009, the minimum number of working hours per week for the teacher would be 45 teaching including preparation hours. The learned Additional Government Pleader informed the Court that this Court can go by the stipulation of 40 teaching hours. There are 27 sections. Each section will have maximum of 6 teaching hours per day. There will be only one period devoted to Tamil subject per day. Thus 27



sections will have only 27 Tamil periods per day. Each period will have duration of 45 minutes. That works out to $45 \times 27 \times 5 = 6075$ minutes (101.25 hours). As per RTE Act norms, the four language teachers together will have to put in 160 hours of teaching in all.

17.The learned Senior counsel eloquently submitted that the rights of the children will be affected. There cannot be any dispute that the State should bend backwards to fulfill the constitutional vision of providing compulsory education for children up to the age of 14. But it would be a serious mistake if the rights of children are conflated with the rights of management. The RTE Act earmarks a quota for children from less privillage background in the neighbourhood schools even if they are not receiving aid. The Government schools are also there. I am therefore not able to accept the contention that the rights of the children will be infringed if the impugned staff-fixation is sustained.

18.The impugned staff-fixation for the year 2022-23 for the petitioner-school is interfered with to the extent mentioned above. It is declared that the petitioner-school is entitled to 27 teaching posts for standards VI to X apart from 3 posts for Tamil language. Since the department itself has chosen to



permit the petitioner to have four language teachers, it is not interfered with.

The stand of the department that one language teacher has been rendered surplus is sustained. The question of deploying or deputing the B.T.Assistants does not arise because the existing strength is lesser than the sanctioned strength.

19.This writ petition is partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

18.07.2023

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To

- 1.The Secretary,
Department of School Education,
Fort St.George,
Chennai – 600 009.
- 2.The Director of School Education,
College Road, Chennai – 600 009.
- 3.The Chief Educational Officer,
Madurai District.
- 4.The District Educational Officer,
Madurai, Madurai District.



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G.R.SWAMINATHAN, J.

skm

WP(MD)No.14028 of 2023

18.07.2023