

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 29.03.2016

Pronounced on : 18-04-2016

Coram

THE HONOURABLE MR. JUSTICE R. SUBBIAH

Writ Petition No. 22642 of 2014

and

M.P. No. 1 of 2014

Nadar Higher Secondary School
Rajapalayam
Virudhunagar District
represented by its Secretary ... Petitioner

Versus

1. The Government of Tamil Nadu
rep. by its Secretary to Government
School Education Department
Fort St. George
Chennai - 600 009
2. The Director of School Education
College Road, Chennai - 600 006
3. The Chief Educational Officer
Virudhunagar District
Virudhunagar ... Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the second respondent issued in UM No.100109/W5/E1/2013 dated 20.11.2013 and quash the same and issue a consequential direction to the respondents to count over 400 students strength in total of petitioner's school for upgradation of one of the existing post of Physical Education Teacher to that of Physical Director and to grant teaching grant for the post of Physical Director from the eligible date with all benefits.

For Petitioner	:	Mr. R. Saseetharan
For Respondents	:	Mrs. P. Rajalakshmi Government Advocate

ORDER

The petitioner school has come forward with this writ petition challenging the order dated 20.11.2013 of the second respondent and after quashing the same, seeks for a consequential direction to the respondents to count over 400 students strength in total of petitioner's school for upgradation of one of the existing post of Physical Education Teacher to that of Physical Director and to grant teaching grant for the post of Physical Director from the eligible date with all benefits.

2. The petitioner school is a private aided higher secondary school recognised by the Government of Tamil Nadu. The school receives teaching grant from the Government. The petitioner's school is governed by the provisions of the Tamil Nadu Private School Regulation Act and the Rules made thereunder. Initially, the petitioner's school was established as a High School in the year 1966 and later it was upgraded as Higher Secondary School on 25.06.1979.

3. According to the petitioner, the Government introduced the higher secondary education pattern in the State from July 1978 which is popularly known as +2 system. At that time, Masters degree qualified teachers were not available to teach higher secondary classes and therefore the Government accepted those teachers with a Bachelor Degree to handle the higher secondary classes. Subsequently, the Government of Tamil Nadu, with a view to sanction the post and for upgradation of the existing post on the basis of students teachers strength, passed GO Ms. NO.525 dated 29.12.1997 by superseding all the earlier orders. As per clause (f) of IV, it was ordered that the schools with student strength of 400 shall have one post of Physical Director by upgrading the existing post of Physical Education Teacher. According to the petitioner, in their school, three physical education teachers are working and at present, the total student strength crossed 1300 from Standards VI to XII and the strength of the students from Standards IX to XII itself would work out to 644. The petitioner also place reliance on GO Ms. No.73 dated 19.03.2010 in which it was directed that if three Physical Education Teachers are working in a school, one among them shall be upgraded as Physical Education Director. Therefore, according to the petitioner, the school is entitled for upgrading one of the three Physical Education Teachers as per the above order passed by the Government. It is also brought to the notice of this Court that Mr. P. Guruvaiah, who is the senior most Physical Education Teacher in the school has acquired the necessary qualification for upgradation of the post. The said Mr. P. Guruvaiah is

inducted from 01.09.2002 onwards to teach higher secondary classes in physical education and he has been granted Rs.80/- as a special allowance instead of upgrading his post. In this context, the petitioner school had sent a proposal dated 14.09.2012 to the third respondent to upgrade the post held by a senior most physical education teachers among the three. Thereafter, the first respondent has passed the impugned order dated 20.11.2013 stating that the petitioner's school does not have 400 students in the higher secondary section and therefore it is not entitled for upgrading the post held by one of the three physical education teachers. Challenging the same, the petitioner has come up with this writ petition.

4. The learned counsel for the petitioner would vehemently contend that as per G.O. Ms. No.525 dated 29.12.1997, the overall student strength of the school alone is a criteria and the second respondent erroneously held that there is no sufficient strength in the higher secondary section. This observation of the second respondent, according to the counsel for the petitioner, is contrary to the order passed by the Government. Even otherwise, the student strength from standard IX to XII itself is 644 which is more than the required strength of 400. This is in accordance with the order passed in G.O. (4D) No.1 dated 21.01.2000 by which the Government ordered to calculate the strength of the students for higher secondary section from standards IX to XII. According to the learned counsel for the petitioner, the second respondent misdirected himself in calculating the actual strength of the students in the petitioner institution and passed the impugned order of rejection.

5. The learned counsel for the petitioner heavily relied on an order dated 10.10.2012 passed by this Court in WP No. 2096 of 2011 wherein in identical circumstances, this Court issued appropriate direction to consider grant of upgradation in favour of the teacher, who filed the writ petition before this Court. The learned counsel for the petitioner also relied on the order dated 21.12.2009 passed by this Court in WP No. 35922 of 2005 passed by this Court wherein also an identical issue was determined by this Court. The learned counsel for the petitioner therefore prayed this Court to allow the writ petition as prayed for.

6. The learned Government Advocate appearing for the respondents opposed the writ petition by placing reliance on the counter affidavit of the third respondent. According to the learned Government Advocate for the respondents, the upgradation is applicable only in case where the student strength of a particular school in Classes IX to XII exceeds 400. In the present case, it is factually incorrect to state that the student strength of the petitioner school exceeded 400 in the

higher secondary school. Therefore, the learned Government Advocate justified the order passed by the second respondent, which is impugned in this writ petition, and prayed for dismissal of the writ petition.

7. I heard the counsel for both sides and perused the material records placed. I had perused the order dated 26.04.2014 of the third respondent, which was passed on the basis of the impugned order of the second respondent dated 20.11.2013. Both the orders are bereft of any material particulars. The respondents have simply stated that the Government has ordered for upgradation of the Physical Education Teacher post into one of Physical Director provided a particular school has a student strength of more than 400. The respondents have not made any whisper as to whether the petitioner school has the student strength of more than 400 or what is the actual strength. It is merely stated that the petitioner school is not entitled to the benefit of the order passed by the Government inasmuch as the student strength does not exceeds 400. If it is so, then the respondents ought to have indicated as to what is the actual student strength of the petitioner school and how the petitioner school is not entitled for the benefit of the Government Order. Both the orders passed by the respondents are per se without application of mind. This Court is at a loss to understand as to what prompted the respondents to reject the claim made by the petitioner for upgradation of one of the posts of Physical Education Teacher in their school.

8. In the affidavit filed in support of the writ petition, the petitioner has categorically indicated that the petitioner school has a total strength of 1318 from standard VI to XII out of which the student strength in Standard IX to XII itself represents 644. However, in the counter affidavit, this averment was merely denied by the third respondent. Even the counter affidavit of the third respondent is bereft of any particulars. In the counter affidavit also, the third respondent has not taken any pain to indicate as to what is the actual student strength of the petitioner school. Rather, the third respondent merely stated that the averment of the petitioner relating to student strength is incorrect. Except this bald statement, there is no particular given in the counter affidavit of the third respondent.

9. In the order dated 21.12.2009 passed by this Court in WP No. 35922 of 2005, which was relied on by the counsel for the petitioner, an identical issue arise for consideration of this Court. In that case, the petitioner, a physical education teacher working in St. Andrew High School, challenged the order of rejection passed by the first respondent therein - Director of School Education, Chennai on identical grounds. This Court held that when it is established that the student strength

exceeds 400 as per the Government Order, then it is the duty of the respondents to grant permission for upgradation of the post of Physical Education Teacher. In this case also, it is merely disputed by the respondents that the student strength of the petitioner institution crossed 400. Even according to the petitioner, in the higher secondary section itself, the student strength is 644. This is not specifically denied by the third respondent in the counter affidavit. Therefore, I have no hesitation to hold that the petitioner school is entitled for upgradation of the post of Physical Education Teacher into that of Physical Education Director as per the order passed by the Government.

10. In the result, the impugned order dated 20.11.2013 of the second respondent, which was communicated by the third respondent on 26.04.2014, are quashed. The writ petition is allowed. No costs. Consequently, MP No. 1 of 2014 is closed. The respondents are directed to pass appropriate orders for upgradation of one post of Physical Education Teacher in the petitioner school into that of Physical Education Director within a period of eight weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,
The Government of Tamil Nadu,
School Education Department,
Fort St. George,
Chennai - 600 009, सत्यमेव जयते
2. The Director of School Education,
College Road, Chennai - 600 006.
3. The Chief Educational Officer,
Virudhunagar District,
Virudhunagar.

W.P. No. 22642 of 2014

AK[CO]
SRG 03/05/2016