

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2016

CORAM :

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.7805 of 2010 and
M.P.Nos. 2/2010 & 1/2013

THE CORRESPONDENT

AIDED PRIMARY SCHOOL KATTUMANNAR KOIL SRI
NEDUNCHERI CUDDALORE-608703 .. Petitioner

Vs.

- 1 THE DIRECTOR OF ELEMENTARY
EDUCATION COLLEGE ROAD CHENNAI-6.
- 2 THE DISTRICT ELEMENTARY
EDUCATIONAL OFFICER CUDDALORE DISTRICT.
- 3 THE ADDITIONAL ASSISTANT
ELEMENTARY EDUCATIONAL OFFICER
KATTUMANNARKOIL CUDDALORE DISTRICT. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorari, calling for the entire records connected with the impugned order passed by the 2nd respondent in Na.Ka.No.4783/A3/09 dated 17.02.2010 and quash the same.

For Petitioner : Mr.S.N.Ravichandran

For R1 to R3 : Mr. V.Jayaprakash Narayanan
Spl.G.P.

O R D E R

The prayer in the writ petition is for a writ of certiorari to call for the entire records connected with the impugned order passed by the 2nd respondent in Na.Ka.No.4783/A3/09 dated 17.02.2010 and to quash the same.

2. The case of the petitioner is that the petitioner school was started in the year 1942 to cater the needs of primary education for the poor and down trodden people in and around Sri Neduncheri village, Cuddalore District. The school was originally recognized by the authorities by proceedings dated

04.02.1942. The school continues to receive teaching grant from the Government.

3. The school is running classes from I std to V std for which there were pre-sanctioned teaching posts, i.e., one Headmaster and two Secondary Grade Teachers. A vacancy arose for the post of Headmaster on 01.06.2006 due to the retirement of erstwhile Headmaster on 31.05.2006 and therefore, in that post of Headmaster one Subramani, a Secondary Grade Teacher working in the school was promoted on 01.06.2006 and the same was approved by the respondents. Thereafter, the said Headmaster retired in the middle of the academic year and therefore, his service was extended till the end of the academic year and therefore, he ultimately, was retired on 31.05.2009. In the meantime, the resultant vacancy arose due to the promotion of the said Subramani, Secondary Grade Teacher as Headmaster was filled up by the appointment of Tmt.P.Arul Selvi as Secondary Grade Teacher on 20.02.2009 and the same was approved by the second respondent only after the lapse of one year i.e., 23.02.2010. Therefore, the petitioner's school could not fill up the vacant post arose due to the retirement of the said Subramani, Headmaster on 31.05.2009. So, presently i.e., at the time of writ petition, only the said P.Arul Selvi, Secondary Grade Teacher and one G.Rajendiran, Secondary Grade Teacher were working in the petitioner's school and the said Headmaster post was vacant.

4. While so, the third respondent suddenly directed the petitioner's school to surrender a post of Secondary Grade Teacher to the Director's Pool and such a direction was communicated to the petitioner by order of the second respondent dated 17.02.2010. By the said impugned order, the respondents after having considered one post of Secondary Grade Teacher at petitioner school as excess had sought to surrender the same. The respondents without having taken note of the students strength continuously for several years and particularly, in the year 2009-2010 and also without taking note of the various classes i.e., classes I to V, conducted by the petitioner's school had passed the impugned order.

5. The petitioner school since is entitled for two more posts of Secondary Grade Assistants including the one sought to be taken away as excess, the present action on the part of the respondents taking away one post of Secondary Grade Teacher from the petitioner school, is totally unlawful and therefore, challenging the same, the petitioner has come out with the present writ petition with the prayer aforementioned.

6. Heard the learned counsels appearing for both sides.

7. The learned counsel appearing for the petitioner would contend that the petitioner school is a primary school and fully aided for teaching grant by the Government. It is running five classes from Classes I to V. Even the existing staff strength of one Headmaster plus two Secondary Grade Teacher itself is insufficient because the petitioner school is running five classes and atleast for each class, one teacher is required, i.e., there must be atleast five teachers in the school including the Headmaster. In support of the contention, the learned counsel further submitted that the Government passed a Government Order in G.O.Ms.No.525, School Education Department, dated 29.12.1997 by which the teacher pupil ratio for elementary schools i.e., Standards 1 to 5 was fixed as 1 : 40. The Secondary Grade Teachers for the strength of 80 shall be the minimum requirement and if the strength goes beyond 80, additional Secondary Grade Teacher would be pressed into service. Subsequent to the said Government Order, since there were conflicting views and orders were passed by this Court interpreting the said Government Order in a different way, the ultimate issue of the interpretation of the said G.O.Ms.No.525 was decided by a Full Bench of this Court in the case of Director of Elementary Education, Chennai-6 and others Vs. S.Vigila and another reported in 2006(5)CTC 385. In the said Judgment, the Full Bench of this Court has given its interpretation to the said G.O.Ms.No.525 and the relevant portion of the Judgment reads thus:

23. Keeping in view this various relevant aspects, we feel that G.O.Ms.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 student's 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 requires recognition.

(5) It would be obviously open to the Government to formulate appropriate norms in consonance with the above observation and provisions of the Constitution.

8. The learned counsel for the petitioner would further contend that by relying upon the fixation of teachers' strength in respect of the petitioner school by the third respondent for the year 2009-2010 and 2010-2011 and also continuously up to 2012-2013 by way of proceedings which have been filed in the typed set of papers which disclosed that in the year 2009-2010, the students' strength was 99 and in 2010-2011, it was 93 and 2011-2012, it was 85. Even according to the second respondent proceedings dated 07.01.2011, the students strength of the year 2009-2010 of the petitioner school was 99 and based on which for 2009-2010, posts sanctioned were $1 + 1 = 2$ and for 2010-2011, the posts had to be sanctioned were $1 + 3 = 4$ i.e., one Headmaster and three Secondary Grade Teachers. This fixation of one Headmaster and three Secondary Grader Teachers fixed for the year 2010-2011 is based on the strength of 99 students of the petitioner school in the year 2009-2010. Therefore, even if the statistics given by the respondents is taken into account, the petitioner school would be entitled for one Headmaster and three Secondary Grade Teachers. However, by impugned order, even the one teacher out of two Secondary Grade Teacher sanctioned for the petitioner school have been taken away as excess. Therefore, it is totally unjust and palpably wrong. Hence, the impugned order is liable to be set aside, the learned counsel for the petitioner contended.

9. Per contra, the learned Special Government Pleader appearing for the respondents would contend that as against the impugned order, the petitioner obtained an interim order of stay from this Court and thereafter, in view of the stay was granted, though vacate stay petition was filed by the respondents, it was not decided. Therefore, there was no further action on the part of the petitioner forthcoming even to seek any additional post of Secondary Grade Teacher. The learned Special Government Pleader further submits that the G.O.Ms.No.525, no doubt was the Government Order occupying the field and the same also had been interpreted by the said Full Bench decision of this Court reported in 2006(5)CTC 385 (cited supra) However, after the

Right of Children to Free and Compulsory Education Act, 2009 (Central Act) came into effect, all the schools including the petitioner school are governed by the provisions of the Act where a schedule fixing the norms and standards for a school have been given according to which, if the admitted children for elementary school from I std to V std is up to 60 the school would be eligible only to 2 teacher and if it is between 61 to 90, it shall be 3 like that if it is between 91 - 120, it shall be 4. Therefore, pursuant to the said Central act and also in pursuant of the further Government Order in G.O.Ms.No.231, School Education Department dated 11.8.2010, the first respondent has issued the proceedings in Na.Ka.No.24548/G1/2010 dated 28.8.2010 whereby clear instructions were given as to how the teacher pupil ratio has to be fixed for schools for elementary standards i.e., from I to V and middle classes i.e., from VI to VIII. Clause 5 of the said letter of the first respondent which is reproduced hereunder would disclose the fact that what is the actual eligibility of a primary school including the petitioner school based on the student strength.

அரசாணை நிலை எண்.231, பள்ளிக் கல்வித் துறை, நாள்.11.08.2010-ல்
தெரிவிக்கப்பட்டுள்ளவாறு உதவிபெறும் பள்ளிகளில் பணியாளர்
நிர்ணயத்திற்கான ஆசிரியர் / மாணவர் விகிதாச்சாரம் பார்வை 4ல்
தெரிவிக்கப்பட்டுள்ள சட்டத்தில் (ளுஉநனரடநன வடி ருஉவ) கீழே
கண்டுள்ளவாறு இருத்தல் வேண்டும் என தெரிவிக்கப்பட்டுள்ளது.

The Schedule
NORMS AND STANDARDS FOR A SCHOOL

Sl.No	Item	Norms and Standards	
1.	Number of teachers:	Admitted children	Number of Teachers
	a) For the first class to fifth class	Upto Sixty	Two
		Between sixty-one to ninety	Three
		Between Ninety-one to one hundred and twenty	Four
		Between One hundred and twenty one to two hundred	Five
		Above One hundred and fifty children	Five plus one Head teacher

Sl.No	Item	Norms and Standards	
		Above Two hundred children	Pupil-Teacher Ratio (excluding Head teacher) shall not exceed forty

10. The learned Special Government Pleader would further submit that in view of the said norms fixed under the Central Act the same is being followed in this State also. The petitioner school would be entitled to get staff strength only based on the students' strength of every academic year and therefore, there is no illegality or infirmity in the order impugned passed by the respondents and in that view of the matter, the learned Special Government Pleader prays for dismissal of the writ petition.

11. This Court has considered the rival submissions made by the respective counsels as well as the materials placed before this Court for perusal.

12. After hearing both sides and on perusal of the records, this Court is of the view that the facts of teacher pupil ratio originally fixed in G.O.Ms.No.525 and the subsequent interpretation given by this Court in the Full Bench Judgment reported in 2006(5)CTC 385 (cited supra) are not controverted. The petitioner school is no doubt a primary school having standards from I to V. Even according to the statistics submitted by the second respondent for the year 2009-2010, the students' strength of the petitioner school is 99 and for the said students' strength, the petitioner school even according to the second respondent, would be entitled for the post of 1 Headmaster and 3 Secondary Grade Teachers. The subsequent year students' strength also discloses that it has never gone down below 85. The learned Special Government Pleader would submit that the students' strength of the petitioner school currently i.e., as on 24.8.2016 is 83. Therefore, at any point of time for all these years, the students' strength have never gone down below 83. Therefore, even in 2009-2010 and 2010-2011, the petitioner school based on the students' strength would be entitled to get atleast one additional post of Secondary Grade Teacher than what the school was actually having i.e., 1 + 2 totally 1 + 3. Instead of sanctioning one post additionally as assessed by the second respondent, in their proceedings dated 7.1.2011, the second respondent has passed the impugned order

dated 17.2.2010 whereby even one post out of the two Secondary Grade Teachers sanctioned for the petitioner school sought to be taken away as excess post. Apparently, there is no justifiable reason even according to the statistics submitted by the second respondent, available to the second respondent to take such a decision to take away one Secondary Grade Post from the petitioner school. Therefore, the impugned order, is totally unsustainable and cannot stand in the legal scrutiny.

13. If we take into account paragraph 23 of the Full Bench Judgment reported in 2006(5)CTC 385 (cited supra) where it has been categorically held that the minimum strength of teachers required obviously should not fall below the number of standards/sections in a school. It is further held that in other words if there are five standards, the minimum number of teachers would be five, out of which one would be the Headmaster. If this interpretation given by the Full Bench to the said G.O.Ms.No.525 is given effect to, then certainly the petitioner school would be entitled for five teachers including a Headmaster.

14. However, in view of the subsequent Central Act, i.e., Free and Compulsory Education Act, 2009 came into effect and according to the said Act, the teacher pupil ratio also has been fixed as shown in the schedule under the heading, "Norms and Standards for a school" as reflected in the proceedings of the first respondent dated 28.8.2010, the petitioner school would be entitled for atleast three teachers as the students' strength of the petitioner school were between 61 to 90 constantly in every academic year right from 2009-2010 till the current academic year. Therefore, at any rate, the impugned order taking away one post of Secondary Grade Teacher from the petitioner school, is totally unjustifiable and cannot be sustained. Hence, this Court has no hesitation to hold that the impugned order is liable to be quashed and accordingly, the same is hereby quashed.

15. As submitted by the learned counsels for both sides, as against the impugned order, though interim stay was granted, no further action was taken to fill up the third post i.e., Secondary Grade Teacher post which was sought to be taken away by the impugned order and the same has been kept vacant all along. At any rate, now the impugned order is quashed. The petitioner school certainly would be entitled to fill up the third post of Secondary Grade Assistant i.e., one Headmaster plus two Secondary Grade Assistants and therefore, the petitioner shall be at liberty to fill up the said post and in case of any such proposal submitted by the petitioner, the respondents, especially the second respondent shall forthwith give permission to the petitioner to fill up the said post i.e., the Secondary Grade Teacher post at the petitioner school

without making any further delay. After getting such approval and from the date of appointment, the teacher to be appointed in the said post shall be entitled to claim salary from the respondents. With these directions and observations, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

- 1 THE DIRECTOR OF ELEMENTARY
EDUCATION COLLEGE ROAD CHENNAI-6.
- 2 THE DISTRICT ELEMENTARY
EDUCATIONAL OFFICER CUDDALORE DISTRICT.
- 3 THE ADDITIONAL ASSISTANT
ELEMENTARY EDUCATIONAL OFFICER
KATTUMANNARKOIL CUDDALORE DISTRICT

+1 cc to Mr.S.N.Ravichandran,advocate,sr.64788

+1 cc to Government Pleader,sr.65860.

vsn(co)
krd 26/12

W.P.No.7805 of 2010

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