IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Orders reserved on 24.10.2016)
DATED : 02.12.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.Nos.9860, 33954 & 35439 of 2016
and
W.M.P.Nos.8832 to 8834, 29304 to 29306 &
30501 to 30503 of 2016

W.P.Nos.9860 & 33954 of 2016

K.Manikandan ... Petitioner

Vs.

1.The Chief Educational Officer,
O/o.The Chief Educational Office,
Thiruvarur, Thiruvarur District.

2.The District Educational Officer,
O/o.the District Educational Office,
Thiruvarur, Thiruvarur District.

3.The Secretary,
V.S.Boys Higher Secondary School,
Thiruvarur, Thiruvarur District. ... Respondents

Prayer in W.P.No.9860/2016:- Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impunged order passed by the 2nd respondent in his proceedings in x/K/vz;/10882-M3-2015 dated 05.02.2016 and to quash the same as illegal and consequentially to direct the 2nd respondent to approve the appointment of the petitioner as Physical Education Teacher (P.E.T) with effect from 03.08.2015 within a period that may be stipulated by this Court.

Prayer in W.P.No.33954/2016:- Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 1st respondent in his proceedings in Na.Ka.No.1899/A2/2016, dated 15.09.2016 and to quash the same as illegal and consequentially, to direct the 1st respondent & 2nd respondent to approve the appointment of the petitioner as Physical Education Teacher (P.E.T) with effect from 03.08.2015 within the period that may be stipulated by this Court.

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W.P.No.35439 of 2016
The Secretary,
V.S.Boys Higher Secondary School,
Thiruvarur, Thiruvarur District. ... Petitioner

Vs.

1.The Chief Educational Officer,
Durgalaya Road, Thiruvarur,
Thiruvarur District-610 001.

2.The District Educational Officer,
South Main Street,
Thiruvarur,
Thiruvarur District-610 001. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings of the 1st respondent, Chief Educational Officer in Na.Ka.No.1899/A2/2016, dated 15.09.2016, cancelling the permission granted to fill up the 3rd post of Physical Education Teacher in the petitioner-school and to quash the same and further to direct the 2nd respondent, District Educational Officer, to approve the appointment of Mr.K.Manikandan as Physical Education Teacher with effect from the date of his appointment viz., 03.08.2015 and to release salary and other attended benefits.

Appearance

Mr.M.Ajmalkhan, Senior Counsel
for M/s.Ajmal Associates for petitioner
in W.P.Nos.9860 & 33954 of 2016

Mr.Issac Mohanlal, Senior Counsel
for Mr.P.Godsan Swaminath for petitioner
in W.P.No.35439 of 2016 &
3rd respondent in W.P.Nos.9860 & 33954/2016

Mr.K.Dhananjayan, Spl GP,
for Respondents 1 & 2 in all the above WPs.

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COMMON ORDER

W.P.No.9860 of 2016 has been filed by the petitioner -Manikandan, who is working as Physical Education Teacher in V.S.Boys Higher Secondary School, Thiruvarur, challenging the order in x/K/vz;/10882-M3-2015 dated 05.02.2016 passed by the District Educational Officer, Thiruvarur, in and by which he refused to grant approval for the appointment of the petitioner as Physical Education Teacher in the said school and returned the proposal dated 18.08.2015 sent by the School.

2.When the said writ petition is pending before this Court, the Chief Educational Officer, Thiruvarur, (1st respondent herein) has passed an order in Na.Ka.No.1899/A2/2016, dated 15.09.2016 cancelling the earlier order dated 26.06.2015 under which permission was granted to fill up the post of Physical Educational Teacher in the School; hence, challenging the cancellation order dated 15.09.2016, the petitioner has filed W.P.No.33954 of 2016.

3.Similarly, the said School viz., V.S.Boys Higher Secondary School, Thiruvarur has also filed W.P.No.35439 of 2016, challenging the order dated 15.09.2016 passed by the 1st respondent cancelling the earlier order dated 26.06.2015 under which permission was granted to fill up the post of Physical Educational Teacher in the School.

4.Since the issues involved in these writ petitions are one and the same, these writ petitions are disposed of by way of this common order. For the sake of convenience, the parties are referred to as per their ranking in W.P.No.9860 of 2016.

5.It is stated that the 3rd respondent School viz., V.S.Boys Higher Secondary School, Thiruvarur is a private school receiving grant in-aid from the State Government. The School is governed by the provisions contained in the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973. The total strength of the students in the School is 2068. In High School Level (VI to X) there are about 1233 students studying. In Higher Secondary level (XI & XII), there are about 835 students are studying.

6.It is the case of the petitioner that as per G.O.Ms.No.252, School Education, dated 29.12.1997, the 3rd respondent-School is entitled for One Physical Education Director and three Physical Education Teachers. The staff strength of Physical Education Teachers was approved by the 3rd respondent for the year 2014-2015 and 2015-2016. While so, in the 3rd respondent-School, one Mr.Ganasekaran who was working as

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Physical Education Teacher was promoted as Physical Education Director on 01.07.2013 and as a consequence, the said post of Physical Education Teacher fell vacant and therefore, the 3rd respondent-School decided to fill up the vacant post. The 1st respondent had given approval by his proceedings dated 26.06.2015 to fill up the vacant post of Physical Education Teacher. Based on the approval given by the 1st respondent, the 3rd respondent invited eligible candidates from the District Employment Office as well as by way of paper notification dated 03.07.2015. As the petitioner is fully qualified to the post of Physical Education Teacher, the petitioner has submitted his application to the 3rd respondent-School. The 3rd respondent-School by proceedings dated 21.07.2015 issued a call letter for interview calling upon the petitioner to appear for interview on 28.07.2015 at about 10.00 am before the 3rd respondent. The petitioner participated in the interview held on 28.07.2015 and after duly verifying the petitioner's certificate and the marks obtained by him in the written test, the School Committee of the 3rd respondent by its resolution dated 29.07.2015 resolved to appoint the petitioner as Physical Education Teacher. Based on the said Resolution, the 3rd respondent by proceedings dated 03.08.2015 appointed the petitioner as Physical Education Teacher in the 3rd respondent-School. Thereafter, on 18.08.2015 the 3rd respondent sent a proposal for approval of the petitioner's appointment as Physical Education Teacher in the sanctioned post. But, the said proposal of the 3rd respondent has been returned by the 2nd respondent by way of the impugned proceedings x/K/vz;/10882-M3-2015 dated 05.02.2016 on the ground that as per G.O.Ms.No.525, School Education Department, dated 29.12.1997, the 3rd respondent-School is entitled to a maximum of three numbers of Physical Education Teacher and therefore, no approval can be accorded for the appointment of the petitioner as Physical Education Teacher and hence, the proposal has been returned to the 3rd respondent-School. Hence, the petitioner has filed the writ petition in W.P.No.9860 of 2016 challenging the proceedings of the 2nd respondent dated 05.02.1016.

7.When the said writ petition is pending, by the impugned order dated 15.09.2016 in Na.Ka.No.1899/A2/2016, the 1st respondent has cancelled the earlier order dated 26.06.2015, under which permission was granted by the 1st respondent to fill up three post of Physical Education Teacher. Challenging the same, the petitioner has filed another writ petition in W.P.No.33954 of 2016 and the 3rd respondent-School has also filed writ petition in W.P.No.35439 of 2016.

8.When the matter was taken up for consideration, the learned senior counsel Mr.M.Ajmal Khan appearing for the petitioner submitted that the 3rd respondent-School is a private school. The total strength of the students in the 3rd

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respondent-school is 2068. In High School Level (VI to X) there are about 1233 students studying. In Higher Secondary level (XI & XII), there are about 835 students who are studying. As per G.O.Ms.No.252, School Education, dated 29.12.1997, the 3rd respondent-School is entitled for One Physical Education Director and three Physical Education Teachers and the staff strength of Physical Education Teachers was approved by the 3rd respondent for the year 2014-2015 and 2015-2016. While so, one Mr.Ganasekaran who was working as Physical Education Teacher in the 3rd respondent-School was promoted as Physical Education Director on 01.07.2013 and as a consequence, the said post of Physical Education Teacher fell vacant and therefore, the 3rd respondent-School decided to fill up the vacant post. In fact, the 1st respondent had given approval by his proceedings dated 26.06.2015 to fill up the vacant post of Physical Education Teacher. Based on the approval given by the 1st respondent, the 3rd respondent invited eligible candidates from the District Employment Office as well as by way of paper notification dated 03.07.2015. As the petitioner is fully qualified to the post of Physical Education Teacher, the petitioner has submitted his application to the 3rd respondent-School. After conducting interview, the 3rd respondent by proceedings dated 03.08.2015 appointed the petitioner as Physical Education Teacher. Therefore, the respondents 1 & 2 are duty bound to grant approval to the appointment of the petitioner as Physical Education Teacher in the 3rd respondent-School.

9.The learned senior counsel Mr.P.Dodsan Swaminath appearing for the 3rd respondent-School has made a detailed submission, by relying upon G.O.Ms.No.252, School Education, dated 29.12.1997,. Further, he has also relied upon a judgment delivered by a Division Bench of this Court reported in (2010 2 MLJ 277 [Director of School Education Vs. K.Uma], and submitted that the normal understanding of the above said government order with regard to Physical Education Teachers is that the High Schools would have maximum number of three Physical Education Teachers and Higher Secondary School would in addition have one more Physical Education Director in the name of Physical Education Director. However, there cannot be any ceiling with regard to the strength of teachers as the same is bound to vary as per the strength of the students. When the students strength is increased, the ceiling has to be removed and the required number of Physical Education Teachers are to be appointed, otherwise the students would suffer irreparably and the government order would go against the very scheme of education. For the same proposition, the learned senior counsel for the 3rd respondent-School has also relied upon the decision of this Court in W.P.No.24250 of 2009, dated 02.03.2010 (The Manager, RC SChools, Salem Diocese Society vs. The State of Tmail Nadu and others).

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10.Though the respondents 1 & 2 have not chosen to file any counter, the learned Special Government Pleader appearing for the respondents 1 & 2, by relying upon the same Government Order in G.O.Ms.No.252, School Education, dated 29.12.1997, would contend that when the strength in classes VI to X in High Schools exceeds 250, one post of Physical Education Teacher will be sanctioned and for every additional strength of 300, one additional post of Physical Education Teacher will be sanctioned subject to a maximum of three. Further, only for the schools with a strength of over 400 students, one post of Physical Director will be given by upgradation of existing post of Physical Education Teacher. So far as the present case is concerned, there are already two physical education teachers and one Physical Education Director. Therefore, approval for the appointment of the petitioner as Physical Education Teacher was not granted and the approval granted by the 1st respondent on 26.06.2015 was cancelled by the 1st respondent by order dated 05.02.2016. Thus, the learned Special Government Pleader submitted that there is no infirmity in the impugned orders and sought for dismissal of the writ petitions.

11.Keeping the submission made either side, I have carefully gone through the entire materials available on record.

12.The entire issue involved in these writ petitions is based upon the government order in G.O.Ms.No.525, School Education (D1) Department, dated 29.12.1997. Therefore, it would be appropriate to extract the relevant portions in the said GO, as hereunder_

> "5 III.High School (Standars VI to X)
>
> (a)....
>
> (b)....
>
> (c)When the strength in classes VI to X in High Schools exceeds 250 one post of Physical Education Teacher will be sanctioned and for every additional strength of 300, one additional post of Physical Education Teacher will be sanctioned subject to a maximum of 3."
>
> IV.Higher Secondary Schools (11th and 12th Standards)
>
> (a) to (e) .....
>
> (f)For schools with a strength of over 400 one post of Physical Director will be given by upgradation of existing post of Physical Education Teacher."

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A reading of the above provisions of the said GO would show that when the strength in classes VI to X in High Schools exceeds 250, one post of Physical Education Teacher will be sanctioned and for every additional strength of 300, one additional post of Physical Education Teacher will be sanctioned subject to a maximum of three. So far as the Higher Secondary School is concerned, for a school with strength of over 400, one post of Physical Director will be given by upgradation of existing post of Physical Education Teacher.

13.In the present case, the materials available on record would show that the total strength of the students in the 3rd respondent-School is 2068. The students strength in Higher Secondary School (XI & XII standard) in the 3rd respondent-School for the academic year 2015-2016 is 759. Since sufficient students strength required in the Higher Secondary level (XI & XII Standard) was there in the 3rd respondent-School, one of the Physical Education Teacher viz., one Gnanasekaran, was promoted as Physical Education Director and thereafter, the petitioner was appointed as Physical Education Teacher in the vacant post in the 3rd respondent-School. Now, the respondents 1 & 2 are trying to project and highlight the issue stating that there are already three Physical Education Teachers, by taking into account the post of Physical Education Director also, for the purpose of deciding the strength of the teachers. In this regard, the respondents 1 & 2 cannot take into account the post of Physical Education Director for consideration. Therefore, I am of the opinion, as on date, considering the strength of the students in the 3rd respondent-School, there should be three Physical Education Teachers and one Physical Education Director. Therefore, the respondents 1 & 2 are bound to grant approval for the appointment of the petitioner as Physical Education Teacher in the 3rd respondent-School. Under such circumstances, I am of the opinion that the cancellation of the earlier approval granted on 26.06.2015 by the 1st respondent vide the impugned order dated 15.09.2016 is not legally sustainable.

14.Moreover, this Court is of the opinion that there cannot be any ceiling with regard to the strength of the Physical Education Teacher. In this regard, a reference could be placed in the judgment, relied upon by the learned senior counsel for the School, reported in (2010 2 MLJ 277 [Director of School Education Vs. K.Uma], wherein it has been held by the Division Bench of this Court as follows_

> "23.As stated above, the normal understanding of the above said government order with regard to Physical Education Teachers is that the High Schools would have maximum number of three Physical Education Teachers and Higher Secondary School would be

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added one more Physical Education Director in the name of Physical Education Director. However, there cannot be any ceiling with regard to the strength of teachers as the same is bound to vary/increase as per the strength of the student's. When the student strength is increased, the ceiling has to be removed and required more Physical Education Teachers are to be appointed, otherwise the students would suffer irreparably and the government order would go against the very scheme of education."

Similarly, in the decision in W.P.No.24250 of 2009, dated 02.03.2010 (The Manager, RC SChools, Salem Diocese Society vs. The State of Tmail Nadu and others), it has been held by this Court as follows_

"5. In order to appreciate the contentions of the parties, it is relevant to extract para 5 (III)(c) in G.O.Ms.No.525 School Education (D1) Department, dated 29.12.1997, which reads as follows:

"When the strength in classes VI to X in High Schools exceeds 250, one post of Physical Education Teacher will be sanctioned and for every additional strength of 300, one additional post of Physical Education Teacher will be sanctioned subject to a maximum of 3.

But, in the instant case, a perusal of the materials would show that the strength of the students of the petitioner school is more than 3000. Under such circumstances, it is apparent that the petitioner school is certainly in need of maximum of 3 Physical Education Teachers under the said G.O., particularly when the students' strength is more than 3000. In this regard, a reference could be placed on the relevant passage of the judgment rendered in W.A.No.226 of 2009, wherein it has been held as follows:

"15. In the Full Bench judgment, it has been observed that if the teacher's strength is required to be increased keeping in view of the teacher-student ratio, the same has to be allowed. In view of that also considering the strength of the students the authorities can increase the Physical Education Teacher's posts. However it cannot reduce the

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> strength of the Physical Education Teachers student strength requires more. In view of that also, the impugned order is liable to be set aside.
>
> ..
>
> 23. As stated above, the normal understanding of the above government order with regard to Physical Education Teachers is that the High Schools would have maximum number of three Physical Education Teachers and Higher Secondary School would be added one more Physical Education Director in the name of Physical Education Director. However there cannot be any ceiling with regard to the strength of teachers as the same is bound to vary/increase as per the strength of the students. When the student strength is increased, the ceiling has to be removed and required more Physical Education Teachers are to be appointed, otherwise the students would suffer irreparably and the government order would go against the very scheme of education".

6. Considering the facts and circumstances of the case, I am of the opinion, even in this case, that there cannot be any ceiling with regard to the strength of Physical Education Teachers. However, I find that only a proposal was sent by the 1st respondent to the petitioner school for deploying three Physical Education Teachers of the petitioner school to the other schools. Since it is only at the stage of proposal, I am of the opinion that an appropriate direction could be given to the petitioner school about the proposal."

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The dictum laid down in the above decisions is squarely applicable to the present facts of the case. Hence, the impugned orders in the present writ petition are liable to be quashed.

15.Accordingly, the impugned orders are quashed and the 3rd respondent-School is directed to send their proposal to the 1st respondent with regard to granting approval for the appointment of the petitioner as Physical Education Teacher, within a period

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of two weeks from the date of receipt of a copy of this order. On receipt of such proposal, the respondents 1 & 2 are directed to consider the same in the light of the judgment of this Court referred to above, and to pass appropriate orders, with regard to grating approval for the appointment of the petitioner as Physical Education Teacher (P.E.T) with effect from 03.08.2015, within three weeks thereafter.

16.With the above terms, the writ petitions are allowed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

ssv
To,
1.The Chief Educational Officer,
O/o.The Chief Educational Office,
Thiruvarur, Thiruvarur District.

2.The District Educational Officer,
O/o.the District Educational Office,
Thiruvarur, Thiruvarur District.

+1 cc to M/s.P.Godson Swaminath Advocate sr 71373
+1 cc to M/s.Ajmal Associates sr 71523
+1 cc to Government Pleader sr 71703

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