



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.09.2016
Pronounced on : 01.12.2016

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CORAM :

THE HON'BLE DR.JUSTICE S.VIMALA

W.P.(MD)No.13965 of 2015
& M.P.(MD) Nos.1 to 4 of 2015

The Secretary / Correspondent,
Setupati Higher Secondary School,
No.2 North Veli Street,
Madurai District 625 001

... Petitioner

vs.

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 600 006
3. The Joint Director (Vocational),
College Road, Chennai 600 006
4. The Chief Educational Officer,
Madurai 625 002, Madurai District
5. The District Educational Officer,
Madurai 625 002
Madurai District

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned staff fixation settled by the fourth respondent CEO in Na.Ka.No.8587/Aa1/2014, dated 07.11.2014, in so far as it renders one post of Vocational Instructor in General Machinist as surplus without staff is concerned and the sequential proceedings issued by the fifth respondent DEO in O.Mu.No.5714/A5/2014, dated 10.11.2014, refusing approval to the appointment of Thiru R.Kannan, as vocational instructor in General Machinist, quash the same and to direct the respondents 4 and 5 to approve forthwith the appointment of Thiru.R.Kannan as Vocational Instructor in General Machinist with effect from the date of his appointment, viz., 10.06.2013 with salary and all attendant benefits.



O R D E R

The petitioner school, namely, Setupathi Higher Secondary School, Madurai, which was originally a primary school later upgraded as High School and still later, upgraded as Higher Secondary School, is a recognized and aided private school. It is established and administered by Madura College Board. It is governed by the provisions of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 (in short "the Act") and Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974 (in short "the Rules").

1.1. The Government announced norms on teacher-students ratio under G.O.Ms.No.525 (School Education), dated 29.12.1997, with effect from 01.06.1998. A new ratio of one teacher for every 40 students was adopted, in principle. There were separate norms for different standards / stages / grades of education.

2. In so far as higher secondary schools are concerned, norms will be eight P.G. Teachers with a minimum of two groups and for **vocational stream two full time Vocational Instructors for each course**. So far as the petitioner school is concerned, right from the year 1978, it is functioning with two vocational groups, viz., (i) General Machinist and (ii) Electrical Machines and Appliances along with other groups. Therefore, the petitioner school is eligible to have at least two vocational instructors. Accordingly, the school was sanctioned with two full time vocational instructors, for each course. The two vocational groups are running with sufficient student strength of 135 students, with sufficient workload for two full time vocational instructors' post.

3. One T.S.Natarajamoothy, who was working in the regular vacancy as Vocational Instructor in the General Machinist attained superannuation and continued under re-employment till 31.05.2013. The school wanted permission from the Chief Educational Officer (CEO) to fill up the post, but he did not pass any order. Thereafter, one Thiru.R.Kannan was appointed as Vocational Instructor (General Machinist) with effect from 10.06.2013.

4. The petitioner school submitted a proposal to the District Educational Officer (DEO) for the disbursement of the grant-in-aid. As the DEO did not pass any order, the petitioner school sent a representation to the CEO, requesting to approve the appointment of Thiru.R.Kannan.

5. The CEO, by the impugned order, dated 07.11.2014, set-aside the Staff fixation for the academic year 2014-15 and thus rendered the only post of Vocational Instructor in General Machinist which was available in the school as surplus (without staff). The CEO imposed a further condition that whenever the post of Vocational Instructor fell vacant, either due to resignation or retirement or death or on the person getting another job, resigns the job, **the post must be surrendered**. Hence, no new appointment should be made



in that vacancy. Thus, the approval to the appointment was declined. This order is under challenge in this writ petition.

6. The petitioner submitted a representation to the third respondent, requesting him to re-fix the staff strength and sanction the post of Vocational Instructor in General Machinist, based on the availability of students strength, with a copy marked to higher officials. It is the grievance of the petitioner that the present appointment is only against the vacancy arising in a post, which is already sanctioned. The course as well as the students still continue. As per G.O.Ms.No.525, dated 29.12.1997, the school is eligible to have at least two post of Vocational Instructors in General Machinist. Therefore, it is claimed that the approval declined is against law and against the interests of the school and students.

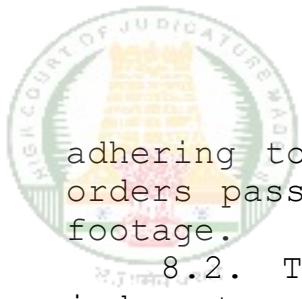
7. The claim made by the petitioner school, on factual aspects, are admitted by the respondents.

7.1. Under Sections 14 (1) and (2) of the Act, the Government, subject to availability of funds and norms and the conditions specified in Grant-in-aid code of the Tamil Nadu Government Education, will pay to the Private Schools any grant or other financial assistance. Under Rule 15 (1) of the Rules, the number of teachers employed in a private school shall not exceed the number of posts sanctioned by the Director of School Education from time to time, with reference to the academic requirement of teacher pupil ratio and over all financial considerations. **As per the norms prescribed in G.O.Ms.No.525, for vocational stream two post of teachers will be sanctioned, irrespective of the number of courses.**

7.2. When the Government has sanctioned the grant, it has got the right to fix the number of posts, taking into account the necessity of the school. When there is an excess post, the same could be allotted to other schools.

8. The main contention of the learned counsel for the respondents is that the Government, being the funding authority, has every right to frame rules for fixation of teaching posts, which include Vocational Instructor posts; the petitioner school is not competent to continue the course, as per the re-fixation of staff strength.

8.1. This contention is refuted by the learned counsel for the petitioner, by submitting that, when a course offered in the school has been approved long ago and the post of Vocational Instructor has been sanctioned by the Government long before, and when the present appointment is only as against the vacancy in the sanctioned post, it is not open to the Government to contend that it will not grant approval only because it is a funding authority. It is also pointed out that the approval to the appointment made against a sanctioned vacancy cannot be denied, citing the proceedings of the Director, dated 28.08.2003, which was issued in respect of an individual working in a particular school at Coimbatore. The proceedings are binding only, if it is issued



adhering to the Act and Rules and any other proceedings based on orders passed against a particular individual cannot have a legal footage.

8.2. The learned counsel for the petitioner relied upon a judgment of this Court rendered in W.P.No.12396 of 2009 dated 21.03.2011, wherein, the issue raised therein was, with reference to the approval for the post of Vocational Instructor, and ultimately, it has been held that when the sanctioned post was sought to be filled up, the rejection of approval is liable to be set-aside.

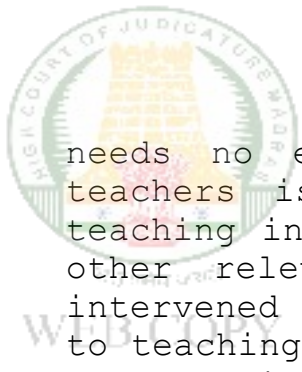
8.3. This order was challenged in a Writ Appeal in W.A.No.652 of 2013, wherein the orders passed in the writ petition were confirmed and ultimately, the orders passed in the writ petition were implemented by the respondents.

9. The learned counsel for the respondents contended that the petitioner school was informed by the proceedings, dated 10.11.2014 that the teachers already working in the diversified courses may continue and if these posts fall vacant, the post should not be filled up and they should be surrendered to the Department and therefore, the non-grant of approval is justified.

9.1. The contention of the respondents is very strange and once there is a sanctioned post and so long as there is a necessity to maintain the teacher pupil ratio and as long as the recognition for the course continue with sufficient student strength, the question of surrendering the post does not arise at all.

10. Further, it is not the case of the respondents that: (a) the course is not actually being conducted; (b) the new proposed appointment is not against the sanctioned post; and (c) there were no students pursuing Vocational stream. The contention that the post has to be surrendered on retirement of the erstwhile employee cannot be accepted, so long as there is a permission to conduct the course. The crux of the contention seems to be that the funding authority has the right to stop the appointment, subject to the will and wish. This contention cannot be accepted in the light of the decision of the Hon'ble Supreme court reported in the case of Chandigarh Administration v. Rajni Vali, reported in AIR 2000 SC 634 : 2000 (2) SCC 42, wherein, the issue that has been considered is, as to whether grant-in-aid can be denied to private schools on the ground of want of funds/paucity of funds and while answering the said issue, in Paragraph No.6 it is held as follows:-

"6. imparting primary and secondary education to students is the bounden duty of the State Administration. It is a constitutional mandate that the State shall ensure proper education to the students on whom the future of the society depends. In line with this principle, the State has enacted statutes and framed rules and regulations to control/regulate establishment and running of private schools at different levels. The State Government provides grant-in-aid to private schools with a view to ensure smooth running of the institution and to ensure that the standard of teaching does not suffer on account of paucity of funds. It



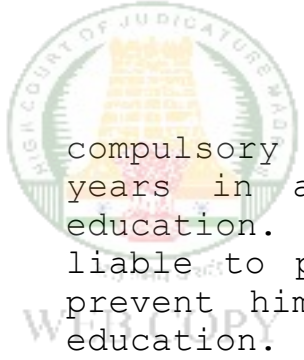
needs no emphasis that appointment of qualified and efficient teachers is a sine qua non for maintaining high standards of teaching in any educational institution. Keeping in mind these and other relevant factors this Court in a number of cases has intervened for setting right any discriminatory treatment meted out to teaching and non-teaching staff of a particular institution or a class of institutions.

11. The Hon'ble Supreme Court in a decision in the case of **Rohit Singhal v. Jawahar N.Vidyalaya** reported in AIR 2003 SC 2088 : 2003 (1) SCC 687, declared that **"education is an investment made by the nation in its children for harvesting a future crop responsible adults productive of a well functioning society.** It is also held that children are not only the future citizens, but also the future of the earth. The State must ensure that children suffer no harm in exercising their fundamental rights and civic duty. The States, thus, bear the additional burden of regulation, ensuring that schools provide safe facilities as part of a compulsory education".

12. In the case of **State of Orissa v. Mamata Mohanty**, reported in 2011 (3) SCC 436, the Hon'ble Supreme Court held that **standard of teaching shall not suffer on the ground of want of funds/ paucity of funds cannot be a ground for the State for not maintaining the standard of education and not providing quality education to its citizens.** In Paragraph No.33 of the said decision, the Hon'ble Supreme Court held thus:-

"33. In view of the above, it is evident that education is necessary to develop the personality of a person as a whole and in totality as it provides the process of training and acquiring the knowledge, skills, developing mind and character by formal schooling. Therefore, it is necessary to maintain a high academic standard and academic discipline along with academic rigour for the progress of a nation. **Democracy depends for its own survival on a high standard of vocational and professional education. Paucity of funds cannot be a ground for the State not to provide quality education to its future citizens.** It is for this reason that in order to maintain the standard of education the State Government provides grant-in-aid to private schools to ensure the smooth running of the institution so that the standard of teaching may not suffer for want of funds."

13. The next point to be considered is as to whether by denying sanction of eligible posts to the petitioner school, the respondents are violating the fundamental right guaranteed to the students of the petitioner schools under Article 21(A) of the Constitution of India, which is also declared as a statutory right under the Right of Children to Free and Compulsory Education Act, 2009. Section 3 of the said Act gives right of child to free and



compulsory education between the age group of six and fourteen years in a neighbourhood school till completion of elementary education. As per Section 3(2) of the said Act, no child shall be liable to pay any kind of fee or charges or expenses, which may prevent him or her from pursuing and completing the elementary education. The said Act mandates the appropriate Government, i.e., State Government and the Local Authority to establish schools. The Central Government and the State Governments shall have concurrent responsibility for providing funds for carrying out the provisions of the said Act. The Central Government shall provide to the State Governments, grants-in-aid of revenues, such percentage of expenditure referred to in sub-section (2), as it may determine from time to time in consultation with the State Governments. Responsibilities of Schools and Teachers are also stated in Chapter IV. No capitation fee for admission can be collected. The norms and standards for schools are also fixed. The qualification for appointment of teachers and terms and conditions of service of teachers are also fixed. Teacher Pupil ratio to be followed for appointment of teachers is also to be mandatorily followed. Rules were also issued in the year 2010 to carry out and implement the Act. The State Government also issued Rules recently. Thus, it is too late of the day for the Government to raise a contention that, due to want of funds, posts cannot be sanctioned to the schools, for which recognition and aid are already granted.

14. In the decision in **Ashok Kumar Thakur v. Union of India** reported in 2008 (6) SCC 1 : 2008 3 MLJ 1105, the Hon'ble Supreme Court held that for fully implementing Article 21(A) of the Constitution of India, **the Government should suitably revise budgetary allocations for education.** The priorities have to be set correctly. The most important fundamental right may be Article 21 (A), which, in the larger interest of the nation, must be fully implemented. Without Article 21(A), the other fundamental rights are rendered meaningless. Education stands above other rights, as one's ability to enforce one's fundamental rights flows from one's education. This is ultimately why the judiciary must oversee the Government spending on free and compulsory education.

15. An identical issue, but pertaining to the appointment of a physical education teacher, was raised before a Division Bench of this Court in the decision in the Director of School Education v. K.Uma reported in 2010 (1) CWC 141 : 2010 (2) MLJ 277. The question was, 'whether the Physical Education Teacher post is required to be sanctioned based on the students strength without any ceiling in terms of G.O.Ms.No.525, School Education (D-1) Department, dated 29.12.1997'. **The Division Bench held that the Physical Education is one of the curriculum subjects, and therefore, sanction of additional post as per the students strength is required;** the learned counsel for the petitioners schools submitted that the Special Leave Petition filed as against the said Judgement was also dismissed by the Hon'ble Supreme Court and the said Judgement is also implemented; the said fact is not disputed



by the learned Advocate General; thus, the petitioners are entitled to succeed on all the issues raised in these writ petitions.

16. Under such circumstances, the refusal for approval of appointment is without basis and without application of mind. Hence, the impugned orders, dated 07.11.2014 and 10.11.2014, are set-aside and the respondents are directed to approve the appointment of Thiru.R.Kannan, as Vocational Instructor, in the petitioner school, with sanction of grant-in-aid, within a period of four weeks from the date of receipt of a copy of this order.

17. The writ petition stands disposed of. No costs. Consequently, the connected MPs are closed.

Sd/-

Assistant Registrar (CS-I)

/TRUE COPY/

Sub Assistant Registrar

To

1. The Secretary, State of Tamil Nadu,
Department of School Education,
Fort St. George, Chennai 600 009
2. The Director of School Education,
College Road, Chennai 600 006
3. The Joint Director (Vocational),
College Road, Chennai 600 006
4. The Chief Educational Officer,
Madurai 625 002, Madurai District
5. The District Educational Officer,
Madurai 625 002, Madurai District

+1 cc to MR.Cibi Chakkaraborthy, ADVOCATE, SR NO:79201

srk

sva/bs/sar2/06.03.2017/7p/7c

Pre-Delivery Order in
W.P. (MD) No.13965 of 2015
& M.P. (MD) Nos.1 to 4 of 2015
01.12.2016