



BEFORE THE MADURAI BENCH OF MADRAS HIGHCOURT

RESERVED ON : 17.11.2017
DELIVERED ON : 29.11.2017
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THE HONOURABLE MR.JUSTICE M.VENUGOPAL
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.A. (MD) Nos.1292 of 2017 & 461 of 2014
and
C.M.P. (MD) Nos.8980 of 2017 & 1 of 2014

W.A. (MD) No.1292 of 2017:

1. The Director of Elementary Education,
College Road, Chennai - 600 006.
2. The District Elementary Educational Officer,
Tiruchirappalli - 620 020,
Tiruchirappalli District.
3. The Additional Assistant Elementary Educational Officer,
Marungapuri - 621 305,
Tiruchirappalli District. ... Appellants

Vs

The Correspondent,
St.Joseph's RC Primary School,
Palakurichy - 621 308,
Tiruchirappalli District. ... Respondent

PRAYER: Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 27.02.2017 made in W.P.(MD) No.7456 of 2016 on the file of this Court and allow this writ appeal.

Prayer in WP(MD). 7456/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings issued by the 2nd respondent District Elementary Education Officer in Na.Ka.No.5147/a5/2015 dated 14.12.2015, quash the same and further direct the 2nd District Elementary Educational Officer to approve forthwith the appointment of Sr.A.Rex Anita as Secondary Grade Teacher in the petitioner s School namely, St. Josephs R.C. Primary, Palakurichi, w.e.f 18.11.2013 and disburse the grant-in-aid towards her salary and allowances w.e.f. the said date with all attendant benefits.



For Appellants

: Mr.V.R.Shanmuganathan
Special Government Pleader

For Respondent

: Mr.Isaac Mohanlal,
Senior Counsel

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WA (MD) No.461 of 2014:

1. The District of Elementary Education Officer,
Tirunelveli.
2. The Additional Assistant Elementary Educational Officer,
Cheranmahadevi,
Tirunelveli District. ... Appellants

Vs

1. P.Selva Kala Paulraj
2. The Correspondent,
T.D.T.A Primary School,
C.Samathanapuram,
Cheranmahadevi,
Tirunelveli District. ... Respondents

PRAYER: Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 07.01.2014 in W.P.(MD) No.3914 of 2013.

Prayer in WP(MD). 3914/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the 2nd respondent in his Proceedigns O. Mu.No.614/A1/2012 dated 03.08.2012 and quash the same and direct the respondents to approve the appointment of the petitioner from the date of appointment i.e. 04.10.2010 and confer all the consequential benefits.

For Appellants

: Mr.V.R.Shanmuganathan
Special Government Pleader

For Respondent No.1

: Mr.Paneerselvam
for M/s.C.S.Associates

For Respondent No.2

: No appearance

COMMON JUDGMENT**ABDUL QUDDHOSE, J.**

The only point for consideration in both the Writ Appeals is whether a Government Aided Minority School run by a Corporate body having more than one School can recruit fresh Teachers when



there are surplus Teachers in other schools under the same Management.

2. Admittedly, the Respondent School in both the Writ Appeals are Government Aided Minority Institutions. The respective Respondent Schools separately challenged the rejection of the appointment of a Teacher to their respective Schools by the Second Appellant by filing W.P.(MD) No.7456 of 2016 and W.P.(MD) No.3914 of 2013, respectively. The Second Respondent rejected the proposal for appointment submitted by the respective Schools on the ground that there are surplus Teachers in the Schools under the same Management.

3. Insofar as, the Respondent School in W.A.(MD) No.1292 of 2017 is concerned, the Second Appellant rejected the appointment by proceedings dated 14.12.2015 in Na.Ka.No.5147/A5/2015 and insofar as, the appointment made by the Respondent School in W.A.(MD) No.461 of 2014 is concerned, the Second Appellant rejected the appointment on account of surplus Teachers by proceedings dated 03.08.2012 in O.Mu.No.614/A1/2012.

4. The Learned Single Judge allowed the Writ Petitions and quashed the impugned proceedings by separate orders dated 27.02.2017 in W.P.(MD) No.7456 of 2016 and dated 07.01.2014 in W.P.(MD) No.3914 of 2013.

5. Aggrieved by both the separate orders of the Learned Single Judge, the Appellants (State) have preferred the instant Writ Appeals. Since the issue involved in both the Writ Appeals are common, we are disposing both the Appeals by a Common Judgment.

I. FACTUAL MATRIX:

6. The brief facts leading to the filing of these Writ Appeals are as follows:

(a) The Petitioner School in W.P.(MD) No.7456 of 2016, is a Recognised Government Aided Minority School, wherein one post of Secondary Grade Teacher was vacant on account of retirement of one S.Thamizharasi on 31.12.2012. In that vacancy, the School appointed Sr.A.Rex Anitha as Secondary Grade Teacher with effect from 18.11.2013. The School submitted a proposal to the Second Appellant, requesting to approve her appointment as Secondary Grade Teacher from 18.11.2013 and disburse the grand-in-aid towards her salary and allowances. But the Second Appellant returned the proposal vide proceedings dated 14.12.2015, on the ground that there are surplus of posts in other Schools under the same Management. Aggrieved by the same the Respondent School filed W.A.(MD) No.1292 of 2017.



(b) The third respondent School in W.P.(MD)No.3914 of 2013 is a Recognised Government Aided Minority School, wherein one post of Secondary Grade Teacher was vacant on account of the death of Tmt.B.Rani on 02.03.2010. In that vacancy, the School appointed the Petitioner, P.Selva Kala Paulraj as Secondary Grade Teacher with effect from 04.10.2010. The School submitted a proposal to the Second Appellant, requesting to approve the Petitioner's appointment as Secondary Grade Teacher from 04.10.2010 and disburse the grand-in-aid towards her salary and allowances. But the Second Appellant returned the proposal vide proceedings dated 03.08.2012 on the ground that there are surplus of posts in other Schools under the same Management. Aggrieved by the same the Petitioner filed W.A.(MD).No.461 of 2014.

II.SUBMISSIONS OF THE COUNSELS:

7.The Learned Special Government Pleader appearing for the Appellants submitted that the Second Appellant has rightly rejected the proposal sent by both the Institutions on the ground that there are surplus posts in other Schools under the same Management. He submitted that the respective Schools involved in these Writ Appeals are Corporate Managements. According to him, a Corporate Management is a unit of the Management and the Management should have redeployed the surplus teachers from other Schools of the same Management instead of making fresh appointments. According to him, the Management of Respondent Institutions are also managing other Schools and being a Corporate Management, the surplus Teachers available in other Schools must be redeployed to the Respondent School and without redeployment of the surplus Teachers, the Second Appellant cannot approve the proposal submitted by the School seeking approval of new appointments. According to the Learned Special Government Pleader, if the approval for the appointment is granted despite surplus Teachers available in other Schools under the same Management, it will have financial implications draining the State's exchequer. He also submitted that audit objections were raised by the Accountant General, Chennai, vide report No.Prl.AG (G&SSA)/SS1/C-4/I/20-003/16-17/ dated 04.04.2016, in which it has been mentioned that the pay and allowances paid to the surplus Teachers during 2012-2016 was Rs.17.67 crores. Because of the audit objections, the vacant posts should be filled up only by the surplus staff. But both the Respondent Institutions involved in these Writ Appeals have violated the audit objections and made new appointments instead of redeploying the surplus Teachers.

8.The Learned Special Government Pleader drew our attention to Sections 14 and 26 of the Tamil Nadu Recognised Services (Regulation) Act, 1973 [hereinafter referred to as "the Act"]. He relied upon Section 14 (2) of the Act and



submitted that the Government may withhold permanently or for any specified period the whole or part of any grant referred to in sub-section (1) in respect of any Private School, which does not comply with any of the Provisions of the Act or any Rules made or directions issued thereunder insofar as such Provisions, Rules or directions are applicable to such Private School. Section 14 of the Act, reads as follows:

"14.Payment of grant: -[(1) Subject to such Rules as may be prescribed, the Government may continue to pay grant to the private school receiving grant from the Government, before the date of commencement of the academic year 1991 - 1992 at such rate and for such purpose as may be prescribed.

Explanation - For the purpose of this sub-section, private school receiving grant from the Government shall also include a private school receiving grant from the Government only in respect of any class or course of instruction.]

(2)The Government may withhold permanently or for any specified period the whole or part of any grant referred to in sub-section (1) in respect of any private school, -

(i)which does not comply with any of the provisions of this Act or any Rules made or directions issued thereunder in so far as such provisions, Rules or directions are applicable to such private school, or

(ii)in respect of which the pay and allowances payable to any teacher or other person employed in such private school are not paid to such teacher or other person in accordance with the provisions of this Act or the Rules made thereunder, or

(iii)which contravenes or fails to comply with any such conditions as may be prescribed.

(3)Before withholding the grant under sub-section (2), the Government shall give the educational agency an opportunity of making its representation."

9.The Learned Special Government Pleader then drew our attention to the explanation contained in Section 26 of the said Act, and submitted that the strength of the pupil shall be determined in accordance with the norms fixed in the grant in aid code of the Tamil Nadu Education Department or under any Rule, Regulation or Order as may be made or issued by the Government or the Director of School Education, from time to time, for appointment of Teachers or others in any Private School. Section 26 of the said Act reads as follows:

26.Absorption of Teachers or other persons on retrenchment.- Where any retrenchment of any Teacher or



other person employed in any private school is rendered necessary consequent on any order of the Government relating to education or course of instruction or to any other matter,¹ [or consequent on the reduction in strength of the pupil's studying in any such private school] it shall be competent for the Government or the School Committee of any private school to appoint such Teacher or other person in any school or institution maintained by the Government or in such private school, as the case may be.

Explanation.- For the purpose of this section, the strength of the pupil's shall be determined shall be determined in accordance with the norms fixed in the Grant-in-Aid Code of the Tamil Nadu Education Department or under any Rule, Regulation or order as may be made or issued by the Government or the Director of School Education, from time to time, for appointment of teachers or others in any private school]."

10. The Learned Special Government Pleader then drew our attention to Rules 2 and 42 of the Grant in Aid Code of the Tamil Nadu Educational Department and submitted that under Rule 2, the Government has the right to refuse or to withdraw any grant to the Aided Schools at their discretion. Rule 2 of grant in aid code reads as follows:

"2. Reservation of discretion by the Government.- The Government reserve to themselves, anything in the Rules of this Code notwithstanding the right to refuse or to withdraw any grant at their entire discretion.

(ii) Grants will, ordinarily, be withdrawn from a manager, if he or any of the teachers employed by him takes part in political agitation directed against the authority of Government or inculcates opinions tending to excite feelings of political disloyalty or disaffection among the pupils.

(iii) Payments of all grants will be subject to audit, and in the event of an objection being upheld, the management concerned may be called upon to refund the amount paid on such portion of it as the Government may decide. Such refund may be made either by adjustment in any other grant payable to the school or in such other manner as the Government may deem fit.

(iv) In cases where the managements of aided Educational Institutions (other than primary schools) do not pay dearness allowance at Government rates to the staff under their control, the Director shall carry out investigation into the financial position of the Institutions and if, after such investigation, he is satisfied that the managements can afford to pay the allowance at Government rates shall direct the



managements concerned to pay the allowance at Government rates. If even after the issue of such a direction, the managements receiving grants from State funds do not pay the allowance at Government rates, the grant payable to them may be withheld either in full or in part. The refusal of the payment of the allowance at Government rates by managements which do not earn any teaching / staff grants may be considered as valid reason for the withdrawal of recognition.

(v) The Director shall have power to refuse grants to any Institution which directly or indirectly encourages propaganda calculated to bring into hatred, ridicule or contempt, the beliefs and practices of any religion."

11. He also submitted that under Rule 42 of the same Code, the Government has the right to reserve to themselves, the right to prescribe any particular line of action to be taken by the Management in regard to any matter affecting the College.

"42. Reservation of control by the Government:- As a condition of the continuance of the grant or any portion thereof, the Government reserve to themselves the right to prescribe any particular line of action to be taken by the management in regard to any matter affecting the college."

12. The Learned Special Government Pleader then drew our attention to the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977 and referred to Rule 6 of the said Rules and submitted that grant to the Minority Schools is subject to the orders and instructions issued by the Government, from time to time. Rule 6 of the said Rule reads as follows:

"6. Payment of grant:- (1) Minority schools may be paid grants subject to the orders and instructions issued by the Government, from time to time. The rate at which, and the purpose for which, the grant may be paid shall be as specified in Annexure II appended to these Rules.

(2) Payment of monthly staff grant shall be made only in respect of qualified and admissible Teachers actually employed in Minority schools whose appointments have been approved by the concerned authorities according to the number of posts sanctioned to the Institutions concerned.

(3) If any over payment is pointed out by the audit and it is ultimately found to be excess, after consideration of the representations, if any, of the management the, the excess amount will have to be made good by the management from its own funds.

<https://hcservices.ecourts.gov.in/hcservices/> (4) If any falsification of account or misuse of the amount of grant paid to any minority school is



found or reported and if, after due enquiry by the Chief Educational Officer in respect of pre-Primary / Primary / Middle schools or the Joint Director of School Education (Secondary Education) in respect of High School / Teachers Training Institute Special Schools / Anglo-Indian Schools. It is found that falsification of account or misuse of the amount of grant is proved, such Minority school shall not be eligible for further grant.

(b) Before refusing further grant under clause (a), the management of such minority school shall be given an opportunity of making its representation."

13. The Learned Special Government Pleader further submitted that even though the respective Schools in these Writ Appeals are Minority Institutions entitled for protection under Article 30 (1) of the Constitution of India, the impugned proceedings passed by the Second Respondent do not violate Article 30 (1) of the Constitution of India as it does not interfere with the internal administration of the respective Schools.

14. The Learned Special Government Pleader drew our attention to G.O.Ms.No.1376 dated 06.07.1981, issued by the Government of Tamil Nadu, Education Department. According to the Learned Special Government Pleader, as per the said Government order, if there are surplus Teachers in the Group of Institutions, before making any appointments, the concerned School must redeploy the surplus Teachers available in other Schools under the same Management and fill them up in the School which is having the vacancy. By the said Government order, Rule 15 of the Tamil Nadu Recognised Private Schools (Regulations) Rules, 1974 was amended. The amended Rule 15(4) (ii), reads as follows:

"15(4) (ii) Appointment of the various categories of teachers shall be made in the following methods:

i) Promotions from among the qualified teachers in the school; or

ii) Promotion from among the qualified Vocational Instructors in that School;

iii) If no qualified and suitable candidate is available by method (i) above.

a) Appointment of other persons employed in that school provided that they are fully qualified to hold the post of teachers.

b) Appointment of teachers from any other school.

c) Direct requirement.

In the case of appointment from any other school or by direct recruitment, the school committee shall obtain the prior permission of the District Educational Officer of Pre-primary, Primary and Middle School and that of the Chief Educational Officer in respect of High Schools and Higher Secondary Schools, Teacher's Training



Institutions setting out the reasons for such appointment. In respect to corporate body running more than one school, the Schools under the body shall be treated as one unit for purpose of this rule."

15.The Learned Special Government Pleader referring to G.O.Ms.No.1376 dated 6.7.1981 submitted that in a Corporate body running more than one School, the Schools under the body shall be treated as one unit for the purpose of this Rule. Therefore, according to him, a Corporate body which runs various Schools including the Respondent School shall be treated as one unit and therefore, surplus Teachers from other Schools in the same group will have to be first utilized for filling up the vacant post in the concerned School.

16.He also drew our attention to the circular issued by the First Appellant in Na.ka.No.28541/H3/2010 dated 27.12.2010 to all the Elementary Educational Officers in Tiruchirapalli District. According to him, the circular is a clarification given by the First Appellant to the District Elementary Educational Officer, Erode that only after obtaining certificate from the District Elementary Educational Officer that there are no surplus Teachers, approval can be granted for fresh appointments. The relevant portion of the circular dated 27.12.2010 issued by the Second Appellant reads as follows:

“கூட்டு மேலாண்மை (Corporate Body) பள்ளிகள் என அரசாணை பெற்றிருக்கும் பள்ளிகளைப் பொறுத்தமட்டில் அனைத்து பள்ளிகளும் ஒரே அலகாகக் (Single Unit) கருதப்பட்டு நியமனம், இடமாறுதல் பதவி உயர்வு ஆகியன வழங்கப்படுகிறது. எனவே, அந்த மேலாண்மையின் கீழ் உள்ள அனைத்துப் பள்ளிகளின் விலாசத்தைப் பெற்றுக் கொண்டு அனைத்து பள்ளிகளிலும் உயர் ஆசிரியர் இல்லை என சம்பந்தப்பட்ட மாவட்டத் தொடக்கக்கல்வி அலுவலரிடம் உயர் ஆசிரியர் எதுவும் இல்லை என்று சான்று பெற்றுக் கொண்டு பணியிடத்தை நிரப்பியமைக்கு ஒப்புதல் வழங்கலாம் என ஈரோடு மாவட்டத் தொடக்கக்கல்வி அலுவலருக்குத் தெரிவிக்கப்படுகிறது.”

17.The Learned Special Government Pleader then drew our attention to G.O.Ms.No.525, School Education (D1) Department, dated 29.12.1997 issued by the School Education Department, Government of Tamil Nadu and submitted that as per the said order, the staff strength shall be fixed by the District Educational Officer concerned. Those who may be rendered surplus due to application of these norms, shall, as far as possible be redeployed to the needy Schools. The redeployment of the staff in Schools shall be done by the Director of School Education and Director of Elementary Education or by the officers to be authorized by them.



18. The Learned Special Government Pleader relied upon, paragraph 8 of G.O.Ms.No.525, School Education (D1) Department, dated 29.12.97, which reads as follows:

"8. A Fresh assessment of grant for posts as per these orders shall be done on the basis of average attendance. The staff strength shall be fixed by the District Educational Officer concerned for High and Higher Secondary Schools and by District Elementary Educational Officer in respect of Elementary-Middle Schools. Those who may be rendered surplus due to application of these norms, shall, as far as possible be redeployed to the needy schools. The redeployment of staff in schools shall be done by Director of School Education and Director of Elementary Education or the Officers to be authorised by them. This will be in supersession of the orders issued in G.O.Ms.No.392, Education, dated 24.6.96. In cases where such deployment is felt difficult, the surplus staff shall be allowed to continue in the same school till their retirement and then the staff strength refixed as per norms. So also wherever necessary, additional posts shall be sanctioned only after taking into account the number of staff deployed to such schools. The Director of School Education and Director of Elementary Education should report the additional posts to be sanctioned as per the new norms after which formal permission in the first year alone shall be granted by Government for filling up of the posts. Subsequent fixation of staff strength shall be done by District Elementary Educational Officer in respect of Elementary and Middle Schools. Regarding High and Higher Secondary Schools, this shall be done by the Joint Directors in the Education at the rate of 4 Revenue Districts per Joint Director and permission from Government to fill up the posts is not necessary."

19. According to the Learned Special Government Pleader, G.O.Ms.No.525, School Education (D1) Department, dated 29.12.97, applies to Minority Institutions. The Learned Special Government Pleader then referred to a Division Bench Judgment of this Court in Writ Appeal (MD) No.70 of 2012 and submitted that surplus Teachers will have to be redeployed to a School which has a vacancy. He referred to paragraph 4 and 5 of the said judgment which reads as follows:

"4. As far as the first respondent case is concerned, in the second respondent school, the sanctioned strength of the teachers for the year 2010-11 was 4, of which there were only two appointments, thereby leaving two posts vacant. Taking note of the above statistics that there are



excess teachers available in the Group of Schools run by the second respondent management and the first respondent's claim in the second respondent school is within the sanctioned strength, this Court directs the first appellant herein to grant approval of the appointment of the first respondent in the second respondent school. Apart from that, the first appellant in the appeal is hereby directed to deploy the excess teachers and posts excess with teachers available in the group of schools run by the second respondent Management, namely TDTA, to the extent of 68 posts, to the schools where there are unfilled vacancies in the sanctioned strength, so that there could be proper utilization of excess hands available in the second respondent Group of Schools.

5.It is seen that 247 Primary Schools and 73 Middle Schools are being run by TDTA. When excess teachers are available in a number of institutions run by the second respondent management as of today, in fairness to the claim and demands of the students, the first appellant herein should take immediate steps to deploy the 68 excess teachers, immediately, to the schools where vacancies are to be filled, which is stated to be 73 in number."

20.He then drew our attention to the list of surplus Teachers in the Government Aided Schools as per the Notification dated 09.11.2017 of the Elementary Education Directorate, Chennai. According to the said Notification, the list for Tirchirappalli District, in which the Respondent School in W.A.(MD)No.1292 of 2017 is being run, there are 29 surplus Teachers and insofar as the Respondent School in W.A.(MD)No.461 of 2014 is concerned, there are 23 surplus Teachers in Tirunelveli District. Since there are surplus Teachers, according to the Learned Special Government Pleader, the Second Appellant has rightly rejected the proposals submitted by the respective Schools vide separate impugned proceedings which are subject matter of consideration in these Writ Appeals.

21.The Learned Special Government Pleader then drew our attention to the relevant portion in paragraph 2 of the Counter Affidavit filed by the Appellants in W.P.(MD)No.3914 of 2013 which reads as follows:

"2.It is submitted that the school in which the petitioner claims to have been appointed as a Secondary Grade Teacher is a minority school. It is



in the District. It is a Corporate Management. It is also exercising the right of transfer of its teachers from one school to another. There are large number of Surplus Secondary Grade Teachers in the T.D.T.A. Schools as shown below:-

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Year	No. of Surplus Secondary Grade Teachers
2010-2011	54
2011-2012	56
2012-2013	74

When there are surplus Secondary Grade Teachers working in the T.D.T.A. Schools, there is no need or justification for the appointment of the petitioner from open market."

22.He submitted that since there are surplus Teachers, without redeployment, the Respondent Schools cannot make fresh appointments and the Second Appellant has rightly rejected the proposals submitted by the respective Respondent Institutions.

23.The Learned Special Government Pleader then relied upon the following authorities:

(1) **T.M.A Pai Foundation Vs. State of Karnataka** reported in **2002 8 SCC 481**, he referred to paragraph 50 of the said judgment which reads as follows:

"50.The Right to establish and administer broadly comprises the following rights:

- (a) to admit students;
- (b) to set up a reasonable fee structure;
- (c) to constitute a governing body;
- (d) to appoint staff (teaching and non-teaching); and
- (e) to take action if there is dereliction of duty on the part of any employees."

24.He also referred to question 5 (c) and its answer which is found in Page 709 of the same judgment which reads as follows:

"Q.5.(c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/withdrawal thereof, and appointment of staff, employees, teachers and principals including their service conditions and regulation of fees etc. would interfere with the right of administration of minorities?

A. So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory



measure of control should be minimal and the conditions of recognition as well as conditions of affiliation to a university or board have to be complied with, but in the matter of day-today management, like appointment of staff, teaching and non-teaching and administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, a rational procedure for selection of teaching staff and for taking disciplinary action has to be evolved by the management itself. For redressing the grievances of such employees who are subjected to punishment or termination from service, a mechanism will have to be evolved and in our opinion, appropriate tribunals could be constituted, and till then, such tribunal could be presided over by a judicial officer of the rank of District Judge. The State or other controlling authorities, however, can always prescribe the minimum qualifications, experience and other conditions bearing on the merit of an individual for being appointed as a teacher of an educational institution.

Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State without interfering with overall administrative control of management over the staff, government/university representative can be associated with the Selection Committee and the guidelines for selection can be laid down. In regard to unaided minority educational institutions such regulations, which will ensure a check over unfair practices and general welfare of teachers could be framed.

There could be appropriate mechanism to ensure that no capitation fee is charged and profiteering is not resorted to.

The extent of regulations will not be the same for aided and unaided institutions."

25.Placing reliance on the decision in **T.M.A. Pai Foundation's** case cited supra, the Learned Special Government Pleader submitted that grant-in-aid to Minority Institution is not a fundamental right and is subject to regulations imposed by the authorities which does not violate Article 30 (1) of the Constitution of India which gives right to Minority Institutions to establish and administer the institution of their choice.

26.The Learned Special Government Pleader then relied upon another decision of the Hon'ble Supreme Court reported in **(2010) 1 SCC 133 (Kolawana Gram Vikas Kendra Vs. State of Gujarat and others)** and referred to paragraph 7 of the said judgment and submitted that even though, the Minority Institutions have the



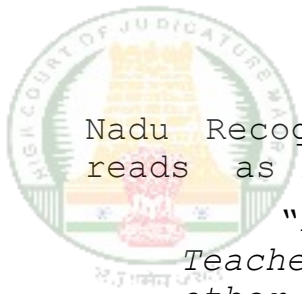
right to select candidates without any interference of the Government, the requirement of the authorities for prior approval is necessitated because, it is for the Government to see as to whether there were actual posts available in the Institution as per the strength of students and secondly, whether the candidates who were sought to be appointed were having requisite qualification in terms of the rules and regulations of the Education Department. Paragraph 7 of the judgment reported in **2010 1 SCC 133**, cited *supra* reads as follows:

"7. In our considered view, we do not view this to be interference in the selection process. It would be perfectly all right for a minority institution to select the candidates without any interference from the Government. However, the requirement of this prior approval is necessitated because it is for the Government to see as to whether there were actually posts available in the said institution as per the strength of students and secondly; whether the candidates, who were sought to be appointed, were having the requisite qualifications in terms of the rules and regulations of the Education Department. That is precisely the stand taken by the State of Gujarat before us in its counter-affidavit."

27. In view of the submissions made by him, the Learned Special Government Pleader prayed that both the Writ Appeals will have to be allowed.

28. Per Contra, Mr. Isaac Mohanlal, Learned Senior Counsel appearing for the respondent in W.A.No.1292 of 2017 submitted that the Respondent School St. Joseph's RC Primary School is a Government Aided Minority School. According to him, the sanctioned strength of the Respondent School is 11 and there are no surplus Teachers in the said School. According to him, the present appointment for which, approval is sought for from the Second Appellant is the 11th Teacher. The concerned Teacher Sr.A.Rex Anitha was appointed by the Respondent on 18.11.2013 and till date the said appointment has not been approved by the Appellants.

29. According to the Learned Senior Counsel, the list of surplus Teachers furnished by the Appellants in their typed set of papers found at page 24 in Serial No.28 pertaining to the Respondent School disclosing that there are 19 surplus Teachers in their Group of Institutions is not correct. According to the Learned Senior Counsel, only from the list annexed in the typed set of papers filed by the Appellants, the Respondent School has been intimated for the first time that there are 19 surplus Teachers in excess of the sanctioned strength. According to the Learned Senior Counsel, at no point of time, there were excess Teachers in the Respondent School as alleged by the Appellants. The learned Senior Counsel referred to Rule 15 (1) of The Tamil



Nadu Recognised Private Schools (Regulation) Rules, 1974 which reads as follows:

"15. Qualifications, conditions of service of Teachers and other persons.-(1) The number of Teachers and other persons employed in a private school shall not exceed the number of posts sanctioned by Director of School Education, from time to time, with reference to the academic requirements Teacher-pupil ratio and overall financial consideration."

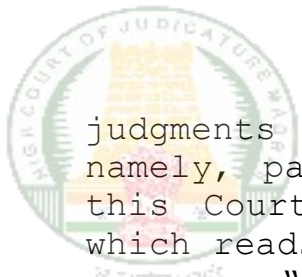
30. According to the Learned Senior Counsel, sanctioned staff strength for the School is 11 and the approval sought for is only for 11th Teacher and therefore, there is no surplus Teacher in the School. He then drew our attention to paragraph No.8 of G.O.Ms.No.525 School Education (D1) Department, dated 29.12.97, in which, Learned Special Government Pleader for the Appellants relied upon and submitted that as per the said Government Order, it is only for the Director of Elementary Education to redeploy staff from one School to another and the Respondent School cannot redeploy on its own.

31. The Learned Senior Counsel then submitted that there is no discovery of surplus Teachers by the Appellants. According to him, it is also not in dispute by the Appellants as to the sanctioned staff strength of the Respondent School. Furthermore, he submitted that each School under the Group of Institutions has been assessed individually. As seen from the following (a) Recognition is Institution based (b) Granting aid is assessed institutionally not collectively, (c) Number of students, fixation of staff strength, etc. is Institution based and is not based as a group.

32. According to the Learned Senior Counsel, G.O.Ms.No.1376 dated 6.7.1981, applies to the case on hand, and there is no surplus staff strength in the Respondent School. Therefore, the Second Appellant ought not to have rejected the proposal submitted by the Second Respondent School.

33. The Learned Senior Counsel also relied upon the Division Bench judgments of this Court in W.A.(MD)No.237 of 2016 dated 02.02.2016, W.A.(MD)Nos.798 and 799 of 2015 dated 22.07.2015 and W.A.(MD)No.255 of 2016 dated 03.02.2016 and submitted that in all these judgments, the Division Bench of this Court has rejected the stand of the Appellants that due to surplus Teachers in other Schools belonging to the same Management, the approval for appointment to a School having a vacancy in the sanctioned strength cannot be granted.

34. The Learned Senior Counsel, while referring to the decisions relied upon by the Learned Special Government Pleader, appearing for the Appellants submitted that judgments relied upon by the Appellants, in fact, support the stand of the Respondent more than that of the Appellants. He referred to the same



judgments relied upon by the Learned Special Government Pleader namely, paragraph Nos.4 and 5 of the Division Bench judgment of this Court dated 13.03.2012 in Writ Appeal (MD) No.70 of 2012 which reads as follows:

"4.As far as the 1st respondent case is concerned, in the 2nd respondent school, the sanctioned strength of the teachers for the year 2010-2011 were 4, of which there were only two appointments, thereby leaving two posts vacant. Taking note of the above statistics that there are excess teachers available in the Group of Schools run by the 2nd respondent management and the 1st respondent's claim in the 2nd respondent school is within the sanctioned strength, this Court directs the 1st appellant herein to grant approval of the appointment of the 1st respondent in the 2nd respondent school. Apart from that, the 1st appellant in the appeal is hereby directed to deploy the excess teachers run by the 2nd respondent Management, namely TDTA, to the extent of 68 posts, to the schools where there are unfilled vacancies in the sanctioned strength, so that there could be proper utilization of excess hands available in the 2nd respondent Group of Schools.

5.It is seen that 247 Primary Schools and 73 Middle Schools are being run by TDTA. When excess teachers are available in a number of institutions run by the 2nd respondent management as of today, in fairness to the claim and demands of the students, the 1st appellant herein should take immediate steps to deploy the 68 excess teachers, immediately, to the schools where vacancies are to be filled, which is stated to be 73 in number."

35.As seen from the judgment, the Division Bench had in fact directed the Appellant to grant approval of the appointment in the concerned Schools. Therefore, according to the Learned Senior Counsel, applying the proposition laid down in the judgment referred supra, redeployment can be done only by the Appellants and not by the Respondent School on their own.

36.The Learned Senior Counsel, then drew our attention to a judgment of a Learned Single Judge of this Court who has considered the judgment in **W.P. (MD) No.5731 of 2013 (batch) dated 25.02.2014 B.Infanse Vs. Director of Elementary Education, College Road, Chennai and Others**, in which a similar impugned proceedings was quashed and the Writ Petition was allowed.

37.Mr.Isaac Mohanlal, Learned Senior Counsel submitted that applying the Principles of Law laid down in paragraph 50, **T.M.A. Pai Foundation Vs. State of Karnataka, 2002 8 SCC page 481**, which was also relied upon by the Learned Special Government Pleader, the Second Respondent Institution has the unfettered authority to appoint staff for a vacancy within the sanctioned strength. According to the Learned Senior Counsel, there are no financial implications for the State if the approvals sought for



by the Respondent Schools are granted by the Appellants as the overall sanctioned strength remains the same and is not altered.

38. The Learned Single Judge has also referred to various other Writ Petitions involving the same issue. After considering all these judgments, the Learned Single Judge has observed that in view of the said settled position of law, there is no justification to deny the approval of the appointment as sought for by the Respondent Schools, as the Teacher was appointed in a sanctioned vacancy and the School, in which the Teacher was appointed, was eligible to retain the said post. According to the Learned Senior counsel, the Learned Single Judge, has rightly quashed the impugned proceedings of the Second Appellant declining approval for appointment. The Learned Senior Counsel, submitted that the appeal filed as against the order dated **25.02.2014** in ***B. Infanse Vs. Director of Elementary Education, College Road, Chennai and Others, Writ Petition (MD) No. 5731 of 2013 (batch)***, was also upheld by the Division Bench of this Court in Writ Appeals. Therefore, according to the Learned Senior Counsel, the Writ Appeal does not deserve any merit and has to be dismissed.

39. Mr. Paneerselvam, Learned Counsel for the Respondent School in W.A. (MD) No. 461 of 2017, supports the arguments of Mr. Isaac Mohanlal. He relied upon the following authorities in addition to the authorities already submitted by Mr. Isaac Mohanlal, Learned Senior Counsel for the Respondent School in W.A. (MD) No. 1292 of 2017.

a) The Division Bench Judgment of this Court dated 02.02.2016, in W.A. (MD) No. 237 of 2016.

b) The Division Bench Judgment of this Court dated 22.07.2015, in W.A. (MD) No. 798 and 799 of 2015.

c) The Division Bench Judgment of this Court dated 03.02.2016, in W.A. (MD) No. 255 of 2016.

III. DISCUSSION AND FINDINGS:

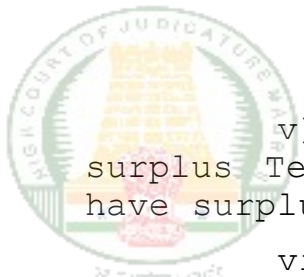
40. Admittedly, both the Schools are Minority Institutions.

(i) Each and every School run by the same Corporate body has been assessed individually.

ii) Each and every School has been granted separate recognition.

iii) The grant of aid by the Government is assessed for each and every School separately.

iv) The number of students, fixation of staff strength etc., is also Institution based and is not based on the group.



v)The Appellants have also not intimated the number of surplus Teachers for that particular School which is alleged to have surplus staff.

vi)Eventhough, the amended Rule 15(4)(ii) of the Tamil Nadu Recognised Private Schools (Regulations) Rules, 1974, talks about "Corporate body running more than one School, the Schools under the body shall be treated as one unit", the Corporate body is not granted separate recognition but only the individual School is granted recognition under the Tamil Nadu Recognised Private Schools (Regulation) Act. Further, the term Corporate body is also not defined under the Act.

41.G.O.Ms.No.525, School Education (D1) Department dated 29.12.1997, which the Learned Special Government Pleader appearing for the Appellants relied upon, clearly stipulates that the redeployment of surplus staff shall be done by Director of School Education and Director of Elementary Education or officers authorised by them. This methodology was also directed to be followed by the Division Bench of this Court in its judgment in W.A.(MD)No.70 of 2012 dated 13.03.2012. By the said judgment, the Division Bench after directing the Appellants to grant approval of the appointment in the School, directed them to redeploy the excess Teachers in the same Management to the Schools where there are unfilled vacancies in the sanctioned strength for the proper utilization of the excess hands available in the group of Schools. As seen from G.O.Ms.No.525, referred to supra and the judgment dated 13.03.2012, in W.A.(MD)No.70 of 2012, only the Appellants can redeploy the surplus Teachers in the Schools under the same Management and the Respondent School cannot redeploy on its own. Further, in the case on hand, the Appellants have not intimated the respective Schools individually as to the exact surplus Teachers. Further, the Appellants have also not placed materials on record to establish that the Schools involved in these Writ Appeals have exceeded the sanctioned strength.

42.As regards the next contention of the Learned Special Government Pleader, that if the School violates any of the Provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, the Appellants (State) has got the power to withhold permanently or for any specified period the whole or part of any of the grant to the concerned School, cannot be countenanced for the following reasons.

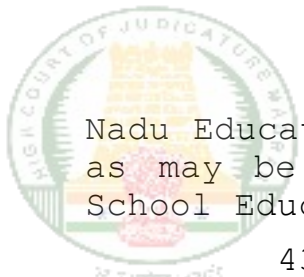
It is not the case of the Appellants:

a)that they have stopped granting aid to the School on account of its non-adherence to the Provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and Rules.

b)The individual Schools involved in these Writ Appeals have exceeded their sanctioned strength.

<https://hcservices.ecourts.gov.in/hcservices/>

c)The individual Schools involved in these Writ Appeals have violated the norms fixed in the grant in aid Code of the Tamil



Nadu Educational Department or under any Rule, Regulation or Order as may be made or issued by the Government or the Director of School Education from time to time for appointment of Teachers.

43. Section 14 and 26 of the Tamil Nadu Private Schools (Regulation) Act, 1973 which the Learned Special Government Pleader relied upon are not applicable for Minority Institutions as the power to appoint Teachers is well within their rights as enshrined in paragraph 50 of the judgment in **T.M.A. Pai Foundation Vs. State of Karnataka, 2002 8 SCC page 481**. Paragraph 50 (d) of the said judgment empowers the Minority Institution to appoint staff (teaching and non-teaching). The same judgment has categorically held in its answer to question 5(c) found in page 709 that insofar as the Statutory Provisions regulating the facets of administration are concerned, in case of an Un-aided Minority Educational Institution, the regulatory measure of control should be minimal and the conditions of recognition as well as the conditions of affiliation to a University or Board have to be complied with. But in the matter of day-to-day management like appointment of staff (teaching and non-teaching) and administrative control over them, the Management should have the freedom and there should not be any external controlling agency.

44. It is also not the contention of the Appellants that the Teachers appointed by the respective Schools are not qualified and eligible to hold the post. The Appellants have also not produced records to show that the respective Schools do not have any vacancy. In fact, Rule 6(ii) of the Tamil Nadu Minority Schools (Regulation and Appointment of grant) Rules, 1977, does not stipulate that appointments can be made only after getting prior approval from the concerned authorities. It only says that for the eligibility of the grant to the Minority Institutions, all appointments made by the Minority Institutions will have to be approved by the concerned authorities. Further, it is not the case of the Appellants that they have stopped giving grant to the respective Schools for breach of Rule 6 (ii) of the Tamil Nadu Minority Schools (Recognition and appointment of grant) Rules, 1977.

45. The next judgment relied upon by the Learned Special Government Pleader reported in **(2010) 1 SCC 133 (Kolawana Gram Vikas Kendra Vs. State of Gujarat and others)**, is also not applicable to the facts of the instant case, since in the said case, the Government issued a circular to verify as to whether there was a vacancy as per the workload and whether the candidate possessed minimum prescribed qualification and that circular was challenged. The Hon'ble Supreme Court upheld the said Government circular. But, the judgment is distinguishable from the facts of the instant case as admittedly, in the case on hand, there is no dispute as regards the qualification and eligibility of the Teachers who were appointed by the respective Schools. Therefore, the facts of the instant case are different from the facts of the



case reported in **(2010) 1 SCC 133 (Kolawana Gram Vikas Kendra Vs. State of Gujarat and others)**. Therefore, that judgment of the Hon'ble Supreme Court is not applicable to the instant case.

46.As regards the reference made to paragraph 2 of the counter affidavit filed by the Appellants in W.P.(MD)No.3914 of 2013, disclosing the number of surplus Secondary Grade Teachers in TDTA Schools for the years 2010-2011, 2011-2012 and 2012-2013, the Appellants were not able to establish as to which of the Schools under the same Management is having surplus. Further, the Respondent Schools have also denied that there is a surplus. Be that as it may, it is for the Appellants to establish that each of the Respondent School is having surplus Teachers and therefore, they are not entitled to make fresh appointments which they have miserably failed to establish in both the cases. The list as per the notification dated 16.11.2017 submitted by the Appellants disclosing the surplus Teachers in each of the group of Institution also does not reveal as to which School in that group has surplus Teachers.

47.As regards the financial implications and Audit objections raised by the Appellants on account of surplus Teachers, the Schools cannot be blamed as they have not violated the relevant Provisions of the Act or its Rules. Rule 2 and 42 of the grant in aid code permits the Appellants to refuse or to withdraw any grant to the Aided Schools at their discretion, if the concerned School violates any of the conditions contained therein. The Appellants have also not been able to pinpoint as to which conditions stipulated therein have been violated by the respective Schools. It is also not the case of the Appellants that the grant of aid to the respective Schools have been stopped on account of the violation of Rules 2 and 42 of the grant in aid code of the Tamil Nadu Educational Department.

48.The internal circular issued by the First Appellant in Na.ka.No.28541/H3/2010 dated 27.12.2010 to all the District Elementary Educational Officers in Tiruchirappalli District that only after obtaining certificate from the District Elementary Educational Officer, that there are no surplus Teachers, approval can be granted for fresh appointments is not issued as per the Provisions of the Act or its Rules. The circular must be in consonance with the Act and its Rules. The Appellants (State) have also not made any amendment to the Rules in accordance with the said circular. Therefore, the circular dated 27.12.2010 in Na.Ka.No.28541/H3/2010, which is not in consonance with the Act and its Rules cannot be relied upon by the Appellants.

49.The School involved in W.A.(MD)No.1292 of 2017 has a sanctioned strength of 11 Secondary Grade Teacher posts and the Teacher for whom the approval was sought for is the 11th Teacher and therefore School has not exceeded the sanctioned strength.



50.The School involved in W.A.(MD)No.461 of 2014 has a sanctioned strength of 2 Secondary Grade Teacher posts and the Teacher for whom the approval was sought for is the 2nd Teacher and therefore, School has not exceeded the sanctioned strength. Therefore, there are no surplus Teachers in each of the Schools involved in these Writ Appeals.

51.In the case on hand, it is not the case of the Appellants that the appointment procedure was not fair but was discriminatory and irrational. This same Division Bench, by its recent judgment rendered in W.A.(MD)No.1350 of 2017 on 14.11.2017, while considering the issue whether a Government Aided Minority Educational Institution is required to obtain prior approval from the concerned Educational authorities for conversion of a Secondary Grade Post to a B.T. Assistant post before making appointment of a Teacher in the B.T. Assistant post, considered all the judgments rendered by the Hon'ble Supreme Court till date and held that there is no necessity for the School to obtain prior permission for conversion of post from the authorities concerned when there is a vacancy.

52.Article 30 (1) of the Constitution of India gives linguistic and religious minorities a fundamental right to establish and administer Educational Institutions of their choice. These rights are protected by a prohibition against their violation. The prohibition is contained in Article 13 of the Constitution of India, which declares that any law in breach of the fundamental rights would be void to the extent of such violation. It is well settled that Article 30 (1) cannot be read in a narrow and pedantic sense and being a fundamental right, it should be given its widest amplitude. The width of Article 30 (1) cannot be cut down by introducing in it considerations which are destructive to the substance of the right enshrined therein.

53.Following **T.M.A. Pai Foundation case** reported in **(2002) 8 SCC 481**, the Hon'ble Supreme Court in a judgment reported in **(2007) 1 SCC 386 (Secretary, Malankara Syrian Catholic College Vs. T.Jose and others)**, in paragraph 19 of the said judgment summarized the general principles relating to establishment and administration of Educational Institution by Minorities, which reads as follows:

"19.The general principles relating to establishment and administration of educational institution by minorities may be summarised thus:

(i)The right of minorities to establish and administer educational institutions of their choice comprises the following rights:

<https://hcservices.ecourts.gov.in/hcservices/>(a)To choose its governing body in whom the founders of the institution have faith and confidence



to conduct and manage the affairs of the institution;

(b) to appoint teaching staff (teachers / lecturers and Headmasters/Principals) as also non-teaching staff, and to take action if there is dereliction of duty on the part of any of its employees;

(c) to admit eligible students of their choice and to set up a reasonable fee structure;

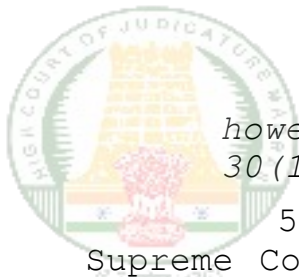
(d) to use its properties and assets for the benefit of the institution.

(ii) The right conferred on minorities under Article 30 is only to ensure equality with the majority and not intended to place the minorities in a more advantageous position vis-a-vis the majority. There is no reverse discrimination in favour of minorities. The general laws of the land relating to national interest, national security, social welfare, public order, morality, health, sanitation, taxation, etc. applicable to all, will equally apply to minority institutions also.

(iii) The right to establish and administer educational institutions is not absolute. Nor does it include the right to maladminister. There can be regulatory measures for ensuring educational character and standards and maintaining academic excellence. There can be checks on administration as are necessary to ensure that the administration is efficient and sound, so as to serve the academic needs of the institution. Regulations made by the State concerning generally the welfare of students and teachers, regulations laying down eligibility criteria and qualifications for appointment, as also conditions of service of employees (both teaching and non-teaching), regulations to prevent exploitation or oppression of employees, and regulations prescribing syllabus and curriculum of study fall under this category. Such regulations do not in any manner interfere with the right under Article 30(1).

(iv) Subject to the eligibility conditions/qualifications prescribed by the State being met, the unaided minority educational institutions will have the freedom to appoint teachers/lecturers by adopting any rational procedure of selection.

(v) Extension of aid by the State does not alter the nature and character of the minority educational institution. Conditions can be imposed by the State to ensure proper utilisation of the aid, without



however diluting or abridging the right under Article 30(1)."

54. Applying these principles formulated by the Hon'ble Supreme Court, this Court is of the considered view that both the impugned proceedings dated 14.12.2015 in Na.Ka.No.5147/A5/2015 and dated 03.08.2012 in O.Mu.No.614/A1/2012, were rightly quashed by the Learned Single Judge as the regulations imposed by the Second Appellant does not come within the parameters laid down by the Hon'ble Supreme Court in the judgment referred to supra as well as the judgment in **T.M.A. Pai Foundation Vs. State of Karnataka**, reported in **2002 8 SCC 481**.

V. CONCLUSION:

55. In the result, both the Writ Appeals shall stand dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Director of Elementary Education,
College Road, Chennai - 600 006.
2. The District Elementary Education Officer,
Tirunelveli.
3. The District Elementary Educational Officer,
Tiruchirappalli - 620 020,
Tiruchirappalli District.
4. The Additional Assistant Elementary Educational Officer,
Marungapuri - 621 305,
Tiruchirappalli District.
5. The Additional Assistant Elementary Educational Officer,
Cheranmahadevi,
Tirunelveli District.

+1cc to M/s. ISAAC CHAMBERS, Sr.No.90267

+1cc to Mr.Paneerselvam, Advocate Sr.No.90200

MR/PAM

VB/SV/MMS/SAR3/26/12/2017/23P/7C