



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.03.2017

CORAM :

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR. JUSTICE T.VELMURUGAN

WA (MD) No.229 of 2017
and
C.M.P. (MD) No.2379 of 2017

1. The State of Tamil Nadu,
Represented by its secretary,
Department of School Education,
Fort St. George, Chennai - 600 009.
2. The Director of Elementary Education,
College Road, Chennai - 600 006.
3. The District Elementary Educational Officer,
Tuticorin, Tuticorin District.
4. The Assistant Elementary Educational Officer,
Srivaikundam, Tuticorin District. ...Appellants/Respondents

Versus

The Correspondent,
St. Antony's Primary School,
Pazhaiyakayal - 628 152,
Tuticorin District.

.. Respondent /Writ Petitioner

Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 19.01.2017 made in W.P.(MD)No.20362 of 2016.

Prayer in WP(MD). 20362/ 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 impugned staff-fixation fixed by the 3rd respondent herein for the academic year 2014-2015 vide proceedings Nil dated 21.01.2015 consequently impugned proceedings issued by the 4th respondent herein vide Na.Ka.No.259/A1/2015 dated 13.03.2015 and subsequently impugned staff-fixation fixed by the 3rd respondent herein for the academic year 2015-2016 vide proceedings Nil dated 24.02.2016, quash the same and further direct the respondents herein to refix the staff strength as per the Full Bench Judgement reported in 2006(5) CTC 385 within the reasonable time fixed by this Court.



For Appellants

: Mr.V.R.Shunmuganathan
Special Government Pleader

For Respondent

: Mr.Ajith Geethan

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JUDGMENT

(Judgment of the Court was delivered by **T.S.SIVAGNANAM, J**)

Heard Mr.V.R.Shunmuganathan, the learned Special Government Pleader appearing for the appellants and Mr.Ajith Geethan, learned counsel appearing for the respondent.

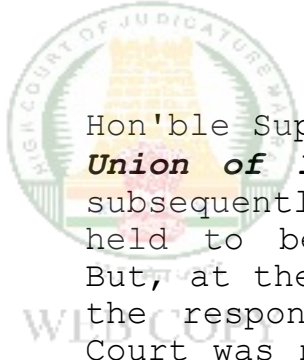
2.This Writ Appeal is directed against the order passed in W.P. (MD)No.20362 of 2016 filed by the respondent. In the said writ petition, the respondent challenges the staff fixation fixed by 3rd appellant vide proceedings dated 13.03.2015, to direct the appellants to re-fix the staff strength as per the decision of the Hon'ble Full Bench in **Director of Elementary Education, Chennai - 6 and others Vs. S.Vigila** reported in **2006(5) CTC 385**.

3. The appellants were impleaded as respondents in writ petition filed a counter affidavit contending that as per the students strength, only three teachers are eligible to be sanctioned and therefore, the 4th teacher has to be declared as surplus. The writ court following the decision of the Honble 'Full Bench in **S.Vigila case** allowed the writ petition setting aside the impugned order and remit the matter back to the 3rd appellant for considering the staff fixation of the petitioner afresh in the light of the orders passed by the Hon'ble Full Bench in **S.Vigila's case**.

4.The learned special Government Pleader would contend that the impugned direction issues is correct, because Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as the Act), had come into force and in terms of the said provision, only three teachers are eligible to be sanctioned to the respondent school and the fixation is correct. It is further submitted that staff fixation has been done at the relevant point of time strictly following the Government orders, which were prevalent viz., G.O.Ms.No.231 and there is no error in fixation of staff with three teachers.

5.We have heard the learned counsel for the respondent on the above submissions.

6.Firstly, it is pointed out that the Hon'ble Supreme Court has held that the Act would not be applicable to the minority educational institutions. Therefore, the appellants cannot fall back on the said provisions and fix staff strength. The argument of the learned Special Government Pleader is that the decision of the



Hon'ble Supreme Court in **Paramati Educational and Cultural Trust Vs. Union of India** reported in (2014) 8 SCC 271, was only rendered subsequently, by virtue of which, certain provisions of the Act were held to be not applicable to minority educational institutions. But, at the relevant point of time, when staff fixation was done for the respondent institution, the decision of the Hon'ble Supreme Court was not holding the field and therefore, the action initiated by the appellants is correct. The decision rendered by the Hon'ble Supreme Court holding that the provisions of the Act are not applicable to minority institutions and date back and the date of the decision alone would not be relevant.

7. Further more, even if the decision of the Hon'ble Supreme Court was not available at the relevant point of time, yet the decision of the Hon'ble Full Bench in **S.Vigila's case** was holding the field and staff fixation had to be done in accordance with the said decision. The distinction which sought to be drawn by the learned Special Government Pleader is that for the primary school section, the decision in **S.Vigila's case** would not be application.

8. We are not inclined to accept the submissions for the reason that the provisions of the Act are not applicable to the minority educational institutions. Therefore, the appellants can not take contrary stands depending upon the circumstances, which suit them. In a reasoned order passed in the case of **J.Sahaya Geetha Vs. State of Tamil Nadu and others in W.P.(MD) No.24129 of 2016**, an identical issue arose for consideration and the only distinction is the said writ petition was filed by the teacher, who supposed was declared as surplus and had deployed to an aided school. The writ petition was allowed following the decision of the Full Bench in the case of **Director of Elementary Education, Chennai and two others Vs. B.Infanse and another in W.A.(MD) No.639 of 2015 dated 17.06.2015**, which was based on the basis of the decision of the Hon'ble Full Bench in **S.Vigila's case**.

9. Furthermore, it would be relevant to note that in an appeal filed by the State in W.A.(MD) No.725 of 2016 dated 03.01.2017, (**State of Tamil Nadu and others Vs. R.Koilmani Jasinth and another**). This very issue was considered and the Division Bench affirmed the order passed in the writ petition and dismissed the appeal. The learned special Government Pleader sought to distinguish the said order by contending that it pertains to vocational instructors. However in the said appeal also, an identical contention has raised in this appeal was raised by the Government and it was negatived. Therefore, the respondent was justified in relying upon the decision in the case of **R.Koilmani Jasinth**.

<https://hcservices.courts.gov.in/hcservices/courts/govt/hcscs/>
 The Hon'ble Single Judge, for all the above reasons, is of the view that the appellants have not made out any case for interference with the order passed by the learned Single Judge. Therefore, the writ



appeal is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

SD/-
ASSISTANT REGISTRAR

WEB COPY /TRUE COPY/

SUB ASSISTANT REGISTRAR

To

1. The secretary,
State of Tamil Nadu,
Department of School Education,
Fort St. George, Chennai - 600 009.
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Tuticorin, Tuticorin District.
4. The Assistant Elementary Educational Officer,
Srivaikundam, Tuticorin District.

+1 CC TO SPECIAL GOVERNMENT PLEADER SR NO.18190

+1 CC TO MR.A.AJITH GEETHAN, ADVOCATE, SR NO.17428

ARUL/IA
MAS/RR/SAR3:05.04.2017:4P-7C

Judgment in
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