

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.Nos.306 to 308 of 2018

The Manager,
Immaculate Heart of Mary Hr. Sec. School,
275, Mission Street,
Puducherry - 605 001. ... Petitioner in W.P.No.306 of 2018

The Manager,
Deepa Oli High School,
Thondamanatham,
Puducherry. ... Petitioner in W.P.No.307 of 2018

The Manager,
St. Joseph's Govt. Aided High School,
Muthiyalpet,
Puducherry. ... Petitioner in W.P.No.308 of 2018

vs.

1. The Union Territory of Puducherry
by its Secretary,
Department of Education,
Secretariat, Puducherry - 605 001.
2. The Director of School Education,
Government of Puducherry,
Directorate of School Education,
Puducherry - 605 005.
3. The Senior Accounts Officer,
Government of Puducherry,
Directorate of School Education,
Puducherry - 605 005. ... Respondents in all W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of writ of Certiorari, calling for the records pertaining to the impugned Memorandum, dated 12.12.2017 and the consequential Memorandums, dated 16.12.2017 and 18.12.2017 in No.6001/DSE/GIAS/U.III/2017-18, on the file of the 2nd Respondent, in respect of the Petitioner Schools, and quash the same.

For Petitioner in all W.Ps. : Fr.Xavier Arulraj,
Senior Counsel
for Ms.A.Arul Mary

For Respondent in all W.Ps. : Mr.C.T.Ramesh,
Addl. Government Pleader (Pondy)

C O M M O N O R D E R

As the issue involved in all the Writ Petitions is one and the same, they are being disposed of in common.

2. Petitioners are before this Court challenging the impugned proceedings dated 12.12.2017, 16.12.2017 and 18.12.2017 passed by the 2nd Respondent in respect of their Schools.

3. According to the Petitioner in each Writ Petition, their School is established and administered by the Society, which is constituted by the "Roman Catholic Congregation of the Order of Immaculate Heart of Mary, Pondicherry", which is exclusively comprised of Roman Catholic Nuns. Petitioners herein are Government aided minority Schools, enjoying minority status. Details of the student strength, staff strength, total number of sanctioned Teacher posts and approved posts in each of the Petitioner/Schools, are as under:

	W.P.No.306 of 2018	W.P.No.307 of 2018	W.P.No.308 of 2018
Approximate Student Strength	6000	1053	1089
Total Staff Strength	125	30	32
No. of sanctioned posts	110	22	32
No. of sanctioned posts approved for salary	29	12	18
Sanctioned PST Posts	44	11	16
Sanctioned PST posts accorded approval	3	5	9
No. of Teachers in the PST cadre working without approval	41	6	7

4. It is the case of the Petitioner-School that though the proposal for approval of the Teachers working in the sanctioned posts have been submitted to the Respondent-authorities time and again by the Management, it is of no avail. While so, the 2nd

Respondent, vide Memorandum dated 12.12.2017 issued transfer orders to the following Teachers working in other Schools and posted them in the Petitioner/Schools. Details of the transfer are as under:

W.P.No.306 of 2018:

S.No.	Name of the PST & School in which working	School to which transferred and posted
1	T.Anithabala, Our Lady of Lourdes Govt. Aided Boy's High School, Villianur	Immaculate Heart of Mary Govt. Aided High Court, Mission Street, Puducherry
2	N.Manimegalaye, Govt. Aided High School, Velrampet	"
3	M.Radha, Wiseman Govt. Aided High School, Velrampet	"
4	K.Uma, Wiseman Govt. Aided High School, Velrampet	"
5	R.Vasanthi, Wiseman Govt. Aided High School, Velrampet	"
6	N.Lokanayaki, Wiseman Govt. Aided High School, Velrampet	"
7	N.Solairani, Wiseman Govt. Aided High School, Velrampet	"
8	S.Tamilselvi, Wiseman Govt. Aided High School, Velrampet	"
9	A.Jamuna, Wiseman Govt. Aided High School, Velrampet	"

W.P.No.307 of 2018:

S.No.	Name of the PST & School in which working	School to which transferred and posted
1	D.Arul Selvi, Our Lady of Lourdes Govt. Aided Boy's High School, Villianur	Deepa Oli Govt. Aided High School, Thondamanatham
2	P.Rani, Wiseman Govt. Aided High School, Velrampet	"

W.P.No.308 of 2018:

S.No .	Name of the PST & School in which working	School to which transferred and posted
1	D.Pushpalatha, Wiseman Govt. Aided High School, Velrampet	St. Joseph Govt. Aided High School, Muthialpet
2	C.Niranjanaidevi, Wiseman Govt. Aided High School, Velrampet	"
3	M.A.Fathima, Wiseman Govt. Aided High School, Velrampet	

5. As the said transfer and posting of Teachers by deployment to their School from outside the Management is in violation of the right of the minority Institutions, the Petitioner/School in all the above Writ Petitions submitted a detailed letter to the 2nd Respondent/Directorate of School Education, Puducherry, not to press the said deployments which are not in accordance with law. However, the 2nd Respondent, without accepting the plea of the Petitioners, issued another Memorandum dated 16.12.2017 to strictly comply with the order of transfer dated 12.12.2017, taking into account the needs of the Teachers working in other Schools. Pursuant thereto, the 2nd Respondent, issued another Memorandum dated 18.12.2017 in which, he issued some instructions under Rule 19 and Rule 23 of Pondichery School Education Rules. Aggrieved by the said Memorandums, Petitioners are before this Court by way of the present Writ Petitions.

6. Learned Senior Counsel appearing for the Petitioner/School in all the Writ Petitions, contended that the 2nd Respondent, cannot unilaterally carry out appointment of Teachers by deployment in the Petitioner/Schools and that it will displace the Teachers, who are already working in the Petitioner/Schools for so many years.

7. In reply, learned Additional Government Pleader (Pondy) appearing for the Respondents, submitted that more than 75% of the students studying in the Petitioner School are non-minority and that if the School does not have 50% of the students of the minority community, constitutional protection is available under Article 30 of the Constitution of India and having lost the minority status, Petitioners cannot contend that the Teachers should have been deployed on account of closure of some of the Schools and that the contention that there are no vacancies, cannot be accepted. He drew the attention of this Court to the decisions of the Apex Court in the cases of T.M.A.Pai Foundation vs. State of Karnataka, (1994) 2 SCC 195 and P.A. Inamdar vs. State of Maharashtra, (2005) 6 SCC 537 and contended that the

Petitioners cannot prevent any Teacher from joining the School, as the Petitioners/Schools are getting aid from the Government.

8. To substantiate his stand, learned Additional Government Pleader (Pondy) has relied on a decision of the Apex Court in the case of the Ahmedabad St. Xavier's College Society vs. State of Gujarat reported in (1974) 1 SCC 717, wherein, it is held as under:

"103. Another conclusion which follows from what has been discussed above is that a law which interferes with a minority's choice of qualified teachers or its disciplinary control over teachers and other members of the staff of the institution is void as being violative of Article 30(1). It is, of course, permissible for the State and its educational authorities to prescribe the qualifications of teachers, but once the teachers possessing the requisite qualifications are selected by the minorities for their educational institutions, the State would have no right to veto the selection of those teachers. The selection and appointment of teachers for an educational institution is one of the essential ingredients of the right to manage an educational institution and the minorities can plainly be not denied such right of selection and appointment without infringing Article 30(1). In the case of Rev. Father W. Proost this Court while dealing with Section 48-A of the Bihar Universities Act observed that the said provision completely took away the autonomy of the governing body of the college and virtually vested the control of the college in the University Service Commission. The petitioners in that case were, therefore, held entitled to the protection of Article 30(1) of the Constitution. The provisions of that section have been referred to earlier. According to the section, subject to the approval of University appointment, dismissals, removals, termination of service or reduction in rank of teachers of an affiliated college not belonging to the State Government would have to be made by the governing body of the college on the recommendation of the University Service Commission. The section further provided that the said Commission would be consulted by the governing body of a college in all disciplinary matters affecting teachers of the college and no action would be taken against or any punishment

imposed upon a teacher of a college otherwise than in conformity with the findings of the Commission.

182. It is upon the principal and teachers of a college that the tone and temper of an educational institution depend. On them would depend its reputation, the maintenance of discipline and its efficiency in teaching. The right to choose the principal and to have the teaching conducted by teachers appointed by the management after an overall assessment of their outlook and philosophy is perhaps the most important facet of the right to administer an educational institution. We can perceive no reason why a representative of the University nominated by the Vice-Chancellor should be on the Selection Committee for recruiting the Principal or for the insistence of head of the department besides the representative of the University being on the Selection Committee for recruiting the members of the teaching staff. So long as the persons chosen have the qualifications prescribed by the University, the choice must be left to the management. That is part of the fundamental right of the minorities to administer the educational institution established by them."

9. Heard the learned counsel on either side and perused the documents placed on record.

10. The issue on hand is whether there is vacancy in the post of Teachers in the Petitioner/School in all the above Writ Petitions. Undoubtedly, it is open to the Respondents to transfer Teachers from other Schools to the Petitioner/Schools, on account of non-availability of students in other Schools. But, deployment of Teachers cannot be done to a minority School. A minority School has the right to recruit Teachers and staff on their own. On the ground of non-availability of 50% of the students from the minority community, whether the Petitioner/Schools will lose their minority status, cannot be gone into the present Writ Petitions, as the same is not the subject matter.

11. Taking note of the fact that there are no vacancies of Teachers in the Petitioner/Schools and that already sufficient number of Teachers are employed in the Petitioner/Schools and that some of the Teachers have already filed Writ Petitions seeking regularization, this Court is of the view that the

Respondents cannot force the Petitioner/Schools to accommodate Teachers, who have been deployed to their School, as it is left to the discretion of the Management to employ the Teachers, as the Petitioners are enjoying minority status till date.

12. It is needless to mention that if any decision is taken and communicated to the Petitioners after hearing them, it is open to them to question the same and this Court cannot render any finding as to whether the Petitioners have got minority status as on date, more particularly, while considering the impugned orders in the present Writ Petitions. Further, it is open to the Government to transfer the Teachers so deployed, to some other Schools on account of re-deployment.

The above Writ Petitions are allowed with the direction(s) and observation(s). No costs. Consequently, connected W.M.P.Nos.353, 355 and 357 of 2018 in the respective Writ Petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The Secretary,
Union Territory of Puduchery
Department of Education,
Secretariat, Puducherry - 605 001.
2. The Director of School Education,
Government of Puducherry,
Directorate of School Education,
Puducherry - 605 005.
3. The Senior Accounts Officer,
Government of Puducherry,
Directorate of School Education,
Puducherry - 605 005.

+2cc to Mr.Xavier Arul Raj, Advocate Sr.No.26912

+1cc to Government Pleader for Puducherry, Sr.No.26911

sm:7.5.2018

W.P.Nos.306 to 308 of 2018