

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2018

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.No.38195 of 2004
and W.M.P.No.45723 of 2004

The Correspondent,
Viswadeepthi Matriculations Higher Secondary School,
Udumalai Road, Pollachi,
Coimbatore District. ... Petitioner

Versus

1.The State of Tamilnadu,
Rep. By its Secretary,
Department of School Education,
Fort St. George, Chennai- 600 009.

2.The Director of Matriculation Schools,
College Road,
Chennai-600 006. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to Writ of Declaration, declaring Rules 16(ii) & 18(ii) of the Code of Regulation for Matriculation Schools as unconstitutional, ultravires, null and void and un-enforceable against the petitioner.

For Petitioner : Mr.P. Godson Swaminathan

For Respondents : Mrs. V. Annalakshmi (for R1 & R2)
Government Advocate

O R D E R

This Writ Petition has been filed for issuance of a Writ of Declaration declaring Rules 16(ii) & 18 (ii) of the Code of Regulation for matriculation Schools as unconstitutional, ultravires, null and void and un-enforceable against the petitioner. By the impugned rules challenged in this writ, the management of private school are required to pay salary to its staff on par with staff of State Government. The brief facts that are said out in support of the writ petition are as follows:

2. The petitioner stated that the petitioner's school is one among the few Educational Institutions established and administered by a society known as Little Flower Education

Society, Coimbatore. It is stated that the society is a Congregation of Catholic Priests of the CMI Order. The society established the petitioner's School in the year 1976 and it is a Christian Religious Minority Educational Institution and it is recognised by the Government of Tamil Nadu. The petitioner school is also a self financing institution. The petitioner states that the school is located in a rural area and the establishment of the school was to cater to the needs of people for socially, educationally and economically backward, since the people in the rural areas are mainly working as coolies in farms and mills. Therefore it is contended that the petitioner's School was established with the sole idea of providing education to the children of these rural masses. It is further stated that the admission is open to all the children regardless of religion, caste and creed and that Education is offered as a charitable mission. It is further submitted that no capitation fee or donation is collected for admission of children or for appointment of teachers. It is also stated that the school provides education from standard LKG to 12th standard and the current strength students in the petitioner's School is 859 and the strength of the staff working is 57. It is submitted that the teacher and other staff are employed on the basis of qualification prescribed in the Tamil nadu Private School Regulation Act. It is the specific case of the petitioner, that the petitioner spends 85% of the tuition fee towards teacher's pay and only 15% of the fee is spent for other expenditure.

3. The learned counsel for the petitioner has also produced before this Court the order passed by the Private School fee determination committee dated 25.10.2017, wherein, based on the fees collected by the petitioner and on considering other statics, the committee permitted the petitioner to fix the salary up to a maximum time scale of pay prescribed in the Sixth Pay Commission Report. In view of the above order, the learned counsel for the petitioner submitted that the petitioner cannot be compelled to pay the salary for teachers and staff and on par with Government Scale of Pay. It is the further contention of the petitioner in this Writ petition is that the petitioner being a self financing institution, having right to fix its own fees structure in terms of regulation, the impugned rules, directing to pay of the staff engaged by the private institution as per the Scales of Pay prescribed by the Government from time to time are unconstitutional.

4. Since education is offered as a charitable mission by giving preference to destitutes and economically poor students, it is stated that the school cannot be saddled with the burden of paying the Government Scales of pay to its staff with all allowances. As the school is not collecting any capitation fee or donation either for admission or for appointment and only a reasonable fee is collected from the students to meet out the

day to day expenditure including the salary and other expenses towards maintenance and improvement of building and free books. Therefore, according to petitioner it is highly unreasonable to direct the petitioner school to pay Government scale of pay to its staff.

5. The learned counsel for the petitioner relied upon the judgement of a Full Bench of this Court in the case of Correspondent/ Principal, Arokiyamada Matriculation Higher Secondary School, Udumalai Road, Pollachi vs. Tmt. T. Sorubarani (deceased) and four others reported in 2015-5-L.W.544, wherein, the Full Bench after considering the provisions namely Rule 16 (ii) of chapter V and 18(ii) of Chapter VI has held that the Code of Regulations for Matriculation Schools is only a code and only an enabling provision, which has no statutory effect and cannot be enforced in a Court of law. The Hon'ble Full Bench has further observed that the Hon'ble Supreme Court on more than one occasion, held that the Government cannot regulate the salary structure of the unaided institutions as the same is a matter of contract between the teacher and the school which is outside the domain of public law.

6. The Full Bench of this Court has ultimately concluded that the Government cannot force the management of private schools to pay salary to its staff on par with staff of State Government. Having regard to the various regulations, this Court is of the view that the salary of teaching and non teaching staff in the Private matriculation school cannot be fixed by the Government. It is not in dispute that private institutions are bound to collect only the fees prescribed by the private school fee determination committee in respect of self finance /Private schools. The formula that has been recommended for fixing the school fee does not indicate that the salary for Private School is equalant to Government scale of pay .

7. The Full Bench of this Court has already taken the view that the regulation which are challenged in the present Writ Petition are not enforceable. Even otherwise clause 16(ii) and 18(ii) of the Code of regulation for Matriculation School Tamilnadu are unreasonable, if it is made applicable to the Private Schools with the limited resources and other restrictions particularly the regulations regarding collection of fee and for maintenance of standard in educational institution. The Government cannot unreasonably burden the educational institutions by fixing salary of teachers on par with the salary paid by Government. In the case minority institutions such a condition would certainly offend the right of minority institutions under article 30 of constitution of India.

8. Hence, it is declared that regulation 16(ii) and 18 (ii) the code of Regulation for Matriculation Schools are neither valid nor enforceable in so far as the same is made

applicable to private unaided Matriculation Schools are concerned. Accordingly the Writ Petition is allowed. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

mpa/ak

To

- 1.The Secretary,
The State of Tamilnadu,
Department of School Education,
Fort St. George, Chennai- 600 009.
- 2.The Director of Matriculation Schools,
College Road, Chennai-600 006.

+1cc to Mr.P.Godson Swaminath, Advocate SR.No.67327

+1cc to Government Pleader SR.No.67816

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GMV (25/10/2018)

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