

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.A.No.1642 of 2014
and M.P.No.1 of 2014

- 1.The District Educational Officer,
Coonoor-2.
 - 2.The Director of School Education,
College Road, Chennai-600 006.
 - 3.The Secretary,
School Education D.1 Department,
Government of Tamil Nadu,
Fort St.George, Chennai-600 009.
- Appellants/Respondents

vs

Shri Shanthi Vijay High School,
Masingagudi, Nilgiris
rep.by its Correspondent

... Respondent/Petitioner

Appeal filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.No.22177 of 2003 dated 15.04.2013.

W.P.No.22177 of 2003

Writ of Certiorarified Mandamus calling for the records of the first respondents comprised in Proceedings No.Na.ka.No.6778/A2/2003 dated:06/02/2003 and quash the same and consequently direct the respondents to approve the appointments of suitable persons to the posts of Physical Education Teacher and Drawing Teacher as and when appointed by the petitioner school.

For Appellants :: Mr.C.Munusamy,
Special Government Pleader (Edn.)

For Respondent :: No appearance

JUDGMENT

(Delivered by HULUVADI G.RAMESH, J.)

The respondent is an aided school, receiving aid from the State Government. While filling up of the posts of Drawing Teacher and Physical Instructor after issuing advertisements by the said school, the first appellant has passed an order dated 06.02.2003 deciding to do away with the said posts. The respondent issued a legal notice dated 14.03.2003 against the said order. Since no reply /response has been received from the first appellant, the respondent approached this Court by way of filing a writ petition in W.P.No.22177 of 2003 praying to quash the said proceedings and for a direction to approve appointments of suitable persons to the posts of Physical Education Teacher and Drawing Teacher as and when appointed by the respondent School.

2.The learned single Judge, by order dated 15.04.2013, allowed the writ petition with a direction to approve the appointment of suitable person to the Physical Education Teacher to the respondent School from the month of April 2013 onwards.

3.Challenging the order passed in the writ petition, the present writ appeal has been filed by the Department.

4.The learned Special Government Pleader appearing for the appellants has submitted that as per G.O.Ms.No.525 Education, Science and Technology Department dated 29.12.1997, when the strength in Classes VI to X in the High Schools exceeds 250, one post of Physical Education Teacher will be sanctioned, but the respondent school has only 54 students in IX Standard and 62 students in X Standard as per the report of the Correspondent of the respondent School. Further, G.O.Ms.No.525 is applicable to all the Aided schools irrespective of the date of opening of the schools, but the same has not been rightly considered by the learned single Judge. Since there is no work load for the Physical Education Teacher, as per the above said G.O., the respondent is not eligible for appointing a Physical Education Teacher. It is also submitted the respondent-School is a self-financing one.

5.There is no representation on behalf of the respondent-School today.

6.Heard the learned Special Government Pleader appearing for the appellants and perused the materials available on record.

7.Before the learned single Judge, the learned counsel appearing on behalf of the respondent School, placed reliance upon the judgment of this Court in Director of School Education,

Chennai-6 and others v. K.Uma, reported in (2010) 2 MLJ 277, and submitted that the said decision emphasises the need for extracurricular activities and the same has to be given liberal interpretation, since Physical Education and Coaching are essential even though the students are less in number. After considering the facts and circumstances of the case, the learned single Judge has held that the said G.O. is not a criteria to withdraw the Physical Education Teacher and the Drawing Teacher of the respondent School which is situated in the middle of the forest area and imparting education to the Scheduled Caste, Scheduled Tribe and Most Backward Class children. A direction was also given to the authorities to approve the appointment of suitable person to the Physical Education Teacher to the respondent School from the month of April 2013 onwards.

8. Normally, physical education is to be imparted right from the age of 5 to 18 in the schools, i.e., upto Higher Secondary Level and beyond that. G.O.Ms.No.525 has been dealt with by a Division Bench of this Court in Director of School Education, Chennai-6 and others v. K.Uma, reported in (2010) 2 MLJ 277, in which it has been observed that the said G.O. has to be given liberal interpretation and that the Government has to reconsider the matter and issue reasonable and appropriate norms with regard to appointment of Physical Education Teachers in School as per the strength of students.

9. Whether the school strength may be more than 250 or not, we are of the view that the students studying in the school have to be given physical education to ensure healthy mind in a healthy body. Especially the children aged between 5 and 18 have to be taught physical education, along with yoga, in order to keep their physique in a good condition and also to concentrate on their studies. Thus, the need for physical education, should not be under-estimated. As stated in the Division Bench judgment stated supra, appropriate norms with regard to appointment of physical education teachers in the schools have to be fixed, in relation to the strength of students.

10. The learned single Judge has passed the order directing to appoint the Physical Education Teacher. As per the submission of the learned Special Government Pleader, only for the schools having a strength of more than 250, appointment of Physical Education Teacher is permissible, and if a Physical Education Teacher is appointed for schools having lesser number of students than the one prescribed, there would be no work for the Teacher.

11. In this connection, we are of the view that the Government has to approve appointment of Physical Education

Teacher in the schools like that of the respondent herein, where the students are lesser than the one prescribed, on hourly basis by paying honorarium, so that the requirements shall be taken care of. Such appointments may be made taking into consideration the strength of students in the particular school. For such appointments, conditions may be imposed in the Appointment Order clearly stipulating that such appointments will be only on hourly basis by paying honorarium, and such appointments will not be regularised. The honorarium amount may be fixed suitably, depending upon the Government Orders issued from time to time. This observation is made only to ensure that even if the strength of the students is less than the prescribed one, physical education is very much necessary keeping in view the concept of healthy mind in a healthy body.

12. In the result, the appellants are directed to approve the appointment of Physical Education Teacher in the respondent School, on hourly basis by way of paying honorarium, if any such request / proposal is submitted by the respondent School, as per the above observations of this Court. The impugned order passed by the learned single Judge is modified accordingly and the writ appeal is disposed of. No costs. Consequently the connected miscellaneous petition is closed.

13. In view of the above stand taken by us, we also direct the appellants/State to consider issuance of a Circular / Government Order making it compulsory for all the schools, whether it is aided or unaided, having the students' strength of more than 50 and less than 250, in respect of approval of such Physical Education Teachers on honorarium basis without giving any provision for treating it as part-time, fixing the honorarium amount according to the Government Orders issued from time to time. Such qualified persons who are less than 60 years and ready to accept such assignment, are available in plenty. Such persons could be deployed in the schools, which are having students' strength of less than 250 and more than 50. They may be utilised for about two hours a day to impart physical education and yoga to the students of such schools having lesser strength, so that the physical activities of the students shall be taken care of, and further it would not be burdensome for the Government to adopt the above said procedure.

Sd/-

Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

KM

To

1.The District Educational Officer,
Coonoor-2.

2.The Director of School Education,
College Road, Chennai-600 006.

3.The Secretary,
School Education D.1 Department,
Government of Tamil Nadu,
Fort St.George, Chennai-600 009.

+1cc to the Government Pleader, S.R.No.57654

W.A.No.1642 of 2014
and M.P.No.1 of 2014

VGI(CO)
GSP(05/09/2018)



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