

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.9.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

WRIT APPEAL NOS.2017 TO 2022 OF 2012

1. THE SECRETARY
GOVERNMENT OF TAMIL NADU
EDUCATION DEPARTMENT
FORT ST. GEORGE
CHENNAI 600 009.
2. THE DIRECTOR OF SCHOOL EDUCATION
(SECONDARY EDUCATION)
COLLEGE ROAD
CHENNAI 600 006. PETITONERS 1 AND 2 IN
ALL WRIT APPEALS
3. THE DISTRICT EDUCATIONAL OFFICER
DISTRICT EDUCATIONAL OFFICE
CUDDALORE NEW TOWN
CUDDALORE DISTRICT. 3RD PETITIONER IN
WA NO. 2017 AND 2018/2012
4. THE DISTRICT EDUCATION OFFICER,
DISTRICT EDUCATIONAL OFFICE,
VILLUPURAM 606 107,
VILLUPURAM DISTRICT 3RD PETITIONER IN
WA NOS.2019,2020&2021/2012
5. THE JOINT DIRECTOR OF SCHOOL EDUCATION,
(HIGHER SECONDARY) COLLEGE ROAD,
CHENNAI 6 3RD PETITIONER IN
WA NO.2022/2012
6. THE CHEIF EDUCATIONAL OFFICER,
CUDDALORE 4TH PETITIONER IN
WA NO.2022/2012

VS.

ST. ANNES GIRLS HIGHER SECONDARY SCHOOL
CUDDALORE-1 OF THE CONGREGATION OF THE
IMMACULATE HEART OF MARY, PONDICHERRY

REP. BY ITS CO-ORDINATOR OF EDUCATION
REV. SR.DEVA ASEER MARY IMMACULATE GENERALATE
ST. THERESA STREET,
PONDICHERRY 605 001. ... RESPONDENT IN WA NO.2017/2012

ST PHILOMENAS GIRLS HIGH SCHOOL
CUDDALORE OLD TOWN OF THE CONGREGATION
OF THE IMMACULATE HEART OF MARY PONDICHERRY,
REP BY ITS CO ORDINATOR FOR EDUCATION
REV.SR.DEVA ASEER MARY IMMACULTE GENERALTE,
ST.THERESA STREET,
PONDICHERRY 605 001 ... RESPONDENT IN WA NO.2018/2012

THE BESCHI HIGHER SEC SCHOOL OF ULUNDURPET
VILLUPURAM DISTRICT OF THE CONGREGATION
OF THE IMMACULATE HEART OF MARY PONDICHERRY
REP BY ITS CO ORDINATOR FOR EDUCATION
REV.SR.DEVA ASEER MARY IMMACULTE GENERALTE,
ST THERESA STREET,
PONDICHERRY. ... RESPONDENT IN WA NO.2019/2012

THE IMMACULATE HIGH SCHOOL
VELANTHANGAL VILLUPURAM DISTRICT OF THE
CONGREGATION OF THE IMMACULATE HEART OF
MARY PONDICHERRY REP BY ITS CO ORDINATOR
FOR EDUCATION REP BY ITS REV.SR.DEVA ASEER
MARY IMMACULTE GENERALTEST.THERESA STREET,
PONDICHERRY ... RESPONDENT IN WA NO.2020/2012

SIRUMALAR HIGHER SEC SCHOOL
CHINNASALEM VILLUPURAM DISTRICT OF THE
CONGREGATION OF THE IMMACULATE HEART OF
MARY PONDICHERRY REP BY ITS CO ORDINATOR
FOR EDUCATION REV.SR.DEVA ASEER MARY
IMMACULTE GENERALTE, ST THERESA STREET,
PONDICHERRY ... RESPONDENT IN WA NO.2021/2012

D.GM.HIGHER SECONDARY SCHOOL
REP BY ITS SECRETARY G. RAMACHANDRAN
SETHIATHOPPU 608 702
CUDDALORE DISTRICT ... RESPONDENT IN WA NO.2022/2012

Common Prayer:- Appeals under Clause 15 of Letters Patent directed against the common order dated 24.02.2012 made in W.P.Nos.18827 to 18831 of 2011 & 30041 of 2007 on the file of this Court.

Prayer in W.P.No: 18827 of 2011:-

Praying for the issuance of Writ of Certiorarified Mandamus, calling for all records relating to the order of the 2nd respondent made in Mu. Mu. No. 3228/D2/E1/2011 dt 9.7.2011 and quash the same thereby directing the respondents 1 to 3 herein to implement G.O.Ms.No.525 School Education (D1) Department dt 29.12.1997 as declared by this Honourable Court in judgement reported in 2006 (5) CTC 385 and 2009(7) MLJ 527 2010(1) CWC 141 and as per annexure to the order of the Director of School Education made in Na. Ka. No. 24548/G1/2010 dt 28.8.2010 in so far as the petitioner St. Annes Girls Higher Secondary School Cuddalore is concerned by sanction of teaching and non-teaching posts in terms with the prevailing rules atleast as and from 2006-2007 onwards

Prayer in W.P.No: 18828 of 2011:-

Praying for the issuance of Writ of Certiorarified Mandamus, calling for all records relating to the order of the 2nd respondent made in Mu. Mu. No. 3228/D2/E1/2011 dt 9.7.2011 and quash the same thereby directing the respondents 1 to 3 herein to implement G.O.Ms.No.525 School Education (D1) Department dt 29.12.1997 as declared by this Honourable Court in judgement reported in 2006 (5) CTC 385 and 2009(7) MLJ 527 2010(1) CWC 141 and as per annexure to the order of the Director of School Education made in Na. Ka. No. 24548/G1/2010 dt 28.8.2010 in so far as the petitioner St. Philomenas Girls High School Cuddalore Old Town is concerned by sanction of teaching and non-teaching posts in terms with the prevailing rules atleast as and from 2006-2007 onwards

Prayer in W.P.No: 18829 of 2011:-

Praying for the issuance of Writ of Certiorarified Mandamus, calling for all records relating to the order of the 2nd respondent made in Mu. Mu. No. 8500/D1/E4/2011 dt 21.7.2011 and quash the same thereby directing the respondents 1 to 3 herein to implement G.O.Ms.No.525 School Education (D1) Department dt 29.12.1997 as declared by this Honourable Court in judgement reported in 2006 (5) CTC 385 and 2009(7) MLJ 527 2010(1) CWC 141 and as per annexure to the order of the Director of School Education made in Na. Ka. No. 24548/G1/2010 dt 28.8.2010 in so far as the petitioner Beschi Higher Secondary School (High School Sections VI to X) is concerned by sanction of teaching and non-teaching posts in terms with the prevailing rules atleast as and from 2006-2007 onwards;

Prayer in W.P.No: 18830 of 2011:- calling for all records relating to the order of the 2nd respondent made in Mu. Mu. No. 8499/D1/E4/2011 dt 15.07.2011 and quash the same thereby direct the respondents 1 to 3 herein to implement G.O.Ms.No.525 School Education (D1) Department dt 29.12.1997 as declared by this Honourable Court in judgement reported in 2006 (5) CTC 385 and 2009(7) MLJ 527 2010(1) CWC 141 and as per annexure to the order of the Director of School Education made in Na. Ka. No. 24548/G1/2010 dt 28.8.2010 in so far as the petitioner St.Immaculate High School Velanthangal is concerned by sanction of teaching and non-teaching posts in terms with the prevailing rules atleast as and from 2006-2007 onwards;

Prayer in W.P.No: 18831 of 2011:-

Praying for the issuance of Writ of Certiorarified Mandamus, calling for all records relating to the order of the 2nd respondent made in Mu. Mu. No. 23204/D1/E4/2011 dt 21.07.2011 and quash the same thereby directing the respondents 1 to 3 herein to implement G.O.Ms.No.525 School Education (D1) Department dt 29.12.1997 as declared by this Honourable Court in judgement reported in 2006 (5) CTC 385 and 2009(7) MLJ 527 2010(1) CWC 141 and as per annexure to the order of the Director of School Education made in Na. Ka. No. 24548/G1/2010 dt 28.8.2010 in so far as the petitioners Sirumalar Higher Secondary School Chinna Salem Villupuram District is concerned by sanction of teaching and non-teaching posts in terms with the prevailing rules atleast as and from 2006-2007; and

Prayer in W.P.No: 30041 of 2007:-

Praying for the issuance of Writ of Certiorarified Mandamus, calling for the records of the fourth respondent relating to his proceedings Na.Ka.No.15424/Aa3/2006 dated 6.2.2007 and quash the same and consequently direct the second respondent to sanction the additional post viz., one post of PG Assistant-Tamil, one post of PG Assistant-English, one post of PG Assistant-Physics, the post of PG Assistant-Commerce, 2 BT Assistants, one Tamil Pandit, one Junior Assistant post, one Office Assistant and one sweeper as per GO MS.No.525 dated 29.12.1997 in the light of the proceeding of the fourth respondent dated 30.11.2006.

For Appellants in
all W.As.

Mr.C.Munusamy
: Special Government Pleader

For Respondents in
W.A.Nos.2017 to
2021 of 2012

Mr.Joseph Thatheus Jerome
: For Mr.R.Srinivasalu

For Respondent in
W.A.No.2022/12 : Mr.Antony Jesus

COMMON JUDGMENT
(Made by Huluvadi G.Ramesh,J)

These writ appeals have been directed against the common order dated 24.02.2012 made in W.P.Nos.18827 to 18831 of 2011 & 30041 of 2007.

2. Heard Mr.C.Munusamy, learned Special Government Pleader appearing for the appellants, Mr.Joseph Thatheus Jerome and Mr.Antony Jesus, learned counsel for the respondents.

3. The respondent Management has appointed additional teachers, apart from the sanctioned posts and sought sanction of additional posts in terms of G.O.Ms.No.525 dated 29.12.1997. However, the appellant has passed an order that sanction of posts could not be accorded since after the issue of the said G.O., no additional post was sanctioned and that the request could be considered only on allocation of additional posts. Assailing the said order, writ petitions were filed and the same were disposed of directing the appellants to sanction additional posts on the basis of students strength, if the respondent schools are found eligible and not to reject the claim of the respondent Schools for want of funds. Challenging the said order, the Government and the Department have come up with the above appeals.

4. Regarding sanction of additional posts, which is the issue before us, it is relevant to refer to G.O.Ms.No.525, School Education (D1) Department, dated 29.12.1997, wherein, it is stated that the grant for posts will be done on the basis of average attendance and the staff strength will 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.

5. In the case of surplus due to application of norms, they would be redeployed to the needy school, which will be done by the Director of School Education and Director of Elementary Education. In this regard G.O.Ms.No.392 dated 24.6.1996 has been issued. If the deployment is found to be difficult, the surplus staff will be allowed to continue in the same school till their retirement and the staff strength shall be refixed as per norms.

6. Similarly, wherever necessary, additional posts will be sanctioned only after taking into account the number of staff

deployed in such schools. The Director of School Education and the Director of Elementary Education has to report the additional posts to be sanctioned as per new norms after which formal permission in the first year alone shall be granted by the Government for filling up the post. Subsequently, fixation of staff strength shall be done by the District Elementary Educational Officer.

7. The Director of Elementary Education is the estimating reconciling and controlling authority for the above new head of account. The expenditure on the additional posts newly to be sanctioned in respect of High Schools and Higher Secondary Schools shall be debited to "2202-General Education-02.Secondary Schools-Schemes in the Ninth Five Year Plan-II State Plan JC. Assistance to aided High Schools and Higher Secondary Schools" and in respect of Elementary-Middle Schools, it shall be debited to a new sub-head of account, namely "2202-General Education-01.Elementary Education - 102. Assistance to Non-Government Primary Schools - Schemes in the Ninth Five Year Plan-II. State Plan - JL. Grants to Non-Government Elementary/Middle Schools".

8. Coming to the case on hand, as regards sanction of additional posts and grant, the stand of the Department is that as per G.O.4D No.4, Education Department, dated 25.11.1991, if the Management creates additional section or upgrade the existing school or opens higher standard, it is not eligible for any grant and since the Management created additional sections without the permission of the Department in some cases and the Management has given undertaking while upgrading the school as high school that they will run the high school on self-financing basis in some cases, grant-in-aid cannot be extended to the Management nor additional posts created could be sanctioned.

9. In support of their stand, the appellants placed reliance on Section 14-A of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1993, which was inserted by the Tamil Nadu Act 11 of 1999. Section 14-A reads as under:

"Section 14-A. -

Grant not payable to new private schools and new class and course of instruction.-

Notwithstanding anything contained in this Act or in any other law for the time being in force in any judgment, decree or order of any Court or other authority, no grant shall be paid to, -

(a) any private school established and any class or course of instruction opened in such private school, on or after the date of commencement of the academic year 1991-1992;

(b) any private school in existence on the date of commencement of the academic year 1991-1992 to which no grant has been paid by the Government immediately before the date of such commencement;

(c) any class or course of instruction in a private school in existence on the date of commencement of the academic year 1991-1992 to which no grant has been paid by the Government immediately before the date of such commencement; and

(d) any class or course of instruction opened on or after the date of commencement of the academic year 1991-1992 in a private school in existence on the date of such commencement.
Explanation.- For the purpose of this section, private school includes a minority school."

10. As per Section 14-A, any private school established after the date of commencement of academic year 1991-1992 is not entitled to get any post and sanction of teaching and non-teaching posts due to non-availability of funds. In the case on hand, the respondent Schools have opened new sections without obtaining permission of the department and conducting classes. Therefore, according to the appellants, the grant-in-aid or additional posts cannot be claimed by the respondent Schools as a matter of right.

11. It appears that the Government had already directed the Department to send necessary proposals for including it in the budget proposals and it is a matter of fiscal policy of the Government. In this regard correspondence are said to be going on.

12. In the light of the above facts and circumstances, we are of the considered view that it is for the concerned authority to look into fiscal policy of the State Government and also regarding sanction of additional posts. Accordingly, the appellants are directed to consider the claim of the respondent Schools for sanction of additional posts, on the basis of the students strength and pass appropriate orders in accordance with law, after following the procedure in this regard.

The writ appeals are disposed of accordingly. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

kpl

1. THE SECRETARY,
GOVERNMENT OF TAMIL NADU EDUCATION DEPARTMENT,
FORT ST. GEORGE, CHENNAI 600 009.
2. THE DIRECTOR OF SCHOOL EDUCATION
(SECONDARY EDUCATION)
COLLEGE ROAD, CHENNAI 600 006.
3. THE DISTRICT EDUCATIONAL OFFICER
DISTRICT EDUCATIONAL OFFICE
CUDDALORE NEW TOWN, CUDDALORE DISTRICT.
4. THE DISTRICT EDUCATION OFFICER,
DISTRICT EDUCATIONAL OFFICE,
VILLUPURAM 606 107, VILLUPURAM DISTRICT
5. THE JOINT DIRECTOR OF SCHOOL EDUCATION,
(HIGHER SECONDARY) COLLEGE ROAD,
CHENNAI 6
6. THE CHEIF EDUCATIONAL OFFICER,
CUDDALORE.

+1 cc to M/s.J.Antony Jesus, Advocate Sr.No.63318
+5 cc's to Mr.Joseph Thatheus Jerome, Advocate SR.No.63236
+1 cc to The Government Pleader, Sr.No.63817

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RGN(CO)
CSL/18.12.2018