IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.10.2018

CORAM:
THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Writ Petition Nos. 30571 and 30572 of 2017

St. Joseph of Cluny Higher Secondary School
represented by its Correspondent
Airport Road, Lawspet .. Petitioner in
Puducherry - 605 008 the writ petitions in 30571/17

St.Joseph of Cluny Montessari School
rep.by its Correspondent, Airport Road,
lawspet, Puducherry 605 005. ... WP. 30572/2017

Versus

The Committee for Fixation of Fee and other
charges in Private School
represented by the Member Secretary
Perunthalaivar Kamarajar Centenary Educational Complex
100 Feet Road, Anna Nagar .. Respondent in both
Puducherry - 605 005 the writ petitions

WP No. 30571 of 2017:- Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the Committee, pertaining to the order dated 10.08.2017 in proceedings No. 101059/DSE/DD(EE)/FC/OBJ/2017 on the file of the respondent and quash the same, in so far as it relates to the petitioner school and consequently directing the respondents to permit the petitioner school to follow the fee structure proposed in the order dated 09.06.2017 in proceedings No.101059/DSE/DD(EE)/FC/2017 on the file of the respondent for the academic year 2017-2018 to 2019-2020.

WP No. 30572 of 2017:- Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the Committee, pertaining to the order dated 10.08.2017 in proceedings No. 101060/DSE/DD(EE)/FC/OBJ/2017 on the file of the respondent and quash the same, in so far as it relates to the petitioner school and consequently directing the respondents to permit the petitioner school to follow the fee structure proposed in the order dated 09.06.2017 in proceedings No.101060/DSE/DD(EE)/FC/2017 on the file of the respondent for the academic year 2017-2018 to 2019-2020.

For Petitioner : Fr. Xavier Arul Raj, Senior Advocate for Ms. A. Arul Mary in both WP's

For Respondent : Mr. Syed Mustafa in Special Government Pleader (Pondicherry) in Both WP's

COMMON ORDER

(Order of the Court was made by R. Subbiah, J)

These writ petitions are filed by the petitioner institution challenging the order dated 10.08.2017 passed by the respondent determining the fee to be received by the petitioner institution from the students.

2. The petitioner school was established in the year 1946 and it is an unaided Higher Secondary School managed and run by the Educational Institute of The Sisters of St. Joseph of Cluny. It is a Christian minority school and a registered society bearing Registration S.No.9 of 1975 under the Societies Registration Act XXI of 1860. According to the petitioner, it is a religious, charitable and educational society involved in the service of the poor and downtrodden, especially in the rural areas. The object with which the petitioner school was established is to render educational service to the people, irrespective of their caste and creed.

3. According to the petitioner, the first respondent directed them to participate in an enquiry and to submit the documents for perusal, purportedly for determining the fee structure for the academic year 2016-2017, 2017-2018 and 2018-2019. The petitioner also submitted all the relevant documents and also a proposal indicating the fee structure required to be collected for the academic years 2016-2017 and 2017-2018. The Committee constituted for determination of fee, on perusal of the documents produced by the petitioner passed an order dated 29.06.2016 determining the fee structure to be collected by the petitioner for the three academic years in exercise of their power under Rule 64 (2) of The Puducherry School Education (Amendment) Rules, 2013. In the said order, it was also stated that if the petitioner is in any way aggrieved by the decision, an objection can be filed within fifteen days from the date of

receipt of the order. Accordingly, the petitioner school filed their Memorandum of Objection dated 14.07.2016 under Rule 64 (3) of the Puducherry School Education (Amendment) Rules, 2013. After going through the objections raised by the petitioner, the Committee once again called for certain particulars from the petitioner pertaining to the academic year 2015-2016 on the ground that the accounts for the academic year 2016-2017 could not be ascertained as it was in the middle of the academic year 2016-2017. Accordingly, the petitioner school appeared before the Committee on 04.03.2017 and submitted all the required documents, based on the same, the committee issued another order of determination of fee on 09.06.2017. Even as against this order dated 09.06.2017, the petitioner submitted their objection dated 27.06.2017 based on which the petitioner was directed to appear for a personal hearing on 22.07.2017. The petitioner attended the personal hearing and submitted a Memorandum along with accounts including audited balanced sheet as on 31.03.2017. Thereafter, the respondent passed the order dated 10.06.2017, which according to the petitioner was passed without considering the objections raised by them with regard to salary payable to the teaching faculty, the pensionary obligations on the part of the petitioner towards the teachers retired from the school etc., Therefore, challenging the order passed by the respondent, the present writ petitions are filed.

4. The learned Senior Counsel appearing for the petitioner would contend that the respondent failed to consider the objections filed by the school in their memorandum dated 27.06.2017, but simply confirmed the determination made in the earlier order dated 09.06.2017. In the memorandum of objections dated 27.06.2017, the petitioner has raised nine grounds for consideration of the committee. According to the learned Senior counsel for the petitioner, the salary paid to the teachers during the year 2014-2015 has been taken as the benchmark for determination of salary for the academic years 2017 to 2020, without regard to the escalation in the salary payable to the teaching faculties and other financial commitments required to be met by the petitioner school. The learned Senior counsel for the petitioner also submitted that even though the respondent has given 10% escalation in the fee receivable by the petitioner in the year 2015-2016, even after such escalation, the salary paid for the year 2016-2017 to the teaching faculties is on the higher side, which short fall could not be met by the petitioner. According to the learned Senior counsel for the petitioner, the salary payable to the teachers working in their school are paid by remittance through Bank by way of Electronic Clearance System (ECS) mode. The salary paid to the teaching faculties and other expenses incurred by the petitioner institution has been clearly indicated in the audited statement of account. The audited statement of account is the best piece

of evidence for consideration of the claim of the petitioner institution, however, it was grossly ignored by the committee while passing the impugned order of fee determination. In effect, owing to the non-consideration of the expenses to be incurred by the petitioner school, the petitioner was constrained to spend the excess amount from the School Development fund, Surplus Fund, Infrastructure development fund etc., and those funds could not be put to optimum use. In such circumstances, the learned Senior counsel for the petitioner prayed for setting aside the impugned orders and to direct the respondent to consider the audited statement of account which reflect the true and correct income and expenses incurred by the petitioner and thereafter to pass an order in accordance with law.

5. Per contra, the learned counsel for the respondent would contend that in order to address the issue of over-charging of fees by the private educational institutions in the Union Territory of Puducherry, the Puducherry School Education Rules were framed and it was published on 01.03.2014. Subsequently, as per the directions of this Honourable Court, a retired Judge of this Honourable Court was appointed as the Chairman of the Fee Committee for fixing fees and other charges to be incurred by the Private and Government Aided Schools in the Union Territory of Puducherry. The Committee commenced it's function on 09.07.2015. As per the procedure prescribed in the School Education Rules, the committee fixed the fee structure for the petitioner school after examining all the documents and records submitted by the school. In fact, the petitioner filed an objection and it was considered by the committee and an order was passed on 09.06.2017. Even as against the order dated 09.06.2017, an objection was filed by the petitioner on 27.06.2017 which was also considered by the respondent and an order was passed on 10.08.2017, which are impugned in the present writ petitions. In this writ petition, the petitioner challenges the order dated 10.08.2017 and to give effect to the earlier order dated 09.06.2017, against which also the petitioner has earlier filed their objection on 27.06.2017. In fact, in the order dated 10.08.2017, the respondent has only upheld the earlier order dated 09.06.2017, while so, seeking to give effect to the order dated 09.06.2017 will not arise. Except the petitioner, the other schools, against whom also orders were passed by the committee, are adhering to the fee determined by the respondent and the petitioner alone has come forward with this writ petition. The respondent committee has determined the fee structure for all the schools with surgical precision based on sound legal principles. The petitioner claims that they are paying salary to their teaching staff on par with the government but on perusal of the documents evidencing payment of salary, it was noticed that the petitioner has made

abnormal hike in the salary of their teaching staff for the academic year 2016-2017 on account of the revision of pay consequent to the implementation of the recommendation in the VII Pay Commission. Therefore, the respondent had taken the salary paid to the teaching staff for the academic year 2015-2016 as a benchmark which is practically more realistic. Even otherwise, the teachers working in the Government School are getting only 8% hike by virtue of the implementation of the VII Pay Commission recommendation, but the petitioner claims that they have escalated the salary upto 10% which is over and above the salary received by the teachers working in Government school. The petitioner projected loss in relation to payment of gratuity and retirement benefits, festival gifts, incentives etc., which cannot form part of the salary paid to their teachers and those expenditures have to be incurred by the petitioner themselves. The respondent, after analysing the expenses required to be incurred by the petitioner has allowed a sum of Rs.37,82,328/- under Part-I which includes school development fund, surplus fund, infrastructure fund and sundry expenses. While so, it cannot be said that the respondent failed to consider the expenses which are reasonably required to be incurred by the petitioner and prayed for dismissal of the writ petitions.

6. We have heard the counsel for both sides. The grievance of the petitioner institution appears to be that the respondent, while determining the fee to be received by them, has not taken into consideration the salary paid to the teaching staff, the escalation in such salary proportionate to the student strength, the requirement to retain surplus fund to meet contingency expenses etc. which are reflected in the audited statement of accounts. According to the petitioner, even though the committee has allowed 10% of escalation from the actual expenses incurred by them in the year 2015-2016 for the subsequent year, yet such escalation of 10% falls below the actual increase of salary disbursed to the teaching staff for the year 2016-2017 due to increase in the pay payable to the teaching staff by virtue of implementation of the VII Pay Commission. In order to demonstrate the increase in the pay payable to their teaching faculties, the petitioner institution mainly relied on the audited statement of account which reflect the actual income and expenditure incurred by the petitioner. At the same time, even according to the petitioner, in the month of February 2017, the respondent called upon the petitioner to produce the documentary evidence for determination of the fee receivable by the petitioner institution for the academic year 2017-2018, which the petitioner produced on 10.02.2017. Admittedly, at the time of producing the documents for consideration of the respondent-committee, the petitioner did not produce the audited statement of account as it was not received by them. Even according to the petitioner, the audited

statement of account for the year 2016-2017 was received by them only during April 2017 and therefore, they could not produce it for consideration of the respondent committee. However, it was claimed that the respondent did not consider the audited statement of account. It was also contended that when the audited statement of account was produced by the petitioner during the personal hearing on 22.07.2017, it was not accepted by the respondent. In any event, the respondent-committee had no occasion to consider the audited statement of account pertaining to the petitioner institution. It is needless to mention that the audited statement of account will reflect the correct income and expenditure of the petitioner institution and if it is taken into account, the fee payable by the petitioner institution can be correctly decided. In such circumstances, we set aside the orders, which are impugned in these writ petitions and remand the matter back to the respondent committee for consideration of the claim of the petitioner afresh. The petitioner is directed to produce the audited statement of account for the relevant year for consideration of the committee and on such production, the respondent-committee shall consider the same and to pass orders on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

7. The writ petitions are allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

The Member Secretary
The Committee for Fixation of Fee and other
charges in Private School
Perunthalaivar Kamarajar Centenary
Educational Complex
100 Feet Road, Anna Nagar
Puducherry – 605 005

+2cc to Mr.Arul Mary, Advocate, S.R.No. 70039

WP Nos. 30571 & 30572/2017

RR(CO)
GN(31/01/2019)