

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2018

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

WP.No.29216 of 2004

Sri Kumaragurbara Swamigal Middle School,
Thiruloki, Kumbakonam, Thanjavur,
Rep. by its Secretary / Correspondent,
Sri Chandrasekara Pillai.

...Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. by its Secretary,
School Education Department,
Fort St. George, Chennai 600 009.
2. The Director of Elementary Education,
College Road,
Chennai 600 006.
3. The District Elementary Educational Officer,
Thanjavur.
4. The Additional Assistant Elementary Educational Officer,
Tirupanandal, Thanjavur District.

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the order of the third respondent issued in his proceedings Na.Ka.No.1624/B32/03, dated 13.01.2004 and the final order issued by the first respondent in its letter No.33244/P2/03-2, dated 02.08.2004, quash the same and consequently direct the respondents to sanction 3 Secondary Grade Teacher Posts / Middle Graduate Teachers posts to the petitioner School with salary and other benefits from 01.06.1997 and sanction required number of posts as per the norms fixed in G.O.Ms.No.525, School Education Department, dated 29.12.1997 from the academic year 2004-2005.

For petitioner : Mr.R.Venkatesulu
For Respondents : Mr.K.Karthikeyan, G.A.

ORDER

The writ petition is prayed for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order of the third respondent issued in his proceedings Na.Ka.No.1624/B32/03, dated 13.01.2004 and the final order issued by the first respondent in its letter No.33244/P2/03-2, dated 02.08.2004, quash the same and consequently direct the respondents to sanction 3 Secondary Grade Teacher Posts / Middle Graduate Teachers posts to the petitioner School with salary and other benefits from 01.06.1997 and sanction required number of posts as per the norms fixed in G.O.Ms.No.525, School Education Department, dated 29.12.1997 from the academic year 2004-2005.

2. The brief facts necessary for disposal of the Writ Petition are as follows.

3. The petitioner School was established in the year 1942 and it is being administered by Sri Kumaragurubara Swamigal Educational Trust, Tirupanandal. The petitioner-School has obtained the status of a minority Institution as per the judgment and decree in O.S.No.18 of 1985, which was confirmed in A.S.No.62 of 1986, by a judgment and decree, dated 03.09.1991. Originally petitioner-School was a Primary School, which was upgraded as Middle School from the year 1990-91.

4. It is not in dispute that the Chief Educational Officer granted recognition for Standards 6 to 8. The recognition for the 6th Standard was given on 25.07.1990 and for the Standards 7 and 8, recognition was given by an order dated 10.06.1993. It is stated that the petitioner-School applied for grant of aid after expiry of three years, as the respondents have granted recognition on condition and based on the undertaking that the petitioner-School would not claim for aid for a period of three years.

5. It is submitted that the petitioner has given a representation to the first respondent requesting them to sanction grant-in-aid to the Middle Sections as per G.O.Ms.No.525, dated 29.12.1997 and as per the students' strength. It is further stated that the petitioner-School is entitled to get sanction for six Secondary Grade Posts, one B.T. Headmaster, one Tamil Teacher and one Craft Teacher. However, it is the grievance of the petitioner that the respondents have not passed any order.

6. The petitioner earlier filed W.P.No.30954 of 2003 for issuance of a direction to the first respondent to consider and pass orders on the representation of the petitioner dated

20.01.2003, seeking sanction of posts for the Middle School Sections in the petitioner School. This Court allowed the writ petition, directing the first respondent to pass orders on or before 12.12.2003. Even though recommendation was made by the third respondent to the first respondent, the first respondent rejected the request of the petitioner on the ground of financial constraints and also in view of the amendment made to the Tamil Nadu Private Schools Regulation Rules. It is also indicated that the petitioner-School cannot be given aid for ever in view of the fact that the petitioner has obtained recognition by giving an undertaking that it will not seek aid for ever and the request of such Schools had already been declined by the Government.

7. The grievance of the petitioner in the present writ petition is that the undertaking given earlier not to claim aid was limited only for a period of three years, i.e., from 1990 to 1993 and therefore, there is no legal impediment for the first respondent to sanction the post, as per the requirements and to grant aid. Further, the action of the respondents in not granting aid to the petitioner-School by treating along with other Schools, which gave undertaking not claim grant, is arbitrary, discriminatory, and violation of Article 14 of the Constitution of India.

8. The third respondent has filed a counter affidavit reiterating the stand taken in the impugned order. It is the firm stand of the respondent that the petitioner has applied for teaching grant only after 2000, which was rejected. The respondent pointed out the students' strength for the academic year 2016-2017, and submitted that one Secondary Grade Teacher is working as surplus with reference to the teacher-pupil ratio prescribed under the Right of Children to Free and Compulsory Education Act, 2009.

9. Considering the nature of the grievance expressed by the learned counsel for the petitioner and the facts and circumstances of the case, this Court is of the view that the petitioner School is entitled to get sanctioned strength as reflected from the proceedings. However grant of aid is not one's right or as a matter of routine.

10. It is not in dispute that the petitioner School is entitled to the sanctioned strength, after upgradation from the Primary School to Middle School. The contention of the learned counsel for the petitioner is that there was an undertaking from the petitioner not to receive any grant-in-aid, only for a limited period of three years, and that therefore, the impugned order is not sustainable. Further, the learned counsel for the petitioner relied upon the proceedings of the Chief Educational

Officer, Thanjavur, dated 18.01.2017, and submitted that the unfilled post in the petitioner School can be filled up by deploying the teachers now being found to be in surplus in another School under the same Management.

11. As per the proceedings dated 18.01.2017, it is seen that one teacher in S.K.S.D.S. Higher Secondary School, Thirupananthal got deployed into the petitioner School.

12. The learned Government Advocate appearing for the respondents submitted that the respondents are unable to verify the above position, even though the typed set of papers containing proceedings were served on them on 20.03.2018. With regard to the contentions of the learned counsel for the petitioner, the learned Government Advocate appearing for the respondents, has no objection for issuing direction to the respondents to consider the above position and pass appropriate orders on merits.

13. As a result, this writ petition is disposed of with the following direction:

The second respondent is directed to consider the request of the petitioner to deploy the surplus teacher as found in the proceedings dated 18.01.2017 or the surplus teacher from any other School under the management of the petitioner School and pass suitable orders within a period of four weeks from the date of receipt of a copy of this order.No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

pvs

To

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

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

3. The District Elementary Educational Officer,
Thanjavur.

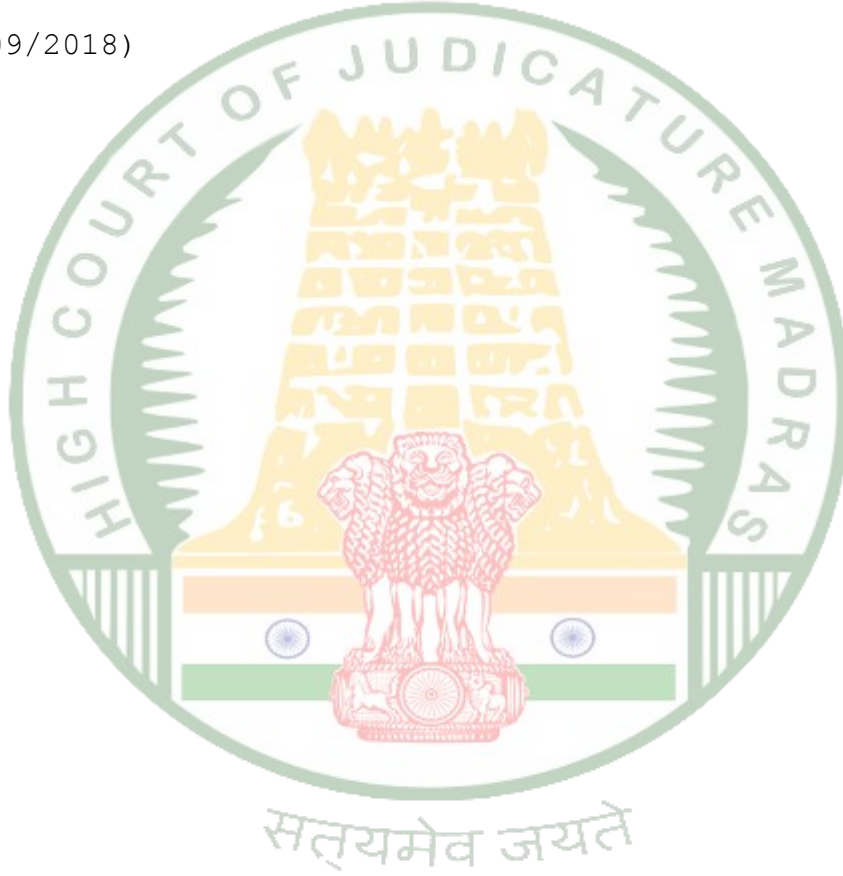
4. The Additional Assistant Elementary Educational Officer,
Tirupanandal, Thanjavur District.

+1cc to Mr.Usha Ramaman, Advocate, S.R.No.56530

+1cc to the Government Pleader, S.R.No.57274

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GSP(07/09/2018)



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