



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED : 21.06.2018  
ORDER PRONOUNCED : 12.09.2018

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CORAM :

**THE HONOURABLE MR. JUSTICE S.S.SUNDAR**

W.P. (MD) No.10158 of 2018  
and

W.M.P. (MD) No.9209 of 2018

The Secretary  
E.V.A. Vallimuthu High School,  
Velayuthapuram,  
Kovilpatti,  
Tuticorin District - 628 501.

... Petitioner

**vs.**

1. The State of Tamil Nadu,  
represented by its Secretary,  
Department of School Education,  
Fort St.George, Chennai - 600 009.
2. The Director of School Education,  
College Road, Chennai - 600 006.
3. The Chief Educational Officer,  
Thoothukudi District, Thoothukudi.
4. The District Educational Officer,  
Kovilpatti, Thoothukudi District.

... Respondents

**Prayer:-**Writ Petition filed under Article 226 of the Constitution of India, to issue Writ of Mandamus, directing the respondents to give permission to the petitioner's school to fill up the vacant post of Pre-Vocational Instructor (weaving) by converting the said post into Pre-Vocational Instructor (sewing).

For Petitioner : Mr.K.Ragatheesh Kumar  
for M/s.Isaac Chambers  
For Respondents : Mr.V.Anand  
Government Advocate

**ORDER**

This writ petition has been filed for issuing a writ of mandamus, directing the respondents to give permission to the petitioner's school to fill up the vacant post of Pre-Vocational Instructor (weaving) by converting the said post into Pre-Vocational Instructor (sewing).

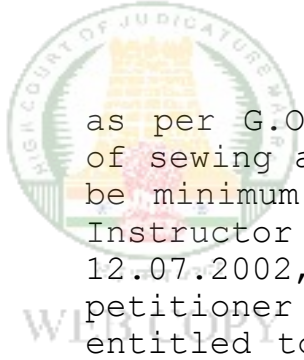


2.The petitioner school, by name, E.V.A.Vallimuthu High School, Velayuthapuram, Kovilpatti, (hereinafter referred to as 'the school') is a recognized private aided school established and administered by "Velayuthapuram Nadar Uravinmurai Sangam", which is the educational agency. The petitioner school was established as a primary school in the year 1956 and it was upgraded as a middle school in the year 1964 and as High School in the year 1994.

3.It is admitted that the school is partly aided by the State Government up to middle school level [ Standards VI and VII ] but the High School Sections namely, Standards IX and X are self financed. It is also admitted that the school is sanctioned with three B.T., Assistants, one Tamil Pandit, one Secondary Grade Teacher and one Pre-Vocational Instructor. It is also admitted that the school appointed one A.Rajendran, as Weaving Instructor in the post of Pre-Vocational Instructor. However, it is stated that there has been a constant request from the Parents-Teacher Association of the school to have sewing course instead of weaving. It is also stated that the Parents-Teacher Association has passed a resolution, requesting the school to convert the post of weaving into sewing and to appoint a sewing teacher in the said post after the retirement of A.Rajendran, whose retirement was due on 31.10.2017. Hence, by a representation dated 17.07.2017, the school committee requested the respondents to convert the post of weaving into sewing so as to enable the school to appoint a sewing instructor in the sanctioned post. The school has sent another representation on 09.10.2017, with similar request.

4.The post of Pre-Vocational Instructor fell vacant with effect from 01.11.2017 due to the retirement of then incumbent one A.Rajendran on 31.10.2017. It is stated that the school submitted a proposal to the respondents 3 and 4 seeking permission to fill up the vacant post of Pre-Vocational Instructor by sewing teacher instead of weaving teacher. However, by communication dated 27.12.2017, the fourth respondent returned the proceedings, directing the school to resubmit the proposal along with a Government Order or the proceedings of the Director of School Education, if any, permitting such conversion of post from weaving into sewing. The school preferred an appeal to the second respondent namely, the Director of School Education, Chennai, requesting him to convert the post of weaving into sewing. It is stated that thereafter there was no response from the second respondent. In such circumstances, the petitioner school has come forward with the present writ petition.

5.The fourth respondent has filed a counter. In the counter, it is stated that as per G.O.Ms.No.132, School Education, dated 27.04.1998 and G.O.Ms.No.104, School Education, dated 12.07.2002, there should be at least 250 girl students in a school to fill up a Pre-Vocational Instructor post. Since the strength of petitioner school is 146 during the academic year 2017-2018, it is stated that



as per G.O.Ms.No.104, School Education, dated 12.07.2002, the post of sewing and music teacher cannot be filled up. Since there should be minimum of 250 pupils in a school to retain one Pre-Vocational Instructor post as per G.O.Ms.No.104, School Education, dated 12.07.2002, it is contended by the fourth respondent that the petitioner school, having pupils strength of only 146, is not entitled to fill up the post of sewing teacher even if the weaving teacher post fell vacant from 01.11.2017.

6.It is further stated that as per G.O.Ms.No.104, School Education, dated 12.07.2002, the Government has banned to fill up the post of Pre-Vocational Instructor in the subjects other than sewing and music and that therefore, the petitioner school cannot fill up the vacancy of Pre-Vocational Instructor (weaving). It is stated that the Parents-Teachers Association has no jurisdiction to pass resolution or orders contrary to G.O.Ms.No.104, School Education, dated 12.07.2000 and G.O.Ms..No.39 School Education, dated 21.03.2003. Since the respondents 3 and 4 are not competent to pass any orders to convert the weaving post to one as sewing post, the fourth respondent has stated in the counter affidavit that the request of the petitioner school was turned down. It is also stated by the fourth respondent that the petitioner's representation dated 22.02.2018 to the second respondent regarding conversion of existing weaving post into sewing post is on the wrong interpretation of G.O.Ms.No.39, School Education, dated 21.03.2003 and the second respondent could not consider the request of the petitioner school by referring to G.O. Ms..No.39, School Education, dated 21.03.2003. It is the specific case of the fourth respondent that the school can be permitted to convert only a music teacher post as a craft teacher post or vice versa and that conversion to any other kind cannot be permitted.

7.From the reading of the entire counter affidavit, the prime contention of the respondent appears to be on two grounds. The first contention is that the total number of pupils in the petitioner school being 146 against the minimum requirement of 250 pupils, the petitioner school cannot retain a craft teacher post after, it fell vacant. The second contention is that the conversion of weaving into sewing on or after 01.11.2017 is not permissible as per G.O.Ms.No.39, School Education, dated 21.03.2003.

8.The learned counsel appearing for the petitioner relied upon an unreported judgment of the Honourable Division Bench of this Court, in which the petitioner school is also a party, in the case of **The State of Tamil Nadu, and others Vs. S.Renganayagi and others** in **W.A. (MD) No.1207 of 2016** dated 23.08.2016. It was a case, where it was admitted that the post was sanctioned on 22.03.2018 and permission was obtained from the Chief Educational Officer on 22.03.2018. However, when the post was sought to be filled up, the proposal was rejected by the District Educational Officer on the ground that the students' strength is less than 250. This Court did not accept the contention of the respondents in the following lines:



"7. In our opinion, the Chief Educational Officer has rightly approached the subject, when he has sanctioned necessary permission to fill up the vacant post of Craft Teacher/Vocational Teacher Instructor in the School on 22nd March 2008. Once, the Chief Educational Officer, being the administratively superior than that of the District Educational Officer, accorded the permission to the Management of the School to fill up the vacancy that arose due to the retirement of the incumbent Craft Teacher who retired on 31st May 2007, the Management has followed the necessary procedure and filled it up by appointing the writ petitioner on 22nd March 2008. The proposals have been sent to the District Educational Officer, namely, the fourth respondent, for according approval to such an appointment. It is, therefore, beyond the scope and power of the fourth respondent to examine the correctness or validity of the orders passed by his superior agency, namely, the third respondent in according the permission to the School concerned on 22nd March 2008 to fill up the said post. The scrutiny by the District Educational Officer is liable to be confined strictly to the issue as to whether the Management has followed the procedure of filling up vacancies, fairly and faithfully or not. Once the procedure is followed correctly, approval is required to be accorded.

8. No public administration can run smoothly if subordinate agencies keep questioning the correctness or otherwise of the orders passed by superior agencies. At any stage, if there is a genuine doubt entertained by the subordinate agency, with regard to the correctness of the order passed by such superior agency, they must approach the said superior agency to seek necessary clarification on the subject but, not to take independent decision on their own, which might be contrary to the orders passed by the superior agencies. The public administration, if it is allowed to function in that manner, it would create too many bottleneck and the quality of services to the public will get impeded substantively. We, therefore, disapprove the conduct of the fourth respondent/District Educational Officer, Tuticorin, in passing the rejection order, dated 02nd July 2009, to approve the appointment of the writ petitioner, on the precious plea that a post of Craft teacher could not have been created in the school for want of strength of 250 Girl students, notwithstanding his superior sanctioning permission to the School to fill up the said post.

9. In our opinion, the order passed by the fourth respondent on 02nd July 2009, amounts to administratively reviewing the order passed by the Chief Educational



Officer, Tuticorin on 22nd March 2008, according necessary permission to the Management to fill up the post of Craft Teacher/ Vocational Training Instructor. Hence, the order passed on 02nd July 2009 passed by the District Educational Officer, which is impugned in the writ petition, is wholly un-sustainable."

9. The learned Counsel for the petitioner further relied on an unreported judgment of Honourable Division Bench of this Court in the case of the **State of Tamil Nadu represented by the second respondent and three others Vs. the Correspondent, RC Middle School, Nedungulam, Sattankulam, Tuticorin District** in **W.A.(MD) Nos.22 and 23 of 2017 and W.A.(MD) Nos.117, 149, 407 and 548 of 2016** dated 20.02.2018. The Hon'ble Division Bench dealt with the situation, where the management of middle school filed writ petitions, to approve the appointment of Pre-Vocational Instructors, who are working in their school. Permission was not granted on account of the Government Order vide G.O.Ms.No.39, dated 21.03.2003, by which, the Government issued directions, restricting conversion of the post of Pre-Vocational Instructor between the branch of sewing and music. The writ petition was allowed and the official respondents filed an appeal in a batch of cases, as against the order of learned Single Judge in a batch of writ petitions. The said writ appeal was also dismissed. The Hon'ble Division Bench of this Court in yet another case considered the issue in a writ petition in W.P.(MD) No.24071 of 2017. By order dated 20.02.2018, this Court has held as follows:

" 3. Similar issue was considered by the Division Bench in W.P.(MD).No.1569 of 2015. The only difference being the writ petitioner therein was a minority aided institution, whereas the petitioner in this case is the non-minority aided institution. In the said writ petition, the Court considered the effect of G.O.Ms.No.39, dated 21.03.2003, and also as to how the Government Order needs to be interpreted. Though in that writ petition as well as in this writ petition, the petitioners have challenged the validity of G.O.Ms.No.39, at this stage, it would be useful to refer to the portion of the order.

4. In our considered view, on a reading of G.O.Ms.No.39, one gets an impression that there is an absolute ban, however the object of the Government Order for restricting the conversion between two posts is not very clear. In any event, if the Government Order is read as a whole, it appears that the intention of the Government is to consider as to whether there is a need for conversion of the post in a particular institution. But, it has not been stipulated explicitly as the preamble of the Government Order says that conversion can be made only between Sewing and Music.

5. We are of the considered view that the Government Order should be read down, bearing in mind the need of



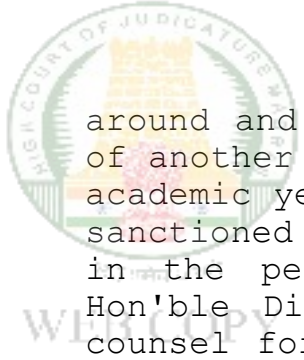
the Students and since Vocational instruction has been found to be a very important particularly in the subject Agriculture. The Government should enable the Institution to decide upon what would be the need and what would be the requirement for the particular Institution. In the case of The State of Tamil Nadu and others Vs. P.Bella Fernando and another in W.A.(MD)No.421 of 2017, dated 19.04.2017, the Division Bench to which one of us was a party (T.S.S.J), considered the similar question as to whether the post of pre-vocational Instructor in Agriculture could have been filled up with a person possessing qualification in Sewing, without obtaining prior approval from the Government."

10.From the two later judgments of the Hon'ble Division Bench of this Court referred to above, it is seen that this Court has held that the conditions stipulated in G.O.Ms.No.39, dated 21.03.2003 should be read down to mean that the predominant aspect, which has to be considered is the need for the particular branch of Vocational Instructor and that it should be decided by the institution considering the demand of the students / parents etc. Therefore, the similar stand taken by the respondents in this writ petition, is untenable. Hence, the respondents cannot rely upon G.O.Ms.No.39, dated 21.03.2003, to contend that conversion of weaving teacher post to sewing teacher post is not permitted by the Government Order.

11.The next issue is about the requirement of minimum strength of students in a school to retain the Pre-Vocational Instructor post. The learned Additional Government Pleader has not produced G.O.Ms.No.104, School Education, dated 12.07.2002, before this Court. The learned counsel appearing for the petitioner relied upon the proceedings of the District Educational Officer, vide Na.Ka.No.3424/A1/2017 dated 14.09.2017 fixing the staff strength for the petitioner school for the academic year 2017-2018 as on 01.08.2017. In the said proceedings, one post of Pre-Vocational Instructor in weaving was sanctioned for the petitioner's school for the academic year 2017-2018.

12.The fourth respondent returned the proposal by proceedings dated 27.12.2017 only on the ground that the conversion of weaving teacher post into sewing teacher post is not obtained from the competent authority and that therefore, the proposal was returned with a request to resubmit the proposal after getting order for conversion. When the petitioner school applied for conversion before the second respondent, the said application is yet to be considered. In such circumstances, this Court is of the view that the judgment relied upon by the learned counsel for the petitioner in W.A.(MD) No.1207 of 2016 dated 23.08.2016 is relevant.

13.In this case also, it is an admitted fact that the post of Pre-Vocational Training Instructor is sanctioned. When a decision has been taken, it is not appropriate for the respondents to turn



around and now contend that the post cannot be filled up by virtue of another Government Order. Even while sanctioning the post for the academic year 2017-2018, the respondents have not indicated that the sanctioned post is limited till the teacher, who is holding the post in the petitioner school retires. In view of the judgments of Hon'ble Division Bench of this Court relied upon by the learned counsel for the petitioner, the petitioner in the writ petition is entitled to succeed in this writ petition.

14.As a result, this writ petition is allowed and the respondents are directed to give permission to the petitioner school to fill up the vacant post of Pre-Vocational Instructor (weaving) by converting the said post into Pre-Vocational Instructor (sewing). No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar (CS-II)

**To**

1. The Secretary,  
The State of Tamil Nadu,  
Department of School Education,  
Fort St.George, Chennai - 600 009.
2. The Director of School Education,  
College Road, Chennai - 600 006.
3. The Chief Educational Officer,  
Thoothukudi District, Thoothukudi.
4. The District Educational Officer,  
Kovilpatti, Thoothukudi District.

+ 1 CC TO M/s.ISAAC CHAMBERS, IN SR No. 84242

MM/CMR

TE/SKN/SAR-2 : 28/09/2018 : 7P/6C

W.P. (MD) No.10158 of 2018  
12.09.2018