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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MS.JUSTICE P.T.ASHA

W.A.Nos.972 to 974 of 2017
&
C.M.P.Nos.13536 to 13540 & 20210 of 2017

W.A.No.972 of 2017

- 1.The Chief Educational Officer,
O/o The Chief Educational office,
Thiruvarur, Thiruvarur District.
- 2.The District Educational Officer,
O/o the District Educational office,
Thiruvarur, Thiruvarur District.
- 3.The State of Tamil Nadu
Rep. by the Secretary to Government,
Department of School Education,
Fort. St. George, Chennai - 600 009.
- 4.The Director of School Education,
College Road, Chennai - 600 006.

.... Appellants

(Appellants 3 & 4 impleaded as parties appellants vide order of this Court dated 24.11.2017 made in C.M.P.Nos.20207 to 20209 in 2017 in W.A.Nos.972 to 974 of 2017)

-vs-

- 1.K.Manikandan
- 2.The Secretary,
V.S.Boys Higher Secondary School,
Thiruvarur, Thiruvarur District.

.... Respondents

W.A.No.973 of 2017

- 1.The Chief Educational Officer,
O/o The Chief Educational Office,
Thiruvarur, Thiruvarur District.



2.The District Educational Officer,
O/o the District Educational office,
Thiruvavarur, Thiruvavarur District.

3.The State of Tamil Nadu
Rep. by the Secretary to Government,
Department of School Education,
Fort. St. George, Chennai - 600 009.

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

.... Appellants

(Appellants 3 & 4 impleaded as parties appellants vide order of this Court dated 24.11.2017 made in C.M.P.Nos.20207 to 20209 in 2017 in W.A.Nos.972 to 974 of 2017)

-vs-

1.The Secretary,
V.S.Boys Higher Secondary School,
Thiruvavarur, Thiruvavarur District.

.... Respondents

W.A.No.974 of 2017

1.The Chief Educational Officer,
O/o The Chief Educational Office,
Thiruvavarur, Thiruvavarur District.

2.The District Educational Officer,
O/o The District Educational office,
Thiruvavarur, Thiruvavarur District.

3.The State of Tamil Nadu
Rep. by the Secretary to Government,
Department of School Education,
Fort. St. George, Chennai - 600 009.

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.... Appellants

(Appellants 3 & 4 impleaded as parties appellants vide order of this Court dated 24.11.2017 made in C.M.P.Nos.20207 to 20209 in 2017 in W.A.Nos.972 to 974 of 2017)

-vs-

1.K.Manikandan

2.The Secretary,
V.S.Boys Higher Secondary School,
Thiruvavarur, Thiruvavarur District.

.... Respondents



Write Appeal in W.A.No.972 of 2017 filed under Clause 15 of Letter Patent against the order in W.P.No.9860 of 2016 dated 02.12.2016 on the file of the High Court of Judicature at Madras.

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Prayer in WP.No. 9860 of 2016 : Writ Petition filed under Article 226 of the constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, Calling for the records relating to the impugned order passed by the 2nd respondent in his proceedings in O.Mu.No. 10882/Aa3/2015 dated 05.02.2016 and quash the same as illegal and consequently to direct the 2nd respondent to approve the appointment of the petitioner as Physical Education Teacher (P.E.T) with effect from 03.08.2015 within the period that may be stipulated by this Honourable Court.

Write Appeal in W.A.No.973 of 2017 filed under Clause 15 of Letter Patent against the order in W.P.No.35439 of 2016 dated 02.12.2016 on the file of the High Court of Judicature at Madras.

Prayer in WP.No. 35439 of 2016 : Writ Petition filed under Article 226 of the constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, Calling for records relating to the impugned proceedings of the 1st respondent chief Educational Officer in Na. Ka. No. 1899/ A2/ 2016 dated 15.09.2016 cancelling the permission granted to fill up the 3rd post of Physical Education Teacher in the petitioner school quash the same and further direct the 2nd respondent District Educational Officer to approve the appointment of Mr.K.Manikandan as Physical Education Teacher with effect from the date of his appointment viz. 03.08.2015 and release salary and other attended benefits.

Write Appeal in W.A.No.974 of 2017 filed under Clause 15 of Letter Patent against the order in W.P.No.33954 of 2016 dated 02.12.2016 on the file of the High Court of Judicature at Madras.

Prayer in WP.No. 33954 of 2016 : Writ Petition filed under Article 226 of the constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, Calling for the records relating to the impugned order passed by the 1st respondent in his proceedings in Na.Ka.No. 1899/A2/2016 dated 15.09.2016 and quash the same as illegal and consequently to direct the 1st respondent & 2nd respondent to approve the appointment of the petitioner as Physical Education Teacher(P.E.T) with effect from 03.08.2015 within the period that may be stipulated by this Honourable Court.



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W.A.No.972 of 2017

For Appellants : Mr.C.Munusamy
Special Government Pleader

For R1 : Mr.Isaac Mohanlal
Senior counsel
For Mr.B.Ramprasath

For R2 : Mr.Isaac Mohanlal
Senior counsel
for M/s.Issac Chambers

W.A.No.973 of 2017

For Appellants : Mr.C.Munusamy
Special Government Pleader

For Respondent : Mr.Isaac Mohanlal
Senior counsel
for M/s.Issac Chambers

W.A.No.974 of 2017

For Appellants : Mr.C.Munusamy
Special Government Pleader

For R1 : Mr.Isaac Mohanlal
Senior counsel
For Mr.B.Ramprasath

For R2 : Mr.Isaac Mohanlal
Senior counsel
for M/s.Issac Chambers

C O M M O N J U D G M E N T

[Judgment of the Court was delivered by P.T.ASHA,J.]

The Intra-Court appeals are concerned with a common issue, namely, sanctioned strength of Physical Education Teachers in a School which has a strength of over 2,500 students as in the case of the school in question in these proceedings. The Writ Appeal in W.A.No.972 of 2017 is filed challenging the order passed in W.P.No.9860 of 2016, which is a Writ filed by one K.Manikandan working in M/s.V.S Boys Higher Secondary School, Thiruvarur.



2. The Appeal in W.A.No.973 of 2017 is filed challenging the order passed in W.P.No.35439 of 2016, which is filed challenging the cancellation of the order dated 26.06.2015, in and by which the permission has been granted by the Chief Educational Officer, Thiruvarur to fillup the post of Physical Education Teacher in the School. The School inturn, namely, V.S Boys Higher Secondary School, Thiruvarur has filed W.P.No.35439 of 2016, challenging the order passed by the Chief Educational Officer dated 15.09.2016, cancelling the earlier order dated 26.06.2015, under which permission was granted to the School to fill up the post of Physical Education Teacher.

3. As against the order in W.P.No.33954 of 2016, the Chief Educational Officer, Thiruvarur and the District Educational Officer, Thiruvarur have filed Writ Appeal in W.A.No.974 of 2017.

4. The facts in brief necessary for disposing of the Writ Appeals are as follows:

5. The institution by name V.S Boys Higher Secondary School is a private school receiving grant-in-aid from the State government. The School is governed by the provisions contained in Tamil Nadu Recognized Private Schools (Regulation) Act, 1973. The total strength of the School as on the date of filing the Writ Petitions was 2068 students. In the High School (6th standard to 10th standard) there were about 1233 students. In the Higher Secondary level, namely, 11th standard and 12th standard there were about 835 students.

6. It is the case of the Writ petitioners that as per the provisions of G.O.Ms.No.525 (School Education), dated 29.12.1997, the respondent school is entitled to one Physical Education Director and three Physical Education Teachers. The staff fixation of the school for the year 2015 - 2016 was approved by the Chief Educational Officer, Thiruvarur, vide his proceedings bearing R.C.No.5050/A2/2015 dated 20.10.2015 and a perusal of the said proceedings would indicate that the Chief Educational Officer has approved one Physical Director (Grade II) and three Physical Education Teachers.

7. Meanwhile, one D.Gnanasekaran who was working as the Physical Education Teacher was promoted as Physical Educational Director on 01.07.2013 as a consequence of which one post of Physical Education Teacher fell vacant. The Chief Educational Officer by his proceedings dated 26.06.2015, had granted permission to the School to fillup the vacant post of Physical Education Teacher. The Chief Educational Officer had instructed the District Educational Officer to ensure that the vacant post



of the Physical Education Officer is filled up with a suitable candidate following community roster as prescribed by the rules.

8. K.Manikandan, who was registered with the District Employment Office had submitted his application and a call letter was also issued by the School asking him to appear for an interview on 28.07.2015. The said K.Manikandan had participated in the interview on 28.07.2015 and after verifying his credentials, the School had resolved to appoint him as Physical Education Teacher. Thereafter, the School had appointed him as a Physical Education Teacher.

9. The School had send a proposal for approval of the appointment of K.Manikandan as a Physical Education Teacher in the sanctioned post. However, to the utter shock and surprise of the School and the said Manikandan, the District Educational Officer refused to grant approval on the ground that the maximum number of Physical Education Teachers permissible was only three and the 4th Physical Education Teacher cannot be entertained in the School.

10. During the pendency of the said Writ Petition, the Chief Educational Officer, Thiruvavur, by his proceedings dated 15.09.2016, cancelled the permission given earlier to the School to induct one more Physical Education Teacher. This order was challenged in the Writ Petitions by the School as well as the said Manikandan.

11. The learned Single Judge heard all the Writ Petitions together and passed a common order, quashing the impugned order and directed the School to send their proposal to the Chief Educational Officer for grant of approval for appointment of Manikandan as a Physical Education Teacher and on receipt of the same the Chief Educational Officer and District Educational Officer were directed to pass appropriate orders. Challenging the said order, the Chief Educational Officer and District Educational Officer have filed the above Writ Appeals.

12. Mr.C.Munusamy, Special Government Pleader would draw the attention of this Court to G.O.Ms.No.525 dated 29.12.1997, with broad reference to the sanctioned strength for the post of Physical Education Teacher which reads as follows:

“(c)When the strength in classes VI to X in High Schools exceeds 250, one post of Physical Education Teacher will be sanctioned and for every additional strength of 300, one additional post of Physical Education Teacher will be sanctioned subject to a max of 3.”



13. He would also draw the attention of this Court to Clause IV (f) therein which reads as follows:

"(f) For Schools with a strength of over 400, one post of Physical Director will be given by up gradation of existing post of Physical Education Teacher."

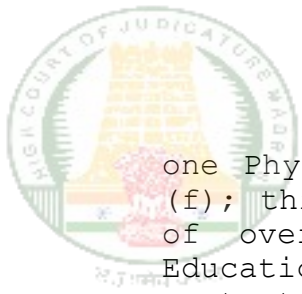
14. Therefore the Special Government Pleader would contend that besides a Physical Education Director, the School could have only two other Physical Education Teachers and totally they would be entitled to three Physical Education Teacher. He would therefore contend that the Government was right in rejecting the approval.

15. Mr. Isaac Mohanlal, learned Senior counsel arguing on behalf of the respondents would draw the attention of this Court to the earlier Judgement of the Division Bench of this Court reported in 2010 2 MLJ 277 - Director of School Education, Chennai - 600 006 and others Vs. K. Uma, wherein this Court while considering G.O.Ms.No.525 had held as follows:

"23. As stated above, the normal understanding of the above government order with regard to Physical Education Teachers is that the High Schools would have maximum number of three Physical Education Teachers and Higher Secondary School would be added one more Physical Education Director. However there cannot be any ceiling with regard to the strength of teachers as the same is bound to vary/increase as per the strength of the student's. When the student strength is increased, the ceiling has to be removed and required more Physical Education Teachers are to be appointed, otherwise the students would suffer irreparably and the government order would go against the very scheme of education."

16. He would also invite our attention to the approval of Staff Fixation for the year 2014 - 2015, accorded by the Chief Educational Officer, Thiruvavur, vide proceedings dated 16.12.2014, to the school wherein approval was granted for one Physical Director (Grade II) and three Physical Education Teacher. The same approval has been granted for the year 2015 - 2016 also. He would therefore contend that in the light of the above, the order cancelling the approval is erroneous.

17. A Reading of G.O.Ms.No.525, with reference to Teacher - Pupil ratio of the Physical Education Teacher would clearly show that where the School strength is over and above 850, then the School is entitled to have three Physical Education Teachers and



one Physical Education Director which is clarified in Clause IV (f); this clause provides that where the Schools have a strength of over 400 students, they were entitled to one Physical Education Director which was to be upgraded from the existing post to Physical Education Teacher. Therefore a conjoint reading of Clauses III (c) and IV (f) would clarify that Schools having a strength of over 850 students were entitled to one Physical Director and three Physical Education Teachers. The Chief Educational Officer and District Educational Officer have rightly understood the Government Order in question as evident from the earlier approvals granted by them. It was only when they have been asked for the approval of the appointment of K.Manikandan that they have taken a contrary view.

18. It is also seen that even as early as in the year 2009 this Court has lamented upon the lack of Physical activities/Physical exercise for today's children and it was also observed that it is only in schools that young talents can be identified and groomed in Sports and Games, in which they show their attitude and excellence. Unless the schools are equipped with the right number of Physical Education Teachers to match the number of students this goal cannot be achieved.

In view of the above discussion, we do not find any reason for interfering with the order passed by the learned Judge. Accordingly, the Writ Appeals stand dismissed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petitions are also closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To,

- 1.The Chief Educational Officer,
O/o The Chief Educational office,
Thiruvarur, Thiruvarur District.
- 2.The District Educational Officer,
O/o the District Educational office,
Thiruvarur, Thiruvarur District.



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

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

+lcc to M/s.Issac Chambers, Advocate, S.R.No. 51402
+lcc to the Special Government Pleader, S.R.No. 51205

W.A.Nos.972 to 974 of 2017 &
C.M.P.Nos.13536 to 13540 &
20210 of 2017

RSK (CO)
GN(14/08/2019)