

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2019

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SUBRAMONIUM PRASAD

W.A.No.3873 of 2019

and

CMP No.24340 of 2019

Tagore Educational Society
Rep by its Founder cum Chairman,
K.C. Rajabather,
No.291/88E, Gingee Road,
Tindivanam-604 001
Villupuram District

... Appellant

-vs-

1. The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006
 2. The Block Development Officer Incharge,
Olapur, @ Saram Village,
Tindivanam Taluk,
Villupuram District
 3. The District Elementary Educational Officer,
Villupuram District
- Respondents

Writ Appeal filed under Clause 15 of Letters Patent against
the order passed in W.P.No.9605 of 2005 dated 16.07.2019

Prayer in W.P.No.9605 of 2005: The Writ Petition is filed under
article 226 of the Constitution of India for a Writ of
Certiorarified Mandamus Calling for the records relating to the
proceedings dated 17/10/2018 in OM.No.31 / A2 /2018 on the file
of the 2nd Respondent and the order dated 10/4/2018 in
Na.Ka.No.1673 / A4 / 2018 of the 3rd respondent and quash the
same and consequently direct the respondents 2 and 3 to
forthwith permit the petitioner to fill up the post of
Instructor which fell vacant due to retirement on 31/05/2017.

For Appellants : Mr.V. Raghavachari

For respondents : Mr.C. Munusamy
Special Govt. Pleader

JUDGMENT

(delivered by SUBRAMONIUM PRASAD,J.,)

The Writ Appeal arises out of an order passed in W.P.No.9605 of 2005 dated 16.07.2019, whereby, the learned Single Judge has dismissed the Writ Petition.

2. The writ petition from which this appeal arises is one for a Certiorarified Mandamus calling for records relating to the proceedings dated 17.10.2018 in OM No.31/A2/2018 on the file of the second respondent being the Block Educational Officer Incharge, Olakur @ Saram Village and the order dated 10.04.2018 in Na.Ka.No.1673/A4/2018 on the file of the third respondent being District Elementary Educational Officer, Villupuram District and consequently direct them to fill up the post of Instructor which fell vacant.

3. The writ petitioner/appellant is a Society and runs an educational institution by name Sri Kamatchi Vilas Middle School. The Society claims that a post of tailoring teacher was sanctioned by the Office of the District Educational Officer, Tindivanam on 31.03.1986.

4. The petitioner/appellant states that the teacher imparting education in the subjects retired on 31.05.2017. The appellant wanted to fill up the vacancy by appointing a suitable candidate. An application to this effect was made to the authorities. The request was forwarded to the second respondent i.e, The Block Educational Officer. The request was rejected by the order impugned in the writ petition. The order impugned in the writ petition states that that the application cannot be entertained because there are only 68 students studying from Class VI to VIII and therefore, the request of the petitioner/appellant cannot be accepted. This order was challenged in WP No.9605 of 2005.

5. The learned Single Judge rejected the writ petition by relying on G.O.Ms.No.231 School Education (C2) Department dated 11.08.2010. The learned Single Judge held that as per the aforementioned Government Order, a full time or a part time teacher for Art Education, Health and Physical Education or Work

Education can be sanctioned only if the admission of children is above 100. The learned Single Judge held that since the number of students studying between Class VI and Class VIII is less than 100, the impugned order does not call for any interference.

6. Heard learned counsel for the parties.

7. Mr.V. Raghavachari, learned counsel appearing for the appellant would urge that once a teacher is sanctioned for imparting a vocational course in a school, then the vacancy which arises due to the retirement, death or transfer of such teacher has to be filled up. Learned counsel would contend that if the students' strength reduces at a later point of time the authorities cannot refuse to appoint a teacher. He would contend that this would have an adverse effect on the students who are pursuing the course. The learned counsel would give an example that if the students strength for a particular academic year is for e.g., say 110 and a teacher is appointed for imparting vocational course like tailoring after the post being sanctioned and say 50 students opt for the vocational course and due to some circumstances the students strength becomes 98 after three years and the teacher has to leave the job or retires, then if a new teacher is not appointed it will affect the 50 students, who have opted for the course. The learned counsel therefore contends that the reasonings given by the authorities which has been accepted by the learned Single Judge is not sustainable.

8. On the other hand, Mr.C.Munusamy, learned Special Government Pleader would place reliance on G.O.No.231 School Education (C2) Department dated 11.08.2010. The said Government Order prescribes the norms and standards for appointment of teachers in aided schools. The said Government Order is extracted hereunder:-

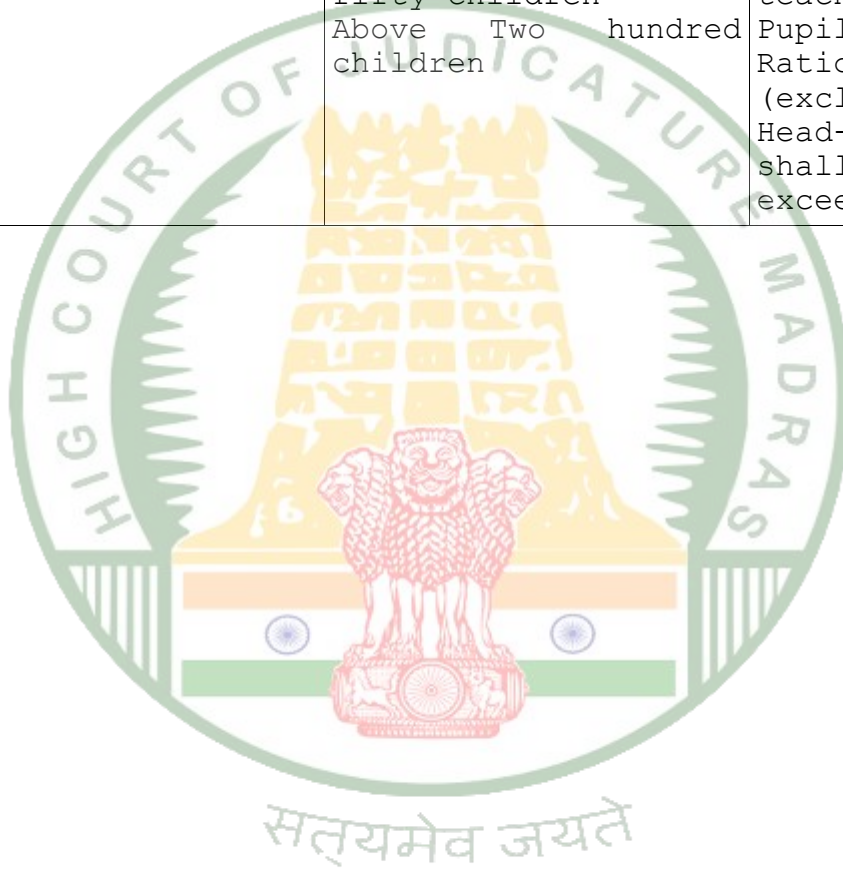
"THE SCHEDULE

(See sections 19 and 25)

NORMS AND STANDARDS FOR A SCHOOL

Sl.No	Items	Norms and Standards	
1.	Number of teacher: (a) For first class to fifth class	Admitted children	Number of teachers:

Sl.No	Items	Norms and Standards	
		Up to Sixty	Two
		Between sixty-one to ninety	Three
		Between Ninety-one to one hundred and twenty	Four
		Between One hundred and twenty-one to two hundred	Five
		Above One hundred and fifty children	Five plus one Head teacher
		Above Two hundred children	Pupil-Teacher Ratio (excluding Head-teacher) shall not exceed forty



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Sl.No	Items	Norms and Standards
	(b) For sixth class to eighth class	(1) At least one teacher per class so that there shall be at least one teacher each for- (i) Science and Mathematics; (ii) Social Studies; (iii) Languages (2) At least one teacher for every thirty-five children. (3) where admission of children is above one hundred- (i) a full time head-teacher (ii) part time instructors for- (A) Art Education; (B) Health and Physical Education; (C) Work Education.

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Sl.No	Items	Norms and Standards	
2.	Building		All weather building consisting of - (i) at least one class-room for every teacher and an office-cum-store-cum Head teacher's room; (ii) barrier-free access; (iii) separate toilets for boys and girls; (iv) safe and adequate drinking water facility to all children; (v) a kitchen where mid-day meal is cooked in the school; (vi) playground; (vii) arrangements for securing the school building by boundary wall or fencing.

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Sl.No	Items	Norms and Standards
3.	Minimum number of working days/instructional hours in an academic year	(i) two hundred working days for first class to fifth class; (ii) two hundred and twenty working days for sixth class to eighth class; (iii) eight hundred instructional hours per academic year for first class to fifth class; (iv) one thousand instructional hours per academic year for sixth class to eighth class.
4.	Minimum number of working hours per week for the teacher	forty-five teaching including preparation hours
5.	Teaching learning equipment	shall be provided to each class as required.
6.	Library	There shall be a library in each school providing newspaper, magazines and books on all subjects, including story books.

7.	Play material, games and sports equipment		Shall be provided to each class as required.
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sd.

T.K.Viswanathan

Secretary to the Government of India."

9. The learned Special Government Pleader would contend that in cases where the students strength falls below 100, the teacher is declared as surplus and is accommodated in other Government or aided schools. He would contend that in such cases, it is for the schools to appoint teachers at their expense to ensure that the students do not suffer.

10. A perusal of the Schedule would show that for appointing a full time or part time teacher for imparting vocational course the students strength must at least be 100. In the present case, the students strength for Classes VI to VIII has fallen to 78. The appellant has not given any details as to what was the students strength when the post of teacher to impart tailoring course was sanctioned. It has not been stated as to how many students opted for the said course. It is not stated as to when the teacher retired; how many students were pursuing the tailoring course. In the absence of any materials on record, the contention of the learned counsel for the appellant cannot be accepted. In the absence of any material, this Court is constrained to follow the Government Order which is not under challenge. The Government Order clearly mandates that if the students strength is less than 100, then, the application for sanction of a teacher for vocational course cannot be considered. The purpose of G.O.No.231 School Education (C2) Department dated 11.08.2010 is to rationalise the deployment of existing teachers to address the problem imbalances in the teachers' placement in Government and aided schools. It is however open to the Appellant to approach the authorities for sanction of a teacher if and when the rules are relaxed or the policy is changed.

11. In view of the above, the writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.
2. The Block Development Officer Incharge,
Olapur, @ Saram Village,
Tindivanam Taluk,
Villupuram District.
3. The District Elementary Educational Officer,
Villupuram District.

+2cc to M/s.V.Raghavachari, Advocate Sr.101572 & 101407
+1cc to the Government Pleader Sr.102192

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W.A.No.3873 of 2019
and
CMP No.24340 of 2019

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srg 09/01/2020

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