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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22..05..2019

CORAM

**THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN
AND**

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

W.P. (MD) Nos. 1091, 1115, 1125, 1128, 1257, 1557 & 2433 of 2019
&
Connected Miscellaneous Petitions

W.P. (MD) No. 1091 of 2019

S. Paul Prince

..Petitioner

Vs.

1. The Government of Tamil Nadu
rep. by its Principal Secretary,
School Education Department,
Fort St. George,
Chennai - 600 009.
2. The Director of Elementary School
Education,
DPI Campus, Nungambakkam,
College Road, Chennai - 600 006.
3. The Chief Educational Officer,
Madurai.
4. The District Educational Officer,
Melur, Madurai District.
5. The Block Educational Officer,
Kottampatti, Madurai District.
6. The Chairperson,
National Council for Teacher
Education,
New Delhi - 110 002.

(R6 is suo motu impleaded vide Court
order dated 28.03.2019.)

..Respondents

Prayer: Petition under Article 226 of the Constitution of India
praying for issue of a Writ of Certiorari to call for the record
pertaining to the impugned order passed by the 4th respondent in
Na.Ka.No. 11981/Aa3/2018 dated 12.01.2019 and the consequential



order passed by the 5th respondent in Na.Ka. No. 90/A1/2019 dated 18.01.2019 and quash the same.

For Petitioner :: Mr.M.Saravanan

For Respondents :: Mr.K.Chellapandian
Additional Advocate General
assisted by

Mrs.S. Srimathy
Special Govt. Pleader

W.P. (MD) No. 1115 of 2019

Tamilaga Asiriyar Kootani (Reg. No.69/83),
rep. by its General Secretary,
A. Vincent Paulraj,
No.27, Nadumettupatti,
Dindigul - 624 002.

..Petitioner

Vs.

1. The State of Tamil Nadu,
rep. by its Principal Secretary,
Social Welfare and Nutritious
Meal Programme (SW-7(1)) Department,
Secretariat, Chennai - 600 009.
2. The State of Tamil Nadu,
rep. by its Secretary,
School Education Department,
Secretariat,
Chennai - 600 009.
3. The Director/Mission Director,
Integrated Child Development
Services Scheme,
Taramani, Chennai - 113.
4. The Director of Elementary Education,
O/o. The Director of Elementary
Education, DPI Campus,
College Road, Chennai - 600 006.

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Mandamus forbearing the respondents from in any way deploying the Secondary Grade Teachers from the Elementary Education Department to Social Welfare Department for the purpose of taking classes to L.K.G/U.K.G students in pursuant to G.O.Ms. No. 89 Social Welfare and Nutritious Meal Programme (SW-7(1)) Department dated 11.12.2018.



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For Petitioner :: Mr.Ajmal Khan
Senior Counsel for
M/s. Ajmal Associates

For Respondents :: Mr.K.Chellapandian
Additional Advocate General
assisted by
Mrs.S. Srimathy
Special Govt. Pleader

W.P. (MD) No. 1125 of 2019

The Tamilaga Elementary School
Teachers Federation,
rep. by its General Secretary,
Mr.G. Kamaraj,
No.31/A, Khajiyar Street,
Arasaradi, Madurai - 625 010.

..Petitioner

Vs.

1. The State of Tamil Nadu
rep. by its
Principal Secretary to Government,
Social Welfare and Nutritious
Meal Programme Department,
Secretariat,
Chennai - 600 009.
2. The Director of Elementary Education,
DPI Campus,
College Road,
Chennai - 600 006.

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorarified Mandamus to call for the records relating to the order passed in "Para-5(v) in G.O.Ms. No. 89 Social Welfare and Nutritious Meal Programme (SW-7(1)) Department dated 11.12.2018" directing "the School Education Department to earmark the teachers from the surplus strength to conduct the classes for LKG/UKG" and the consequent order Na.Ka.No. 021717/K3/2018 dated 09.01.2019 passed by the 2nd respondent and quash the same and consequently, continue the services of the Secondary Grade Teachers in the Primary Schools and Middle Schools in the Department of School Education.



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For Petitioner :: Mr.A. Thirumurthy
For Respondents :: Mr.K.Chellapandian
Additional Advocate General
assisted by
Mrs.S. Srimathy
Special Govt. Pleader

W.P. (MD) NO. 1128 of 2019

S. Solomon Joseph ..Petitioner

Vs.

1. The State of Tamil Nadu,
rep. by its Principal Secretary,
Social Welfare and Nutritious
Meal Programme (SW-7(1))
Department,
Secretariat,
Chennai - 600 009.
2. The State of Tamil Nadu,
rep. by its Secretary,
School Education Department,
Secretariat,
Chennai - 600 009.
3. The Director/Mission Director,
Integrated Child Development
Services Scheme,
Taramani, Chennai - 113.
4. The Director of Elementary Education,
O/o. The Director of Elementary
Education,
DPI Campus,
College Road, Chennai - 600 006.

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Mandamus forbearing the respondents from in any way deploying the Secondary Grade Teachers from the Elementary Education Department to Social Welfare Department for the purpose of taking classes to L.K.G/U.K.G students in pursuant to G.O.Ms. No. 89 Social Welfare and Nutritious Meal Programme (SW-7 (1)) Department dated 11.12.2018.



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For Petitioner :: Mr.Ajmal Khan
Senior Counsel for
M/s. Ajmal Associates

For Respondents :: Mr.K. Chellapandian,
Additional Advocate General
assisted by
Mrs.S. Srimathy,
Special Govt. Pleader

W.P.(MD) No. 1257 of 2019

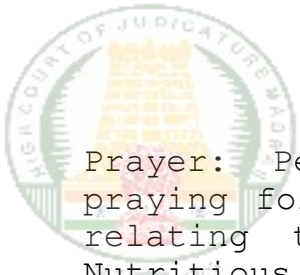
D. Muthuoviya

..Petitioner

Vs.

1. The State of Tamil Nadu
rep. by its Principal Secretary,
Department of Social Welfare &
Nutritious Meal Programme,
Fort St. George, Chennai -600 009.
2. The Principal Secretary,
Department of School Education,
rep. by its Secretary,
Fort St. George,
Chennai - 600 009.
3. The Director of Elementary
Education,
College Road, Chennai - 600 006.
4. The Chief Educational Officer,
Virudhunagar District,
Virudhunagar - 626 001.
5. The District Educational Officer,
Sivakasi, Virudhunagar District.
6. The Block Educational Officer,
Vembakottai, Virudhunagar District.
7. The Headmaster,
Panchayat Union Primary School,
K. Madathupatti, Vembakottai Union,
Virudhunagar District - 626 128.

..Respondents



Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorari to call for the records relating to the impugned G.O.Ms. No. 89, Social Welfare and Nutritious Meal Programme (SW-7(1)) Department dated 11.12.2018 [paragraph 5(v)] issued by the 1st respondent and the consequential proceedings issued by the 3rd respondent Director in Na.Ka.No. 021717/K3/2018 dated 09.01.2019 and the consequent orders of deployment issued by the 5th respondent District Educational Officer in Na.Ka.No. 137/Aa4/2019 dated 11.01.2019 and quash the same.

For Petitioner :: Mr.Isaac Mohanlal,
Senior Counsel for
M/s. Isaac Chambers

For Respondents :: Mr.K. Chellapandian,
Additional Advocate General
assisted by
Mrs.S. Srimathy,
Special Govt. Pleader

W.P. (MD) No. 1557 of 2019

1.A.Arockia Priya

2.A.Arockia Mary

3.A.Arul Jothi

4.M.Rose Mary

5.A.Nirmala

..Petitioners

Vs.

1. State of Tamil Nadu
Rep. by its Secretary,
Social Welfare and Nutritious
Meal Programme Department,
Secretariat, Chennai.
2. State of Tamil Nadu
Rep. by its Secretary,
School Education Department,
Secretariat, Chennai.
3. The Director of Elementary Education,
DPI Campus, College Road,
Chennai - 6.



4. The Director of Integrated Child Development Services,
Chennai.

5. The District Collector,
Theni District.

6. The Chief Educational Officer,
Theni District.

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorarified Mandamus to call for the records relating with the G.O.(Ms)No. 89, Social Welfare and Nutritious Meal Programme (SW-7(1)) Department, dated 11.12.2018 and quash Clause 5(v) of the same as it is arbitrary and illegal and to direct the 1st respondent to consider the petitioners to the post of teachers in L.K.G./U.K.G in Anganwadi centres in the government middle schools in Theni District.

For Petitioner :: Mr.R.Suriya Narayanan

For Respondents :: Mr.K.Chellapandian
Additional Advocate General
assisted by
Mrs.S.Srimathy
Special Govt. Pleader

W.P. (MD) No. 2433 of 2019

B.Malar Vizhi

..Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. by its Principal Secretary,
School Education Department,
Fort St. George,
Chennai.

2. The Director of Elementary School Education,
DPI Campus,
Nungambakkam,
College Road,
Chennai 600 006.

3. The Principal Secretary,
The State of Tamil Nadu,
Social Welfare and Nutritious Meal Programme
(SW-7(1)) Department,
Secretariat, Chennai 600 009.



4. The District Educational Officer,
Cheranmahadevi,
Tirunelveli District.

5. The Taluk Educational Officer,
Cheranmahadevi,
Tirunelveli District.

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorari to call for the entire records pertaining to the impugned order passed by the 4th respondent vide his proceedings in Na.Ka.No.155/21/2019 dated 11.01.2019 and the consequential order passed by the 5th respondent in Na.Ka.No.51/22/2019 dated 18.01.2019 and quash the same.

For Petitioner :: Mr.R.Anand

For Respondents :: Mr.K.Chellapandian
Additional Advocate General
assisted by
Mrs.S.Srimathy
Special Govt. Pleader

COMMON ORDER

N. KIRUBAKARAN, J.

It is the constitutional obligation of the State to provide early childhood care and education for all children until they complete the age of 6 years under Article 45 of the Constitution of India. Therefore, it is the bounden duty of every State Government to provide early childhood care and education for all children. In this direction only, the State Government has already established Anganwadi Centres to look after the children aged between 2 years to 5 years, as per the Integrated Child Development Services Scheme (ICDS) which is the largest integrated early childhood programme for covering various Government Programmes namely, primary health care and education delivery systems for young children, adolescent girls and women from under privileged communities through Anganwadi Centres. The noble object of the scheme is to increase the literacy rate and to eradicate malnutrition by providing hot cooked meals to the children in the age group of 2 years to 5 years throughout the year.

2. In Tamil Nadu, as many as 54,439 Anganwadi Centres have been established with one Anganwadi Worker and one Anganwadi Helper in each centre to take care of the children in Anganwadi Centres by providing supplementary nutrition and non-formal free school education. In the said 2381 Anganwadi Centres, which are located within the premises of Government Middle Schools, the State Government decided to introduce Montessori Education based LKG and



UKG classes for 52,933 children, who are to be benefitted. The Government of Tamil Nadu passed orders in G.O.Ms. No.89 Social Welfare and Nutritious Meal Scheme (SW7(1)) Department dated 11.12.2018 granting administrative approval. Based on the said approval, the Director of Elementary Education passed an order in Na.Ka. No. 021717/K3/2018 dated 09.01.2019 directing re-deployment of surplus Secondary Grade Teachers in the School Education Department to the Anganwadi Centres to teach LKG/UKG students. The said Government Order as well as the subsequent order of the Director of Elementary Education of deployment of surplus Secondary Grade Teachers in Government Schools are challenged by various Teachers' Associations as well individual teachers by these writ petitions.

3.Mr.Ajmal Khan, learned Senior Counsel, who led the argument on behalf of the petitioners would make the following submissions:

(i) The Secondary Grade Teachers, who are working in Government Schools cannot be directed to take classes for LKG/UKG students as they do not have the required qualification as prescribed in I schedule of the National Council for Teacher Education (Determination of Minimum Qualifications for persons to be recruited as Education Teachers and Physical Education Teachers in Pre-primary, Primary, Upper Primary, Secondary, Senior Secondary or Intermediate Schools or Colleges) Regulations, 2014;

(ii) The qualifications prescribed for appointment as "KinderGarten/Montessori Teachers" and " Secondary Grade Teachers" are different. Hence, transfer of Secondary Grade Teachers to work as KinderGarten Teacher/Montessori Teacher is not sustainable;

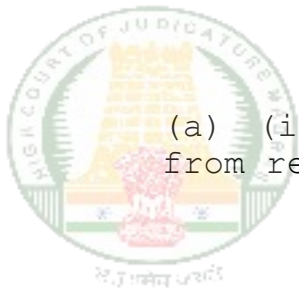
(iii) The transfer of Secondary Grade Teachers to work as KinderGarten/Montessori Teacher amounts to degradation or reduction in status;

(iv) The deployment of Secondary Grade Teachers as KinderGarten/Montessori Teacher in Anganwadi Centres, which come under the Department of Social Welfare and Nutritious Meal amounts to change in service condition;

(v) The deployment of Secondary Grade Teachers to work as KinderGarten/Montessori Teacher is without any rules or regulations;

(vi) The very purpose of teaching KinderGarten students would be lost if Secondary Grade Teachers without qualification are deployed.

By making the above submissions, the learned Senior Counsel also referred to the above said Regulations, 2014 and submitted that the minimum academic and professional qualification required for pre-school/nursery (for children in the age group of 4 to 6 years)



(a) (i) Senior Secondary (Class XII or its equivalent) from recognized board with at least 50% marks

(Or)

(ii) Senior Secondary (Class XII or its equivalent) from recognized board with at least 45% marks in accordance with the National Council for Teacher Education (Form of application for recognition, the time limit of submission of application, determination of norms and standards for recognition of teacher education programmes and permission to start new course or training) Regulations, 2002 notified on 13.11.2002

(And)

b. Diploma in Nursery Teacher Education/ Pre-school / Early childhood Education Programme (D.E.C.Ed) of duration of not less than two years, or B.Ed. (Nursery) from National Council for Teacher Education recognized institution".

He would submit that in the absence of required qualification to teach KinderGarten children, the Government Order as well as the order of the Director of Elementary Education granting approval and consequent deployment of Secondary Grade Teachers to teach students of Montessori based LKG/UKG classes in Anganwadi Centres are ultra vires and are liable to be set aside.

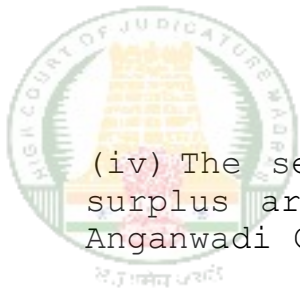
4.The other counsel for the respective parties also urged similar points and prayed for allowing the writ petitions.

5.Mr.K. Chellapandian, learned Additional Advocate General appearing on behalf of the respondents would submit that the intention of the Government is only to see that the children of poor sections of the Society are benefitted. The arguments of the learned Additional Advocate General are enumerated hereunder:

(i) The Government is compelled to introduce Montessori education based LKG/UKG classes in Anganwadi Centres as the parents are interested in getting their wards admitted in private schools which offer pre-school education namely LKG/UKG and provide facilities like modernised buildings, vehicle, uniform, etc. resulting in decrease in the enrolment of children in Anganwadi Centres;

(ii) It is the endeavour of the Government to implement the programme on pilot basis for three years and further continuance shall be decided based on the outcome of proposed third party evaluation;

(iii) To address the aspiration of the parents, to educate their children admitted in Anganwadi Centres in English Medium, LKG/UKG classes have been started by the Government;



(iv) The services of Secondary Grade Teachers who are found to be surplus are to be utilised as Montessori/KinderGarten Teachers in Anganwadi Centres located within the campus of Middle Schools;

(v) It is the policy decision of the Government to introduce Montessori Education based LKG/UKG classes in 2,381 Anganwadi Centres with 52,933 children and therefore, the said decision cannot be questioned;

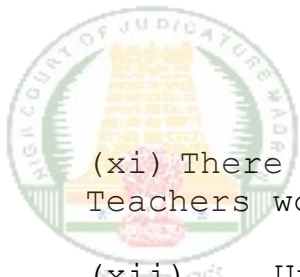
(vi) Financial sanction has been accorded to incur an expenditure of Rs.773.32 lakhs per annum to provide accessories to the children and training to the teachers;

(vii) About 5,934 Secondary Grade Teachers in Aided Primary/Middle Schools and 1979 Secondary Grade Teachers in Panchayat Union/Government/Municipal/Primary and Middle Schools are working as surplus teachers causing huge financial loss to the Government.

(viii) The teachers have become surplus due to decline in enrolment of children in Government Schools as parents prefer to admit their children in private schools which offer English Medium from KinderGarten level itself with the hope that their children will be properly educated in private schools. Only to utilise the services of surplus teachers and also to see that the children of weaker sections are also given quality education as given in private schools, the Government has taken a decision to start Montessori education based LKG and UKG classes;

(ix) The Government has also written a letter on 17.07.2018 to the National Council for Teacher Education to amend the notification dated 12.11.2014 enabling the State Government to appoint teachers with Diploma in Elementary Education and B.Ed qualification with the condition to undergo bridge course of fixed duration and a remainder has also been sent on 28.01.2019;

(x) The Government, through letter dated 13.01.2019 requested the Secretary, Department of School Education and Literacy, MHRD, to extend the time limit granted upto 31st March, 2019 for acquiring minimum qualification or to relax the same for two more years and in a case of Nursery Education, either by amendment or by relaxation as there is no institution which offers Degree or Diploma in KinderGarten/Nursery Education in the State. A communication has been received from National Council for Teacher Education on 11.04.2019 addressed to the Director (TE), Government of India, Department of School Education and Literacy, Ministry of Human Resources Development Department (MHRD), New Delhi recommending that D.El.Ed qualified candidates be allowed to teach at pre-primary levels, after a six month Bridge Course and the approval from the Central Government is awaited;



(xi) There is no reduction in status as the surplus Secondary Grade Teachers would continue to teach students only;

(xii) Utilising the services of surplus Secondary Grade Teachers to teach KinderGarten students would not amount to either reduction in rank or status;

(xiii) It would not amount to transfer from one Department to another Department as the teachers would be governed by the very same Elementary Education Department and their service conditions including seniority are not going to be affected;

(xiv) As per G.O.Ms. No.89 dated 11.12.2018 and the order of the Director of Elementary Education dated 09.01.2019, norms have been fixed and it is only a pilot project for three years;

(xv) Preferably, surplus women teachers are to be deployed and in case of non-availability of women teachers, male teachers are to be deployed;

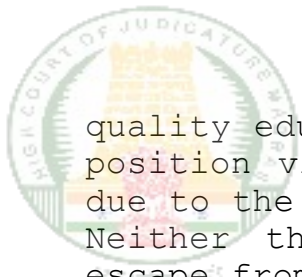
(xvi) There is no reduction in their pay or any loss in pay or deprivation of promotional chances.

Making the above submissions, the learned Additional Advocate General would submit that in no way, the petitioners would be prejudiced by this endeavour. The services of the surplus Secondary Grade Teachers are to be utilised only to teach children, of weaker sections and rural side people without causing any loss to the petitioners or change in their service conditions. Therefore, the writ petitions are liable to be dismissed.

6. Heard the parties and perused the records very carefully.

7. It is common knowledge that private schools are multiplying in number and enrolment of students in Government Schools including Schools run by Local Bodies are dwindling for various reasons including non-availability of KinderGarten Sections, non-provision of English Medium and decline in imparting quality education. That is the reason why as many as 5934 Secondary Grade Teachers in aided Primary/Middle Schools and 1979 Secondary Grade Teachers in Panchayat Union / Government/ Municipal Primary and Middle Schools have become surplus. There is no reason for poorer sections of the society to admit their wards in private schools paying huge amounts as fees unless there is something seriously wrong with the Government Schools.

8. The reason for the decline in enrolment in Anganwadi Centres and Government Schools has been given in the common counter affidavit filed by the respondents is that the parents who are interested in providing English Medium education, are ready to admit their children in KinderGarten in private schools with the hope that



quality education would be given to their children. The above said position viz., increase in admission in private schools, should be due to the failure of the Government as well as Government teachers. Neither the Government nor the Government School teachers could escape from their responsibility for this situation.

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9. Only as a remedial measure, it seems, the Government has rightly introduced Montessori based KinderGarten Sections in Anganwadi Centres as a pilot project for three years, the continuance of which would be subject to the outcome of evaluation after three years. It is seen that the Government has already taken a policy decision and with an intention to arrest the decline in admissions in Government Schools as well as in Anganwadi Centres and to benefit the children of weaker sections and rural area, G.O.Ms.No.89, dated 11.12.2018 came to be issued. When the Government considering the pros and cons of the present situation and needs of the society, has taken a policy decision, this Court has got only a limited jurisdiction and does not have power to review the policy decision when the decision is arbitrary or unconstitutional. It is only in the interest of weaker sections of the Society and in the interest of their children to provide quality education from KinderGarten Stage itself as per Article 45 of the Constitution of India, the Government has rightly taken steps.

The Hon'ble Supreme Court in **V.Lavanya and others v. State of Tamil Nadu and others** reported in (2017) 1 Supreme Court Cases 322 held that relaxation of 5 marks in Teacher Eligibility Test examination for the candidates of the weaker sections of the society being a policy decision cannot be questioned. Paragraph 28 of the said decision is usefully extracted as follows:-

"28. We are unable to persuade ourselves to accept the view of Madurai Bench quashing the impugned G.O. on the ground of alleged change in the stand of the Government. Considering the representation from various quarters, it was a policy decision taken by the Government to relax marks for TET pass for specified and under-privileged communities. It is a matter of State policy to frame and prescribe selection norms with regard to services and posts connected with the affairs of the State. **It is well-settled that courts cannot interfere with the policy decisions of the State especially when the policy decision is taken in public interest to further the advancement of reserved categories.** A policy decision taken by the State in exercise of its jurisdiction under Article 162 of the Constitution of India is subservient only to the mandate of the constitutional provisions and the recruitment rules framed by the State itself, either in terms of a legislative act or an executive order. The relaxation provided by the State Government and criteria of selection laid down vide impugned government orders are in exercise



of the powers provided under the proviso to Article 309 of the Constitution of India and being a policy decision in terms of its extant reservation policy cannot be impeached on the ground that the relaxation has been given to suit some specific class of individuals."

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It is the duty of the State to make provision for early childhood care and education to the children below the age of 6 years. Therefore, in exercise of the power to discharge the obligation as mandated under Article 45 of the Constitution of India, the Government has rightly introduced the above education scheme, which can be said to be neither contrary nor violative of any Rule or Regulation or statute or constitutional provision.

10.While taking steps to provide free and quality education from KinderGarten level, the Government has got every right to utilise the services of surplus teachers constructively instead of going for fresh recruitment spending huge amounts. As already pointed out, about 5934 posts Secondary Grade Teachers in aided Primary/Middle Schools and 1979 posts Secondary Grade Teachers in Panchayat Union / Government/ Municipal Primary and Middle Schools have been rendered surplus and the Government is incurring about Rs.37 crores per month and Rs.445 crores per annum towards salary to surplus teachers. Therefore, while taking care of the educational needs of the poor sections of the society, the Government is equally justified to consider the Government Exchequer as well. To avoid any further expenditure, the services of surplus teachers are being effectively sought to be utilised. Therefore, the Government is justified in utilising the services of surplus Secondary Grade Teachers in public interest.

11.The Government has already accorded sanction for incurring an expenditure of Rs.773.32 lakhs per annum to supply accessories to the children and proper training to the teachers. Paragraph Nos. 12 and 13 of the common counter affidavit filed by the respondents are usefully extracted as follows:

"12. It is submitted that there are 54,439 Anganwadi Centres set up throughout the State of Tamil Nadu. The Government have decided to introduce Montessori Education based LKG/UKG classes in 2,381 Anganwadi Centres with 52,933 children, that are located within the premises of Government Middle Schools in 32 Districts in convergence with the School Education Department on a **PILOT BASIS** and accordingly the Government of Tamil Nadu had passed orders in G.O.(Ms) No. 89 Social Welfare and Nutritious Meal Programme (SW.7 (1)) Department dated 11.12.2018 according administrative approval for the same.

Further, financial sanction has also been accorded to incur an expenditure of Rs.773.32 lakhs per annum (the School Education Department amount is Rs.610.57 lakh and

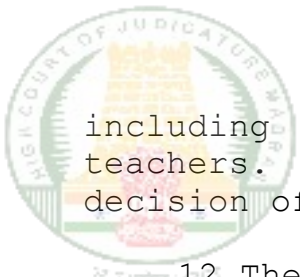


Social Welfare and Nutritious Meal Programme Department amount is Rs.162.75 lakh) to supply the following accessories to the children and provide training to the teachers:-

S1. No.	Details of Component	Amount (in lakh)
	School Education Department	
1	Four Sets of Uniform at Rs.960.00 per child x 52.933 children	508.15
2	One set chappel at Rs.144.90 per child x 52,933 children	76.69
3	One Woollen Sweater at Rs.2908.30 per child x 471 children (Hill Areas)	1.01
4	One Set Rain Boots at Rs.323.92 per child x 471 children (Hill Areas)	0.52
5	Completion Certificate at Rs.10 per certificate x 52,933 children	0.52
6	Imparting Training to the Teachers through SSA	66.37
	Total	654.27
	Social Welfare Department:	
	Educational Kits, Teaching and Learning Materials including Colour Pencil/CRayons, Printing of curriculum etc., for 2,381 Anganwadi Centres	119.05
	Total	773.32

13. It is further submitted that the Educational Kits, Teaching and Learning Materials, including Color pencil/ crayons, printing of curriculum, etc., shall be provided to the 2,381 Anganwadi Centres at a cost of around Rs.119.05 lakhs. It shall be met within the funds of Rs.5,000/- allocated per centre under Early Childhood Education by the Social Welfare and Nutritious Meal Programme Department. For better coordination and improved educational standard and issue of age specific Welfare Education viz., 3-4 LKG, 4-5 UKG, the School Education Department is directed to earmark the teachers from the surplus strength to conduct the classes."

From the above, it is clear that the Government is usefully spending money in providing accessories like uniforms, Chappals, Woollen Sweaters, Rain boots, etc to children of weaker sections



including Educational Kits and save money by utilising surplus teachers. This Court appreciates the prudence and wisdom in the decision of Government.

12. The main contention raised by the petitioners is with regard to lack of qualification of Secondary Grade Teachers to teach Montessori education based Kindergarten classes. In this regard, the notification dated 16.12.2014 issued by the National Council for Teacher Education has to be looked into. In exercise of the powers conferred under Clause (dd) of sub-section (2) of Section 32 read with Section 12A of National Council for Teacher Education Act, 1993, the National Council for Teacher Education framed regulations called National Council for Teacher Education (Determination of Minimum Qualifications for Persons to be recruited as Education Teachers and Physical Education Teachers in Pre-primary, Primary, Upper Primary, Secondary, Senior Secondary or Intermediate Schools or Colleges) Regulations, 2014. As per the I schedule of the said Regulations, 2014, the minimum academic and professional qualifications have been prescribed for teachers at various levels. The relevant portion applicable to pre-primary nursery teachers is extracted as follows:

"a. (i) Senior Secondary (Class XII or its equivalent) from recognized board with at least 50% marks

(Or)

(ii) Senior Secondary (Class XII or its equivalent) from recognized board with at least 45% marks in accordance with the National Council for Teacher Education (Form of application for recognition, the time limit of submission of application, determination of norms and standards for recognition of teacher education programmes and permission to start new course or training) Regulations, 2002 notified on 13.11.2002

(And)

b. Diploma in Nursery Teacher Education/ Pre-school / Early childhood Education Programme (D.E.C.Ed) of duration of not less than two years, or B.Ed. (Nursery) from National Council for Teacher Education recognized institution. "

As per the above Regulations, for Pre-school/Nursery (for children in the age group of 4 to 6 years) and for Pre-school/Nursery followed by first two years in a formal school, the minimum qualification prescribed for the teachers is Senior Secondary (Class XII or its equivalent) from recognized board with at least 50% marks (Or) Senior Secondary (Class XII or its equivalent) from recognized board with at least 45% marks in accordance with the National Council for Teacher Education (Form of application for recognition, the time limit of submission of



application, determination of norms and standards for recognition of teacher education programmes and permission to start new course or training) Regulations, 2002 notified on 13.11.2002 and Diploma in Nursery Teacher Education/ Pre-school / Early childhood Education Programme (D.E.C.Ed) of duration of not less than two years, or B.Ed. (Nursery) from National Council for Teacher Education recognized institution. Though the petitioners are justified in referring to the above qualification as prescribed by National Council for Teacher Education and contending that the Secondary Grade Teachers lack qualification in Nursery Teacher Education, Regulation 5 in the very same notification dated 16.12.2014 gives power to the Council to relax some of the provisions of the Regulations. Regulation 5 is extracted hereunder:

"5. Power to relax

Where the Council is satisfied on receipt of reference from the concerned State Government that special circumstances exist warranting relaxation of some of the provisions of the Regulations, it may grant relaxation of that provision to such extent, for such time period and subject to such conditions and limitations as it may consider necessary, in a just and equitable manner.

Provided, that no relaxation, shall be granted under these Regulations with regard to the minimum qualifications for appointment of teachers for Level 3 (Class I to VIII) as specified in the First Schedule."

When there is power given to the Council, it is always open to the State Government to apply for exemption /relaxation, which has been rightly done by the State Government by writing a letter dated 17.07.2018 followed by remainder dated 28.01.2019 seeking amendment/relaxation from the minimum qualification for two years beyond March, 2019. Paragraph Nos. 2 to 4 of the letter dated 17.07.2018 written by Principal Secretary to Government of Tamil Nadu, School Education Department to the National Council for Teacher Education as well as the Central Government are usefully extracted as follows:

"2.It is submitted that most of these private schools do not have teachers with such qualifications. **Moreover, there is hardly any institution in Tamil Nadu that offers such courses.** Therefore, it may not be possible to ensure compliance to such regulation.

3.This issue also came up for discussion when the State Government initiated deliberations on merging a few Anganwadi centres functioning within the premises of schools as part of schooling system on pilot basis. This has been initiated to arrest the declining trend of enrolment in government schools. While doing so, it has



been noticed that there is hardly any teacher with such minimum qualifications. On the other hand, there are plenty of candidates with Diploma in Elementary Education and B.Ed. It is also not possible to establish institutions and create demand for such institutions in the near future. Unless some amendments are carried out in this notification, the proposed scheme of merging Anganwadis with schooling system would remain a non-starter.

4. Therefore, it is suggested that suitable amendments to NCTE notification may be made to enable these candidates to become eligible for teaching at pre-schooling level also. I request you to kindly advise NCTE to explore the possibility of designing short duration bridge courses to enable these candidates with D.El.Ed., and B.Ed., qualifications to teach in pre-schooling and carrying out suitable amendment to the notification F.No.62-1/2012/NCTE (N&S) dated 12th November 2014. If the amendment is agreed to, the extension of time limit beyond March, 2019 for acquiring such qualification may kindly be considered."

A perusal of the above letter would reveal that the Government is justified in seeking amendment/relaxation from the minimum qualification.

13. In response to the request made by the State Government, the National Council for Teacher Education considered the request of the State Government and recommended to the Central Government that Secondary Grade Teachers be allowed to teach at primary levels. Paragraph No.2 of the letter dated 11.04.2019 written by the National Council for Teacher Education to the Ministry of Human Resources Development is extracted as follows:

"It is strongly recommended that the D.El.Ed qualified candidates be allowed to teach at pre-primary levels, after a six month Bridge Course. This would also correct some of the imbalance between demand and supply of primary teachers brought about by the policy decision of MHRD to allow B.Ed., qualified candidates to become eligible as primary teachers."

Therefore, the powers under Regulation 5 of Regulations 2014 has been exercised by National Council for Teacher Education as evident from the above communication dated 11.04.2019 and only a formal approval is necessary from the Central Government. This Court expects that the Central Government would take a decision at the earliest accepting the recommendation of the NCTE dated 11.04.2019 permitting D.El.Ed qualified candidates to teach pre-preliminary levels, as the academic year has to commence from June 2019. Hence, the main ground raised by the petitioners with regard to non-possession of necessary qualification as per the Council's



Regulations has to be necessarily repelled and accordingly, rejected.

14. Further more, Section 23(2) of the Right of Children to Free and Compulsory Education Act, 2009 enables the Central Government to give exemption/relaxation from the minimum qualification required for appointment as teacher. Section 23 of the said Act is extracted as follows:-

23. Qualifications for appointment and terms and conditions of service of teachers.-

(1).....

(2). Where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications as laid down under sub-section (1) are not available in sufficient numbers, the Central Government may, if it deems necessary, by notification, relax the minimum qualifications required for appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification:

Provided that a teacher who, at the commencement of this Act, does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of five years.

From the above, it is clear that if the State does not have adequate institutions to offer the Course or training in teacher education or teachers possessing minimum qualification as laid down in Schedule 1 are not available in sufficient numbers, the State Government could appeal to the Central Government for relaxation. In this case also, the State Government by virtue of communication dated 17.07.2018 addressed the Central Government as well as the NCTE for relaxation stating that there is hardly any institution in Tamil Nadu which offers Diploma in Nursery Teacher Education / Pre-School / Early Childhood Education Program (D.E.C.D) or B.Ed. (Nursery) recognised by NCTE, as per notification of the NCTE dated 12.11.2014. Therefore, the efforts taken by the Government by taking a policy decision to introduce montessori education based LKG and UKG classes which is spelt out in G.O.Ms.No.89, dated 11.12.2018 and the consequent order of the Director of Elementary Education dated 09.01.2019 are valid.

15. One more factor that has to be taken note of by this Court is the contention made by the learned Additional Advocate General that there is no institution recognised by National Council for Teacher Education which offers either Diploma in Nursery Teacher Education (D.E.C.Ed) or B.Ed (Nursery Education). That being the factual position, it is very difficult for the Government to get such qualified candidates, which is



already referred to in paragraph No.2 of the communication dated 17.07.2018 written by the Principal Secretary, School Education Department to the Central Government as well as to the National Council for Teacher Education.

16.The petitioners filed the Counter Affidavit filed by the Educational Authorities in W.P.No.10410 of 2006 before the Madurai Bench to contend that the Government stated in the above counter that only those candidates who are having requisite qualification for appointment to Junior Grade and Secondary Grade Teachers in Classes 1-2.

S.S.L.C or equivalent

(And)

Trained Teachers Certificate of Pre-Primary Teachers training Or Pre-basic Teachers training in Nursery, Montessori, Kinder Garden Course provided teachers who have passed in Pre-School Teacher Training Course or Pre Basic Teacher Training Course shall be employed To handle Standards I and II only.

17.By relying upon the said counter affidavit and the stand taken therein by the State Government that only qualified candidates alone can be appointed to Junior Grade and Secondary Grade Teachers in Classes 1-2, the petitioners would impeach the decision of the Government to deploy Secondary Grade Teachers as Kinder Garden Teachers. However, a decision can be taken by the Government contrary to the earlier decision in the interest of the Society and the same is well within its power to direct the Secondary Grade teachers to teach the students of Montessori classes. Further, the said contention of the petitioner is liable to be rejected as there cannot be any estoppel against any statute or against the Government in exercise of its legislative, sovereign or executive powers. The Hon'ble Supreme Court in the decision made in **V.Lavanya and others v. State of Tamil Nadu and others** reported in **(2017) 1 Supreme Court Cases 322** had categorically held that there can be no question of estoppel against the Government in exercise of its legislative, sovereign or executive powers. Paragraph 29 of the said decision is usefully extracted hereunder:

"29.It is now well settled by a catena of decisions that there can be no question of estoppels against the Government in the exercise of its legislative, sovereign or executive powers (vide Excise Commissioner U.P., Allahabad v. Ram Kumar (1976) 3 SCC 540 and M. Ramanatha Pillai v. State of Kerala and Anr. (1973) 2 SCC 650). The view taken by Madurai Bench as regards the stand of the Government to relax the norms allegedly in contradiction to its earlier stand is not sustainable in law."



Further, the Hon'ble Supreme Court in **State of Punjab and others v. Ran Luvhaya Bagga etc.**, reported in **AIR 1998 SC 1703** held that

"When Government forms its policy, it is based on number of circumstances of facts, law including constraints based on its reservations. It is also based on expert opinion. It would be dangerous if court is asked to test its utility, beneficial effect of its policy or its appraisal based on facts set out on affidavit. The Court would dissuade itself from entering this realm which belongs to the Executive."

18. Many contentions were raised by the petitioners regarding reduction in rank, reduction in status, transfer from one Department to another Department, absence of norms including seniority. The Government has categorically stated in paragraph Nos. 25, 29 and 30 of the counter affidavit that Secondary Grade Teachers would be governed by Elementary Education Department only and there is no merger and their service conditions will not be disturbed and seniority will be maintained only in the parent Panchayat Union Block. The aforesaid paragraphs in the counter affidavit are extracted hereunder:

"25. It is submitted that the deployed teachers have been instructed to carry out only the task of teaching in the Anganwadi Centres. Hence, under any circumstances, their seniority, promotions and benefits during their tenure of service will not be disturbed and their seniority will be maintained only in the parent Panchayat Union Block.

...

29. It is submitted that in pursuance to the orders of the Government, specific instructions have been given to the Chief Educational Officers to deploy surplus teachers preferably women teachers to teach students in LKG/UKG. In case surplus women teachers are not available, male teachers may be deployed. In case of non-availability of teachers in the same block, surplus teachers from the neighbouring blocks can be deployed. It was also instructed that the seniority of the teachers deployed from within the block or neighbouring blocks should not be changed vide proceedings in Na.Ka.No. 21717/K3/2018 dated 09.01.2019 of the Director of Elementary Education. As per the orders, the petitioners were deployed.

30. It is submitted that the petitioners continue to be the Secondary Grade Teachers and the seniority of the teachers will be maintained in the same Panchayat Union, and they will be under the control of the Elementary Education Department. His services will also be governed by the Special Rules for the Tamil Nadu Elementary



Educational Subordinate Service issued vide G.O.Ms. No. 1383, Education Department dated 23.8.1988. The deployment is made only as per the policy decision of the Government and there is no pay loss to the petitioners and the promotion of the petitioners will not be affected since the original seniority of the petitioners will be maintained in the same Panchayat Union"

Hence, the apprehensions of the petitioners are not sustainable and by no stretch of imagination, the petitioners would be affected by the impugned orders or by the decision of the Government. Therefore, the writ petitions are liable to be dismissed.

19. Teachers are like Gods and they cannot question each and every decision taken by the Government in public interest, especially in the interest of children belonging to economically weaker sections. The decision taken by the Government is only to see that the children of poor sections of the Society are also given Montessori based education at KG level in English Medium free of cost so that it would prevent economically weaker sections of the Society from admitting their children in private schools by spending huge amounts. By preventing weaker sections of Society from spending more money for their children's education, the Government is only trying to help the poorer sections of the Society to improve their standard of living by providing free and compulsory education to the children, not only at the school level but also at the KG level itself, which has to be appreciated by this Court necessarily. When constructive and positive efforts are being taken for development of the Society, in public interest, by the Government, this Court is duty bound to appreciate and laud the Government as otherwise this Court will be failing in its duty.

20. It has become a fashion for Government Teachers who are paid handsome salary to rush to the Court for each and every decision taken by the Government in the interest of public. They should spend their knowledge and time only to educate for which they are being paid by the Government from the tax-payers' money instead of wasting their time in approaching the Court. Before coming to Court, they should have thought of the interest of the poor sections of the Society and the decline in enrolment in Anganwadi Centres and Government Schools. One factor, which neither the Government can deny nor the teachers can disown, is lack of quality education in Government Schools and this Court supposes, but for lack of infrastructure and quality education, the poor parents would not take the burden of admitting their children in private schools by spending huge amounts. This aspect should be taken note of and then should be introspection by the Government as well as by the teachers very seriously. It is in their own interest, the teachers are duty bound to give proper education by going to schools in time and teach the students properly with a thorough preparation and commitment to inspire students.



21. The Honourable Supreme Court, in the judgment rendered in **Avinash Nagra Vs. Navodaya Vidyalaya Samiti and Others reported in 1997(2) SCC 534** has described the importance of role of teachers and the relevant paragraphs are usefully extracted as follows:

"Before answering the question whether the order terminating the services of the appellant in terms of his appointment letter is in violation of the Rules or the principles of natural justice, it is necessary to consider the need for the education and the place of the teacher in that behalf. Article 45 of the Constitution enjoins the State to endeavour to provide free and compulsory education to all children, till they complete the age of 14 years. The Supreme Court has held that right to education is a fundamental right and the State is required to organise education through its agencies or private institutions in accordance with the law and the regulations or the scheme. The State has taken care of service conditions of the teacher and he owes dual fundamental duties to himself and to the society. As a member of the noble teaching profession and a citizen of India he should always be willing, self disciplined, dedicated with integrity to remain ever a learner of knowledge, intelligently to articulate and communicate the imbibe in his students. As social duty, to impart education, to bring them with discipline, inculcate to abjure violence and to develop scientific temper with a spirit of enquiry and reform constantly to rise to higher levels in any walk of life nurturing constitutional ideals enshrined in Article 51 A so as to make the students responsible citizens of the country. The quality, competence and character of the teacher are, therefore, most significant to mould the institutions and to sustain them in their later years of life as a responsible citizen in different responsibilities.

10. Mahatma Gandhi, the Father of the Nation has stated that "a teacher cannot be without character. If he lacks it, he will be like salt without its savour. A teacher must touch the hearts of his students. Boys imbibe more from the teacher's own life than they do from books. If teachers impart all the knowledge in the world to their students but do not inculcate truth and purity amongst them, they will have betrayed them....

...Dr.S. Radhakrishnan has stated that "we in our country look upon teacher as gurus or, as acharyas. An Acharya is one whose aachar or conduct is exemplary. He must be an example of Sadachar or good conduct. He must inspire the pupils who are entrusted to his care with love of virtue and goodness....



11. It is in this backdrop, therefore, that the Indian Society has elevated the teacher as "**Guru Brahma, Gurur Vishnu, Guru Devo Maheswaraha**". As Brahma, the teacher creates knowledge, learning, wisdom and also creates out of his students, men and women, equipped with ability and knowledge, discipline and intellectualism to enable them to face the challenges of their lives. As Vishnu, the teacher is preserver of learning. As Maheswara, he destroys ignorance....."

Likewise, this Court in the case of **The Secretary, Sri Ramakrishna Vidhyalayam High School, Tirupparaithurai, Tiruchirapalli District Vs. State of Tamil Nadu, rep. by Special Commissioner and Secretary to Government and Others reported in 1990 (9) WLR 62** has held in paragraph No.51 as follows:

"51.Our scriptures command the students to consider the teacher as a God (Acharya Devo Bhava). The term "Acharya" in Sanskrit means a person who not only teaches lessons to students, but also ensures good conduct of his pupils. The more important part of the definition is that he shall himself practice what he preaches. In Sanskrit language the term "Guru" also means teacher. The syllable "Gu" represents darkness (symbolising ignorance). The syllable "Ru" represents the removal thereof. Thus, a Guru is so called as he removes the darkness and the ignorance from the minds of the students. In fact, there is a saying that it is only with the blessings of a teacher that a person blossoms into a full man."

22.This Court takes note of the dismissal of W.P. Nos. 1633 to 1635 of 2019 filed by Tamil Nadu Elementary School Teachers Federation challenging the order dated 09.01.2019 passed by the Director of Elementary Education deploying Secondary Grade Teachers in the Elementary Education to the post of Nursery / Montessori Teachers in Anganwadi Centre by the learned Single Judge presiding over Principal Bench, Madras. This Court approves the reason given by Justice S.M. SUBRAMANIAM for dismissing the writ petitions.

23.For the above reasons, the interim order already granted against the Government stands vacated and the injunction/stay petitions are dismissed. In fine, these writ petitions are dismissed. No costs. Consequently, connected W.M.Ps. are closed.

24.It is open to the Government to introduce a bridge course and give proper training to Secondary Grade Teachers for six months and empower them to impart Montessori based education to



KinderGarten students simulataneously while employing them as Montessori Teachers. The Government is directed to go ahead with the project at the earliest as the academic year is to commence from 1st June, 2019 onwards.

WEB COPY

Sd/-

Assistant Registrar (P AND A)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Principal Secretary,
School Education Department,
Fort St. George, Chennai - 600 009.
2. The Director of Elementary School
Education,
DPI Campus, Nungambakkam,
College Road, Chennai - 600 006.
3. The Chief Educational Officer,
Madurai.
4. The District Educational Officer,
Melur, Madurai District.
5. The Block Educational Officer,
Kottampatti, Madurai District.
6. The Chairperson,
National Council for Teacher Education,
New Delhi - 110 002.
7. The Principal Secretary,
Social Welfare and Nutritious
Meal Programme (SW-7(1))
Department,
Secretariat, Chennai - 600 009.
8. The Director/Mission Director,
Integrated Child Development
Services Scheme,
Taramani, Chennai - 113.



9. The Chief Educational Officer,
Virudhunagar District,
Virudhunagar - 626 001.
10. The District Educational Officer,
Sivakasi, Virudhunagar District.
11. The Block Educational Officer,
Vembakottai, Virudhunagar District.
12. The Secretary, Social Welfare and Nutritious
Meal Programme Department,
Secretariat, Chennai.
13. The Secretary, School Education Department,
Secretariat, Chennai.
14. The District Collector, Theni District.
15. The Chief Educational Officer,
Theni District.
16. The District Educational Officer,
Cheranmahadevi,
Tirunelveli District.
17. The Taluk Educational Officer,
Cheranmahadevi, Tirunelveli District.
18. The Director(TE),
Department of Schools Education and Literacy,
Ministry of Human Resource Development,
Government of India,
Shastri Bhawan, New Delhi 110 001.
(To act as per paragraph 13 of this Order).

1CC TO MR. R. SURIYANARAYANAN, ADVOCATE SR 66141
2CC'S TO M/S. ISAAC CHAMBERS, SR 63082, 66143
2CC'S TO M/S. AJMAL ASSOCIATES, SR 66235, 66236
1CC TO THE SPL GOVT PLEADER SR 66217

KK
23/05/2019
26P/25C

**W.P. (MD) Nos. 1091, 1115, 1125,
1128, 1257, 1557 & 2433 of 2019**
Dated : 22.05.2019