



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.11.2019

*Judgment Reserved
on:19.11.2019*

*Judgment delivered on:
25.11.2019*

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD) No.1272 of 2019

and C.M.P. (MD) Nos.10846 and 10848 of 2019

1.Abraham Memorial Higher Secondary School,
Maruthancode,
Kanyakumari District,
Pin - 629 163,
Rep. by its Correspondent

2.V.G.Godwin Vijay

... Appellant/Writ Petitioner

-vs-

1.The State of Tamil Nadu,
Represented by its Secretary,
Department of Education,
Fort St. George,
Chennai - 600 009.

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

3.The Chief Educational Officer of
Kanyakumari District,
At Nagercoil,
Kanyakumari District.

4.The District Educational Officer,
Kuzhithurai,
At Marthandam,
Kanyakumari District.

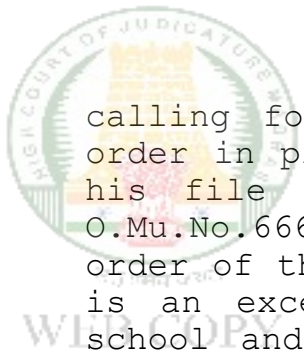
... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 19.08.2019, made in W.P.(MD) No.2383 of 2016, on the file of this Court.

PRAYER in WP (MD) . 2383 OF 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus

<https://hcservices.ecourts.gov.in/hcservices/>



calling for the records of the 3rd respondent pertaining to his order in proceedings in Moo.Mu.No.7780/Aa1/2012 dated 31.01.2013 on his file and the consequential order of the 4th respondent in O.Mu.No.6666/A2/2013, dated 22.10.2013 on his file, quash the said order of the 3rd respondent in so far as the same states that there is an excess of secondary grade teachers in the 1st petitioner school and the said consequential order of the fourth respondent directing the third respondent to pass orders to the effect that there is no excess of Secondary Grade Teacher in the first petitioner - School in the academic year 2012-13, and the fourth respondent to approve the second petitioner's appointment as B.T.Assistant in the first petitioner - school with effect from the forenoon of 01.06.2012, by order No.Nil/2012-13, dated 01.06.2012 of the first petitioner and directing the respondents to give to the second petitioner salary and all other benefits as such.

For Appellants : Sr.A.Amala

For Respondents : Mrs.S.Srimathy
Special Government Pleader

J U D G M E N T

[Judgment of the Court was delivered by T.S.SIVAGNANAM, J.]

The first appellant is an aided educational institution, initially was enjoying the status of religious minority institution and since there was a change of management, the first appellant lost such status after September, 2013. The appellants filed W.P.(MD) No.2383 of 2016, praying for issuance of a Writ of Certiorarified Mandamus to quash the order passed by the third respondent dated 31.01.2013 on his file and the consequential order of the 4th respondent dated 22.10.2013, insofar as it holds that there are surplus teachers in the first appellant school in the academic year 2012-13 and consequential direction to approve the appointment of the second appellant as B.T. Assistant in the first appellant school with effect from the forenoon of 01.06.2012 and to pay all benefits.

2.The Writ Petition was heard together with other connected Writ Petitions, wherein identical relief was sought for by the other teachers, who were appointed in the first appellant school, whose posts were held to be surplus. The Writ Petitions were heard together and by a common order dated 19.08.2019 they were dismissed. Challenging the same, the present Writ Appeal has been filed only as against the order passed in W.P.(MD) No.2363 of 2016. It is needless to state that since it is a common order passed in those Writ Petitions, the finding rendered in this appeal will cover other cases as well because the other Writ Petitioners were employed in the first appellant school.

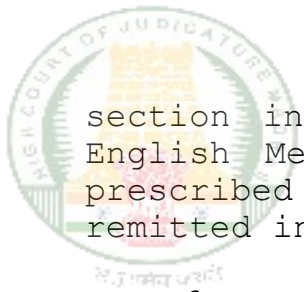
3.We have heard Sr.A.Amala, learned counsel appearing for the appellants and Mrs.S.Srimathy, learned Special Government Pleader



appearing for the respondents.

4.It is submitted by the learned counsel appearing for the appellants that the first appellant institution was permitted to open an English Medium Section in Standards VI to X from 1986-87 with the approval of the Director of School Education with a condition that in the other Sections the instructions will be given in Tamil and Malayalam. This approval was granted by a proceedings dated 11.03.1989. In the light of the said approval, the respondent Department is not justified in refusing to take note of the students studying in English Medium Sections for the purpose of ascertaining the students strength and consequently for determining the staff strength. It is further submitted that the only condition mentioned in the said proceedings dated 11.03.1989 is that in the other Sections of the School, the medium of instruction will be Tamil and Malayalam. Further, it is submitted that the students strength in English Medium Sections was considered while staff fixation was done during the academic year 2009-2010. However, during the academic year 2010-2011, it was not counted. It is submitted by the learned counsel that this classification adopted by the Department is without any basis because English Medium Sections were formed by converting the existing Tamil Medium Sections. It is further submitted that on account of the action of the Department, the staff strength has been abruptly reduced, as a result of which, the students will be put to prejudice. Further, it is contended that the tuition fee collected by the first appellant is remitted to the Government every year, while so, refusing to take note of the students studying in English Medium Sections for arriving at the total strength and consequently the staff fixation are not sustainable.

5.The learned counsel appearing for the appellant has submitted her written submissions contending that there are 33 teachers now working in the school (1 Headmaster + 16 Post Graduate Assistants, 12 BT Assistant and 4 Secondary Grade Teachers). That apart, there are special teachers viz., 1 Sewing Mistress, 2 Tamil Pandits, 1 Music Teacher, 2 Physical Educational Teachers, 1 Full Time Vocational Teacher, 1 Part-time Vocational Teacher and 7 Non-teaching staff. There are totally 491 students. Of that, 211 are studying in Tamil Medium. By interim order dated 07.07.1988, in W.M.P.No.10652 of 1988 in W.P.No.7375 of 1988 the appellant was permitted to open one English medium section in standards VI to X from the academic year 1986 - 1987. Based on the above order, the Director himself granted permission to start one additional parallel English Medium Section in standard VI to X from the academic year 1986 - 1987 onwards with the condition that in the other sections the instructions will be given in Tamil and Malayalam vide his proceedings in Rc.No.230107/L3/86 dated 11.03.1989. Accordingly, the appellant started one additional English Medium section in standard VI from the academic year 1986 - 1987. Thereafter, it was done in the same manner for other standards. Now, the school has one English medium



section in Standards VI to X. Ever since its establishment, the English Medium sections are assessed for grant-in-aid. The fees prescribed by the Government is collected from the students and remitted in the Sub-Treasury periodically till date.

6.It is further submitted that there are 17 Private Higher Secondary Schools in the Thuckaly Educational Districts, which are receiving grand-in-aid towards parallel English Medium Sections and extending the same to the appellant institution is discriminate and violation of Article 14, 21-A and 30(1) of the Constitution of India. Further, it is submitted that if the English Medium Strength is taken into account for fixing the staff strength, the school will need additional posts.

7.The learned Special Government Pleader appearing for the respondents referred to the counter affidavit filed by the Department, which has not been annexed in the typed set of papers, and submitted that the averments set out in the counter affidavit will clearly demonstrate that the stand taken by the Department is fully justified, because the management of the institution changed hands, consequently they lost the minority status and the institution become a non-minority aided institution and at the request of the management Tamil Medium Section was converted as English Medium Section with specific condition that grant-in-aid will not be sanctioned. Having accepted the said condition, it would not be permissible for the first appellant institution to contend that the students strength in English Medium also should be reckoned for calculating the total staff strength.

8.After we have elaborately heard the learned counsel for the parties and carefully considering the materials placed, we find that the order passed by the learned Single Bench is perfectly in order and wants no interference. We support such conclusion with the following reasons:-

(i) It is an admitted fact that the first appellant institution was initially established and administered as religious minority institution. The students strength was calculated and staff fixation was done during the academic year 1986 - 87. During September, 2013, the first appellant institution was sold and one Vanniyoore Welfare Trust became the owner, in which Mr.A.Padmaja Kumar, son of N.Achuthan Thampi is the Manager-cum-Correspondent of the school. Thus, the school lost its minority status after 10.09.2013.

(ii) It is the admitted case of the first appellant that it is they, who had applied to the Department viz., the first respondent seeking permission to start English Medium Sections in Standards VI to X. This request appears to have been rejected by the second respondent by order dated 20.05.1988. This order was challenged by the first appellant by filing W.P.No.7375 of 1988 and direction was issued to the authorities, based on which the said temporary



Medium Section from Standards VI to X from the academic year 1986-87 and the other Sections the medium of instructions will be Tamil and Malayalam. This temporary permission was granted pursuant to an interim direction issued in the Writ Petition. Subsequently, the Writ Petition was allowed by order dated 24.03.1997.

(iii) It is the case of the appellants that staff fixation was done and teachers were continuously working and the second appellant is qualified and eligible to be appointed as B.T. Assistant and he was appointed as Teacher in the English Medium Sections with effect from 03.06.2009 and the change of Management was on 13.09.2013. It is admitted by the Management that the Department is yet to approve the appointment of the second respondent and therefore, the consequent relief in the Writ Petition is to approve his appointment.

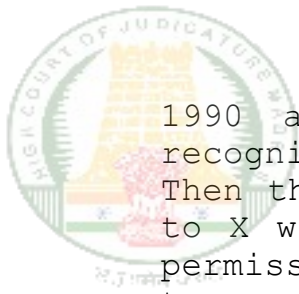
(iv) The contention of the first appellant is that since the Writ Petitioners/teachers were appointed when the institution was a minority institution, there is no requirement to pass Teachers Eligibility Test. However, the fact is that though the said teachers are said to have been appointed, none of the appointments were approved and when the first appellant institution sought for approval, they are no longer a minority institution. Therefore, the contention of the first appellant that though they are non-minority institution after September, 2013, yet they are entitled to seek for approval of the appointment done by the erstwhile management by appointing teachers without TET qualification. In our considered view the appellants are attempting to indirectly achieve what they could not directly achieve. Even going by the submissions made by the first appellant that the second appellant was appointed on 03.06.2009 and the change of Management is said to have been taken place on 13.09.2013, for more than four years, the appointment of the second appellant was not approved after the change of Management. The present non-minority Management cannot seek for his approval by stating that when he was appointed, the school was a minority institution. Therefore, the stand taken by the Department is perfect.

(v) Further, we find that in the staff fixation, the English Medium Sections have been shown as self-financing Sections. Therefore, no grant-in-aid has been granted to those teachers working in self-financing Sections and the students studying in these self financing Sections cannot be counted for ascertaining the total students strength for the purpose of staff fixation. The staff fixation can be done only in respect of the Classes/Sections which are under the grant-in-aid Scheme and not under self-financing Scheme.

(vi) The copy of the counter affidavit filed by the Department in the Writ Court was directed to be filed by the learned Special Government Pleader and the same has been placed for our consideration. The following averments in the counter affidavit would be relevant:

"7.I submit that moreover those who started Additional

<https://hcservices.mca.gov.in/hcservices> English Medium (Std VI to X with one Tamil Subject) before



1990 and applied for permission and got permission and recognition for that before 1990 only can appoint teachers. Then those who started the additional English Medium (Std VI to X with one Tamil Subject) before 1990 but failed to get permission and recognition from the government not permitted to appoint teachers. (The teacher Posts were not given to that Schools.)

... 10. I submit that in the year 2012-13 the Chief Educational Officer Nagercoil issued the School Teachers Excess List. In that list 6 teachers were working as Excess teachers.

List of Excess Teachers:
Tamil Subject Teacher - 2
History School Assistant - 1
Science School Assistant - 1
Secondary Grade School Teacher - 2
Total : 6

11. I submit that on 04.06.2017 Mr.S.S.Subin was appointed as a Secondary Grade in an excess Teacher Post. Here the additional English Medium with one Tamil Subject strength was also calculated. Thiru. Mr. S.S.Subin was appointed as a science School Assistant teacher from 01-06-2013 in the retirement vacancy of Tmt.Lilly Bai and also Mr. S. S. Subin has been working as science School Asst teacher From 01-06-2013.

12. I submit that now this School is a Non-Minority School. All Appointment must be from the Employment Exchange Office by following communal roaster."

(vii) The learned counsel appearing for the appellants placed reliance on the decision of the Division Bench of this Court in the case of **G.Sahadevan Nair v. Government of Tamil Nadu [(2008) 4 MLJ 289]**. The ratio of the said decision is that if any minority institution was entitled to receive grant-in-aid, but was denied such aid on account of any erroneous order, such order is obviously to be corrected and such institution established before the cut-off date can have the continued right of receiving such aid and the amended provision contained in Section 14-A of Tamil Nadu Recognised Private Schools (Regulations) Act, 1973 cannot be put against such right merely on account of the fact that such institution had not received aid before the cut-off date. In our considered view this decision can have no application to the facts of the present case, because on the date when the first appellant claimed approval of the appointments, including the second appellant, they were no longer a minority institution. The first appellant cannot take any umbrage under the erstwhile minority Management who were unsuccessful in getting the appointments of the Teachers in English Medium Schools approved. As the English Medium Sections were brought under the self-financing Scheme and a condition was imposed that the medium of instruction in the other Sections i.e., Aided Sections should be Tamil and Malayalam, the first appellant cannot seek for or obtain



approval of the teachers appointed in self-financing Sections so as to determine the staff fixation.

(viii) The students strength in self-financing institution cannot be reckoned for fixation of staff strength. Therefore, the stand taken by the Department in the order impugned in the Writ Petition is perfectly valid and the order passed by the learned Single Bench upholding the validity of the said order is correct and calls for no interference.

9.In the result, the Writ Appeal fails and the same is dismissed. Consequently, connected Civil Miscellaneous Petitions are also dismissed. No costs.

Sd/-

Assistant Registrar(Writs)

// True Copy //

Sub Assistant Registrar(CS)

sj
To

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

+1CC TO MR.A.AMALA, Advocate Sr. No. 101687

Pre-delivery judgment in
W.A. (MD) No.1272 of 2019
and C.M.P. (MD) Nos.10846 and 10848 of 2019
Delivered on 25.11.2019

DB(CO)
TR(06.12.2019) 7P 6C