



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

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W.P. (MD) Nos.2383, 2384 & 8663 of 2016 and 821 & 822 of 2017
and

W.M.P. (MD) Nos.2116, 2117, 2119, 2120, 6926 & 6927 of 2016 and
W.M.P. (MD) Nos.669, 670, 672 & 673 of 2017

1.Abraham Memorial Higher Secondary School,
Maruthancode,
Kanyakumari District,
Pin - 629 163.

Rep. by its Correspondent

..1st Petitioner in all WP's

V.G.Godwin Vijay	... 2 nd Petitioner in WP (MD). 2383/ 2016
P.M. Sheeba	... 2 nd Petitioner in WP (MD). 2384/ 2016
S.S.Subin	... 2 nd Petitioner in WP (MD). 8663/ 2016
E.Jessy Bai	... 2 nd Petitioner in WP (MD). 821/ 2017
Ts.Beula Christal	... 2 nd Petitioner in WP (MD). 822/ 2017

Vs.

1.The State of Tamil Nadu,
Rep. 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 in all WP's



PRAYER in WP(MD) . 2383/ 2016 :

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

Prayer in WP(MD) . 2384/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certioraraified Mandamus, calling for the records of the 3rd respondent, pertaining to his order in proceedings in Moo.Mu.No.6911/Aa2/2011 dated 8.9.2011 on his file and the consequential order of the 4th respondent in O.Mu.No.6664/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 five secondary grade teachers in the 1st petitioner-school and the said consequential order of the 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 2011-12, 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 15.06.2011, by order No.Nil/2011-12, dated 15.06.2011 of the first petitioner and directing the respondents to give to the second petitioner salary and all other benefits as such.

Prayer in WP(MD) . 8663/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records of the 3rd respondent, pertaining to his order in proceedings in Moo.Mu.No.6477/Aa1/2013 dt.03.09.2013, signed on 03.10.2013, on his file and the consequential order of the 4th respondent in O.Mu.No.1577/A2/2016, dated 2.4.2016 on this file, quash the said order of the 3rd



respondent insofar as the same states that there is an excess of five posts of secondary grade teachers with teachers and two posts of secondary grade 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 2013-14, 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 10.06.2013, by order in R.C.25/2013 dated 10.06.2013 of the first petitioner and directing the respondents to give to the second petitioner salary and all other benefits as such.

Prayer in WP(MD) . 821/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of certiorarified Mandamus calling for the records of the 3rd respondent, pertaining to his order in proceedings in Moo.Moo.No.7425/Aa1/2016 dated 31.10.2016, quash the same insofar as it states that there is excess of three posts of secondary grade teachers with teachers and five posts of secondary grade teachers without teachers in the 1st petitioner-school, directing the 3rd respondent to pass orders to the effect that there is no excess of secondary grade teacher in the 1st petitioner-school for the 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 2016-17, 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 01.06.2016, by order in R.C.No.126/2013 dated 01.06.2016 of the first petitioner and directing the respondents to give to the second petitioner salary and all other benefits as such.

Prayer in WP(MD) . 822/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent, pertaining to his order in proceedings in Moo.Moo.No.7425/Aa1/2016 dated 31.10.2016, quash the same, insofar as it states that there is excess of three posts of secondary grade teachers with teachers and five posts of secondary grade teachers without teachers in the 1st petitioner school, directing the 3rd respondent to pass orders to the effect that there is no excess of secondary grade teacher in the 1st petitioner school for the academic year, 2016-2017, 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 01.06.2016, by order in R.C.No.124/2013 dated 01.06.2016 of the first petitioner and directing the respondents to give to the second petitioner salary and all other benefits as such.



For Petitioners

: Mr.K.N.Thampi in all WP's

For Respondents

: Mrs.S.Srimathy in all WP's
Special Government Pleader

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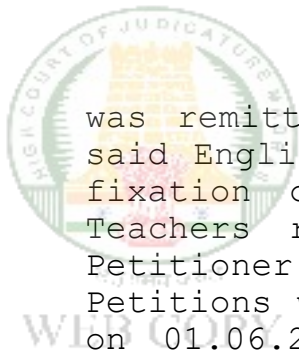
COMMON ORDER

The first petitioner in all the five Writ Petitions is one and the same and the second petitioners in all the Writ Petitions are the Teachers appointed by the first Petitioner School and approval for their appointments were rejected by the respondents in W.P.(MD) Nos.2383, 2384 and 8663 of 2016 and the same has not been approved so far by the respondents in W.P.(MD)Nos.821 and 822 of 2017. Challenging the same, the present Writ Petitions have been filed.

2. As the issue involved in all the Writ Petitions is similar, all the cases are heard together and disposed of by way of this common order.

3. The first Petitioner School is a recognized, aided private School under the respondents and is receiving financial aid from the first respondent. The first Petitioner School is a Christian religious minority School, entitled to and enjoying minority rights under Articles 29 and 30 of the Constitution of India. According to the first Petitioner School, it started one Section in English medium in Standards VI to X. Further, the first Petitioner School filed a Writ Petition in W.P.No.7375 of 1988 before this Court, to quash the order of the second respondent, dated 20.05.1988 and direct him to permit the first Petitioner School to start the English medium Section in the place of one Tamil medium Section or one additional parallel English medium Section from Standards VI to X in the first Petitioner School from 1986-87 onwards. Pursuant to the order passed by this Court in W.M.P.No.10652 of 1988 in the said Writ Petition, the second respondent, vide his proceedings dated 11.03.1989, granting temporary permission to the first Petitioner School to start one additional parallel English medium School in Standards VI to X from 1986-87 onwards with the condition that in the other Sections, the instructions would be given in Tamil and Malayalam, without prejudice to the Court orders pending in the above said Writ Petition.

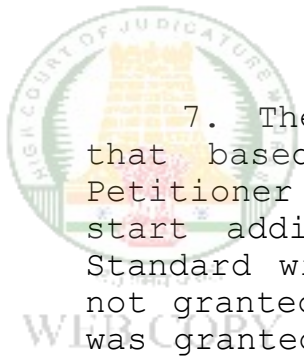
4. According to the first Petitioner School, this Court, by order dated 24.03.1997, following its earlier orders, allowed the said Writ Petition and directed the second respondent herein to permit the first Petitioner School to start one English medium Section in the place of one Tamil medium Section from Standards VI to X in its School from the academic year 1986-87, which had already been done by virtue of the interim order granted by this Court. As per the order of the first respondent, the first Petitioner School



was remitting the tuition fee collected from the students of the said English medium Classes to the first respondent. In the staff fixation orders, the third respondent took note of the Pupil-Teachers ratio, for the English medium Sections, in the first Petitioner School. The writ petitioners/teachers in all the Writ Petitions were appointed as Teachers in the first Petitioner School on 01.06.2012, 15.05.2011, 10.06.2013, 01.06.2016 and 01.06.2016 respectively, in the retirement vacancies, the proposals for approval of their appointments, were rejected by the authorities in W.P.(MD)Nos.2383, 2384 and 8663 of 2016 and the same has not been approved, insofar as the Writ Petitioners in W.P.(MD)Nos.821 and 822 of 2017 are concerned. Challenging the same, the present Writ Petitions have been filed.

5. The learned counsel appearing for the petitioners submitted that the proposals sent by the first Petitioner School were returned by the respondent Department mainly on the ground that the second petitioners cannot be appointed in the surplus vacancies. The respondents have granted aid to the similar Schools in English medium Sections and therefore, the first Petitioner School is also entitled to the said benefit and there is no surplus post as contended by the respondents. The learned counsel further submitted that the third respondent issued staff-fixation order for the first petitioner School for the academic year 2015-2016, stating erroneously that there were excess of three posts of Secondary Grade Teachers with Teachers and five posts of Secondary Grade Teachers. If the strength of students in the English medium Classes of the first Petitioner School is taken into account, there will be no posts of excess Secondary Grade Teacher in the first Petitioner School. Therefore, without taking note of the fact that the Staff working in the English medium Section, the respondent Department has neglected the Section and treated the teachers working in the said School as surplus, which is erroneous and the same is liable to be quashed.

6. The learned Special Government Pleader appearing for the respondents submitted that the first Petitioner School was started before 1960 and the same was a Minority Government Aided School upto 10.09.2013. While so, the Correspondent of the School was changed in the name of A.Padmajakumar on 01.04.2011 and then, the property of the School was recorded in the name of A.Padmajakumar on 19.05.2013. Thereafter, application was sent to the Director of School Education, Chennai, to approve the document in the name of said A.Padmajakumar. Immediately, the School was brought under the direct control of the District Educational Officer, Kuzhithurai, to issue all the monetary benefits of the Staff of the School and now, the School is functioning as a non-minority School. Subsequently, the School started +1 and +2 Classes and became a Higher Secondary School in 1978-79 and now, it is functioning as a Higher Secondary School.

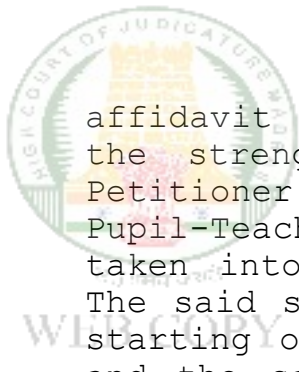


7. The learned Special Government Pleader further submitted that based on the order passed by the Government, the first Petitioner School applied to the respondents to grant sanction to start additional English medium Class from 6th Standard to 10th Standard with Tamil as one subject. But, the said permission was not granted. Based on the orders passed by this Court, permission was granted to start additional English Medium Class from Standard VI to Standard X with one Tamil Subject from 1980. However, permission was not granted to appoint Teachers. The Government has stated that the Government aided and the Government High Schools and Higher Secondary Schools, those who started English medium Classes from 6th Standard to 10th Standard with one Tamil subject before 1980 will be given permission to appoint teachers on the basis of one teacher for one Class. Moreover, those who started additional English medium (Standard 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 and those who started the additional English medium (Standard 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 Teachers posts were not given those who started Schools after 01.06.1990. But, the first Petitioner School failed to apply to get permission to appoint teachers in the School.

8. The learned Special Government Pleader further submitted that in the year 2012-13, the Chief Educational Officer, Nagercoil, issued Surplus Teachers list, mentioning six teachers were working in the surplus posts. The first Petitioner School is a non-minority School and therefore, all the appointments must be from the newspaper notification by following the communal roster. Moreover, the teachers those who have appointed after 23.08.2010, must have passed T.E.T. Examination as per G.O.No.181, dated 15.11.2011 and therefore, the proposals have been rightly returned by the respondent Department.

9. The learned Special Government Pleader also submitted that Section 14-A of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973, deals with the grant not payable to new private Schools and new Class and course of instruction and therefore, prayed for dismissal of the Writ Petitions.

10. Admittedly, the first Petitioner School was a minority institution till 10.09.2013. Thereafter, the said School was treated as non-minority School. In the year 2012-2013, inspection was conducted by the Chief Educational Officer, Nagercoil and the Chief Educational Officer submitted a report stating that six teachers are surplus in the said School. The learned counsel appearing for the petitioners contended, before this Court, that the English medium Section was started in the above said School with the permission of the respondent Department. Therefore, their



affidavit filed in W.P.(MD)No.822 of 2017, by taking into account the strength of the Students in English Medium in the first Petitioner School can also be taken into account for fixing the Pupil-Teacher ratio by the respondent Department. If the same is taken into account, there are no surplus teachers in the School. The said submission cannot be countenanced for the reason that the starting of English medium Section is not aided by the Department and the same is only self-financing Section started by the first Petitioner Management. Therefore, the strength of the Students has not been taken into account for fixing the staff strength of the first Petitioner School. The learned counsel for the petitioners put forth his contention that in other Schools, the respondent Department has granted aid for running the English medium and therefore, if the respondents granted aid to the first Petitioner School and approved their appointments, there are no surplus teachers in the School. The said contention cannot be accepted for the reason that the first Petitioner School has not obtained any financial aid from the Government for running the English medium Section. Therefore, relief sought for by the petitioners in the instant Writ Petitions, cannot be granted and the same are liable to be rejected and there is no merit to interfere with the orders passed by the respondents. Hence, these Writ Petitions are dismissed. No costs. It is open to the Writ Petitioners to approach the authorities concerned seeking financial aid, during the said period, if permissible under law. Consequently, connected Miscellaneous Petitions are closed.

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ASSISTANT REGISTRAR (CO)

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SUB ASSISTANT REGISTRAR (CS)

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To

- 1.The State of Tamil Nadu,
Rep. 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.



his order in proceedings in Moo.Mu.No.7780/Aa1/2012 dated 31.01.2013

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

+5 CC'S TO MR.K.N. THAMPI, ADVOCATE SR 82249 TO 82253

1CC TO THE SPL GOVT PLEADER SR 82416

**Common order in
W.P. (MD) Nos.2383, 2384 & 8663 of 2016 and
821 & 822 of 2017**

19.08.2019

CS(25.09.2019) 8P 11C