

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 16.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. No.1495 of 2014

Sivagiri Senai Thalaivar
Higher Secondary School,
Sivagiri, Tirunelveli District,
rep. By its Secretary

... Petitioner

- Vs -

1.Government of Tamilnadu rep. By
Secretary to the Government,
School Education Department,
Secretariat, chennai 600 009.

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

3.The Chief Educational Officer,
Tirunelveli District, Tirunelveli.

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

...Respondents

Writ petition 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 1st and 2nd respondent in relation to the order issued in G.O.Ms.No.73 School Education (D1) Department dated 19.03.2010 and in proceedings O.M.No.070/102/W5/E1/2012 dated 28.09.2012 and quash the same and issue a consequential direction to the respondents to upgrade the post of physical Education Teacher in the petitioners' school with effect from the academic year 2008-09 onwards to that of physical Director and provide the scale of pay of Physical Director to the Physical Education Teacher namely S.Shanmugavelu and grant arrears of pay.

For Petitioners : MR.R.Saseetharan

For Respondents : Mr.S.Sureshkumar,
Government Advocate

ORDER

This writ petition has been filed by the petitioner to call for the records of the 1st and 2nd respondent in relation to the order issued in G.O.Ms.No.73 School Education (D1) Department dated 19.03.2010 and in proceedings O.M.No.070/102/W5/E1/2012 dated 28.09.2012 and quash the same and issue a consequential direction to the respondents to upgrade the post of physical Education Teacher in the petitioners' school with effect from the academic year 2008-09 onwards to that of physical Director and provide the scale of pay of Physical Director to the Physical Education Teacher namely S.Shanmugavelu and grant arrears of pay.

2. According to the petitioner, it is a recognized non minority school getting staff grant from the Government. The petitioner school was established in the year 1971 as a High School to provide Secondary Education to the poor and rural students in and around Sivagiri, in Tirunelveli District and it was upgraded as Higher Secondary School with effect from 1979. The petitioner/school is functioning in accordance with the provisions of the Tamil Nadu Private School Regulation Act and Rules framed thereunder as well as Government orders issued from time to time. It is the averment made by the petitioner that it has two sanctioned posts of Physical Education Teacher and the strength in Standards 11 and 12 of the school during the year 2018-19 was 160+166 = 326. Of the two physical education teachers one Teacher by name Shanmugavelu having the qualification of M.P.Ed was inducted to handle physical education classes to the pupils of Standards 11 and 12 of the school for which he is being paid a special pay of Rs. 80/- p.m. It is submitted that the State Government had issued G.O.Ms.NO.525 dated 20.12.1997. In the said G.O., the Government of Tamil Nadu has fixed the guidelines to regulate the staff strength for the schools in Tamil Nadu on the basis of the students strength. As per the said Government Order, when the students strength in classes VI to X in High Schools exceeds 250, one post of Physical Education Teacher will be sanctioned and for every additional strength of 300, one additional post of Physical Education Teacher will be sanctioned, subject to a maximum of three. The said Government order also provides that for the Higher Secondary Schools with the strength over 400, one post of physical Director will be given by up gradation of existing post of physical education teacher. It is the case of the petitioner school that it has a total strength of 1139 students for the academic year 2012-13 and 401 in 11th and 12th standards and therefore the petitioner school is entitled to have the post of physical education teacher upgraded to that of physical education director. The School, during the academic year 2008-09 onwards, has a strength over 400 in 11th and 12th

standards. However, the educational authorities have not ungraded the existing post of physical Education Teacher to that of physical Education Director. Therefore the petitioner school made a representation on 16.07.2012 to the 2nd respondent for upgradation through proper channel, as per the G.O.Ms.No.525, dated 29.12.1997. To its shock and surprise, the 2nd respondent by his order dated 28.09.2012 rejected the claim of the petitioner school on the ground that as per the G.O.Ms.No.73, dated 19.03.2010, if aided school has three physical education teachers, one can be upgraded as Physical Education Director as per the student strength as per the G.O.Ms.No.525 dated 29.12.1997 and further, in the petitioner school only two posts of physical Education Teacher has been sanctioned and therefore upgradation cannot be given, which is contrary to the said G.O., Hence the present petition.

3.Learned counsel for the petitioner referred the decision rendered by the Hon'ble Division Bench of this Court in W.A.No.226/2009 dated 04.12.2009, and submitted that at the time of filing Writ Petition, the petitioners' school has a total strength of 1139 for the academic year 2012-13 and 401 in 11th and 12th standards, however, after lapse of 9 years, he is not in a position to speak about the present strength of the students studying there. Hence, he prays that it would suffice if this Court remands the matter back to the 2nd respondent for fresh consideration and allow the school to send fresh proposal based on the students strength as per the G.O.Ms.No.525 dated 29.12.1997 and G.O.Ms.No.73, dated 19.03.2010.

4.On the above contention, this Court heard the learned Government Advocate appearing for the respondents, who has filed a counter affidavit on behalf of respondent. However, it is fairly submitted by the learned Government Advocate that if this court issues a direction to the respondent to consider the petitioner's case afresh, it will be considered in accordance with law, within a reasonable time fixed by this Court.

5. In view of the limited relief sought for and there being no serious objection raised by the learned Government Advocate appearing for the respondent, this Court, without interfering with the order passed by the 2nd respondent, remands the matter back to the 2nd respondent without expressing any opinion as to the merits of the issue by directing the petitioner to submit a fresh representation containing the relevant particulars along with a copy of this order to the 2nd respondent within a period of two weeks from the date of receipt of copy of this order and on receipt of the said representation, the 2nd respondent is directed to consider the same and pass appropriate orders in accordance with law within a period of twelve weeks thereafter.

6. With the above direction, this Writ petition is disposed of. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS.VII)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to the Government,
Government of Tamilnadu
School Education Department,
Secretariat, Chennai 600 009.

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

3. The Chief Educational Officer,
Tirunelveli District, Tirunelveli.

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

+1cc to Mr. R. Saseetharan, Advocate SR.NO.41793

+1cc to The Government Pleader Sr.No.41709

AKM/23.2.21 /4P-7C/

W.P. NO.1495 of 2014

16.12.2020

सत्यमेव जयते
WEB COPY