

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.03.2020

Delivered on : 02.06.2020

CORAM:

THE HON'BLE MR.JUSTICE **V.PARTHIBAN**

W.P.Nos.31117, 31125, 31130 of 2018

And

W.M.P.Nos.36321, 36312, 36024,
36319, 36808 and 36327 of 2018

The Correspondent,
St.Antony's Girls Primary School,
Near Head Police Office,
Coimbatore District-641 001

... Petitioner in
W.P.No.31117 of 2018

The Correspondent,
St.Agnes Middle School,
Eswaran Koil Street,
Fort Coimbatore District-641 001

... Petitioner in
W.P.No.31125 of 2018

The Correspondent,
St.Antony's Girls Primary School,
Near Head Post Office,
Coimbatore District-641 001

.... Petitioner in
W.P.No.31130 of 2018

Vs.

- 1.The Director of Elementary Education,
College Road,
Chennai-600 006
 - 2.The District Elementary Education Officer,
Coimbatore, Coimbatore District.
 - 3.The Assistant Elementary Education Officer,
Coimbatore, Coimbatore District
- Respondents in all the W.Ps.

W.P.No.31117 of 2018:Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records relating to the impugned proceedings issued by the 2nd respondent District Elementary Education Officer in O.Mu.No.4772/A4/2016, dated 15.03.2017, and quash the same and further direct the 2nd respondent/District Elementary Education Officer to approve forthwith the appointment of P.Sheeba as Secondary Grade Teacher in the petitioner's school w.e.f. the date of her appointment viz., 26.6.2014 and disburse grant-in-aid towards the salary and other attendant benefits.

W.P.No.31125 of 2018:Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records relating to the impugned proceedings issued by the 2nd respondent District Elementary Education Officer in O.Mu.No.4774/A4/2016, dated 15.03.2017, and quash the same and further direct the 2nd respondent/District Elementary Education Officer to approve forthwith the appointment of F.Pricilla Sheeba as Secondary Grade Teacher in the petitioner's school w.e.f. the date of her appointment viz., 26.6.2014 and disburse grant-in-aid towards the salary and other attendant benefits.

W.P.No.31130 of 2018:Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records relating to the impugned proceedings issued by the 2nd respondent District Elementary Education Officer in O.Mu.No.4773/A4/2016, dated 15.03.2017, and quash the same and further direct the 2nd respondent/District Elementary Education Officer to approve forthwith the appointment of A.Silviya as Secondary Grade Teacher in the petitioner's school w.e.f. the date of her appointment viz., 26.6.2014 and disburse grant-in-aid towards the salary and other attendant benefits.

For Petitioners : Mr.H.Mary Sowmi Rexi
For M/s.Isaac Chambers

For Respondents : Mr.P.Raja,A.G.P.

COMMON ORDER

In all these writ petitions, the core issue for consideration is the same, inasmuch as all the Writ Petitions challenge the action of the respondent authority in refusing to grant approval against the appointment of Secondary Grade Teachers in the petitioner Schools on the ground that these schools have not obtained 'No Objection Certificate' from the authority concerned in regard to the several pattern and strength of the respective schools.

2.The facts of each of the writ petitions are briefly stated hereunder:

All the three schools, who are the petitioners in these writ petitions, are recognized aided Minority Educational Institutions, governed by the Tamil Nadu Private Schools Regulation Act. The schools are being run by the Christian Minority and having protection of Article 30 of the Constitution of India.

(a)The brief facts in W.P.No.31117 of 2018:

In the petitioner school, the post of Secondary Grade Teacher fell vacant on 01.06.2014 due to the transfer of the then incumbent on 31.05.2014. In that vacancy, the School appointed Mrs.A.Silviya as Secondary Grade Teacher with effect from 26.06.2014. According to the petitioner school, the appointed person had fully qualified and eligible and had also cleared Teachers' Eligibility Test (TET) in August 2013. After the appointment of the said teacher, the School submitted a proposal to the Education authority immediately on the same day i.e. on 26.06.2014, for grant of approval of her appointment and also for disbursement of grant-in-aid towards her salary. Since no action was forthcoming, the school appears to have sent another representation subsequently in 2016. However, ultimately, the proposal seeking approval of the appointment of the teacher was rejected by the impugned proceedings dated 15.03.2017 stating that as per the

proceedings of the Director of School Education, 'No Objection Certificate' was not obtained by the school and that the school was having surplus teachers under their management. According to the education authorities when the management has more than one school under its control and administration, the surplus posts have to be adjusted by redeploying teachers from one school to the other under the same management. In view of the rejection of the approval request, the school is before this Court.

(b) **Brief facts in W.P.No.31125 of 2018:** In the school, one post of Secondary Grade Teacher fell vacant on 17.06.2011 due to the Voluntary Retirement from service of the then incumbent on 16.06.2011. The school appointed one Mrs.F.Pricilla Sheeba as Secondary Grade Teacher with effect from 26.6.2014. The said candidate fulfilled all the qualifications, including pass in Teachers' Eligibility Test (TET) in August 2013. Thereafter, the school Management submitted a proposal to the authority concerned on 26.06.2014, seeking for approval and for disbursement of grant-in-aid to the appointed teacher. Herein also the authority rejected the proposal seeking approval, vide proceedings dated 15.03.2017, on the same ground of not obtaining 'No Objection Certificate', as in the case

of the earlier Writ Petitioner.

(c)Brief facts in W.P.No.31130 of 2018:In the petitioner school, the post of Secondary Grade Teacher fell vacant on 26.06.2013 due to the transfer of the then incumbent on 25.06.2013. The school appointed one Mrs.P.Sheeba as Secondary Grade Teacher with effect from 26.06.2014. This candidate also fulfilled all the qualifications, including pass in Teachers' Eligibility Test (TET) in August 2013. When the school Management forwarded its proposal to the authority concerned on 26.06.2014 seeking for approval of appointment of Mrs.P.Sheeba and for disbursement of grand-in-aid salary to her, the same was rejected on 15.03.2017 by the authority on the ground as stated above.

3.The learned counsel appearing for the petitioner Schools Mr.Mary Sowmi Rexi would submit that the issue as to whether 'No Objection Certificate' is required before filling up the sanctioned posts in the aided minority schools or not is no more *res integra*, since, two Division Benches of this Court have held in categorical terms that such insistence for obtaining 'No Objection Certificate' in regard to Minority Institutions amounted to impinging their rights guaranteed under

Article 30 of the Constitution of India. The Division Benches of this Court, according to the learned counsel, have followed the legal principle laid down by the Honourable Supreme Court of India in regard to the status and rights of the Minority Institutions.

4. In support of her contention, the learned counsel would draw the attention of this court to a decision of the Division Bench of this Court rendered in **1. The Director of Elementary Education, College Road, Chennai-600 006 and two others vs. The Correspondent, St. Joseph's RC Primary School, Palakurichy [W.A.(MD).Nos.1292 and 461 of 2014, dated 29.11.2017]**. Before the Division Bench, the issue on hand came up for consideration as to whether it is open to the Management to fill up the posts, notwithstanding surplus posts available in other schools under the Corporate Management, without obtaining 'No Objection Certificate' from the authority concerned or not. After referring to several judgments of the Hon'ble Supreme Court of India and also this Court and also referring to various Regulations and Government Orders issued in this regard, ultimately, the Division Bench in its judgment held imposition of such condition, viz., obtaining 'No Objection Certificate' from the education authority is contrary to law

laid down by the Hon'ble Supreme Court of India, in **T.M.A. Pai Foundation vs. State of Karnataka [(2002) 8 SCC 481]** and also the decision rendered in **Secretary, Malankara Syrian Cathlic College vs. T.Jose and Others [2007(1) SCC 386]**.

5.Following the above Division Bench judgment, another Division Bench of this Court in **1.The State of Tamil Nadu, represented by its Secretary, Department of School Education, Fort St.George, Chennai-9 and four others vs. 1.M.Anbalagan and another [W.A.(MD).No.872 of 2018, dated 29.06.2018]**, has confirmed the order passed by the learned single Judge holding that the authority cannot insist on 'No Objection Certificate' in such cases. Therefore, the learned counsel would submit that the impugned action of the respondent is patently illegal and contrary to the settled legal position and the same is liable to be interfered with.

6.Per contra, Mr.P.Raja, the learned Additional Government Pleader would submit that the Government, which is granting aid to the schools, periodically used to fix staff pattern and strength in each of the schools on the basis of the pupils strength of the school during various academic years. In fact, the Government has issued

G.O.Ms.No.1376, dated 06.07.1981, stating that in a Corporate body running more than one school, the schools under the body shall be treated as one unit for the purpose of the Rule. Therefore, if that G.O. is to be applied, which was not challenged, it is not open to these schools to fill up the surplus posts, even though the same are sanctioned. It is always open to the school to resort to a deployment and adjust the surplus teachers among its schools run by the same Management, as the Government has the right to regulate such staff strength even in Minority institutions, since the grant-in-aid is by the Government.

7.The learned Additional Government Pleader would submit that though two Division Benches of this Court have held in favour of the issue canvassed by the school, the Hon'ble Supreme Court of India in the decision in **Kolawana Gram Vikas Kendra vs. State of Gujarat and Others [Civil Appeal No.7595 of 2004, dated 20.10.2009]**, has upheld a similar requirement issued by the Government of Gujarat. According to this judgment, the Hon'ble Supreme Court has held that such insistence of obtaining 'No Objection Certificate' cannot be construed as interference in the selection process. In fact, the Hon'ble Supreme Court of India further proceeded to hold that such

Circular issued by the State Government insisting for 'No Objection Certificate' does not amount to unconstitutional interference in the internal working of the Minority Institutions. The learned Additional Government Pleader would, therefore, submit that it is well within the power of the Government to insist for 'No Objection Certificate', in respect of the petitioner Schools, which are managed by Corporate entity.

8.Considered the submissions of the learned counsel for the petitioner Schools and Mr.P.Raja, learned Additional Government Pleader appearing for the respondents and perused the materials and pleadings placed on record.

9.The contention of the learned counsel appearing for the petitioners that the issue is no more *res integra*, in view of the categorical pronouncement of the two Division Benches of this Court is, ofcourse, to be accepted in respect of the cases on hand, nevertheless, if one were to critically and incisively examine the contention of the Government, it cannot be gainsaid that the contention is irrational, preposterous or invalid. It cannot also be stated that it is contrary to the law laid down by the Hon'ble Supreme

Court of India.

10.Looking at it from the perspective of the Government, wayback in 1981, it appears from the contention of the learned Additional Government Pleader, a G.O. was issued in G.O.No.1376, dated 06.07.1981, holding that in a Corporate body running more than one School, the schools under the body shall be treated as one unit for the purpose of the Rule. Therefore, it stands to logic and reason that when a body is running more than one school, like the present Writ Petitioners, the insistence for 'No Objection Certificate' for filling up the excess sanctioned posts for the purpose of regulating the staff strength, the Government, which provides grant-in-aid towards salary of the staff, cannot be denuded completely of its regulatory power and laying down legitimate conditions. Whether such regulatory power exercised by the Government is outside the framework of Constitutional protection envisaged in Articles 29 and 30 of the Constitution of India or contrary to the principles laid down by the Hon'ble Supreme Court of India in the two decisions quoted by the Hon'ble Division Bench of this Court in **W.A.(MD) Nos.1292 of 2017 and 461 of 2014**, or not, in the opinion of this Court may have to be revisited and re-examined, in the light of the decision of the

Hon'ble Supreme Court, cited by the learned Additional Government Pleader appearing for the respondents **in Civil Appeal No.7595 of 2004, dated 20.10.2009.**

11.Even otherwise, the Hon'ble Division Bench, which was heavily relied on by the learned counsel for the petitioners supra, has in *extenso* extracted the general principles laid down by the Honourable Supreme Court in Paragraph No.19(v) of the judgment in **2007(1) SCC 386**, at Paragraph No.53, as under:

"53.....

19(i) ...

(v)Extension of aid by the State does not alter the nature and character of the minority educational institution. Conditions can be imposed by the State to ensure proper utilization of the aid, without however diluting or abridging the right under Article 30(1)"

12.The above summation *inter alia* of the Hon'ble Supreme Court of India has in fact recognized the power of the Government to regulate the working of the Schools in terms of appointments vis-à-vis the utilisation of the aid granted by the Government. In that view of

the matter, the insistence of 'No Objection Certificate', in case of sanctioned surplus posts in body Corporate Schools, may legally be plausible, more so when another Hon'ble Division Bench of this Court in a batch of Writ Appeals in **W.A.(MD).Nos.76, 225, 341 of 2019 etc., batch**, has directed the Government not to approve any appointment made by private Aided Schools, including minority institutions, wherever the surplus posts are available in those schools. Therefore, the stand of the Government cannot be brushed aside as completely out of tune with the legal principle laid down by the Hon'ble Supreme Court of India and also the Constitutional guarantee given to the minority institutions under Articles 29 and 30 of the Constitution of India. With due respects to the Division Benches' decisions of this Court, referred to supra, in the considered view of this Court, a comprehensive and an authoritative pronouncement on the subject matter is a judicial imperative at this juncture, in order to avoid any flexible or varied decisions of this Court, in dealing with similar matters.

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13.Be that as it may, as far as the present cases on hand are concerned, since the subject appointments and the issue of approval as on date is governed by the law laid down by the Division Benches of

this Court, as stated supra, these cases need not be deferred any further, as a single Bench of this Court is bound by the Judgment of the Hon'ble Division Benches. In that view of the matter, this Court has no hesitation in allowing all the Writ Petitions and the impugned orders passed by the 2nd respondent/District Elementary Education Officer in O.Mu.No.4772/A4/2016, dated 15.03.2017, O.Mu.No.4774/A4/2016, dated 15.03.2017, and O.Mu.No.4773/A4/2016, dated 15.03.2017, respectively, are hereby set aside and **the Writ Petitions are allowed.** The competent authority in all the writ petitions are directed to grant approval to the respective appointments of the teachers by the petitioner schools without insisting for 'No Objection Certificate', in case, the appointed teachers concerned fulfill all other criteria for regular appointment as Secondary Grade Teachers.

14.The competent authorities are directed to pass appropriate orders as indicated above within a period of eight weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petitions are closed.

15.As far as the issue to be referred before the Larger Bench for its consideration, the same may be framed as under:

Whether the Government have regulatory power to insist on obtaining 'No Objection Certificate' from the competent authority, in case of filling up of sanctioned surplus posts available in schools coming under the same Management, in order to ensure that there is optimal effective utilization of the grant-in-aid to be provided by the Government to the aided minority institutions, without offending Articles 29 and 30 of the Constitution of India or not?

16.The Registry is directed to place this matter before the Hon'ble Chief Justice with a request that a Larger Bench may be constituted for resolving the issue of competing claims of Constitutional rights by Minority Institutions on one side and the State's legitimate concern of proper utilization of its grant-in-aid by the Minority Institutions on the other and for an authoritative pronouncement in that regard.

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02.06.2020

Index:Yes/No

Internet:Yes

15/16

V.PARTHIBAN,J.

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To

- 1.The Director of Elementary Education,
College Road,
Chennai-600 006
- 2.The District Elementary Education Officer,
Coimbatore, Coimbatore District.
- 3.The Assistant Elementary Education Officer,
Coimbatore, Coimbatore District

Pre-delivery order in
W.P.Nos.31117, 31125,
31130 of 2018 of 2019

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