



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.11.2020
(Reserved on 23.01.2020)

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.11046 of 2015

G.Maria Selvarani

... Petitioner

vs.

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

2)The District Educational Officer,
Tuticorin, Tuticorin District.

3)The Correspondent,
St.Xavier's High School,
T.Saveriarpuram,
Tuticorin-628 002.

4)The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St.George,
Chennai-600 009.

... Respondents

(R4 is impleaded vide order dated 28.03.2016 in WMP(MD)No.3873/16)

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 4th respondent herein vide G.O.Ms.No.944, Education (D2) Department, dated 29.07.1989 and consequential proceedings issued by the 2nd respondent District Educational Officer vide Na.Ka.No.1299/Aa4/15 dated 18.05.2015, quash the same, and further direct the 2nd respondent herein to sanction one set of incentive increment to the petitioner for acquiring B.Ed degree w.e.f. 27.12.2011.

(Prayer amended vide Court order dated 28.03.2016 in WMP.3874/16)

For Petitioner: Mr.A.Ajith Geethan

For R1 and R2 : Mr.N.Shanmuga Selvam
Special Government Pleader

For R3 : Mr.FR.V.John Kennedy



ORDER

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 4th respondent herein vide G.O.Ms.No.944, Education (D2) Department, dated 29.07.1989 and consequential proceedings issued by the 2nd respondent District Educational Officer vide Na.Ka.No.1299/Aa4/15 dated 18.05.2015, quash the same, and further direct the 2nd respondent herein to sanction one set of incentive increment to the petitioner for acquiring B.Ed degree w.e.f. 27.12.2011.

2.The petitioner would submit that she is working as a Secondary Grade Teacher in the 3rd respondent school which is a recognised aided private school owned and administered by the R.C. Diocese of Tuticorin. It is a religious minority educational institution in terms of Article 30(1) of the Constitution of India. At the time of her initial appointment, he possessed only Diploma in Teacher Education (D.T.Ed). Thereafter, she acquired higher qualification through the distance education mode viz., B.A. (English), degree in December 2008 and B.Ed., in December 2011. She made a representation to the 3rd respondent requesting to sanction one set of incentive increment for obtaining higher qualification viz., B.Ed degree. The school submitted a proposal to the 2nd respondent for sanction of one set of incentive increment and the 2nd respondent returned the proposal vide proceedings in O.Mu.No.1299/Aa4/15 dated 18.05.2015 stating that obtaining higher qualification without prior permission cannot be ratified. The official respondents filed counter affidavit stating that employees working in aided private schools have to obtain prior permission from the Director of School Education to join the correspondence courses as per G.O.Ms.No.944, Education (D2) Department, dated 29.07.1989. As the said G.O is contrary to the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act and Rules, the petitioner filed a petition to amend the prayer challenging the said G.O which was ordered by this Court on 28.03.2016. However, the learned single Judge dismissed the writ petition vide order dated 01.07.2019 by referring G.O.No.944, against which, the petitioner filed writ appeal in WA(MD)No.819 of 2019 in which, the Division Bench restored the writ petition holding that G.O.No.944 itself has been challenged in the writ petition. Hence, this writ petition has been listed before this Court.

3.Learned counsel for the petitioner would submit that being an employer, the State Government is empowered to delegate its power to the Heads of Department in respect of Government Servants. However, in respect of staff working in aided private school, the State Government is not the employer and no such power is vested on the Government under the Tamil Nadu Recognised Private Schools



(Regulation) Act and Rules. As per Section 51 of the Tamil Nadu Recognised Private Schools (Regulation) Act, the power to grant permission to join the correspondence courses in respect of aided school staff does not vest with the Government and therefore, the impugned G.O is arbitrary, void and without jurisdiction.

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4.He would further submit that as per Section 18(b) of the Tamil Nadu Recognised Private Schools (Regulation) Act, the school committee alone is competent to appoint staff, fix their pay and define their duties and conditions of service and the petitioner being employed in the 3rd respondent school which is a minority educational institution, it need not constitute school committee and the powers of the school committee defined under the Act vest with the educational agency as per the various judgments of this Court as well as the Apex Court. He would also state that the impugned G.O curtails the right of the school committee as well as the educational agency by delegating its power to the Director of School Education in gross violation of the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act and Rules, various orders of this Court and also the fundamental rights guaranteed to the minority educational institutions under Article 30(1) of the Constitution.

5.It is also submitted that now the State Government has accepted the right of the management and now the power to grant permission for acquiring higher studies is vested with the management under G.O.Ms.No.101, School Education (Budget-1) dated 18.05.2018. Hence, the petitioner is entitled to get one set of incentive increment prayed for in this writ petition. In support of his contentions, he would rely on the following judgments:-

(i)N.K.Geetha vs. The Government of Tamil Nadu, 2009 (1) CTC 463.

(ii)The Director of School Education, Chennai vs. Geldon Wifred Viola and another, 2009 (2) TLNJ 101 (Civil).

(iii)G.Vijayalakshmi vs. Director of Elementary Education, Chennai, W.P(MD)No.18040 of 2014 dated 08.12.2014.

(iv)Director of Elementary Education, Chennai, vs. G.Vijayalakshmi and another, (2015) 6 MLJ 315.

6.The 2nd respondent has filed counter affidavit. Learned Additional Government Pleader appearing for the official respondents would submit that as per G.O.Ms.No.944, Education (D2) Department, dated 29.07.1989, prior permission should be obtained from the Director of School Education to join the correspondence courses conducted by the universities. Since the petitioner did not obtain prior permission for acquiring higher qualification, she is not entitled to incentive increment. Further, there is no provision in the Tamil Nadu Recognised Private Schools (Regulation) Act and Rules to grant incentive increment to the teachers working in aided schools. Thus, he would pray that the interference of this Court is



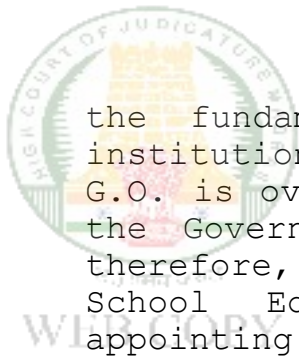
7. Heard the learned counsel for the petitioner as well as the official respondents.

8. The petitioner has challenged G.O.Ms.No.944, Education (D2) Department, dated 29.07.1989 to quash the same and has sought for incentive increment. The learned Additional Government Pleader would contend that since the petitioner has not obtained prior permission before she joined the correspondence course as per the said G.O., she is not entitled to incentive increment.

9. The only issue to be decided herein is whether G.O.Ms.No.944, Education (D2) Department, dated 29.07.1989 requiring prior permission from the Director of School Education to join the correspondence course conducted by the University, is contrary to the provisions of the Tamil Nadu Recognised Private Schools (Regulations) Act and the Rules made thereunder.

10. It is the contention of the learned Additional Government Pleader would state that there is no provision in the Tamil Nadu Recognised Private Schools (Regulations) Act and the Rules to grant incentive increment to the teachers working in aided schools. It is well settled in law that the provisions of the Tamil Nadu Recognised Private Schools (Regulations) Act and the Rules made thereunder, are made applicable to the private schools alone and the qualifications are prescribed under Section 56 of the Act. Any prescription of the qualification by way of the Government Order without amendment to the rules cannot be given effect to bind the private schools and the appointments, conditions of service, qualification are all governed by the provisions of the Act and the rules made thereunder and any Government Order is applicable only to the Government Servants viz., the teachers who are employed in Government Schools and not to the teachers in private schools and the above principle has been echoed in the judgments relied on by the learned counsel for the petitioner. Subsequently, the Government has accomplished the right of the management and now even the power to grant permission for acquiring higher studies is vested with the Management under G.O.Ms.No.101, School Education (Budget -1), dated 18.05.2018.

11. As per Section 18(b) of the Tamil Nadu Recognised Private Schools (Regulation) Act, the school committee alone is competent to appoint staff, fix their pay and define their duties and conditions of service and the petitioner being employed in the 3rd respondent school which is a minority educational institution, it need not constitute school committee and the powers of the school committee defined under the Act vest with the educational agency as per the various judgments of this Court as well as the Apex Court. The present G.O under challenge curtails the right of the school committee by delegating its power to the Director of School Education in gross violation of the provisions of the Tamil Nadu Recognised Private Schools (Regulations) Act and the Rules and also



the fundamental rights guaranteed to the minority educational institution under Section 30(1) of the Constitution. Thus the said G.O. is overriding the Act. Any Government Order can be passed by the Government without affecting the objectives of the Act and therefore, subsequently, the Government have passed G.O.Ms.No.101, School Education (Budget-1) dated 18.05.2018, wherein, the appointing authority is a person competent to grant permission for acquiring higher studies and as far as the Tamil Nadu Recognised Private Schools (Regulations) Act, the competent authority is the educational agency.

12. In the judgment reported in **(2015) 6 MLJ 315, Director of Elementary Education, Chennai, vs. G.Vijayalakshmi and another**, relied on by the petitioner, the Division Bench of this Court held as follows:-

''35. Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, have been framed, in exercise of the powers, under Section 56 of the Act. Both the Act and the Rules do not speak about the powers of the Director of Elementary Education, to make any Government Order, ipso facto, applicable to both the teaching and non-teaching staff, in the schools, recognised and governed by the Tamil Nadu Recognised Private Schools (Regulation) Act. As stated supra, Government Orders, referred to in the earlier paragraphs, were issued by the Government, while dealing with Rule 24-A of the Tamil Nadu Government Servant's conduct Rules, 1973, which is applicable only to government servants. Code of conduct, as prescribed in Annexure-II, in terms of Section 21 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, read with Rule 16 of the Rules framed thereunder, alone can be made applicable to teaching and non-teaching staff, working in recognised schools. No doubt, by addition or deletion or substitution, an amendment can be made to the statutory provisions dealing with the code of conduct for the staff in a recognised private school, by the Government and consequently, modify the code of conduct prescribed in Annexure-II. But the Director of Elementary Education, Chennai, cannot import rule 24A of the Tamilnadu Government Servant Rules into the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the rules made thereunder. Incorporation of Section 24A directly into the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, is beyond the legislative competence of the Director of Elementary Education and such a course is impermissible under the statutory provisions. The School Committee has the powers to appoint and dismiss a teaching staff. Such committee also has the powers to grant leave to any staff.



36. As discussed in the foregoing paragraphs, School Committee is the authority to deal with service conditions of the staff. Materials available on record, do not indicate as to whether, the Government have issued any orders, in exercise of the powers, conferred under Sections 51 and 51-A of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, by which a teaching and non-teaching staff, working in a recognised schools, have to obtain sanction of leave, from the Director of Elementary/School Education, as the case may be. The contention of the appellants that the staff works in a recognised private school, has to obtain a 'No objection certificate' from the Head of Department, viz., the Director of Elementary Education, on the ground that he is the appointing authority, cannot be countenanced, as he is not the appointing authority under the Tamil Nadu Recognised Private Schools (Regulations) Act, 1973.

37. Unless and until, the Government issues any order, within the frame work of the statute, which governs the recognised and aided schools, the Director of the Elementary Education, Chennai, cannot assume jurisdiction, extending the abovesaid Government Orders, which are intended mainly for to the government servants, where there are Heads of the Department. Though recognised private aided institutions, perform a public duty and receive salary for the staff, through State Aid, yet in so far as grant of leave is concerned, it is sanctioned only by the School Committee, in exercise of their powers, under Section 18 of the Act.

38. Offices of a Department may be located at different places, for which, there may be a Head of the Department. But a recognised aided private school, cannot be said to be a unit of the Department of School Education. On the other hand, it is an independent unit, governed by the statutory provisions of the Act and the rules framed thereunder. The Director has the powers to issue directions, only within the frame work of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Rules framed thereunder.

39. Merely because, the petitioner has not obtained sanction of leave from the Director of Elementary Education, Chennai, it cannot be said that there is a violation of the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act and the Rules framed thereunder and in particular, the Code of Conduct framed in Annexure-II, in terms of Section 21 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, read with Rule 16 of the Rules framed thereunder. Conditions imposed in the order, dated 30.05.2014, of the Director of Elementary Education, Chennai, can at best be made



applicable, only to the extent, within the statutory provisions, to which, the recognised aided schools and the staff therein, are bound to follow. At the risk of repetition, Government orders issued are amendments to rule 24A of the Government Servant Conduct Rules, and not to Tamil Nadu Recognised Private Schools (Regulation) Act, 1973.''

13.The above judgment is squarely applicable to the present facts and circumstances of the case. Merely because the petitioner has not obtained prior permission from the Director of School Education for joining the correspondence course, it cannot be said that there is a violation of the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Rules framed thereunder. Any Government Order passed should be within the ambit of the statutory provisions of the Act and the Rules and if there is any conflict between the statutory provisions and the Government Order, the statutory provisions will prevail and therefore, the petitioner need not get prior permission from the authority for undergoing higher studies and hence, the petitioner is entitled to incentive increment.

14.Accordingly, the impugned proceedings issued by the 4th respondent herein vide G.O.Ms.No.944, Education (D2) Department, dated 29.07.1989 and consequential proceedings issued by the 2nd respondent District Educational Officer vide Na.Ka.No.1299/Aa4/15 dated 18.05.2015, are quashed. Consequently, the 2nd respondent is directed to sanction one set of incentive increment to the petitioner for acquiring B.Ed degree w.e.f. 27.12.2011, within a period of twelve weeks from the date of receipt of a copy of this order.

With the above direction, the writ petition is allowed as prayed for. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

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



2) The District Educational Officer,
Tuticorin, Tuticorin District.

3) The Secretary,
Department of School Education,
Fort St. George,
Chennai-600 009.

+1 CC to M/s.A.AJITH GEETHAN, Advocate (SR-22853[F] dated
26/11/2020)

ORDER MADE IN
W.P(MD)No.11046 of 2015
DATED : 26.11.2020

SSS (CO)
NR (09/12/2020) 8P : 5C