



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD)No.7943 of 2018

and

W.M.P. (MD) Nos.7518 & 7519 of 2019

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V.Shyni
Physical Education Teacher,
Home Church Girl's High School,
Nagercoil,
Kanyakumari District.

... Petitioner

vs.

- 1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St.George,
Chennai 600 009
- 2.The Director of School Education,
College Road, Chennai 600 006
- 3.The Chief Educational Officer,
Kanyakumari District,
Nagercoil 629 001
- 4.The District Educational Officer,
Nagercoil 629 001
Kanyakumari District.
- 5.The Correspondent,
Home Church Girl's High School,
Nagercoil 629 001
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records relating to the impugned Staff Fixation issued by the 4th respondent District Educational Officer for the academic year 2013-2014 vide proceedings in Na.Ka.No.6327/A2/2013 dated 18.10.2013 indicating one post of Physical Education Teacher as Surplus without teacher, and the consequent proceedings issued by the Director of School Education vide proceedings in Na.Ka.No.68160/D1/E4/2013 dated 21.02.2014 insofar as the fifth respondent school is concerned, quash the same and further direct the respondents to approve the



appointment of the petitioner as Physical Education Teacher in the fifth respondent school w.e.f., 27.06.2013 and disburse grant-in-aid towards her salary and other monetary benefits.

For Petitioner : Mr.S.Xavier Rajni
For RR 1 to 4 : Mr.M.Karuppasamy,
Government Advocate

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O R D E R

This Writ Petition has been filed seeking to call for the records relating to the impugned Staff Fixation issued by the 4th respondent and quash the same and further direct the respondents to approve the appointment of the petitioner as Physical Education Teacher in the fifth respondent School.

2. The case of the petitioner is as follows:

2.1. The petitioner herein, was appointed as a Physical Education Teacher, with effect from 27.06.2013 in the fifth respondent School in a vacancy that arose due to the retirement of one of the teachers. The fourth respondent herein issued the Staff Fixation for the Academic Year 2013-2014 indicating that only the post of Physical Education Teacher is surplus through his proceedings dated 18.10.2013. The fifth respondent School has given its representation requesting the fourth respondent herein, to refix the Staff Fixation on the ground that, the School is eligible to have a Physical Education Teacher. However, those representations were disregarded, primarily on the ground that, the High School lacks the minimum strength of students to enable the School to have a Physical Education Instructor.

3. The learned counsel for the petitioner would submit that the fifth respondent School has a total student strength of about 280 students, which includes 160 students studying in Tamil medium and 120 students studying in English medium. He would further submit that the norms fixed under G.O.Ms.No.525 (School Education), dated 29.12.1997 requires to be liberally interpreted and if done so, even assuming that the School does not possess the minimum strength, they would be entitled for a Physical Education Teacher. For such a contention, the learned counsel relied upon the various decisions of this Court.

4. The learned Government Advocate appearing on behalf of the respondents would submit that G.O.Ms.No.525 (School Education), dated 29.12.1997 clearly stipulates that, the required strength of students between classes 6th to 10th for a High School is 250 and since the 5th respondent School has enrolled 147 students alone, the post of Physical Education Instructor is deemed to be surplus and therefore, there is no infirmity in the impugned order.



5. I have given careful consideration to the submissions made by the learned counsel appearing on either side.

6. It is no doubt true that G.O.Ms.No.525, School Education Department, dated 29.12.1997 stipulates the minimum student strength of 250 for classes between 6th to 10th in a High School, in order to have the sanctioned post of Physical Education Instructor. The sanctity of G.O.Ms.No.525, School Education Department, dated 29.12.1997 came up for consideration before this Court and in various decisions, this Court had consistently held that the norms prescribed in the aforesaid G.O. requires to be given a liberal and meaningful interpretation. In the case of **Director of School Education vs K.Uma** reported in (2010) 2 MLJ 277, the Hon'ble Division Bench of this Court had observed as follows:-

"From the above, it is clear that High Schools are entitled to have three Physical Education Teachers, whereas for Higher Secondary School (XI and XII standard) with strength of over 400, one Physical Director would be appointed. The above G.O. has to be interpreted practically, pragmatically and reasonably. It can not be interpreted that Higher Secondary School can have only Physical Education Director apart from three Physical Education Teachers in the High School. The reasonable and possible interpretation is that the Higher Secondary School is entitled to have more physical education teachers and could be increased as per the strength of the student depending upon physical education classes as per the existing norms. Hence the inference is that the High School would have maximum number of three Physical Education Teachers and Higher Secondary School would be added one more teacher as Physical Education Director. If the strength of the students in the Higher Secondary School are more, according to the strength of the students, Physical Education Teachers are required to be increased. If 1000 or more students are studying in Higher Secondary level (XI to XII Stds.), it would be irrational and unfair to appoint only one physical education teacher and it would not serve the cause of the physical education.

....

16. The aforesaid government order is not prohibitive in nature and in fact, if necessity arises, more teachers can be appointed. The criteria applied in G.O.Ms.No.525, School Education dated 29.12.1997, is only the strength of the students and according to which the teachers have to be appointed. Admittedly as stated above the strength of students is 3948, which requires more number of Physical Education Teachers. G.O.Ms.No.525 School Education dated 29.12.1997 speaks about the maximum of three Physical Education Teachers



for High School and separate Physical Education director for Higher Secondary School which got strength over 400. In view of that also the school is entitled to have four teachers. Hence the petitioner's position need not be disturbed."

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7. Likewise, in the case of the **Correspondent, Arockia Annai Middle School vs. the District Elementary Educational Officer**, this Court by its order dated 03.06.2014 made in W.P.(MD) No.6069 of 2010 had observed that the Government order passed in G.O.Ms.No.525 (School Education) department, dated 29.12.1997 has to be given a purposeful interpretation. Just because, there was a dip in the strength of the students, the respondents cannot treat the appointment as surplus.

8. Thus, it is clear from the aforesaid decision that the norms laid down in the aforesaid Government Order cannot be literally construed and adopted for the purpose of determining the staff strength. If such a liberal meaning has to be given to the norms laid down therein, there could arise situations, where one of the academic sections of the School could become redundant. As a matter of fact, by the present impugned order, the respondents have literally deprived the students of being instructed by a Physical Education Teacher. The Division Bench of this Court, in the case of **State of Tamil Nadu rep. by its Secretary vs. the Secretary/ Correspondent, Setupati Higher Secondary School, Madurai** held in its order dated 01.03.2018 passed in W.A.(MD) No.1494 of 2017 that, such an order would virtually close down the said course in the absence of a Vocational instructor. This observation was made in the following manner:-

"8.Next we come to staff fixation done by the Department for the year 2014 vide order dated 07.11.2014. It is interesting to note that in the said order the appellant department records the fact that there are 46 students in the 11th standard and 39 students in the 12th standard in spite of the same stated in the fixation order that one post is surplus. In our considered view, the Department cannot take such a technical plea. When it is admitted fact that there exists sufficient students strength, the course has to continue. Thus the order of the fifth respondent showing one post of Vocational Instructor as surplus, he has virtually closed down the said course as there would be no teacher. We cannot lose sight of the fact when there is full students strength and course is in demand, the Department cannot take such a stand and render one post as surplus. In the Government order in G.O.Ms.No.525 School Education (D1) Department dated 29.12.1997, in Paragraph No.IV, the number of post eligible for Higher secondary School is mentioned in the clause (d) of the



said order which states that for vocational stream, 2 posts of teachers (full time) will be sanctioned irrespective of the number of courses. Therefore, even while passing the order dated 29.10.2013 and fixing the staff strength for the year 2013-14, the respondent/Management was entitled to two post of Vocational Instructor. Thus, we find the reason for rejection of approval of the Vocational Instructor, Thiru.R.Kannan as well as staff fixation for the year 2014-2015 is completely flawed. "

9. Physical Education activities are an integral part of a child's academics. In the case of '*K.Uma*' (*cited supra*), the Hon'ble Division Bench has stressed the importance of physical activities for the children and the positive need for having such an activity in the School. When the law laid down to the effect that the norms in G.O.Ms.No.525 (School Education) department, dated 29.12.1997 should be given a liberal approach, it can only be construed that the government order is only directory in nature and not mandatory.

10. The Division Bench of this Court in its decision dated 05.03.2018 made in W.A.(MD) No.1295 of 2016 had held as follows:-

"6. Therefore, we opined that the stipulations of 5 sections in 6 ? 8 classes was considered to be directory and not mandatory and that is why the Government took such a stand not only in respect of 10 middle schools, but also other similar cases. The Government order came to be issued in 2006 and the appointment of Tmt.Kokila was in the year 2009. Above all, there is only one post and therefore, the department cannot insist upon the course being conducted and simultaneously not sanction the post. Apart from that, increasing the number of sections in a class is not at the sole discretion of the management of the institution. Be it an aided non-minority institution or minority institution or for that matter a government institution, it has to abide by the Rules and Regulations, which stipulate a students strength of minimum 40 and that strength has to be assessed in August every year for the purpose of assessing the staff strength.

7. Therefore, the Government order in G.O.Ms.No.168 dated 13.09.2006, if read in tandem with the guidelines stipulated for increasing the number of sections, then, this stipulation of having 5 sections in 6-8 classes can at best be read as directory and not mandatory. Further, it is relevant to point out that the decision in the case of N.Regii Mallika referred supra has been affirmed by the Hon'ble Division Bench in W.A.(MD) No.16 of 2011 dated 25.01.2011. In the said



in W.P.(MD) No.7218 of 2008 dated 04.08.2009, which was implemented by the department."

11. For the above foregoing reasons, I do not find any justification on the part of the fourth respondent in declaring the post of Physical Education Teacher as surplus in the fifth respondent School and thereby, the proceedings of the Directorate of School Education dated 21.02.2014 would be illegal. Accordingly, the impugned proceedings made in Na.Ka.No.68160/D1/E4/2013 dated 21.02.2014 and Na.Ka.No.6327/A2/2013 dated 18.10.2013 are hereby quashed. Consequently, there shall be a direction to the third respondent to approve the petitioner's appointment, thereby enabling the disbursement of all consequential aid to the fifth respondent School. Such an exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

12. With the above directions, the Writ Petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

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/ /2020

Sub Assistant Registrar(CS)

Sts

To

- 1.The Secretary,
Department of School Education,
Fort St.George,
Chennai 600 009
- 2.The Director of School Education,
College Road, Chennai 600 006
- 3.The Chief Educational Officer,
Kanyakumari District,
Nagercoil 629 001
- 4.The District Educational Officer,
Nagercoil 629 001
Kanyakumari District.



5.The Correspondent,
Home Church Girl's High School,
Nagercoil 629 001
Kanyakumari District.

+1 CC to SPL.GP (SR-111[F] dated 03/01/2020)

+1 CC to M/s.S.XAVIER RAJINI, Advocate (SR-241[F] dated
03/01/2020)

Order made in

W.P. (MD)No.7943 of 2018

Dated:02.01.2020

MK (27.01.2020) 7P 8C