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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 18.01.2019
PRONOUNCED ON : 03.06.2020
CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
AND
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.A.(MD)No.969 of 2017 and
C.M.P.(MD)No.6519 of 2017

1. The Director of School Education,
Elementary Education,
College Road, Chennai - 600 006.
2. The Joint Director,
(Elementary Education),
College Road, Chennai - 600 006.
3. The District Elementary Educational Officer,
Virudhunagar District.
4. The Additional Assistant,
Educational Officer,
Rajapalayam,
Virudhunagar District. ... Appellants/Respondents

Vs.

M.Venkatasamy Naicker,
S/o.Muthaiah Naicker,
Manager-cum-Correspondent,
Educational Agency,
Hindu Thuvakkapalli, Sattikinathupatti,
R.Reddipatti, Rajapalayam Taluk,
Virudhunagar District. ... Respondent/Writ Petitioner

PRAYER: Writ appeal is filed under Clause 15 of Letter Patent,
to set aside the order dated 23.02.2017 in W.P.(MD) No.923 of
2010.

PRAYER IN WP(MD) . 923 of 2010 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court to issue a WRIT OF
CERTIORARI calling for the records of the 3rd respondent in
Na.Ka.No. 4891/A2/2009 dated September, 2009 signed on 12.10.2009
and quash the same.

For Appellants : M/s.S.Srimathy,
Special Government Pleader.

For Respondent : Mr.V.Sasikumar

**J U D G M E N T****[Judgment of the Court was made by G.R.SWAMINATHAN, J.]**

This writ appeal is directed against the order dated 23.02.2017 made in W.P.(MD)No.923 of 2010 filed by the respondent herein.

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2. The respondent is the Manager-cum-Correspondent of an aided elementary school known as Hindu Thuvakkapalli, situated at Sattikinathupatti Village, R.Reddipatti P.O., Rajapalayam Taluk Virudhunagar District. The school was founded in the year 1938. It was a recognized institution right from the inception. It is a private school governed by the provisions of Tamil Nadu Recognized Private Schools (Regulation) Act 1973 and the Rules framed thereunder. The school management felt aggrieved by the staff fixation proceedings issued by the District Elementary Education Officer, Virudhunagar. The District Elementary Education Officer, Virudhunagar, noted that the registered students' strength of the school was 113 and that on the inspection date, 81 students were found to be in attendance. The details of the students strength as found in August 2009 as under:-

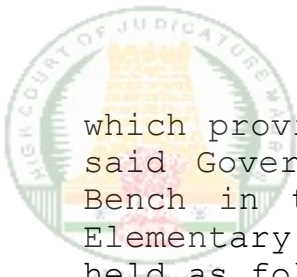
Class	1	2	3	4	5	1-5	6	7	8	6-8	Total
Registered strength	33	24	23	14	19	113	-	-	-	-	113
Actual Attendance	21	18	15	12	15	81	-	-	-	-	81

3. The school was having a sanctioned strength of three teachers including that of headmaster. Since there were only 81 students, one teacher was rendered surplus. Since the redeployment of the teacher rendered surplus became imminent, the respondent filed W.P.(MD)No.923 of 2010 challenging the said proceedings and the order passed by the District Elementary Education Officer on 12.10.2009 declaring one teacher as surplus was set aside.

4. Aggrieved by the same, the Department has filed this writ appeal.

5. Heard the learned counsel on either side.

6. The learned counsel appearing for the respondent submitted <https://hservices.ecourts.gov.in/hservices/> allowing the writ petition does not warrant any interference. He would point out that the authority went by G.O.Ms.No.525, School Education(D1) Department, dated 29.12.1997



which provided for the teacher/student ratio of 1:40. But then, the said Government Order came to be interpreted by the Hon'ble Full Bench in the decision reported in (2006) 5 CTC 385 (Director of Elementary Education V. Tmt.S.Vigila). The Hon'ble Full Bench held as follows:-

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" 23. Keeping in view the various relevant aspects, we feel that G.O.Ms.No.525 dated 29.12.1997 should be interpreted in the following manner:-

(1) The ratio of students-teacher strength as indicated in the G.O. should be primarily considered by taking each individual standard-section as a unit.

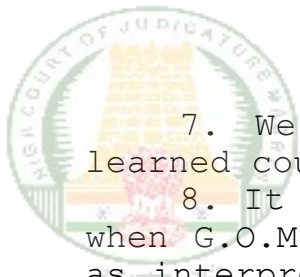
(2) The minimum strength of teachers required obviously should not fall below the number of Standards/Section in a school. In other words, if there are five standards, obviously the minimum number of teachers should be five, out of which one would be the Headmaster.

(3) If the students' strength in a particular Standard exceeds 60, at that stage, an additional section is required to be created requiring the sanction of a second teacher and the strength reaches 100, the post of a third teacher is required.

(4) Even after maintaining the aforesaid ratio by taking into account the students strength of each individual standard and additional section, as the case may be, by keeping in view the teacher-students ratio 1:40 of the entire school if the teachers strength is required to be increased, the same has to be allowed, but in no case, the teachers strength should be less than the number of standards including the additional sections. If more teachers are thus sanctioned keeping in view the over all strength of the school, the authorities of the school should create additional section in respect of any particular Standard according to the need and convenience keeping in view the standard of education. This requirement is not only in respect of aided schools or Government schools, but also in respect of any private recognised school. In other words, this ratio is to be maintained for any school which requires recognition.

(5) It would be obviously open to the Government to formulate appropriate norms in consonance with the above observation and provisions of the constitution."

Applying the ratio laid down by the Hon'ble Full Bench, the learned Single Judge rightly held that the respondent school herein is eligible for minimum 5 teachers, since the school consists of Standards I to V. The learned counsel, therefore, pressed for dismissal of the writ appeal.



7. We are unable to agree with the submission made by the learned counsel appearing for the respondent.

8. It is true that the impugned order was passed on 12.10.2009, when G.O.Ms.No.525 School Education(D1) Department dated 29.12.1997 as interpreted by the Hon'ble Full Bench in Vigila's case held the field. But then, a Court of law is obliged to take note of the subsequent developments. Even before the learned Single Judge, the learned Government Advocate pointed out that the students strength had further come down to 26.

9. When the matter was argued before us, this figure was not contested by the learned counsel appearing for the respondent.

10. The Right of Children to Free and Compulsory Education Act 2009(35 of 2009) had come into force on 01.04.2010. The Government of Tamil Nadu has issued G.O.(Ms).No.231 School Education(C2) Department dated 11.08.2010. The operative portion of the said Government Order is as follows:-

"4. ...

1. The Director of School Education and the Director of Elementary Education are directed to undertake the initial process of rationalizing the deployment of existing teachers as per the Pupil Teacher ratio specified in the Schedule to the Act.

2. The Director of School Education and the Director of Elementary Education are also directed to do a complete survey of the students enrolled and teachers working in elementary sections as on 01.09.2010 based on the Pupil Teacher ratio specified in the Act.

3. The Director of School Education and the Director of Elementary Education are requested to initiate steps thereafter to rationalize the deployment of existing teachers to address the problem of imbalances in teacher placements. Rationalizing the deployment of teachers should be done in respect of both the Government controlled and aided schools."

11. Section 25(1) of Right of Children to Free and Compulsory Education Act 2009 states that the appropriate Government and the local authority shall ensure that the Pupil-Teacher Ratio, as specified in the Schedule, is maintained in each school. In the schedule annexed to G.O.(Ms).No.231 School Education(C2) Department dated 11.08.2010. The norms and standards for the school have been laid down. Serial No.1 of the Schedule deals with the number of



THE SCHEDULE
(See sections 19 and 25)
NORMS AND STANDARDS FOR A SCHOOL

Sl No	Item	Norms and Standards	
1.	Number of teachers: (a) For first class to fifth class	Admitted children Up to Sixty Between sixty-one to ninety Between Ninety-one to One hundred and twenty Between One Hundred and Twenty-one to two hundred Above One Hundred and fifty children Above Two hundred children	Number of teachers Two Three Four Five Five plus one Head-teacher Pupil-Teacher Ratio (excluding Head-teacher) shall not exceed forty.



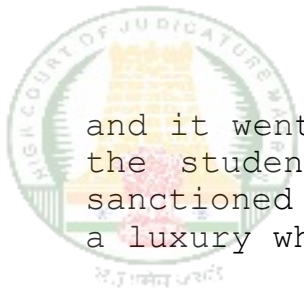
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	(b) For sixth class to eighth class	(1) At least one teacher per class so that there shall be at least one teacher each for:- (i) Science and Mathematics; (ii) Social Studies; (iii) Languages. (2) At least one teacher for every thirty-five children. (3) Where admission of children is above one hundred- (i) a full time head-teacher; (ii) part time instructors for - (A) Art Education; (B) Health and Physical Education; (C) Work Education.
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12. The entire case of the respondent rests on G.O.Ms.No.525 School Education(D1) Department dated 29.12.1997 as interpreted in Vigila's case. That is the sheet anchor of the impugned order passed by the learned Single Judge also. As already pointed out, the ground beneath has already shifted. That is why when a similar argument was canvassed before another learned Judge of this Court in (Y.Elizabeth Rani V. The Convener, Board of Elementary Education) reported in (2013) 1 MLJ 335, the learned Single Judge held as follows:-

"9. As rightly contended by the respondent, G.O.Ms.No.525 has no relevance in view of the subsequent G.O.Ms.No.231 dated 11.08.2010, which prescribed the required strength of teachers in respect of the students available in a school, under 'the Right of Children to Free and Compulsory Education Act 2009'. "

13. In the typed set, the appellants have enclosed sufficient materials which show that the students' strength has been progressively coming down. From 113, it fell to 52 and then to 42 and then to 21. There was a marginal increase in the year 2014-15



and it went up to 25. But when the case was argued in the year 2017, the students' strength was 26. The claim that there must be 5 sanctioned teachers for catering to the students' strength of 26 is a luxury which our economy may not be able to afford.

14. We went through the affidavit filed in support of the writ petition by the school correspondent. A substantial portion of the affidavit has been devoted to setting out the bitter litigation between him and the rival parties. The respondent had filed O.S.No.217 of 1997 before the Principal District Munsif Court, Srivilliputhur. He then filed O.S.No.598 of 2005 before the very same Court. There was an interlocutory application filed in I.A.No.1961 of 2005. It was dismissed on 06.11.2006. Questioning the same, C.M.A.No.3 of 2007 was filed before the Sub Court, Srivilliputhur. His rival filed C.R.P.No.450 of 2009 before the High Court. In the meanwhile, W.P.(MD)No.6063 of 2006 and W.P.(MD) No.1045 of 2008 came to be filed. The respondent filed W.P.(MD) No.6161 of 2008 and W.P.(MD)No.9463 of 2008. Alleging violation of the interim order granted by the High Court in the last writ petition, he filed Cont.P.(MD)No.3 of 2009. Thus the energies of the respondent have been expended for retaining his position at the helm of affairs of the school. even as the students strength was depleting fast. The school is now under direct payment system. We cannot help remarking that the respondent with his rich experience in litigation can start a law college.

15. The precious financial resources of the Government cannot be frittered away by financially supporting institutions which are over-staffed but having poor students' strength. The issues relating to staff strength will have to be determined only with reference to G.O.(Ms).No.231 School Education(C2) Department dated 11.08.2010 as amended from time to time. In as much as the subsequent developments have not been taken in account, the order impugned in this appeal suffers from a clear error. We have no hesitation to set aside the order impugned in the writ appeal.

16. It is accordingly set aside. The writ appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Pmu

To

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



2. The Joint Director,
(Elementary Education),
College Road, Chennai - 600 006.

3. The District Elementary Educational Officer,
Virudhunagar District.

4. The Additional Assistant,
Educational Officer,
Rajapalayam,
Virudhunagar District.

+1 CC to M/s.SPL GP (SR-13054[F] dated 03/06/2020)

+1 CC to M/s.A.MOHAN, Advocate (SR-13110[F] dated 05/06/2020)

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W.A.(MD)No.969 of 2017 and
C.M.P.(MD)No.6519 of 2017
03.06.2020

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