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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	13.08.2021
PRONOUNCED ON	23.08.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.NO.24695 OF 2016

AND

W.M.P.NO.15776 OF 2021

(Through Video Conferencing)

R.Rajasundaram

... Petitioner

.Vs.

1. The Secretary to Govt. of Tamil Nadu,
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,
Cuddalore - 607 001,
Cuddalore District.
4. The District Educational Officer,
Cuddalore - 607 001,
Cuddalore District.
5. The Secretary,
Arumuga Navalar Higher Secondary School,
Chidambaram - 608 001,
Cuddalore.

... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records relating to the impugned staff fixation proceedings issued by the third respondent in Na.Ka.No.8845/AA3/2015 dated 27.01.2016 and the consequential order vide proceedings



Na.Ka.No.8845/AA3/2015 dated /06/2016 and quash the same.

For Petitioner : Mr.Bharath
For Mr.Srinath Sridevan

For R1 to R4 : Mr.V.P.R.Elamparithi,
Government Advocate

For R5 : Mr.N.Sankaravadivel

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O R D E R

This Writ Petition has been filed for issuance of a Writ of Certiorari, to call for the records relating to the impugned staff fixation proceedings issued by the third respondent in Na.Ka.No.8845/AA3/2015 dated 27.01.2016 and consequential order vide Proceedings Na.Ka.No.8845/AA3/2015 dated 10.06.2016 and quash the same.

2. The case of the petitioner is that he was serving as a Physical Education Teacher (P.E.T) in fifth respondent Arumuga Navalar Higher Secondary School, Chidambaram District. It is the submission of the petitioner that he was transferred to DVC Higher Secondary School, Srimushnam, Virudhachalam District contrary to G.O.Ms.No.525, School Education (D1) Department, dated 29.12.1997.

3. The learned counsel for the petitioner submits that the total strength of the students in the fifth respondent School was 610 in both the Tamil Medium and English from standard VI to XII. It is submitted that there were 334 students in Classes VI to X in Tamil Medium, about 88 students in Classes XI and XII (Higher Secondary) in Tamil Medium and about 127 students in Classes XI and XII in English Medium (self financing).

4. It is the case of the petitioner that as per the aforesaid Government Order, if the strength of students in the Classes between VI to X in High School exceeds 250 in number, the respondents are enjoined to sanction one additional post of Physical Education Teacher.

5. It is submitted that the respondents have ignored those students who are studying in Classes XI and XII in English Medium. In this connection, the learned counsel for the petitioner has placed reliance on the decision of the Division Bench of this Court rendered in W.A.No.1290 of 2014 on 17.10.2014 in the case of State of Tamil Nadu, represented by its Secretary, Chennai and others Vs P.Velayutham.



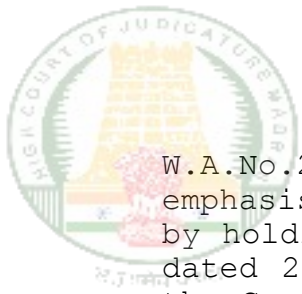
6. A reference was made to Paragraph 3 of the aforesaid order, wherein, the Division Bench of this Court rendered an earlier order dated 21.12.2009 in W.P.No.35922 of 2005. Relevant portion is extracted below:-

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"3.

.....
G.O.Ms.No.525, was issued by the Government on 29.12.1997 with effect from 1.6.1998, ordering to have a Physical Director with the strength of over 400. The contention of the respondent is that if the strength of the higher secondary course is more than 400, then only Physical Director post is available. The issue as to whether the students in the lower classes can also be counted for sanction of Physical Director post in a recognised and aided higher secondary school, was already considered by this Court in the above referred WP and in paragraph- 6, it was held as follows:

"6. I agree with the said submission of the learned counsel for the petitioner. As rightly pointed out by the learned counsel for the petitioner, when clause 3 contemplated a student strength of 250, with a school having classes from Standard VI to X, Clause 3 is referable to a case of a high school having classes upto Standard X. In the case of higher secondary schools, the classes run therein has to be read as upto XII Standard. In the case of High Schools, when the contemplation of fixing the strength of Physical Education Teacher is that for the student strength exceeding 250 therein, there shall be one post of Physical Education Teacher and for every additional strength of 300, there shall be one additional post of Physical Education Teacher with a maximum of three, it stands to reason that in the case of a higher secondary school wherein the classes are upto XII standard, the student strength has to be considered as one referable not restricted to a case of Classes XI and XII alone. Reading paragraph 4 along with the earlier explanation, the idea appears to be that the strength of the school as a higher secondary school has to be taken not with reference to the standards of XI and XII alone but as a higher secondary school offering classes upto Standard XII. A reading of the Government Order shows that while in the case of a high school having upto Standard X the



W.A.No.226 of 2009, dated 04.12.2009, wherein, the Court emphasised the requirement of physical education in curriculum by holding that G.O.Ms.No.525, School Education (D1) Department, dated 29.12.1997 needs to be given a liberal interpretation and the Government is at liberty to re-consider the matter and issue reasonable, viable and appropriate norms with regard to appointment of Physical Education Teachers in schools as per the strength of students, considering the observations made by the Court.

9. The learned counsel also referred to a decision of the Division Bench of this Court rendered in W.A.No.1642 of 2014 vide order dated 21.08.2018, wherein, in Paragraph 7, it was held as under:-

"7. Before the learned single Judge, the learned counsel appearing on behalf of the respondent School, placed reliance upon the judgment of this Court in Director of School Education, Chennai-6 and others v. K. Uma, reported in (2010) 2 MLJ 277, and submitted that the said decision emphasises the need for extracurricular activities and the same has to be given liberal interpretation, since Physical Education and Coaching are essential even though the students are less in number. After considering the facts and circumstances of the case, the learned single Judge has held that the said G.O. is not a criteria to withdraw the Physical Education Teacher and the Drawing Teacher of the respondent School which is situated in the middle of the forest area and imparting education to the Scheduled Caste, Scheduled Tribe and Most Backward Class children. A direction was also given to the authorities to approve the appointment of suitable person to the Physical Education Teacher to the respondent School from the month of April 2013 onwards."

10. Defending the impugned order, the learned Government Advocate for the respondents submits that the petitioner has been transferred to a neighbouring School in the same District and there is no prejudice to the petitioner as the strength of the students studying in Tamil Medium High School had dropped during the Academic Year 2015-2016. He submits that the students studying in English Medium under the Self Financing cannot be reckoned for the purpose of sanctioning additional Physical Education Teacher in Government Aided Schools.

11. The learned Government Advocate further submits that the decisions cited by the learned counsel for the petitioner cannot be applied to the facts of the present case. He further submits



that in W.A.No.226 of 2009, the total strength of students in the said school was about 3948 and therefore the issue that arose was as to whether the school was entitled to have additional Physical Education Teachers for High School.

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12. He therefore submits that there is no merits in this Writ Petition and this Writ Petition deserves to be dismissed. It is further submitted that the fifth respondent had accepted re-deployment order and had relieved the petitioner from the school on 14.06.2016 afternoon to enable the petitioner to join duty in DVC Higher Secondary School, Srimushnam, Virudhachalam District and the petitioner has been provided with protection of service and therefore this Writ Petition was devoid of merits.

13. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents and perused the G.O.Ms.No.525, School Education (D1) Department, dated 29.12.1997 and the above decisions rendered by this Court which was cited by the learned counsel for the petitioner. The relevant portion of the Government Order reads as under:-

"ORDER:

The fixation of staff strength in Elementary/High/Higher Secondary Schools for purpose of State Aid was governed by the following orders/rules:-

1. Elementary Schools ... G.O.Ms.No.250,
Education,
dated 29.2.64.
2. High Schools ... Rules 17 and 18 of
Madras
Educational Rules
3. Higher Secondary School ... G.O.Ms.No.573,
Education,
dated 20.3.78.

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3.

4.

5. In the light of the above discussions and deliberations held the High Power Official Norms Committee has suggested the following recommendations for sanction to posts in Schools:



I. ELEMENTARY SCHOOLS (STANDARDS I TO V)

- (a)
- (b)
- (c)

II. MIDDLE SCHOOLS (STANDARDS VI TO VIII)

- (a)
- (b)

III. HIGH SCHOOLS (STANDARDS IX TO X)

- (a) The teacher - pupil ratio of 1:40 will be followed. On this basis the following norms will be followed:

Average attendance-

- (b)
- (c) When the 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 3."

IV. HIGHER SECONDARY SCHOOLS (11TH AND 12TH STANDARDS)

- (a)
- (b)
- (c)
- (d)
- (e)
- (f) For schools with a strength of over 400, one post of Physical Director will be given by upgradation of existing post of Physical Education Teacher.

6.....

7.....

8. A fresh assessment of grant for posts as per these orders shall be done on the basis of average attendance. The staff strength shall be fixed by the District Educational Officer concerned for High and Higher Secondary Schools and by the District Educational Officer in respect of Elementary Middle Schools. Those who may be rendered surplus due to application of these



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norms, shall as far as possible, be redeployed to the needy schools. The redeployment of staff in schools shall be done by Director of School Education and Director of Elementary Education or the Officers to be authorised by them. This will be in supersession of the orders issued in G.O.Ms.No.392, Education, dated 24.5.96. In cases where such deployment is felt difficult, the surplus staff shall be allowed to continue in the same school till their retirement and then the staff strength refixed as per norms. So also wherever necessary, additional posts shall be sanctioned only after taking into account the number of staff deployed to such schools. The Director of School Education and Director of Elementary Education should report the additional posts to be sanctioned as per the new norms after which formal permission in the first year alone shall be granted by Government for filling up of the posts. Subsequent fixation of staff strength shall be done by the District Elementary Educational Officer in respect of Elementary and Middle Schools. Regarding High and Higher Secondary Schools this shall be done by the Joint Directors in the Education Dept. at the rate of 4 Revenue Districts per Joint Director and permission from Government to fill up the posts is not necessary.

14. There are 334 students between Class VI and Class X in Tamil Medium (High School) and 88 students between Class XI and Class XII in Tamil Medium (Higher Secondary School). Thus, there is no dispute that the total number of students from Class VI to XII was 422 during the relevant academic year in the aided school. The decisions of these Court cited by the learned counsel makes it clear that even though the government order in G.O.Ms.525, School Education (D1) Department, dated 29.12.1997, only considers the strength of the students from Classes VI to X (High School) yet the strength of the students in Classes XI to XII (Higher Secondary School) has to be considered for sanctioning the post of Physical Education Teacher.

15. A reading of G.O.Ms.525, School Education (D1) Department, dated 29.12.1997 makes it clear that for the schools with strength of over 400, on post of Physical Director will be given by upgradation of the existing post of Physical Education Teacher. The recommendation of the High-Power Official Norms Committee, which was accepted by the Government in the above G.O.Ms.525, School Education (D1) Department, dated 29.12.1997 has stated that when the strength of the students in Class VI to Class X in High Schools, exceeds 250 in number, 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 3.

16. Since the combined strength of the students from Class VI to XII was 422 (334 + 88) in Tamil Medium during the relevant academic year, the respondents are required to sanction only one post of a Physical Education Teacher.

17. As per the recommendation of the High-Power Official Norms Committee, where strength exceeds 250 number in the High School, one Physical Education Teacher was required to be sanctioned. For every additional strength of 300, an additional post of Physical Education Teacher was required to be sanctioned. As the combined strength of the students in the High School and the Higher Secondary School was only 422 (334 + 88) in Tamil Medium, question of sanctioning additional Physical Education Teacher did not arise. Only if the strength of students in this school exceeded 550 in number (i.e. 250 + 300), there would have been a justification retaining the petitioner. The question of including students strength in the self financing scheme does not arise as the salary payable to the teachers is to be borne out of the fees collected by the school and the Government subsidy cannot be given by including the strength of the students in the Higher Secondary School in English Medium (self financing) for the purpose of G.O.Ms.525, School Education (D1) Department, dated 29.12.1997.

18. G.O.Ms.525, School Education (D1) Department, dated 29.12.1997, also makes it clear that staffs rendered surplus due to the application of the norms, shall, as far as possible, be redeployed to the needy school. This is what the respondents have done by transferring the petitioner to DVC Higher Secondary School, Srimushnam, Virudhachalam Distric. Only where redeployment is not possible or felt difficult, a surplus staff can be allowed to continue in the same school till their retirement and thereafter staff strength will be fixed as per the norms. Thus, there is no merits of the present Writ Petition.

19. The Writ Petition is therefore liable to be dismissed and is accordingly dismissed. No cost.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

arb / jen



To

1. The Secretary,
Department of School Education,
Government of Tamil Nadu
Fort St.George,
Chennai - 600 009.
2. The Director of School Education,
College Road,
Chennai - 600 006.
3. The Chief Educational Officer,
Cuddalore,
Cuddalore District - 607 001.
4. The District Educational Officer,
Cuddalore,
Cuddalore District - 607 001.
5. The Secretary,
Arumuga Navalar Higher Secondary School,
Chidambaram,
Cuddalore - 608 001.

+1cc to Mr.Srinath Sridevan, Advocate, S.R.No.42250
+1cc to Mr.N.Sankaravadivel, Advocate, S.R.No.42261
+1cc to the Government Pleader, S.R.No.42626

W.P.NO.24695 OF 2016 AND
W.M.P.NO.15776 OF 2021

GSM(CO)
PBS/16/09/2021