



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2021

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.A.Nos.1102, 1105 and 1106 of 2020
and C.M.P.Nos.13445, 13456 and 13461 and of 2020

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

.. Appellants in all Writ
Appeals/Respondents in
all Writ Petitions

Vs.

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

.. Respondent in W.A.
Nos.1102 & 1105/2020/

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

.. Respondent in W.A.
No.1106/2020 /Petitioner

* * *

Prayer : Writ Appeals filed under Clause 15 of Letters Patent
against the common order dated 02.06.2020 passed in
W.P.Nos.31117, 31125 and 31130 of 2018.

W.P.No.31130/2018: Writ petition filed under article 226 of the
constitution of India praying for the issuance of a writ of
certiorarified Mandamus to call for 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 Educational Officer to approve
forthwith the appointment of A.Silviya as Secondary Grade



teacher in the petitioners school w.e.f the date of her appointment viz. 26.06.2014 and disburse grant-in-aid towards the salary and other attendant benefits.

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 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 petitioners school w.e.f the date of her appointment viz. 26.06.2014 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 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 Educational Officer to approve forthwith the appointment of F.Pricilla Sheeba as Secondary Grade teacher in the petitioners school w.e.f the date of her appointment viz. 26.06.2014 and disburse grant-in-aid towards the salary and other attendant benefits.

For Appellants in	:	Mr.V.Manoharan
all Writ Appeals		Government Advocate
For Respondents	:	Mr.Godson Swaminathan
in all Writ Appeals		for M/s.Issac Chamber

C O M M O N J U D G E M E N T

The appeals are preferred by the Education Department of the State of Tamil Nadu challenging the orders passed by the writ Court dated 02.06.2020 in W.P.Nos.31117, 31125 and 31130 of 2018.

2. The respondents in all these writ appeals are the religious minority schools under the Congregation of the Franciscan Sisters of the Presentation of the Blessed Virgin Mary and getting 100% aid from the Tamil Nadu Government. The said Congregation is a corporate management and is running about five schools in the Coimbatore educational district.

2.1. The post of the Secondary Grade Teacher (SGT) fell vacant on 01.06.2014 due to the retirement of the then incumbent on 31.05.2014 in the respondent School in W.P.No.31130 of 2018



and one Mrs.A.Silviya was appointed as SGT with effect from 26.06.2014, who is fully qualified, including the pass in Teachers Eligibility Test (TET) in August 2013. Earlier, in the said School one more post of the SGT fell vacant on 17.06.2011 due to the retirement of the then incumbent on 16.06.2011 and one Mrs.F.Pricilla Sheeba was appointed as SGT with effect from 26.06.2014 and she is also fully qualified, including the pass in TET in August 2013. The said issue is pertaining to W.P.No.31125 of 2018. Similarly, the post of the SGT fell vacant on 26.06.2013 in the respondent School in W.P. No.31117 of 2018, due to the transfer of the then incumbent on 25.06.2013 and one Mrs.P.Sheeba was appointed as SGT with effect from 26.06.2014, who is also a TET qualified teacher.

2.2. On 26.06.2014, the respondents schools submitted proposals to the third appellant - the Assistant Elementary Educational Officer requesting for approval of the appointment of these teachers and disburse grant-in-aid towards their salary. Despite several requests made by the respondents Schools, there was no response from the third appellant. Hence, the proposals were once again submitted to the second appellant - District Elementary Educational Officer on 05.09.2016 through the third appellant. The said proposals were rejected by the second appellant on 15.03.2017 vide the impugned proceedings in the writ petitions in O.Mu.Nos.4773/A4/2016, 4772/A4/2016 and 4774/A4/2016.

2.3. The rejection was on two grounds, namely, (a) while filling up the post of SGT under same management, no objection certificate should have been obtained ; and (b) secondly, the school had surplus teachers under their management. The writ petitioners/respondents had responded to the same stating that surplus posts in the other schools has got no relevance, as the appointments were made only against sanctioned posts and most of the schools are in need of additional posts. It was pointed out that the appointment of the SGTs was only against the regular vacancies in the sanctioned posts assessed for Government grant. Thus, contending the above, the impugned orders were challenged by the respondents' schools in all the respective writ petitions.

2.4. The appellants had resisted the writ petitions contending that only after obtaining the certificates from the DEEO that there are no surplus teachers available, the approval can be granted for fresh appointment, for which, the appellants placed reliance on Circular dated 27.12.2010. The appellants also relied upon G.O.Ms.No.1376, dated 06.07.1981, as per which, the corporate body running more than one school, the schools shall be treated as one unit for the purpose of the rules. Hence, the surplus teachers from the schools in the management will have to be utilized for filling up the vacant post in the concerned School.



2.5. The learned Single Judge had considered the submissions of the learned counsel for the respondents/writ petitioners' Schools and also the Government Pleader and allowed the writ petitions directing the competent authority to grant approval to the respective appointments of the teachers by the respondents/writ petitioners' schools without insisting for 'No Objection Certificate', if otherwise the teachers concerned were qualified for regular appointment as SGT.

2.6. While ordering so, the learned Single Judge framed an issue as to whether the Government have regulatory power to insist on obtaining 'No Objection Certificate' from the competent authority, while filling up of sanctioned surplus posts in schools under the same management, for an authoritative pronouncement by a Larger Bench, and directed the Registry to place the writ petition before the Hon'ble Chief Justice for constitution of a Larger Bench and the same is pending.

3. The learned Government Advocate placed reliance on G.O.Ms.No.1376, dated 06.07.1981 contending that the corporate body running more than one school, the schools shall be treated as one unit. As the said G.O. has not been challenged, it is not open to the schools to fill up the surplus posts, even though the same are sanctioned and it is always open to the school to resort to redeployment and adjust the surplus teachers among its schools run by the same management. The Government Advocate also placed reliance on the interim directions given by a Division Bench of this Court in W.A.(MD)Nos.76 of 2019 etc. batch on 09.04.2019 (The Secretary to Government, Government of Tamil Nadu, School Education Department V. Iruthaya Amali). It was further contended that if the approval of the appointment is granted, despite surplus teachers were available in other schools under the same management, it will have financial implications creating a dent in the State's exchequer.

4. The learned Single Judge placed reliance on the judgment of the Division Bench of this Court dated 29.11.2017 in W.A.(MD)Nos.1292 and 461 of 2014 (The Director of Elementary Education, College Road, Chennai-600 006 and two others V. The Correspondent, St.Joseph's RC Primary School, Palakurichy) holding that imposing a condition that the no objection certificate has to be obtained from the educational authority is contrary to law, as laid down by the Hon'ble Supreme Court in T.M.A.Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 and also the decision in Malankara Syrian Cathlic College V. T.Jose and Others, 2007 (1) SCC 386.

5. Even before the learned Single Judge, the Government Advocate placed reliance on the decision of the Hon'ble Supreme Court in Kolawana Gram Vikas Kendra V. State of Gujarat and Others, (2010) 1 SCC 133, wherein, it was held that the



insistence of obtaining 'No Objection Certificate' cannot be construed as interference in the selection process and the insistence for producing 'No Objection Certificate' does not amount to unconstitutional interference in the internal working of the Minority institutions. Based on the same, the learned Government Advocate appearing for the appellants submitted that it is well within the power of the Government to insist for 'No Objection Certificate' in respect of the respondents/writ petitioners' schools. In this regard, it is worthwhile to notice that the Division Bench of this Court in the writ appeal referred to supra (St. Joseph's RC Primary School case) had considered the judgment of the Hon'ble Supreme Court in Kolawana Gram Vikas Kendra's case [(2010) 1 SCC 133] and distinguished the same on facts holding that factually in that case, the minimum prescribed qualification and the Circular issued therein regarding the vacancy as per the workload were challenged. The said judgment was further distinguished on facts that there was no dispute regarding the notification and eligibility of the teachers, who have been appointed by the respective schools. Therefore, the judgment of the Hon'ble Supreme Court is not applicable to the instant cases also.

6. Be that as it may, the judgment in W.A.(MD)Nos.76 of 2019 etc. batch, wherein, the interim order was granted by an earlier Division Bench of this Court, was pronounced on 31.03.2021 by the Division Bench after hearing all the learned counsels on either side finally (The Secretary to Government, Government of Tamil Nadu, School Education Department V. Iruthaya Amali, 2021 SCC OnLine Mad 1285). The facts in the said batch of cases is somewhat similar to the present cases. Though in the above writ appeal, one of the grounds taken was that the teachers were not qualified and also did not pass the TET, which was one of the essential qualifications for appointment as SGT, in the present writ appeals, the teachers, who were appointed by the respondents schools, admittedly, are qualified and also they have passed TET. The Division Bench has elaborately considered various issues, including the validity of G.O.Ms.No.165, which was issued on 17.09.2019, pursuant to the interim orders passed in the same batch on 09.04.2019. In paragraph 87 to 90 of the said judgment, the Division Bench dealt with fixation of staff strength, identification and redeployment of excess staff, in the following manner :

"87. We have given our anxious consideration to those submissions made on the very ticklish issue of fixation of staff strength, identification and redeployment of excess staff to the needy school and for fixing a compendium of schedule for undertaking the aforesaid job and by which authority the same shall be undertaken.



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88. In this context, we have already recorded the consensus reached between the parties that school shall be the unit and it is not an educational agency, management or corporate management or joint management will be the unit for the purpose of fixing the staff strength for the school concerned. Once such a staff strength is fixed in a particular academic year on or before a particular date, where if there is any lack of staff, that school shall be treated as a needy school, to which, the required teaching staff either can be deployed from the excess staff or the school which is in need of the staff shall be permitted to fill up the post.

89. Once the school is found to be having excess staff such excess staff strength shall be identified and accordingly, the procedure that has been discussed above, as projected by both sides, can be adopted for redeployment of such excess teachers to the needy school.

90. In order to complete this task of fixing the staff strength, identifying the excess staff and redeployment of excess staff to the needy school in a particular academic year is concerned, certainly a compendium of schedule is required to be adopted and once such compendium of schedule is adopted, the same shall be strictly followed and adhered to both by the Education Department as well as the management/institution/schools concerned. In fact both sides have consented to frame a compendium of schedule by this Court."

7. It is also held by the Division Bench in the said judgment that when this Court posed a specific question to the Advocate General, who appeared on behalf of the Government, as to whether any legislation was enacted in order to administer the service issues, apart from the regular establishment and administrative issues of the private schools in the State, instead of having Government Orders, instructions and regulations, it was brought to the knowledge of the Division Bench that the State has already legislated an Act called 'the Tamil Nadu Private Schools (Regulation) Act, 2018 (Tamil Nadu Act 35 of 2019), which was, in fact, received the assent of the Hon'ble President of India on 07.08.2019 and only the framing of the rules under the said Act is yet to be completed. As and when the rules are framed, the Act as well as the rules would be notified and would brought into effect. In such circumstances, the Division Bench thought it appropriate to issue comprehensive directions till such time the comprehensive legislation comes into force and given effect. While doing so, G.O.Ms.No.165,



dated 17.09.2019, which was issued pursuant to the interim directions given by this Court, was declared to be inoperative.

8. Insofar as the fixation of staff strength based on the pupils strength in a given academic year, identification of excess staff and the process of completing the redeployment of excess teacher to the needy school, the Division Bench had provided a 'Compendium of Schedule', which shall be strictly followed, until the above referred comprehensive rules to be framed in the 2018 Act come into effect.

9. It is also pointed out by the learned counsel for the respondents' schools that the issue regarding obtaining 'No Objection Certificate' while filling up the sanctioned post is no more a res integra and that has already been decided in a series of decisions. At this juncture, it is apt to state that a Co-ordinate Bench of this Court, while dealing with a similar issue in respect of the Tamil Nadu Private Colleges (Regulation) Act, 1976, which has pari materia provisions to that of the Tamil Nadu Private Schools (Regulation) Act, 1973 in P. Ravichandran vs. State of Tamil Nadu and Others, 2013 (7) MLJ 641, relying upon a catena of decisions on this issue, held as follows :

"17. A Division Bench of Madurai Bench of this Court in W.A.(MD) No. 462 of 2006, judgment dated 1.12.2006, considered the scope of Rule 11(1) of the Tamil Nadu Private Colleges (Regulation) Rules, 1976 relying upon the earlier order passed on 13.8.2006, and held that for filling up an existing post in a Private Aided College, no prior approval is necessary as any such appointment shall be subsequently approved by the Department, and at that point of time the Department would have an opportunity to consider the availability of such post and rejection of approval on the ground that no prior approval was obtained before appointment, was set aside. Same is the view taken in the following orders of this Court:

(i) W.P. No. 30618 of 2005, order dated 21.9.2005;

(ii) W.P. No. 28396 of 2004, order dated 29.3.2006;

(iii) W.A. Nos. 92 & 93 of 2008, judgment dated 6.1.2010;

(iv) W.P.(MD) No. 174 of 2009, order dated 27.4.2010;

(v) W.A. Nos. 140, 811/2006 & 805/2007, judgment dt. 21.10.2010;

(vi) W.A. No. 2858 of 2010, judgment dated 21.3.2011;



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(vii) W.A.(MD) No. 1088 of 2011, judgment dated 19.10.2011;

(viii) W.A. No. 2345 of 2011, judgment dated 5.3.2012;

(ix) (2012) 5 MLJ 670 (Dr. S. Sukumaran v. State of Tamilnadu) rendered by one of us (NPVJ); and

(x) W.A. No. 474 of 2013, judgment dated 3.4.2013.

Thus, the issue regarding seeking prior permission for filling up the vacant post in aided College within the academic year was already settled in series of decisions and all the above said orders are implemented by the respondents 1 and 2. In such circumstances, it is not open to the respondents to again and again contend that only after getting prior permission from the Director of Collegiate Education, vacant sanctioned posts can be filled up by the management.

* * *

20. In the light of the above findings as well as the decisions, we conclude this Judgment in the following manner:

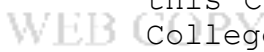
(1) There is no requirement under the Tamil Nadu Private Colleges (Regulation) Act, 1976 and Tamil Nadu Private Colleges (Regulation) Rules, 1976, to seek prior permission to fill up any vacant post in an aided college, which has already been sanctioned for the academic year by the Director of Collegiate Education under Rule 11(1) of the Rules.

(2) If the appointment made by the College Committee in the sanctioned vacant post is in violation of any of the statutory provision, it is open to the Regional Joint Director of Collegiate Education to deny grant-in-aid to the said person appointed in the vacant post.

(3) The teaching staff appointed must be fully qualified, whose qualification is approved by the University to which the college is affiliated. Insofar as the non-teaching staff are concerned, the candidate must possess the qualification prescribed by the Government.

(4) The College Committee while filling up the vacant post, should follow the procedures stated in Rule 11(1A) to 11(4)(ii).

(5) If there is no rival candidate for any post, the appointment is bound to be approved for the purpose of payment of pay and allowances, by



the Regional Joint Director of Collegiate Education."

10. This judgment is followed by a learned Single Judge of this Court in a recent order in *Principal & Secretary, Lady Doak College Vs. Director of Collegiat Education and another*, 2020 SCC OnLine Mad 13872, wherein, it was held as follows :

"17. Time and again, this Court has given orders reiterating the said legal position, if it is a minority institution the prior approval for making appointment or to fill up the vacancies which is already sanctioned, would not arise at all and therefore, such insistment cannot be said to be legally sustainable one. In that view of the matter, this Court has no hesitation to interfere with the impugned order.

11. The said principle is squarely applicable to the appellants Department as well. In view of the above settled position and in the wake of decisions of the recent Division Bench judgment in Iruthaya Amali's case, there is no infirmity or irregularity in the common order of the learned Single Judge dated 12.06.2020 and it does not warrant any interference.

12. For the foregoing reasons, the Writ Appeals are dismissed and the order of the learned Single Judge is upheld. The appellants are directed to comply with the directions issued by the learned Single Judge within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS IV)

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Sub Assistant Registrar

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To

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

W.A.Nos.1102, 1105 & 1106 of 2020
& C.M.P.Nos.13445, 13456, 13458,
13461 & 13443 of 2020

AK II (CO)

B.VC (03/08/2021)