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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2021

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.22222 of 2021

and

W.M.P.Nos.23439 & 23440 of 2021

(Through Video Conferencing)

V.Usha

... Petitioner

Vs.

1.The Chief Educational Officer,
Chennai District,
Egmore, Chennai - 600 008.

2.The District Educational Officer,
Chennai East Education District,
Triplicane, Chennai - 600 005.

3.The Correspondent,
CSI Bishop Corrie A.I.Higher Secondary School,
George Town, Chennai - 600 001.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus to call for the records relating the impugned proceedings issued by the second respondent in Na.Ka.No.3750/A5/2021 dated 24.08.2021 and to quash the same and consequently directing the respondents to pass orders for granting approval of appointment of the petitioner in the sanctioned post of Secondary Grade Teacher in the third respondent School with effect from 13.06.2018 including the arrears of salary.

For Petitioner : Mr.G.Sankaran

For Respondents:

For R1 & R2 : Mr.L.S.M.Hasan Fizal
Government Advocate

ORDER

Mr.L.S.M.Hasan Fizal, learned Government Advocate takes notice on behalf of the first and second respondents.



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2. The petitioner has challenged the impugned order of the second respondent rejecting the request for approving the appointment of the petitioner as a Secondary Grade Teacher in the third respondent School with effect from 13.06.2018.

3. The reasons given for rejecting the request for approving the appointment of the petitioner as a Secondary Grade Teacher are as follows:-

(i) The petitioner has not passed TET examination.

(ii) As per the interim order in W.A(MD).No.76 of 2021 etc cases dated 09.04.2019 and final order dated 31.03.2021, no teaching post can be filled up without exhausting surplus teachers working in other Schools with the Revenue District and there are several teachers working in Chennai Revenue District in the Academic Year 2018-2019 and 2019-2020.

4. Appearing on behalf of the petitioner, the learned counsel submits that the issue is no longer res integra and is covered by plethora decisions of this Court starting from Secretary to Government, Government of Tamil Nadu & others Vs S.Jeyalakshmi & another, (2016) 5 CTC 639 wherein the decision of the Hon'ble Supreme Court in Pramati Educational & Cultural Trust Vs Union of India, 2016 (4) L.W.841 has been followed. The Hon'ble Supreme Court held that minority institutions are outside the purview of Right to Education Act, 2009. The operative portion from the order passed by the Hon'ble Division Bench of this Court in Secretary to Government, Government of Tamil Nadu & others Vs S.Jeyalakshmi & another, reads as under:-

"58.In our opinion, non qualifying in TET by the Teachers already in service should not defeat the object of the Government to provide quality and standard education and therefore, the Government may, in the alternative, conduct a refresher course and also some interactive sessions during annual vacation, in order to ensure and enhance the quality of education.

59.Insofar as minority institutions are concerned, the contention of the learned senior counsel appearing for the minority Schools in that when Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 received the assent of the President of India and it is still in force, it cannot be supplanted by an Executive Order, namely by G.O.Ms.No.181 dated 15.11.2011. Further, the Apex Court has clearly held in Pramati Educational & Cultural Trust that RTE Act, 2009 is not applicable



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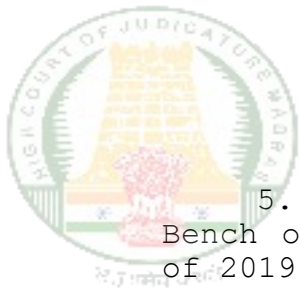
to the minority institutions. Therefore, we have no hesitation to hold that the right conferred under Article 30(1) of the Constitution cannot be abrogated. Consequently, G.O.Ms.No.181 dated 15.11.2011, which was issued pursuant to the directions of NCTE, cannot be made applicable to the minority institutions.

60.In the light of the above, we are of the view that the Government cannot insist upon the minority institutions, both aided or unaided, to abide by any Regulation framed under the provisions of the RTE Act. Therefore, we hold that G.O.Ms.No.181, School Education (C2) Department dated 15.11.2011 issued by the Government of Tamil Nadu, is not applicable to the minority institutions. Similarly, G.O.Ms.No.76 dated 18.03.2015 issued by the Government of Puducherry, is also not applicable to the minority institutions.

61.Though the intention of the Government is that there should not be any discrimination among the Teachers working in non-minority Schools and minority schools with respect to qualification and that there should be uniformity in the teaching imparted to the children, in view of the decision of the Apex Court in Pramati Educational & Cultural Trust, the Government cannot take shelter under the guise of discrimination to impose restrictions on minority institutions.

62.However, keeping in mind the larger interest in which the government has issued the above G.Os., this Court feels that the minority institutions may also consider conducting a refresher course and also some interactive sessions to all the Teachers during annual vacation, in order to ensure and improve the quality of teachers.

63.In the result, the writ petitions are allowed and the writ appeals are dismissed with a direction to the Government to release the salary of the Teachers and also to pay the arrears of salary within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected M.Ps. are closed."



5. This view has also been followed by the Hon'ble Division Bench of this Court on 27.11.2019 in W.A.(MD).Nos.1413 and 1414 of 2019, wherein, this Court held as under:-

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"9. Thus, for the above reasons, the Writ Appeal is allowed and order of the Writ Court in W.P.(MD) No.19467 of 2013 dated 25.07.2019 is set aside. Consequently, the Writ Petition is allowed as prayed for. Consequently, connected Civil Miscellaneous Petition is closed. No costs."

6. As far as the second reason given in the impugned order is concerned, it is noticed that the impugned order appears to be contrary to the final decision of the Hon'ble Division Bench of this Court in W.A.(MD).No.76 of 2019 etc batch. The Hon'ble Division Bench of this Court in the above case has held that G.O.Ms.No.165 dated 17.09.2019 is inoperable.

7. In Paragraph 93.9 of the aforesaid order reads as under:-

"93.9. In that view of the matter and the comprehensive decision since having been arrived at by us in this batch of cases, the said G.O.Ms.No.165, in our considered view, can very well be declared to be inoperative."

8. Ultimately, the Hon'ble Division Bench of this Court by its order dated 31.03.2021 in W.A.No.76 of 2019 etc batch has summarized the decision as follows:-

95. In view of the aforesaid discussions, we are inclined to pass the following orders in this batch of cases :

"(a) For the purpose of fixing the students-teacher ratio, the provisions of RTE Act followed by the G.O. passed in this regard shall be taken as the basis and the student pupil ratio shall be either 1:30 or 1:35 as the case may be as per the provisions of RTE Act.

(b) For the purpose of fixing the staff strength of a school, school shall be the unit and not the Educational agency / joint management / corporate management.



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(c) Once the staff strength is fixed in a particular academic year of a school, it is the duty of the Educational authorities to identify the excess staff and once the excess staff are identified, the same shall be intimated to the school concerned as per the compendium of schedule and thereafter, take steps to redeploy those excess staff to the needy school.

(d) Once the excess staff are identified and after keeping the Institution intimated, if those excess staff are redeployed to the needy school within a stipulated time as per the compendium of schedule, the redeployed staff shall join duty in the redeployed school.

(e) The following compendium of schedule, for the aforesaid purpose, i.e., for fixing the teaching staff, identifying the excess teaching staff and to redeploy the identified excess teaching staff to the needy school, are framed as hereunder.

(f) COMPENDIUM OF SCHEDULE :

(i) Closing of Admission for the purpose of fixation of staff strength-31st July of that academic year.

(ii) Fixation of staff strength of the school concerned, based on the student strength as on 31st July as per the strength of the pupil updated in the EMIS - 10th August.

(iii) The aforesaid fixation of staff strength of the school shall be intimated to the school on or before 15th August.

(iv) On receipt of information from the Department, the School concerned shall give its objection if any, based on the teacher-pupil ratio on such fixation of staff strength by 25th of August.

(v) On receipt of such objection, if any, from the school concerned, the final order of



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fixing the staff strength of the school, with the provisional order for identification and redeployment of excess staff shall be passed by the Department by 5th of September.

(vi) On receipt of such intimation of provisional order on identification and redeployment of excess staff, the school under corporate or joint management, shall act upon to give its consent to the redeployment of excess teacher concerned after keeping the teacher informed, to the Department, by 15th of September.

(vii) On receipt of such reply / intimation from the school concerned, final redeployment order shall be made and communicated to the school from

where redeployment is made with a copy marked to the teacher concerned and also to the needy school to which the deployment is to be made, by 25th September.

(viii) On receipt of such orders by the teachers who are redeployed, they shall report to the school where they have been redeployed, on or before 30th September.

(ix) After making this redeployment process, still excess staff are available, the Education Department shall take further effort, and those excess teachers still available at the hands of the Education Department to be redeployed to a needy school beyond the corporate management concerned, i.e., to any school located in the same Educational District or Revenue District and even beyond which if still excess staff are available, they can be redeployed to any school beyond the Revenue District of course after getting the choice of such teacher concerned and that shall be completed by 10th October.

(x) Those teachers who got such redeployment within the Revenue District or beyond the Revenue District by orders to be issued on or before 10th of October, shall



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report duty to the School where they have been redeployed on or before 15th of October.

(xi) It is made clear that beyond 15th October of every academic year, no redeployment of teacher shall be made or given effect to.

(g) Once the teachers are redeployed from a particular school, after the joining time as provided under the compendium of schedule, the school from which the teacher has been redeployed cannot get teaching aid for the next month salary for that redeployed teacher and that salary shall be paid only through the school, where the teacher has been redeployed, for which, teaching grant shall be sent by the Educational authorities only to the needy school, where the teacher has already been redeployed.

(h) While identifying the excess staff for redeployment purpose as indicated above, regard has to be given that as far as possible junior most teacher shall be subjected to such redeployment. Also in case of high and higher secondary schools, while making such redeployment based on teacher-pupil ratio, regard has to be given to ensure that, atleast the minimum required teacher, for each subject being taught in the school, are in possession.

(i) Insofar as the teaching grant for the additional staff employed in the already aided school as on the academic year 1991-92, irrespective of the medium of instructions or irrespective of the students strength, as per the teacher pupil ratio as indicated above especially in the context of RTE Act and subsequent G.O issued in this regard, the staff fixation shall be made and for those additional teaching staff, who are pressed into service for additional standard or additional class started, from the academic year 2021-22, staff grant shall be sanctioned by the State Government as such sanctioning of staff grant will be the essential



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requirement to meet the object of the provisions of the RTE Act, otherwise, the Fundamental Right guaranteed to the children between the age of 6 and 14 studying in those schools would get affected.

(j) Irrespective of the medium of instruction, whether Tamil or English, such a staff grant for additional sections or standard shall be provided with the same condition as indicated above from the academic year 2021-22.

(k) The State Government shall ensure that, the provisions of the Tamil Nadu Tamil Learning Act, 2006 are implemented in letter and spirit, of course subject to the judicial orders / court orders, if any, passed in this regard for giving exemption to a group or class of students as provided under Section 5 of the said Act.

(l) Until the Tamil Nadu Private Schools (Regulation) Act, 2018 and the Rules to be made thereunder are given effect to, these set of directions issued in this order shall mandatorily be followed by the stakeholders, i.e., both State Government as well as the Educational Institutions.

(m) Once the 2018 Act and the Rules to be made in this regard comes into effect and the issues which are covered under this order as per these mandatory directions are taken care, these mandatory directions shall be ceased to be in execution.

(n) In order to give effect to such comprehensive legislation, i.e., 2018 Act, the work of framing necessary Rules under the Act shall be completed as early as possible.

(o) In view of the aforesaid, the G.O.Ms.No.165, School Education [Tho.Ka.2 (1)] Department, dated 17.09.2019 is hereby declared to be inoperative.

(p) In view of the statistics given by the communication of the Director of School Education and Director of Elementary Education, dated 28.10.2020, as the import of



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the same in entirety has already been quoted herein above, the Education Department shall take endeavour to identify the exact excess teaching staff in various category of Schools, i.e., Government schools (Panchayat Union, Municipality and Corporation) Primary and Middle Schools, Government aided primary and middle schools, Government High and Higher secondary schools and aided High and Higher Secondary Schools separately by taking into account the recent policy decision taken by the State Government, whereby the superannuation age of the Government servants including the teachers was enhanced from 59 to 60, thereby there would be no superannuation of teachers for the next one year and accordingly, the correct statistics shall be made ready within a period of two months.

(q) Once the statistics of excess teaching staff under various category of schools as referred to above are made by taking into account the superannuation age of teachers as 60, such excess teaching staff identified in various category of schools with details of name of the school both Government as well as Private aided, shall be uploaded in the website / web portal of the School Education Department within the aforesaid period of two months.

(r) Once such information are uploaded in the web portal by the Education Department, after verifying the same, the private aided schools, both minority and non-minority can point out any wrong information if given with regard to the identification of the excess teaching staff in the concerned school and such intimation or clarification can be given by the school concerned through the management to the DEO / CEO concerned within a period of one month thereafter.

(s) On receipt of such objections, information / clarification from the school concerned with regard to the alleged wrong information provided by the State Government / Education Department in the web portal as indicated above, the same shall be



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verified and rectified by the Education Department, within one month thereafter.

(t) This exercise shall be completed on or before 31st July 2021, so that the identification of excess staff and follow up action as indicated in the compendium of schedule herein above can be undertaken and be followed strictly.

(u) Till such excess teaching staff are identified under all category of schools as indicated above, no recruitment shall be made by the State Government / Education Department for the purpose of appointment of teachers under various categories like Secondary grade teacher, Graduate teacher, Post-Graduate teacher, Language teacher, Physical education teacher etc.,

(v) Like that insofar as aided minority institutions are concerned, if it is a stand alone institution, their right of appointing a teacher in a vacancy within the sanctioned strength for the academic year 2021-22 shall not be affected because of the identified excess teachers in other schools. At the same time, even if the school is a minority institution, however being administered by a joint management or corporate management, in respect of those schools, even though vacancy arose within the sanctioned strength of such school or schools under corporate management or joint management, those vacancies shall not be filled up unless the excess staff identified in all other schools under the same corporate or joint management are exhausted fully and only after exhausting the redeployment process on all excess teachers identified in the group of schools under the same corporate management, they shall be free to make appointment afresh from open market in the vacancy if any still, within the sanctioned strength."

96. With these directions, all these writ appeals and writ petitions are disposed of. However, there shall be no order as to costs.



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97. The Education Department, i.e., the Director of School Education as well as the Director of Elementary Education shall file a compliance report of the aforesaid directions, by the first week of November 2021.

98. Since the process of fixation of staff strength, identification of excess staff, redeployment of those excess staff to the needy school, grant of aid to the teaching staff etc., are the perennial work to be undertaken routinely in every academic year, this Court want to monitor the same so that unwanted and avoidable litigation in huge numbers can be avoided, so this Court, as and when required, want to issue continuous mandamus after evaluating the progress of implementation of the aforesaid directions and therefore for the said purpose and also to file the compliance report as indicated above, the Registry is directed to list these matters on 08.11.2021."

9. Considering the above, the impugned order is not sustainable and is hereby quashed. The respondents are therefore directed to pass appropriate orders by granting approval to the petitioner within a period of twelve weeks from the date of receipt of a copy of this order.

10. This Writ Petition stands allowed with the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To

1.The Chief Educational Officer,
Chennai District,
Egmore, Chennai - 600 008.

2.The District Educational Officer,
Chennai East Education District,
Triplicane, Chennai - 600 005.



3.The Correspondent,
CSI Bishop Corrie A.I.Higher Secondary School,
George Town,
Chennai - 600 001.

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+1cc to Mr.G.Sankaran, Advocate SR.54525

W.P.No.22222 of 2021
and
W.M.P.Nos.23439 & 23440 of 2021

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