



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.02.2021

CORAM:

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD) .No.2672 of 2021
and W.M.P. (MD) .Nos.2200 & 2201 of 2021

S.Senthil Kumar

... Petitioner

Vs.

- 1.The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.
- 2.The Chief Educational Officer,
O/o. The Chief Educational Officer,
Virudhunagar District,
Collectorate Campus, Virudhunagar.
- 3.The District Educational Officer,
Sivakasi,
Virudhunagar District.
- 4.The Secretary,
Muslim Higher Secondary School,
45, Seethakathi Street,
Sivakasi - 626 123,
Virudhunagar District.

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 3rd respondent vide O.Mu.No.2260/A2/2020, dated 10.12.2020 and quash the same and consequently, direct the 4th respondent to forward the proposal in respect of the petitioner's incentive increment for having acquired M.A and B.Ed., degrees to the 2nd and 3rd respondents and direct the 2nd and 3rd respondents to approve the same, within a time frame.

For Petitioner : Mr.D.Shanmugaraja Sethupathi

For Respondents : Mr.N.Shanmugaselvam for R1 to R3
Additional Government Pleader



O R D E R

Heard Mr.D.Shanmugaraja Sethupathi, learned counsel for the petitioner and Mr.N.Shanmugaselvam, learned Additional Government Pleader for the respondents 1 to 3.

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2.When the fourth respondent's school had sought for approval for grant of incentive increment for the petitioner and three other teachers, the third respondent herein had returned the application through the impugned proceedings dated 10.12.2020, by relying upon the Government letter, dated 15.12.2017, which states that prior approval should be obtained by the concerned teacher before taking the Higher Education.

3.Mr.N.Shanmuga Selvam, learned Additional Government Pleader, submitted that there was no discrepancy in the proceedings of the third respondent, since the Government through its letter dated 15.12.2017, had issued the guidelines stating that incentive increment cannot be extended to the teachers, who have not obtained prior permission for obtaining Higher Education.

4.This issue is no more res integra and the Hon'ble Division Bench of this Court has dealt with the entitlement of such teachers for the incentive increment in the decision in **Director of Elementary Education, Chennai Vs. G.Vijayalakshmi and another**, reported in **(2015) 6 MLJ 315**. The relevant portion of the order is thus:

'35. Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, have been framed, in exercise of the powers, under Section 56 of the Act. Both the Act and the Rules do not speak about the powers of the Director of Elementary Education, to make any Government Order, ipso facto, applicable to both the teaching and non-teaching staff, in the schools, recognised and governed by the Tamil Nadu Recognised Private Schools (Regulation) Act. As stated supra, Government Orders, referred to in the earlier paragraphs, were issued by the Government, while dealing with Rule 24-A of the Tamil Nadu Government Servant's conduct Rules, 1973, which is applicable only to government servants. Code of conduct, as prescribed in Annexure-II, in terms of Section 21 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, read with Rule 16 of the Rules framed thereunder, alone can be made applicable to teaching and nonteaching staff, working in recognised schools. No doubt, by addition or deletion of substitution, an amendment can be made

<https://hcservices.ecourts.gov.in/hcservices> statutory provisions dealing with the code



of conduct for the staff in a recognised private school, by the Government and consequently, modify the code of conduct prescribed in Annexure- II. But the Director of Elementary Education, Chennai, cannot import rule 24A of the Tamilnadu Government Servant Rules into the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the rules made thereunder. Incorporation of Section 24A directly into the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, is beyond the legislative competence of the Director of Elementary Education and such a course is impermissible under the statutory provisions. The School Committee has the powers to appoint and dismiss a teaching staff. Such committee also has the powers to grant leave to any staff.

36. As discussed in the foregoing paragraphs, School Committee is the authority to deal with service conditions of the staff. Materials available on record, do not indicate as to whether, the Government have issued any orders, in exercise of the powers, conferred under Sections 51 and 51-A of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, by which a teaching and non-teaching staff, working in a recognised schools, have to obtain sanction of leave, from the Director of Elementary/School Education, as the case may be. The contention of the appellants that the staff works in a recognised private school, has to obtain a 'No objection certificate' from the Head of Department, viz., the Director of Elementary Education, on the ground that he is the appointing authority, cannot be countenanced, as he is not the appointing authority under the Tamil Nadu Recognised Private Schools (Regulations) Act, 1973.

37. Unless and until, the Government issues any order, within the frame work of the statute, which governs the recognised and aided schools, the Director of the Elementary Education, Chennai, cannot assume jurisdiction, extending the abovesaid Government Orders, which are intended mainly for to the government servants, where there are Heads of the Department. Though recognised private aided institutions, perform a public duty and receive salary for the staff, through State Aid, yet in so far as grant of leave is concerned, it is sanctioned only by the School Committee, in exercise of their powers, under Section 18 of the



Act.

38. Offices of a Department may be located at different places, for which, there may be a Head of the Department. But a recognised aided private school, cannot be said to be a unit of the Department of School Education. On the other hand, it is an independent unit, governed by the statutory provisions of the Act and the rules framed thereunder. The Director has the powers to issue directions, only within the frame work of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Rules framed thereunder.

39. Merely because, the petitioner has not obtained sanction of leave from the Director of Elementary Education, Chennai, it cannot be said that there is a violation of the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act and the Rules framed thereunder and in particular, the Code of Conduct framed in Annexure-II, in terms of Section 21 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, read with Rule 16 of the Rules framed thereunder. Conditions imposed in the order, dated 30.05.2014, of the Director of Elementary Education, Chennai, can at best be made applicable, only to the extent, within the statutory provisions, to which, the recognised aided schools and the staff therein, are bound to follow. At the risk of reptition, Government orders issued are amendments to rule 24A of the Government Servant Conduct Rules, and not to Tamil Nadu Recognised Private Schools (Regulation) Act. 1973.''

5.The aforesaid order of the Honourable Division Bench is self explanatory and as such, the third respondent herein cannot be justified in returning the fourth respondent's application on the ground that prior approval was not sought for before the teachers had undergone the Higher Education.

6.In the light of the above observations, the fourth respondent herein is directed to resubmit the application, dated 09.09.2020, to the third respondent herein and on receipt of the same, the third respondent herein shall consider it on its own merits and without reference to the absence of prior permission of the petitioner for pursuing Higher Education, disposed the same, within a period of six weeks thereafter. While disposing of the representation, the third respondent shall take into consideration the observations made by this Court as well as by the Hon'ble Division Bench, extracted above.



7.This writ petition stands allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

- 1.The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.
- 2.The Chief Educational Officer,
O/o. The Chief Educational Officer,
Virudhunagar District,
Collectorate Campus, Virudhunagar.
- 3.The District Educational Officer,
Sivakasi,
Virudhunagar District.

+1 CC to M/s.D.SHANMUGARAJA SETHUPATHI, Advocate (SR-5447[F] dated 16/02/2021)

W.P. (MD) .No.2672 of 2021

12.02.2021

(SJ) CO

AP(25/02/2021) 5P 5C