



W.A.No.1318 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

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Sengunthar Middle School,
Rep. by its Correspondent A.Palanisamy,
No.20/42-43, Vadakasiamman Koil Street,
Sankarankoil – 627 756,
Tirunelveli District.

...Appellant

Vs.

- 1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Education Department,
Secretariat, Chennai – 6.
- 2.The Director of Elementary Education,
College Road, Chennai – 6.
- 3.The District Educational Officer,
Kovilpatti, Thirunelveli District.
- 4.The Assistant Elementary Education Officer,
Sankarankoil – 627 756,
Tirunelveli District.

...Respondents



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Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, against the order passed in W.P.No.26319 of 2009 dated 30.01.2012.

For Appellant : Mr.S.N.Ravichandran

For Respondents : Mr.G.Nanmaran

Special Government Pleader

J U D G M E N T

(Judgment was made by **R.SUBRAMANIAN, J.**)

The appellant is aggrieved by the order of the writ Court dated 30.01.2012 made in W.P.No.26319 of 2009, in and by which, the writ petition filed by the appellant seeking to quash the order of the 2nd respondent dated 17.06.2009, rejecting the request of the appellant for appointment of one teacher as per the sanction made on 26.12.2000.

2. The appellant school was established as a primary school during the year 1982. In 1988, permission was granted to start VI Standard for the Academic Year 1988-1989. The order granting such permission dated 15.11.1988 imposed the following conditions:-



1) On the basis of the Undertaking given by the school secretary dated 19.08.1998 no teaching rant will be provided to 6th standard.

2) The conditional deposit of Rupees 25,000/- to be paid as per rule 9(2)(C) of Rule 1974

3) The proposal for recognition for opening of new standard will be submitted within 3 months from the date of the proceedings along with the Building Stability Certificate obtained from PWD engineer, Building License from Tahsildar, Sanitary Certificate and along with other necessary particulars.

3. Thereafter, permission was granted for commencing VII for the academic year 1989-90 and VIII Standard for the academic year 1990-91. The condition imposed regarding non-payment of grant was relaxed subsequently and thus the schools that had commenced the middle school sections before 01.06.1992 were given a limited grant. By G.O.Ms.No.142 dated 03.10.1996 the Government sanctioned 1 post to the appellant school by way of re-deployment of excess teachers in other schools. Thereafter, on



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26.12.2000, the Government sanctioned another post again by way of deployment of the surplus post in O.VE.Sa Primary School, Manamadurai, Sivagangai District to the appellant school. When the appellant school wanted to fill up the post for its middle school section, the Authorities sought for clarification and thus the appointment was delayed.

4. Eventually on 15.06.2004, the District Elementary Education Officer, Tirunelveli rejected the request of the appellant school for appointment of teacher in the newly transferred post on the ground that section 14-A of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973, was introduced prohibiting grant in aid for new section or new classes commenced after 01.06.1992. This proceeding dated 15.06.2004 was subject matter of challenge in W.P.No.10078 of 2007. This Court by order dated 11.12.2007 set aside the order on the finding that since the appellant school had commenced Standard VI to VIII prior to the commencement of the Academic year 1991 - 1992 invocation of Section 14-A is erroneous and remitted the issue for fresh consideration.



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5. Thereafter, since no orders were passed by the Authorities, the appellant School was forced to approach this Court again by way of W.P.No.40283 of 2005 seeking a mandamus directing sanction of 1 Head Master and 3 Secondary Grade teachers. This prayer for mandamus was resisted by the Government contending that in view of Section 14-A grant in aid cannot be sanctioned. This contention was rejected by this Court on the ground that this Court had already in W.P.No.10078 of 2007 found that Section 14-A cannot be invoked for the appellant school. There was a direction to consider the representation of the petitioner.

6. It is stated that since the representation was not considered within the time granted by this Court, an application for contempt was also filed and during the pendency of the contempt, the order impugned in W.P.No.26319 of 2009 was passed on 17.06.2009 again invoking Section 14-A of the Act. The writ Court accepted the contention of the Government that since the school had been granted permission to commence middle



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school section subject to the condition that there would not be any grant for first 3 years and Section 14-A was introduced with retrospective effect from 01.06.1992, the claim of the petitioner school for sanction of teachers cannot be granted. Hence, this appeal.

7. Mr.S.N.Ravichandran, learned counsel appearing for the appellant school would vehemently contend that the order impugned in the writ petition itself would amount to contempt, in as much as a clear finding has been recorded by this Court in W.P.No.10078 of 2007 with regard to applicability of Section 14-A of the Act. The same has been reiterated by this Court in its order dated 29.07.2008 made in W.P.No.40283 of 2005. He would therefore contend that the rejection of the claim of the appellant school relying upon Section 14-A is wholly unjust.

8. Mr.G.Nanmaran, learned Special Government Pleader appearing for the respondents would submit that the writ Court was justified in rejecting the claim of the appellant school in as much as the appellant school had not chosen to fill up the post when it was granted and filled up



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the post granted for middle school section in the primary school section itself. He would also point out that as per the current strength of the students in the school viz., 38 in primary section [Standard I to V] and 23 in the middle School Section [Standard VI to VIII] the appellant school is not entitled to any more teachers and as per staff fixation done for the year 2020-21 there are 2 surplus teachers in the appellant school in the primary section itself.

9. We have considered the rival submissions. No doubt Mr.S.N.Ravichandran, is right in contending that the order dated 17.06.2009 is clearly unsustainable and Section 14-A ought not to have been invoked. The writ Court also fell in error in concluding that the petitioner would not be entitled to additional teachers by invoking Section 14-A. Section 14-A was introduced by way of amendment inserted by Tamil Nadu Act 11 of 1999 with retrospective effect from 01.06.1992, thereby dis-entitling grant to private schools who had opened any class or section after the cut off date. The said section reads as follows:-

[14A. Grant not payable to new private



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schools and new class and course of instruction. -

Notwithstanding anything contained in this Act or in any other law for the time being in force or in any judgment, decree or order of any court or other authority, no grant shall be paid to, -

(a) any private school established and any class or course of instruction opened in such private school, on or after the date of commencement of the academic year 1991-1992;

(b) any private school in existence on the date of commencement of the academic year 1991-1992 to which no grant has been paid by the Government immediately before the date of such commencement;

(c) any class or course of instruction in a private school in existence on the date of commencement of the academic year 1991-1992 to which no grant has been paid by the Government immediately before the date of such commencement; and

(d) any class or course of instruction opened on or after the date of commencement of the



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academic year 1991-1992 in a private school in existence on the date of such commencement.

Explanation. - For the purpose of this section, private school includes a minority school.]

10. A reading of the above section would clearly show that it was intended to apply from the commencement of the Academic Year 1991 - 1992 viz., 01.06.1992. It is seen from the records that the appellant school was permitted to start VI standard in 1988-89, VII Standard in 1989-90 and VIII Standard in 1990-91. Therefore, the prohibition contained in Section 14-A will not apply to the appellant school.

11. The appellant school did not fill up the post that was sanctioned in the year 2000, since there was a certain uncertainty as to the standard to which the said post can be allotted, in the process there was a delay of about 3 years. However, when an attempt was made to fill up the post in 2003, the District Elementary Education Officer invoked Section 14-A to reject the claim of the appellant school. This rejection was set aside by this Court in W.P.No.10078 of 2007. However, upon a remit order being passed by this Court directing the Authorities to consider, the



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Authorities again invoked Section 14-A, which drove the appellant school to this Court again.

12. Therefore, the order impugned in the writ petition is clearly in excess of Authority and it is liable to be set aside and the appellant is entitled to succeed in the writ appeal. However, the matter cannot be left there. Since the students strength as of today is very low, the prayer of the petitioner to allot one middle school Head Master and 3 secondary grade teachers cannot be granted. As per the staff fixation done in the year 2020 – 2021, it has been found that the petitioner school has got two excess teachers in the primary school section. Therefore, they will have to be re-deployed forthwith. We are informed that such re-deployment had not taken place. At the same time, there are 23 students admittedly studying in standard VI to VIII in the petitioner school and there are no sanctioned teachers for the middle school section. After 2005 middle school sections are to be handled by BT Teachers. Therefore, the appellant school would be entitled to atleast one BT Teacher to handle the middle school section. The provisions of The Tamil Nadu Right of the children to free and compulsory



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Education Act, 2009 should also be considered in deciding as to what will be the entitlement of the appellant school.

13. We are also alive to the fact that this problem of surplus teachers is haunting Education Department and there is a persistent unwillingness on the part of the Department to re-deploy surplus teachers in schools where there is a need.

14. Taking into account the overall circumstances, while setting aside the order of the writ Court, we direct the Government to re-deploy one surplus BT Teacher from any Government school or aided school to the petitioner school forthwith. Such re-deployment shall take place within a period of 30 days from the date of receipt of a copy of the order.

15. Accordingly, this writ appeal is disposed of with the above directions. No costs.

(R.S.M., J.) (S.S.K., J.)
22.12.2022



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Internet :No

Index :Yes

Speaking order



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To

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State of Tamil Nadu,
Education Department,
Secretariat, Chennai – 6.
- 2.The Director of Elementary Education,
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