



W.P.(MD)No.20831 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.09.2022

PRONOUNED ON : 16.12.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.20831 of 2015

and

M.P.(MD)Nos.1 to 3 of 2015

The Correspondent,
St.Mary Goretty Higher Secondary School,
Manalikarai-629 164,
Kanyakumari District.

... Petitioner

vs.

- 1.The State of Tamil Nadu,
represented by its Secretary,
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,
Kanyakumari District at Nagercoil,
Kanyakumari District.



W.P.(MD)No.20831 of 2015

WEB COPY

4.The District Educational Officer,
Thuckalay,
Kanyakumari 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 staff fixations issued by the CEO for the academic years 2012-2013 in Mu.Mu.No.7756/Aa1/2012, dated 31.01.2013, 2013-2014 in Mu.Mu.No. 6453/Aa1/2013, dated 03.10.2013, the sequential proceedings issued by the CEO in Na.Ka.No.9553/Aa1/2013, dated 05.03.2014 and the consequential proceedings issued by the 2nd respondent Director in Na.Ka.No.68160/D1/E4/2013, dated 21.02.2014, resuming one post of Tamil Pandit, to quash the same and further, to direct the 4th respondent DEO to approve forthwith the appointments made in the petitioner's school viz., M. Anitha as Tamil Pandit with effect from 01.06.2012, S.Srijith as B.T. Assistant in History with effect from 04.06.2014, K. Liji as B.T. Assistant (English) with effect from 01.06.2015 and N.Justin Christoher as Waterman with effect from 10.06.2013 and to disburse forthwith the grant-in-aid towards their salaries and all other attendant benefits.

For Petitioner	: Mr.K.Ragatheesh Kumar for M/s.Isaac Chambers
For Respondents	: Mr.S.Kameswaran Government Advocate



W.P.(MD)No.20831 of 2015

WEB COPY

ORDER

This writ petition is filed for issuance of a writ of Certiorarified Mandamus, to quash the impugned staff fixation order issued for the academic years 2012-2013, dated 31.01.2013, academic year 2013-2014, dated 03.10.2013 and the consequential proceedings of Chief Educational Officer, dated 05.03.2014 and Director's proceedings, dated 21.02.2014, resuming one post of Tamil Pandit and to direct the 4th respondent to approve forthwith the appointments made in the petitioner's school namely, M. Anitha as Tamil Pandit with effect from 01.06.2012, S.Srijith as B.T. Assistant (History) with effect from 04.06.2014, K.Liji as B.T. Assistant (English) with effect from 01.06.2015 and N.Justin Christoher as Waterman with effect from 10.06.2013 and to disburse the grant-in-aid towards their salaries and all other attendant benefits.

2. The brief facts of the case are that the petitioner school is a Recognized Aided Minority Educational Institution owned and administered by the Congregation of Carmelite Mission of St. Joseph. The school is offering



W.P.(MD)No.20831 of 2015

WEB COPY

education from VI to XII. The medium of instruction is both Tamil and English and the total strength of student is 2923 in both the mediums. The school was initially established as a High School in the year 1968 and upgraded as a Higher Secondary School in the year 1978. The total student strength is 1751. There are 33 teachers (1 Headmaster + 12 PG Assistants + 13 BT Assistants + 9 Secondary Grade teachers) working there apart from 1 Director of Physical Education, 2 Physical Education teachers, 4 Tamil Pandits, 1 Sewing Mistress, 1 Drawing Master, 2 Vocational instructors, 1 Record Clerk, 1 Clerk, 1 Lab Assistant, 1 Watch Man, 1 Scavenger and 1 Sweeper. Based on G.O.Ms.No.525, (School Education), dated 29.12.1997, originally the School was sanctioned with 1 Headmaster, 15 PG Assistants (including 1 PG Assistant in Malayalam), 1 Physical Director, 2 Vocational Instructors, 20 BT Assistants, 7 Tamil Pandits, 7 Secondary Grade Teachers, 2 Physical Education Teachers, 1 Drawing Master and 1 craft teacher were sanctioned to the school. That apart the school was sanctioned with 2 Junior Assistants, 1 Record Clerk, 1 Lab Assistant, 2 Office Assistants, 1 waterman and one part-time scavenger was sanctioned along with



W.P.(MD)No.20831 of 2015

WEB COPY

grant-in-aid from the Government. Under self-financed sections there are 26 teaching and 2 non-teaching staffs are working.

3. The petitioner states that out of 7 Tamil Pandits, one post of Tamil Pandit fell vacant on 01.06.2012 due to the retirement of then incumbent namely Mr.A.Xavier Tarcus on 31.05.2012. In that vacancy, the petitioner school appointed one M. Anitha as Tamil Pandit with effect from 01.06.2012. The petitioner submitted proposal to the 4th respondent on 23.07.2012. In the meanwhile, the 3rd respondent was settling staff fixation for the year 2012-2013, vide impugned proceedings, dated 31.01.2013, rendered one post of Tamil Pandit as “Surplus with Teacher”. The school submitted a detailed representation, dated 14.02.2013, explaining that the school is eligible to have 7 Tamil Pandits as per the student strength and available workload in the High School section. Without considering the same, the CEO again while settling staff fixation for the next academic year 2013-2014, vide proceedings, dated 03.10.2013, rendered the posts as surplus are One PG Assistant in Malayalam, One BT Assistant in History, One



W.P.(MD)No.20831 of 2015

WEB COPY

Tamil Pandit, Two Secondary Grade Teachers, One Craft Instructor and One Waterman.

4. The contention of the petitioner is that the CEO fixed the above staff strength without any basis and without proper application of mind. In so far as the PG Assistant Malayalam is concerned, it is the only post of PG Assistant in Malayalam language available in the school. There are 22 students in the school studying under Malayalam Medium and there are 22 working period per week. The act of the 3rd respondent CEO taking away the said post would curtail the Constitutional Rights guaranteed for the students to opt for their Mother Tongue as first language.

5. As far as the Tamil Pandit post is concerned, the petitioner submitted that there are 28 sections in the High School in standards VI to X. 196 teaching periods per week and all the sanctioned 7 Tamil Pandits are having more than 28 periods per week. Therefore, the school is eligible to have atleast 7 Tamil Pandits.



W.P.(MD)No.20831 of 2015

WEB COPY

6. As far as the one post of BT Assistant (History) and two posts of Secondary Grade teachers are concerned, as per the G.O.Ms.No.525 and as per the New Norms fixed under RTE Act, the school is eligible to have 26 teachers as per the available students' strength. The details of the students' strength and required teachers in the High School is tabulated hereunder:

Standard	Students Strength	Required Teachers
VI	119	4
VII	130	4
VIII	174	5
IX	272	7
X	236	6
Total	931	26

7. In view of the same, the school is eligible to 26 posts of Secondary Grade and BT Assistants for the academic year 2013-2014. The School was sanctioned with 27 posts in the academic year 2012-2013. For the present academic year 2013-2014, as per the available students' strength, the school is eligible with 20 BT Assistants and 6 Secondary Grade teachers (total 26). Out of



W.P.(MD)No.20831 of 2015

WEB COPY

a school with such high students' strength. The said post of Waterman fell vacant on 01.06.2013 due to the retirement of then incumbent Swamidhas on 31.05.2013. In the said vacancy, the petitioner appointed one N.Justin Christoher as Waterman with effect from 10.06.2013. The proposal was submitted and the same is pending. The School submitted representation narrating the above facts to the CEO on 11.11.2013, requesting him to re-fix the staff strength. The CEO without applying his mind, simply rejected the petitioner's claim, vide impugned proceedings, dated 05.03.2014, reiterating that the staff strength has been fixed in accordance with the Norms. The CEO neither considered any of the reasons assigned in the explanation nor provided an opportunity of hearing to the petitioner before passing the impugned order. The petitioner submitted a representation to the CEO vide letter, dated 12.03.2014, explaining the need of retaining those posts in the school in virtue of the available students' strength, requested him to re-fix the staff strength in the school. The CEO has not passed any orders. However, the Director of School Education resumed one post of Tamil Pandit from the school vide proceedings, dated 21.02.2014 based on the



W.P.(MD)No.20831 of 2015

WEB COPY

proceedings of the CEO, but the said order of CEO was not communicated to the petitioner and the same was circulated subsequently. Another post of Secondary Grade fell vacant on 01.06.2015 due to the retirement of A.Pushpa Bai on 31.05.2015. In that vacancy, the petitioner appointed only fully eligible candidate namely K.Liji as BT Assistant (English) with effect from 01.06.2015. The proposal for approval was submitted and the same is pending. The above act of the CEO rendering 1 post of PG Assistant Malayalam, 1 post of Tamil Pandit, 2 posts of Secondary Grade teacher, one post of Craft and only post of Waterman as surplus and the act of Director resuming one post of Tamil Pandit from the petitioner school without even providing an opportunity of hearing is highly arbitrary. As per the norms laid down by the Government under G.O.Ms.No.525, (School Education), dated 29.12.1997 and the new norms laid down under RTI Act, the School is eligible to retain the post. In spite of the detailed explanation, the respondents have not resumed the post and has not issued rectified staff-fixation order. Aggrieved over the same, the present writ petition is filed.



W.P.(MD)No.20831 of 2015

WEB COPY

9. The 1st respondent had filed counter affidavit stating that the issue of surplus was dealt in W.A.(MD)No.76 of 2019, wherein the Honourable Division Bench has directed to provide staff grant to the additional staffs pressed into service for handling additional standards or started from the academic year 2021-22 irrespective of the medium of instructions or the students' strength. Since Section 14-A of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973, prohibits the granting of aid to new posts/courses/ sections started from the academic year 1991-1992, no grant shall be paid to the schools which opened from the academic year 1991-1992. Hence, an SLP was filed before the Honourable Supreme Court and had obtained an interim stay and hence, the petitioner cannot insist to grant the approval or grant-in-aid payment and prayed to dismiss the writ petition. The respondents have also circulated the interim order passed by the Hon'ble Supreme Court, dated 22.07.2022. Since the issue is ceased of before the Hon'ble Supreme Court, the respondents prayed to dismiss the writ petition. After the disposal of the SLP, the case of the petitioner will be considered as per the orders of the Hon'ble Supreme Court. The respondents also



W.P.(MD)No.20831 of 2015

WEB COPY

submitted that the Government have enacted new Tamil Nadu Private Schools Regulation Act. However, the framing of Rules have is under process and it is waiting for the approval by the Law Department and the same will be published after obtaining orders and thereafter the Rules will be published. Therefore, the respondents prayed to dismiss the petition.

10. Heard Mr.K.Ragatheesh Kumar for M/s.Isaac Chambers the Learned Counsel appearing for the petitioner and Mr.S.Kameswaran the Learned Government Advocate appearing for the respondents and perused the records.

11. The school is having students strength for the academic year 2013-2014 as under:

Standards	Students strength	Sections
6	119	3 *
7	130	4
8	174	5
9	272	7
10	236	6
Total	931	25



W.P.(MD)No.20831 of 2015

WEB COPY

after 1991-1992, the School is not eligible. The petitioner is relying on G.O.Ms.No.148, School Education [Pa.Ka6(1)], dated 20.07.2018, for grant of such posts, the said G.O. has stated only to utilize the existing teachers for English medium and it is not sanctioning any additional posts in the said G.O. The petitioner has misconstrued the said G.O. and seeking additional posts. The school is relying on the subsequent judgement in W.A.(MD)No.76 of 2019. However, the said issue is pending before the Honourable Supreme Court for consideration and the Honourable Supreme Court has also granted an interim stay. Moreover the said judgment had held to grant only from the academic year 2021 and not in the year 2014, in such circumstances, the petitioner cannot claim any post from 2014 onwards. Also, the said vacancy is due to the transfer of the incumbent teacher, then the school ought to have transferred any other teacher within their corporate management, instead of new appointment. The school is run by corporate management and the school has not submitted any information regarding the surplus teachers in the other schools run by the corporate management. Further there are 47 students in 11th standard and 48 students in 12th



W.P.(MD)No.20831 of 2015

WEB COPY

standard, for which one P.G. Assistant (History) and one P.G. Assistant (Economics) are available. For each teacher 28 periods should be allotted, but the said two P.G. Assistants only 14 period alone is available. Then for the said teachers 14 periods should be allotted to take History class to the standards IX and X. Hence the B.T. Assistant (History) becomes surplus. The claim of the petitioner cannot be entertained and therefore, the claim as far as BT Assistant (History) is rejected.

14. As far as the appointment of Tamil Pandit is concerned the school is having 2 P.G. Assistants (Tamil) and 7 B.T. Assistants. Each teacher should take 28 periods, as stated above since there is no sufficient students strength in 11th and 12 standards, the said teachers should be allotted class in the 6th to 10th. When such allotment is made, two B.T. Assistants would become surplus. In such circumstances the school is not eligible for the Tamil Pandit.



W.P.(MD)No.20831 of 2015

WEB COPY

15. As far as the appointment of B.T. Assistant (English) is concerned one post is already declared as surplus and hence the petitioner cannot appoint any new appointee in the place declared as surplus. The school is eligible for 3 B.T. Assistant (English) based on the G.O.Ms.No.525, which states as follows:

b. Eligibility for language teachers will be as follows:

Total number of sections in standards VI to X	Number of language teachers posts
Upto 5	1
6 to 10	2
11 and above	3

The school is having 2 B.T. Assistants and 5 secondary grade teachers and in such circumstances the school is not eligible for the same post that is prayed for. It is pertinent to state herein that the secondary grade teachers would be allotted to take all subjects including language subjects Tamil and English and also other subjects. But declaring the secondary grade teachers as surplus, would have an consequence of upgrading the said post as B.T. Assistant. Hence the B.T. Assistant would be declared as surplus and not the secondary grade post. Hence the B.T. Assistant Maths and B.T. Assistant Science is declared as surplus. From



W.P.(MD)No.20831 of 2015

WEB COPY

the above discussion, the two posts of Tamil Pandit, one post of B.T. Assistant (Maths), one post of B.T. Assistant (Science) and one post of B.T. Assistant (History) is declared as surplus and the same is valid.

16. The petitioner seeking one Craft Instructor. But in both the staff fixation orders for the academic year 2012-2013 and 2013-2014, the Craft Teacher is shown as surplus. Since students' strength for the said craft course is less, the respondents have shown Craft Teacher as surplus in the staff fixation order. Therefore, the petitioner School is not entitled to Craft Teacher post.

17. As far as the Waterman post is concerned, even the earliest G.O. Ms. 583 Education Department and Public Health Department dated 23.04.1966 is not granting the post of Waterman. In the said G.O. the government had allowed "grant-in-aid" to the non-teaching staffs as per the staff fixation granted thereunder :



W.P.(MD)No.20831 of 2015

WEB COPY

Categories of Non Teaching Staff	Number Strength			
	Below 250	More than 250 but below 1000	More than 1000 but below 1500	More than 1500
Clerks	Nil	Nil	2	3
Librarian or Clerks for Library	Nil	1	Nil	Nil
Attenders for Office	1	1	1	1
Peons	1	1	2	3
Watchman	1	1	1	1
Waterman	-	-	-	-
Gardener Cum Sweeper	-	-	-	-
Gardener	-	-	-	-
Sweeper	1 part time	1 part time	1 part time	1
Scavengers	1 part time	1 part time	1 part time	1

Thereafter the government has issued another G.O. Ms. No. 245 Education Department dated 21.02.1970 modifying the date of implementing the G.O. Ms. No. 583. In the above said two G.O.'s it has been clearly stated that the educational institutions are not eligible for post of **Waterman, Gardener cum Sweeper and Gardener**. Therefore, if any proposal is submitted for the aforesaid three posts, then the approval cannot be granted. The G.O. has not sanctioned any Lab Assistant post at all. As far as Sweeper and Scavengers are concerned the



W.P.(MD)No.20831 of 2015

WEB COPY

G.O. has sanctioned only part time post based on students' strength, if the students' strength is below 1500 and one post of full time Sweeper and Scavenger if the students' strength is above 1500. As far as the post of Clerks, Librarian, Attenders for Office, Peons are concerned the G.O. prescribes based on the students' strength. Even as per G.O.Ms.No.64 School Education Pa.6 (1) Department dated 03.04.2018, it has declined to grant any approval for Waterman and other posts, since these services are to be outsourced. In the subsequent G.O.Ms.No.283 School Education Pa.Ka.6 (1) Department dated 13.11.2018 also the post of waterman was declined. The relevant portion of the said G.O. is extracted hereunder:

Categories of Non-Teaching Staff	Students Strength			Remarks
	Until 250	From 251 to 1000	More than 1001	
Junior Assistant or Assistant or Record Clerk	Nil	1	2	Maximum 2
Office Assistant	1		2	Maximum 2
Watchman	1			Maximum 1



W.P.(MD)No.20831 of 2015

WEB COPY

The learned Counsel appearing for the petitioner submitted that the present incumbent posting was approved by the respondents and therefore the school is entitled to the said post. The said plea cannot be accepted, the respondents have allowed the present incumbent to service based on equity and once the post becomes vacant due to transfer, retirement or any other reasons then the school cannot appoint any person in such post. In other words, the post would lapse after the demitting of the incumbent. In such circumstances claiming the post of waterman is against the said G.O. Therefore, the petitioner school is not entitled to Waterman post.

18. Therefore, seeing from any angle, the petitioner school is not entitled to the said post. If in future, if the School is increasing the strength, petitioner is at liberty to submit a petition before the Director of School Education to provide the post which was returned to the Director's common pool. Hence, the writ petition is devoid of merits.



W.P.(MD)No.20831 of 2015

WEB COPY

19. With the above said observation, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

20. This Court had directed the respondents to submit a report regarding the status of Rules framing under the new Act of Tamil Nadu Private School Regulation Act vide order dated 16.12.2021. Even after lapse of one year the respondents have not framed the rules. Hence this Court is directing the 1st respondent to submit a report stating the status of framing of rules under the Act. Post the case for filing report on 05.01.2023.

Index : Yes / No
Internet : Yes

16.12.2022

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W.P.(MD)No.20831 of 2015

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To

- 1.TheSecretary to Government,
State 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,
Kanyakumari District at Nagercoil,
Kanyakumari District.
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W.P.(MD)No.20831 of 2015

S.SRIMATHY, J

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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.

W.P.(MD)No.20831 of 2015

16.12.2022