



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**RESERVED ON : 03.01.2022
PRONOUNCED ON : 19.05.2022**

WEB COPY

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)Nos.18856 and 18857 of 2017

and

**W.M.P. (MD)Nos.15214 to 15217 of 2017, 9375,
9377, 9379, 9731, 9733 and 9735 of 2020**

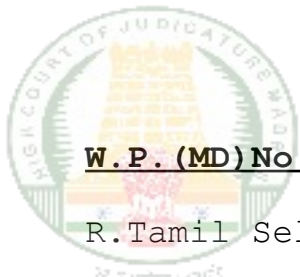
W.P. (MD)No.18856 of 2017:

B.Siva Sankari ... 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 Elementary Education,
College Road, Chennai - 600 006.
- 3.The District Elementary Educational Officer,
R.M.S.Road, Madurai.
- 4.The Assistant Elementary Educational Officer,
Usilampatti, Madurai District - 625 532.
- 5.The Correspondent,
TELC Middle School,
Peraiyur Road,
Usilampatti, Madurai District - 625 532. ... 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 proceedings issued by the 3rd respondent District Elementary Educational Officer, dated 13.12.2010 (settling the Staff Fixation for the 5th respondent-school for the year 2010-2011), to quash the same in so far as it renders two posts of Secondary Grade teachers as surplus and further to direct the third respondent District Elementary Educational Officer to approve the appointment of the petitioner as Secondary Grade teacher with effect from 01.07.2010 in the 5th respondent school and disburse grant-in-aid towards her salary including all the attendant benefits.



W.P. (MD)No.18857 of 2017:

R.Tamil Selvi

... 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 Elementary Education,
College Road, Chennai - 600 006.

3.The District Elementary Educational Officer,
R.M.S.Road, Madurai.

4.The Assistant Elementary Educational Officer,
Usilampatti, Madurai District - 625 532.

5.The Correspondent,
TELC Middle School,
Peraiyur Road,
Usilampatti, Madurai District - 625 532. ... 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 proceedings issued by the 3rd respondent District Elementary Educational Officer, dated 13.12.2010 (settling the Staff Fixation for the 5th respondent-school for the year 2010-2011), to quash the same in so far as it renders two posts of Secondary Grade teachers as surplus and further to direct the third respondent District Elementary Educational Officer to approve the appointment of the petitioner as Secondary Grade teacher with effect from 02.07.2010 in the 5th respondent school and disburse grant-in-aid towards her salary including all the attendant benefits.

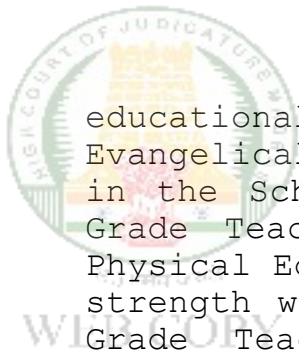
In both cases:

For Petitioner	: Mr.S.Xavier Rajini
For R1 to R4	: Mr.D.Sachi Kumar
	Additional Government Pleader
For R5	: No appearance

O R D E R

The Writ Petitions in W.P.(MD)Nos.18856 and 18857 of 2017 are filed B.Siva Sankari and R.Tamil Selvi respectively.

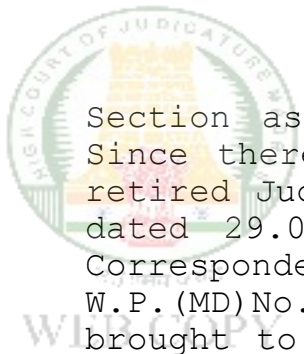
2. The brief facts of the cases are that the 5th respondent School, namely TELC, Middle School is one among the numerous



educational institutions owned and administered by the Tamil Nadu Evangelical Lutheran Church. There are 602 students and 17 Teachers in the School (one Head Master, one B.T. Assistant, 15 Secondary Grade Teachers) and one Sewing Mistress, one Tamil Pandit, one Physical Education Teacher in the academic year 2010-2011. Now, the strength was reduced to 15 Teachers (1 Head Mistress, 14 Secondary Grade Teachers) are working in the School with effect from 29.08.2016. After the Right of Children to Free and Compulsory Education Act, 2009, with effect from 26.08.2009, the norms are fixed for different stages of education. In the Primary School, the appointment of Secondary Teachers is fixed based on students strength in the ratio 1:30 and in Middle School ratio of 1:35 students is adopted.

3. One secondary Grade post fell vacant on 13.01.2010 due to the resignation of the then incumbent V.Veni on 12.01.2010 and in the said vacancy the petitioner Siva Sankari was appointed on 01.07.2010. The School submitted a proposal to DEEO on 13.07.2011, requesting to approve the appointment. One another post of Secondary Grade Teacher fell vacant on 02.07.2010 due to transfer of then incumbent M. Rajeshwari on 01.07.2010, to another School under the same management, namely, Y.M.C.C. Middle School, Madurai. In that vacancy, the School appointed one R. Tamilselvi as Secondary Grade Teacher with effect from 02.07.2010. The School submitted the proposal on 13.07.2011, requesting to approve the appointment. The petitioners contended that the DEEO would approve the appointment only after the staff fixation of the academic year 2010-2011 is published. The admitted students strength for the academic year 2010-2011 for every month a register would be maintained and the same was counter signed by the Assistant Elementary Education Officer. For every month, there is some fluctuation in the strength and on average, the Primary School is eligible for six Teachers and the Middle School is eligible for twelve Teachers and in total eligible for 18 Secondary Grade Teachers apart from Tamil Pandit, Physical Educational Teacher for the academic year 2010-2011. However, the third respondent while setting the staff fixation for the academic year 2010-2011 has indicated that the students strength in Primary School is only 133 and in Middle School is 321. The respondents in view of wrong calculation have rendered two secondary Grade Teachers as surplus. The School submitted a representation requesting to reconsider and refix the strength as seventeen Secondary Teachers and one B.T. Assistant.

4. Since there was delay in fixation of staff strength, the fifth respondent filed a Writ Petition in W.P.(MD)No.7698 of 2014, challenging the staff fixation, order, dated 13.12.2010, with the consequential prayer to approve the appointment of the petitioners. The Writ Petition is pending and the DEEO has filed a counter



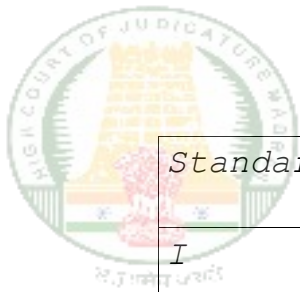
Section as 321 and the School is eligible only for 15 Teachers. Since there was a dispute in management, the School has appointed retired Judge Mr.J.Kanagaraj, as Administrator of TELC, vide order, dated 29.04.2016, in LPA Nos.3 and 5 of 2015. Therefore, the Correspondent could not file the reply to the counter of DEEO in W.P.(MD)No.7698 of 2014. If the current student strength is not brought to the knowledge of the Court, then the Writ Petition will be dismissed and the petitioner would be put to hardship. The petitioner has met the District Elementary Education Officer and on various occasions, requested to refix the staff strength. Since the DEEO was not inclined to revise the staff fixation, the petitioner has filed this Writ Petition to quash the staff fixation and approve her appointment.

5.The respondents have filed a counter affidavit stating that the students strength stated in the affidavit is wrong and the School was having the following strength:

"The actual strength is as follows: 2010-2011

<i>Standard I</i>	<i>42</i>			
<i>Standard II</i>	<i>17</i>			
<i>Standard III</i>	<i>24</i>			
<i>Standard IV</i>	<i>23</i>			
<i>Standard V</i>	<i>43</i>	<i>Total</i>	<i>: I to V</i>	<i>149</i>
<i>Standard VI</i>	<i>170</i>			
<i>Standard VII</i>	<i>86</i>			
<i>Standard VIII</i>	<i>93</i>	<i>Total</i>	<i>: VI to VII</i>	<i>498"</i>

6. As per the norms fixed under Right to Children to Free and Compulsory Education Act, the School is eligible for Teachers as detailed below. Five Teachers have been rendered as surplus and the TELC is duty bound to deploy them to the needy School which comes under the management of TELC. One Secondary Grade Teacher post fell vacant on 02.07.2010, due to the transfer of the then incumbent in Rajeshwari. This post should have been kept vacant and should have been surrendered to the Department as it has been rendered. Contrary to this, the fifth respondent appointed the petitioner in the said post with effect from 02.07.2010. The another post fell vacant on 12.01.2010, due to the resignation of the then incumbent V.Veni. This post also rendered surplus and hence, it should not have been filled up but it was surrendered to the Department. But the School appointed B.Siva Shankari. The staff fixation is challenged in Writ Petition W.P.(MD)No.7698 of 2014 and the same is pending. The petitioner has given false figures on students strength. The actual strength given by the School in W.P.(MD)No.7698 of 2014, in paragraph 9 of the affidavit and the same is false and the same is extracted under:



<i>Standard</i>	<i>Student strength</i>	<i>Eligible Posts</i>	<i>Sanctioned posts</i>	<i>Teachers working</i>	<i>Rendered surplus</i>
<i>I</i>	16	2 Sec. Grade			
<i>II</i>	17	2 Sec. Grade			
<i>III</i>	24	2 Sec. Grade			
<i>IV</i>	29	2 Sec. Grade			
<i>V</i>	47	2 Sec. Grade			
<i>VI</i>	99	3 Sec. Grade			
<i>VII</i>	96	3 Sec. Grade			
<i>VIII</i>	126	4 Sec. Grade			
<i>Total</i>	454	20 Sec. Grade/ BT Asst	17 Sec. Grade/BT Asst	17	2

7.Then, the School is eligible as per norms for the students strength. 149 students in standard I to V, 5 Teachers for the students strength. 349 students in standard VI to VIII, 8 Secondary Grade Teachers, 1 B.T. Assistant and 1 Head Master, totally 10 Teachers. The School for both Primary School and Middle School is eligible for 15 Teachers. Based on the interim order, the Block Educational Officer, Usilampatti, visited the School on 21.11.2019 and 14.02.2020. At the time of visit, the strength of the students was as follows as per EMIS particulars:

<i>"Strength</i>		<i>Eligible teachers as per G.O.</i>	
<i>Standard I</i>	35		
<i>II</i>	41		
<i>III</i>	52		
<i>IV</i>	34		
<i>V</i>	34	<i>Total 196</i>	<i>Eligible Sec.Gr.Trs.6.</i>
<i>VI</i>	67		
<i>VII</i>	52		
<i>VIII</i>	66	<i>Total 185</i>	<i>Eligible Sec.Gr.Trs.5."</i>

8.Then, according to the teacher pupil ratio as per the latest Government order, the School is eligible for following Teachers:

<https://hcservices.ecourts.gov.in/hcservices/>



"Primary Sections Std I to V
Strength upto

60	2
61 to 90	3
91 to 120	4
121 to 150	5
151 to 200	6
201 to 240	7
241 to 290	8"

Middle Sections VI to VIII

35	1
70	2
105	3
140	4
175	5

WEB COPY

9. As per the above strength, the School is eligible for 11 Secondary Grade Teachers only and this is due to fall in students strength in standards 6 to 8 from 349 to 185 and the strength from 1 to 5 has decreased from 498 to 381. The School was not able to maintain the strength and it kept on decreasing. Therefore, the School is not eligible for the sanctioned post. Therefore, the respondents prayed to dismiss the Writ Petition.

10. Heard Mr.S.Xavier Rajini, learned Counsel appearing for the petitioner and Mr.D.Sachi Kumar, learned Additional Government Pleader appearing for the respondents 1 to 4.

11. There is an interim direction dated 15.02.2020 to the respondents to consider the staff strength reflected in grant-in-aid proposal for the year 2010-2011, which was counter signed by the Assistant Elementary Education Officer on 02.02.2011. Based on this, the officials had visited the School on 14.02.2020 and 21.11.2019 and has found that the student strength as under:

வ.எண்	வகுப்பு	மாணவர்கள் எண்ணிக்கை	மொத்தம்	அரசாணையின் படி தகுதியுள்ள ஆசிரியர்கள் எண்ணிக்கை
01.	1	35		
02.	2	41		
03.	3	52		
04.	4	34		
05.	5	34		
	மொத்தம்	196	196	இடைநிலை ஆசிரியர்கள் -6
06.	6	67		
07.	7	52		
08.	8	66		
	மொத்தம்	185	185	இடைநிலை ஆசிரியர்கள் - 4
	பெருமொத்தம்		381	நடுநிலைப் பள்ளி தமிழாசிரியர் - 1



12. Based on the G.O.Ms.No.525, School Education (D1) Department, dated 29.12.1997 and Right to Children to Free and Compulsory Education Act, the ratio of Teacher student is fixed as under:

வ. எண்	ஆசிரியர் கள் விவரம்	மாணவர் கள் எண் ணிக் கை	தகதி உள் ள ஆசிரியர் கள் எண் ணிக் கை	தற் போது பள் ளியில் பணியாற் றும் ஆசிரியர் கள் எண் ணிக் கை	உபரியாக கண் டறியப் பட் ட ஆசிரியர் கள் எண் ணிக் கை
1	இடைநிலை ஆசிரியர் கள்	381	10	12	2
2	தமிழாசிரியர்		1	1	-
3	தையல் ஆசிரியர்		1	1	-
4	உடற் கல் வி ஆசிரியர்		1	1	-
5	நடுநிலைப் பள் ளித் தலைமையாசிரியர்		1	1	-

13. Therefore, the School is eligible for 10 Secondary Grade Teachers and therefore, 2 Teacher is rendered as surplus. The petitioners contention is that this report states the students strength for the academic year 2019-2020. But, the issue was raised before this Court for the academic year 2010-2011. During the academic year 2010-2011, EMIS was not introduced and only manual records were available. Presently, the petitioner is giving a different data, the fifth respondent is giving a different data and the official respondents are giving a different data for the academic year 2010-2011.

14. On perusing the documents, this Court could see the report of the 5th respondent and the report of the official respondents are more or less equal. There may be a wrong data, because the petitioner might have taken the student strength from any self-finance class also.

15. Therefore, this Court is of the considered opinion that the data circulated by the 5th respondent could be more appropriate and it has been averred in W.P.(MD)No.7698 of 2014. The relevant portion of the order is extracted under:

<i>Standard</i>	<i>Student strength</i>	<i>Eligible Posts</i>	<i>Sanctioned posts</i>	<i>Teachers working</i>	<i>Rendered surplus</i>
<i>I</i>	<i>16</i>	<i>2 Sec. Grade</i>			



standards), one Physical Education Teacher, one Sewing teacher - totally 11 teachers for Middle School section and 5 teachers for Primary School section ."

As per G.O. Ms. No. 525 under clause 5 under the heading 1. Elementary School for standards I to V under sub clause (a) it has been stated that

"the teacher-pupil ratio of 1:40 will be followed minimum of two Secondary Grade Teachers upto a strength of 80 will be sanctioned. In respect of new schools, first post will be created in the first year and second post in the second year. One of the two posts will be in the grade of Headmaster".

In the Full Bench judgement rendered in Director of Elementary Education Vs Tmt. S. Vigila reported in 2006 (5) CTC 385 it has been held as under:

"23. Keeping in view the various relevant aspects, we feel that G.O.Ms.No.525 dated 29.12.1997 should be interpreted in the following manner:

(1) The ratio of students-teacher strength as indicated in the G.O. should be primarily considered by taking each individual standard/section as a unit.

(2) The minimum strength of teachers required obviously should not fall below the number of Standards/Section in a school. In other words, if there are five standards, obviously the minimum number of teachers should be five, out of which one would be the Headmaster.

(3) If the students' strength in a particular Standard exceeds 60, at that stage, an additional section is required to be created requiring the sanction of a second teacher and the strength reaches 100, the post of a third teacher is required.

(4) Even after maintaining the aforesaid ratio by taking into account the students strength of each individual standard and additional section, as the case may be, by keeping in view the teacher-students ratio 1:40 of the entire school if the teachers strength is required to be increased, the same has to be allowed, but in no case, the teachers strength should be less than the number of standards including the additional sections. If more teachers are thus sanctioned keeping in view the over all strength of the school, the authorities of the school should create additional section in respect of any particular Standard according to the need and convenience



keeping in view the standard of education. This requirement is not only in respect of aided schools or Government schools, but also in respect of any private recognised school. In other words, this ratio is to be maintained for any school which requires recognition.

(5) It would be obviously open to the Government to formulate appropriate norms in consonance with the above observation and provisions of the constitution."

The Full Bench has held for each standards one teacher, i.e. for 1 to 5 standards, five teachers and out of five one would be Headmaster. Applying this ratio decidendi to the present case,

- a. In the Middle School Section there are 321 students, applying 1:35 ratio, the school is eligible for 9 teachers out of which one should be HM, i.e. 8 teachers and one HM. The school is having 1+1+1+9 = 12 (one HM+ one Tamil Pandit + one B.T. Assistant (Chemistry) + Nine Secondary Grade Teachers) for the academic year 2009-2010. Which means the school is having 12 teachers but eligible is only 9 teachers. Then three teachers are surplus, but only one teacher was declared as surplus. Therefore this Court is of the considered opinion that the staff fixation ought to have declared three surplus but has declared only one as surplus, which is incorrect.
- b. In Primary School Section the school is having 133 students, applying 1:30 ratio, then the school is eligible for 5 teachers out of which one HM. Since there is one Middle School HM post granted to the school which is counted under the Middle School Section, then Five teachers are eligible for Primary School section. Since there are 6 teachers (5+1 teacher), the one teacher was declared as surplus.

17. It is also seen from the records that the School has transferred the said Rajeshwari. When there is a surplus, this Court has repeatedly directed on several occasions either to transfer or depute the surplus Teachers to the needy place. Therefore, that place where Rajeshwari was transferred should never be filled up unless the surplus is set right. As far as the other post is concerned, which was filled up because of the resignation of the earlier incumbent Veni, since this Court has declared the four teachers as surplus (3+1), the School is not entitled to fill up the said post. Therefore, both the posts are declared as surplus and the School is not entitled to fill up the post. Therefore, the appointment of the 2 Teachers are not in accordance with law, consequently the official respondents cannot approve the appointment.



18. Hence, the Writ Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Vacation Officer/
Assistant Registrar (RTI)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Tmg

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 Secretary,
Department of School Education,
Fort St. George, Chennai - 600 009.
- 2.The Director of Elementary Education,
College Road, Chennai - 600 006.
- 3.The District Elementary Educational Officer,
R.M.S.Road, Madurai.
- 4.The Assistant Elementary Educational Officer,
Usilampatti, Madurai District - 625 532.

+2 CC to M/s.S. XAVIER RAJINI, Advocate (SR-23991 & 23992[F]
dated 20/05/2022)

Order made in
W.P. (MD) Nos.18856 and 18857 of 2017
19.05.2022

ck(CO)
GC(30.05.2022) 11P 7C