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W.P.No.5921 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2023

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THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No. 5921 of 2016
and
W.M.P.Nos.5281 & 5282 of 2016

Diamond Jubilee Higher Secondary School,
Rep. by its Correspondent/Secretary
Gobichettipalayam,
Erode District.

... Petitioner

Versus

- 1.The State of Tamil Nadu
Rep. by its Secretary
Education Department, Chennai-9
- 2.The Director of School Education,
College Road, Chennai-6.
- 3.The Chief Educational Officer,
Erode.
- 4.The District Education Officer
Gobichettipalayam,
Erode District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, prays to issue a Writ of Certiorarified Mandamus, call for the entire records connected with the impugned proceeding of the 2nd respondent vide



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Na.Ka.No.100760/W5/E2/2014 dated Nil, June 2015 and quash the same and directing respondents to restore the two P.G. Assistant post in Tamil and English to the petitioner's school.

For Petitioner : Mr.S.N.Ravichandran
For Respondents : Mr.M.Shahjahan
Special Government Pleader

ORDER

This writ petition has been filed seeking issuance of a writ of Certiorarified Mandamus to quash the impugned order passed in Na.Ka.No.100760/W5/E2/2014 dated Nil, June 2015, by the 2nd respondent and consequently direct the respondents to restore the two P.G. Assistant posts in Tamil and English to the petitioner's school.

2. The petitioner is a Higher Secondary School originally started by Mr.Cumming, then Collector of Coimbatore District as early as in the year 1898, even in the pre-independance era. The School has been catering to the needs of the Education Sector, especially to the poor and downtrodden people in and around Gobichettipalayam, Bhavani and Sathyamangalam.



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Post independence, this school was upgraded as a Higher Secondary School in the year 1978, receiving teaching as well as non-teaching grants from the Government since 1964.

3. It is the case of the petitioner that as on date, 1820 students were studying in the school and 69 teaching and non-teaching staff were catering to the students and all these 69 posts are sanctioned posts. The petitioner further states the school had started Crop-Production and General Machinist Course in the year 1964 to cater to local people who are mainly agriculturists. Both these Courses were receiving aid from the Government and several students were enrolled to the said courses. In 1978, the school commenced further Courses namely five General Courses and two Vocational Courses, both in English and Tamil Medium. All these Courses are receiving aid from the Government. However, around 2009-2010, due to globalization, there were no admissions to the Crop Production (Vocational) Course and therefore, till 2014-2015 there were no admissions to the said posts. Subsequently, one P.G.Assistant (English), by name P.Kandasamy has been promoted as Head Master on 01.06.2011 and hence the said post of P.G.Assistant English fell vacant. Another teacher by name,



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Mr.Vaidiyanathan, who held the post of P.G.Assistant Tamil retired on 31.05.2012 and the said post also fell vacant. However, due to increase of admission of students in the school and the fact that there has been enrolment even for the Vocational Courses, the school made a representation on 31.10.2011 requesting the two P.G.Assistant posts to be filled up. In fact, the 3rd respondent by communication dated 23.11.2011 also recommended a proposal for restoration of the post and forwarded the same to the 2nd respondent. In so far as the Crop Production Course now known as Agricultural Practices is concerned, even though there were no admission of students for few years for the said course, the course is still available in the school. Subsequently, the school has intimated the authorities that students are being admitted to the Courses and therefore, it cannot be said that there was a surplus post and requested the authorities to fill up the vacant posts. The 3rd respondent, however by letter dated 17.06.2015 addressed to the 2nd respondent stated that the excess two P.G.Assistant posts were directed to be surrendered to the Directors pool as surplus. The grievance of the petitioner is that they were not even put on notice before communication of the 3rd respondent and moreover, 35 students had been admitted for the Agricultural Practices (Vocational) Courses for the year 2015-16.



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4. The 4th respondent has filed a counter stating that since the course was not functioning for the past five years, there is no provision to re-start the courses and similarly the two P.G.Assistant (English and Tamil) posts were already surrendered to the Directors Pool cannot restored as the said posts were found surplus.

5. Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondents.

6. The learned counsel for the petitioner would contend that even today students are studying in the 100 year old school which has been catering to the needs of poor and downtrodden people in and around Gobichettipalayam and even the sanctioned posts have not filled up. The school has been suffering for want of regular teachers and despite several representations, the post of P.G.Assistant (English, Tamil and Botany) have not been filled up, which is seriously prejudicing the interests of the students. In so far as Vocational Course is concerned, the petitioner would submit that the school suspended the Courses for about 4 to 5 years. Since there was no admission because of issues like globalization and neglect of agriculture, the



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Course was not functioning. However, there is admission for the said Course also and students have been enrolling themselves and in fact as on date, 22 students are studying in 11th standard and 18 students are studying in 12th standard.

7. Mr.M.Shahjahan, learned Special Government Pleader for the respondents would submit that though he has called for a status report from the authorities, as on date, he has not received any instructions and he would argue based on the instructions already given to him. Therefore, he would state it is not possible for the posts to be restored because even according to the 3rd respondent, the posts were found surplus and already surrendered.

8. This Court has considered the rival submissions made by the counsel on either side and perused the materials available on records.

9. The learned counsel for the petitioner also relied on the judgments of Hon'ble Supreme Court as well as this Court with regard to the filling up of sanctioned posts and also the effect of G.O.Ms.No.525 dated 29.12.1997 in and by which the School Education Department prescribed 6



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P.G.Assistants for two groups in Higher Secondary Schools, 1 P.G.Assistant for English and 1 P.G.Assistant for Tamil. The said G.O also contemplates 2 posts of teachers (full time) to be sanctioned, irrespective of the number of Courses for Vocational Stream. It is the specific case of the petitioner that there are 7 groups available in their school. Therefore, even going by the letter and spirit of G.O.Ms.No.525 dated 29.12.1997, the petitioner's school is entitled to three sanctioned posts which are lying vacant, irrespective of the Vocational Courses.

10. The effect of G.O.Ms.No.525 dated 29.12.1997 has been discussed by the Hon'ble Division Bench of this Court in the case of ***Government of Tamil Nadu rep. by its Secretary, Education Department, Secretariat and others Vs J.R.John Samuel Nallathambi*** reported in ***CDJ 2009 MHC 3795***. The Hon'ble Division Bench of this Court held that on the facts of the said case, where the school has made several representations, the Government did not sanction additional posts to the aided school. In accordance with the G.O.Ms.No.525 dated 29.12.1997 and relying on the observations of the Hon'ble Apex Court that imparting primary and secondary school education to students is a bounden duty of the administration and also a constitutional



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mandate, the Hon'ble Division Bench of this Court negated the contentions of the State that it is the discretion of the State to decide as to the posts to be sanctioned or not and the Court should not give any positive directions to sanction posts. Ultimately, the Hon'ble Division Bench held that the State cannot discriminate between aided schools by allowing both teaching and non-teaching posts to one school and deny teaching and non-teaching posts to another school, even though sanctioning of the post may be a discretion of the State.

11. In the present case, admittedly, the petitioner school is an aided school and the posts are also sanctioned and it is not even a case where the petitioner school is seeking for additional posts to be sanctioned in respect of the P.G.Assistant (English, Tamil and Botany). The Specific grievance of the petitioner is that all these posts have become vacant in view of the promotion and retirement of the incumbent persons, who were holding the said three posts. The contention of the respondents that the posts are found surplus and therefore cannot be given as requested by the petitioner school cannot be a ground to deny the petitioner's requirement to fill up the existing sanctioned posts especially for Post Graduate Assistant(English, Tamil and Botany).



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13. In so far as Vocational Course, considering the submissions made by the learned Special Government Pleader for the respondents, the petitioner's school shall make a fresh representation setting out its need as on date, giving the strength of students who are studying or who have enrolled in the last 3 to 4 years and on receipt of such fresh representation from the petitioner's school, 2nd respondent shall consider such request objectively and positively and shall not reject the same on technical grounds stating once the post are surrendered it cannot be filled up. The 3rd and 4th respondents shall also submit their report regarding the present status of the school and the requirement of the teaching staff for the Vocational Courses. In view of the same, the writ petition is partly allowed and the impugned order in so far as the 2 P.G.Assistant (English, Tamil and Botany) posts are concerned is set aside and the respondents are directed to restore the said three posts in the staff strength and in so far as the Agricultural Practices(Vocational Course),



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in the light of the above discussion, the petitioner's school shall make a fresh representation within a period of two weeks from the date of receipt of a copy of this order, setting out its need/requirement for the post of Draft Instructor depending on the present students strength and on receipt of such representation, the 2nd respondent, after consulting the 3rd and 4th respondents, shall pass orders on merits and in accordance with law within four weeks thereafter.

14. With the above observations, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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Index: Yes/ No
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