



W.P.(MD)No.1540 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.(MD)No.1540 of 2020
and W.M.P(MD).No.1251 of 2020**

The Secretary,
Grama Committee Higher Secondary School,
Venkateswarapuram,
Tirunelveli District.

... Petitioner

Vs.

1. The Secretary to Government,
School Education Department,
State of Tamil Nadu,
Secretariat, St.George Fort,
Chennai.
- 2.The Director of School Education,
College Road, Chennai-6.
- 3.The Chief Educational Officer,
Tirunelveli District, Tirunelveli.
- 4.The District Educational Officer,
Cheranmahadevi Educational District,
Tirunelveli.

... Respondents



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PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the fourth respondent in Oo.Mu.No.5010/KAA4/2019 dated 17.12.2019 and to quash the same as illegal and direct the respondents to approve the appointment of one Mr.H.Mayilappan as Record Clerk as on 15.10.2019 and to pay all monetary benefits.

For Petitioner : Mr.K.R.Lazman
For Respondents : Mr.S.Shaji Bino
Special Government Pleader

O R D E R

Challenging the impugned order of the 4th respondent dated 17.12.2019 and for a consequential direction to the respondents to approve the appointment of one Mayilappan, as Record Clerk, the petitioner is before this Court.

2. Heard the learned counsel for the petitioner, the learned Special Government Pleader appearing for the respondents and perused the materials available on record.



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3. The learned Special Government Pleader would submit that the issue raised in this writ petition had already been decided by this Court in WP(MD) No.13428 of 2020 vide order dated 07.02.2023. The said submission is recorded.

4. In WP(MD) No.13428 of 2020 vide order dated 07.02.2023, wherein, while upholding the validity of the impugned G.O., it has been held as follows:

*“8.The issue that arises for consideration is whether private aided minority institutions can demand that the State having once sanctioned a given number of non-teaching posts should continue to extend aid so long as there is requisite students strength. This issue is no longer res integra. The Hon'ble Supreme Court in the decision reported in **2021 SCC OnLine SC 807 (The State of Uttar Pradesh and others v. Principal Abhay Nandan Inter Collge and ors)** had laid down the following propositions :*

- a) Financial constraints and deficiencies are relevant factors while taking any decision qua aid.*
- b) Right to get aid is not a fundamental right.*
- c) Where a policy decision is made to withdraw aid, an institution cannot question it as a matter of right.*



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d)Challenge can be maintained only on the ground of discrimination.

e)When it comes to aided institutions, there cannot be any difference between minority and non-minority institutions. Article 30 of the Constitution of India is subject to its own restrictions being reasonable. A protection cannot be expanded into a better right than one which a non-minority institution enjoys.

f)A policy decision can also be set out through subordinate legislation.

g)A policy decision is presumed to be in public interest, and such a decision once made is not amenable to challenge, until and unless there is manifest or extreme arbitrariness, a constitutional court is expected to keep its hands off.

h)Executive power shall extend to all matters with respect to which there is legislative power. They are coextensive.

*By a policy decision, posts can be abolished. This can be done in an indirect way by providing for outsourcing also. Courts cannot create or sustain a post. It is true that **Deva Asir** decision squarely supports every contention advanced by the writ petitioners. Law cannot remain static. What has been laid down by the Hon'ble Supreme Court is the law of the land under Article 141 of the Constitution of India. The subsequent decision of the Hon'ble Supreme Court referred to above totally undermines **Deva Asir**. For instance, in **Deva Asir**, the learned Judge observes that when the petitioner-schools are receiving aid for so many years,*



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financial consideration cannot be cited as a reason for denying aid. The Hon'ble Supreme Court in the aforesaid decision has held that financial aspect is relevant consideration. Rule 15 of the Tamil Nadu Private Schools Regulation Rules also talks of "overall financial consideration". The government cannot remain blind or indifferent to changing scenario. I take judicial notice of the fact that on account of automation and march of technology, manpower has been rendered redundant in several spheres. Let us take agricultural operations. If 100 persons were needed once upon a time to carry out certain works, with the aid of machines and tractors, even 10 persons are now enough. The impugned G.O cites computerisation has reduced the need for manpower. The reasons set out in the impugned G.O are very much acceptable. In any event, a private institution cannot demand as a matter of right that the Government should continue to disburse the originally fixed grant-in-aid for all times to come.

*9. Article 30 of the Constitution of India guarantees right to establish and administer educational institutions by minorities. The impugned G.O does not in any way constitute an inroad into that right. The management can very well appoint as many persons as they want. All that the G.O states is that the government will not be in a position to fund such appointments beyond what has been already provided. In **Chandana Das v. State of W.B (2015) 12 SCC 140**, it was noted that grant-in-aid is not included in the guarantee contained in the Constitution to linguistic and religious minorities for establishing and running their educational institutions. Of course, such grant cannot be*



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*denied to such institutions only because the institutions are established by linguistic or religious minority. Grant-in-aid cannot be made subservient to conditions which deprive the institution of their substantive right of administering such institutions. This proposition was affirmed when reference was made to a larger bench [(2020) 13 SCC 411]. The above proposition was approvingly quoted in **Christian Medical College Vellore Association v. UOI (2020) 8 SCC 705**. The petitioners cannot complain of discrimination. The aforesaid G.O applies across the board to all educational institutions receiving aid irrespective of whether they are minority institutions or non-minority institutions. There is no infraction of the equality principle enshrined in Article 14 of the Constitution of India.*

*10.The power of the court to interfere in policy matters is limited. The Hon'ble Supreme Court in **Ekta Shakti Foundation v. Government of NCT of Delhi (2006) 10 SCC 337** held that the scope of judicial enquiry in such matters is confined to the question whether the decision taken by the Government is against any statutory provisions or is violative of the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Even if the decision taken by the Government does not appear to be agreeable to the court, it cannot interfere. In Para 11 of the said decision, earlier judgments have been cited and relied upon. In **Satya Dev Bhagaur v. State of Rajasthan (2022) 5 SCC 314**, it was held that the courts would be slow in interfering in the policy matters unless it is found to be palpably discriminatory and arbitrary.*



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11. Section 2(5) of the Tamil Nadu Act 29 of 1974 defines “grant” as any sum of money paid as aid out of State funds to any private school. Section 14 of the Act reads that subject to such Rules as may be prescribed, the Government may continue to pay grant to the private school receiving grant from the government before the date of commencement of the academic year 1991-92 at such rate and for such purpose as may be prescribed. Rule 15 of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 states that number of teachers and other persons employed in a private school shall not exceed the number of posts sanctioned by Director of School Education from time to time, with reference to the academic requirements, teacher-pupil ratio and overall financial considerations. Rule 6 of the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977 states that minority schools may be paid grants subject to the orders and instructions issued by the Government from time to time. The impugned G.O has been issued by the government under Article 162 of the Constitution of India. The earlier orders had been considered. The proposal submitted by the Director of School Education on 19.04.2018 was carefully examined with reference to the relevant provisions. The Government has issued the G.O with the permission of the Finance Department. The Government has taken a considered policy decision as regards certain non-teaching posts. The relevant portion of the said G.O is as follows :

12. For the reasons mentioned above, I hold that no case has been made out for interfering with the impugned policy decision of the government. I uphold the validity of G.O Ms.No.



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பணிமிடத்தின் பெயர்	உதவி பெறும் வகுப்புகள் மற்றும் பிரிவுகளில் உள்ள மாணவர் எண்ணிக்கையில் அடிப்படையில்			
	250 வரை	251 முதல் 1000 வரை	1001 க்கு மேல்	குறிப்பு
1. இளநிலை உதவியாளர், உதவியாளர், பதிவுரை எழுத்தர்.	இல்லை	1	2	அதிகபட்சம் 2
2. அலுவலக உதவியாளர்		1	2	அதிகபட்சம் 2
3. காவலர்		1		அதிகபட்சம் 1

238 School Education (Pa.Ku.6(1) Department dated 13.11.2018. Of course, in the case on hand the appointment of the petitioner was made on 14.07.2018. Therefore, it was not proper on the part of the authorities to have returned the proposal by referring to a subsequently issued Government Order. Such a view has already been taken by the Hon'ble Division Bench vide order dated 06.12.2021 in **WA(MD)No.1052 of 2020 (The State of Tamil Nadu v. The Correspondent, Holy Family Girls Higher Secondary School, Gnanaolivupuram, Madurai)**. The orders passed by the fourth respondent is set aside. The correspondent of the fifth respondent school shall submit the proposal pertaining to the petitioner's appointment. The third and fourth respondents shall consider the proposal to be re-submitted dehors and without reference to the impugned Government Order. Appropriate orders will be passed on merits and in accordance with law within a period of six weeks from the date of receipt of the re-submitted proposal.



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5. Following the same, this writ petition is disposed of. However, liberty is granted to the petitioner to work out its remedy in the manner known to law in respect of staff fixation for teaching staff. However, liberty is granted to the petitioner to re-submit the proposal, if the appointment is made prior to the impugned G.O., in the sanctioned posts/vacancies, which shall be made within a period of four weeks from the date of receipt of a copy of this order and on receipt of the said proposal, the respondents shall pass appropriate orders within a period of eight weeks thereafter. No costs. consequently connected Miscellaneous Petition is closed.

14.02.2023

NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No
vji

To

1. The Secretary to Government,
School Education Department,
State of Tamil Nadu,
Secretariat, St.George Fort,
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- 2.The Director of School Education,



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- 3.The Chief Educational Officer,
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M.DHANDAPANI,J.

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