



W.P.(MD)Nos.16505, 16506, 16508 and 16510 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.09.2023

PRONOUNCED ON : 01.11.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)Nos.16505, 16506, 16508 & 16510 of 2023

The Secretary,
Sahayamatha Middle School,
M.K.Puram – 625 011
Madurai District. ... Petitioner in W.P.(MD)No.16505 of 2023

The Secretary,
Madurai Muthu Middle School,
36, Alagaradi 1st Street – 625016,
Madurai District. ... Petitioner in W.P.(MD)No.16506 of 2023

The Secretary,
Manoharan Middle School,
Sellur – 625002,
Madurai District. ... Petitioner in W.P.(MD)No.16508 of 2023

The Secretary,
Mangayarkarasi Middle School,
Maninagaram – 625001,
Madurai District. ... Petitioner in W.P.(MD)No.16510 of 2023

Vs.

1.The Director of Elementary Education ,
College Road,
Chennai – 600 009.



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2.The District Educational Officer,
(Elementary Education),
Madurai District.

3.The Block Educational Officer,
Madurai North,
Madurai District.

... Respondents in all W.Ps.

PRAYER in W.P.(MD)No.16505 of 2023 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the entire records relating to the impugned staff fixation settled by the second respondent DEO for the academic year 2022 – 2023 in Na.Ka.No. 502/a1/2022 dated 14.06.2023 holding nine post of Secondary Grade Teachers as surplus and the consequential impugned proceeding in Na.Ka.No.502/a1/2022 dated 03.07.2023 deputing three secondary Grade Teachers to Panchayat Union Primary Schools, quash the same in so far as petitioner's school is concerned.

PRAYER in W.P.(MD)No.16506 of 2023 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the entire records relating to the impugned staff fixation settled by the second respondent DEO for the academic year 2022 – 2023 in Na.Ka.No. 502/a1/2022 dated 14.06.2023 holding 16 post of Secondary Grade Teachers as surplus and the consequential impugned proceeding in Na.Ka.No.502/a1/2022 dated 03.07.2023 deputing five secondary Grade Teachers to Panchayat Union Primary Schools, quash the same in so far as



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petitioner's school is concerned.

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PRAYER in W.P.(MD)No.16508 of 2023 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the entire records relating to the impugned staff fixation settled by the second respondent DEO for the academic year 2022 – 2023 in Na.Ka.No. 502/a1/2022 dated 14.06.2023 holding 17 post of Secondary Grade Teachers as surplus and the consequential impugned proceeding in Na.Ka.No.502/a1/2022 dated 03.07.2023 deputing 6 Secondary Grade Teachers to Panchayat Union Primary Schools, quash the same in so far as petitioner's school is concerned.

PRAYER in W.P.(MD)No.16510 of 2023 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the entire records relating to the impugned staff fixation settled by the second respondent DEO for the academic year 2022 – 2023 in Na.Ka.No. 502/a1/2022 dated 14.06.2023 holding 31 post of Secondary Grade Teachers as surplus and the consequential impugned proceeding in Na.Ka.No.502/a1/2022 dated 03.07.2023 deputing 11 secondary Grade Teachers to Panchayat Union Primary Schools, quash the same in so far as petitioner's school is concerned.

For Petitioner
(in all W.Ps.)

: Ms.A.Amala

For RR 1 to 3
(in all W.Ps.)

: Mr.R.Baskaran

Additional Advocate General

Assisted by Mr.N.Ramesh Arumugan



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COMMON ORDER

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The prayer in all the writ petitions reads as follows:-

“(i)W.P.(MD)No.16505 of 2023 have been filed for issuance of a Writ of Certiorari, to quash the impugned staff fixation settled by the second respondent DEO for the academic year 2022 – 2023 in Na.Ka.No.502/a1/2022 dated 14.06.2023 holding 9 post of Secondary Grade Teachers as surplus and the consequential impugned proceeding in Na.Ka.No.502/a1/2022 dated 03.07.2023 deputing 3 secondary Grade Teachers to Panchayat Union Primary Schools.

(ii)W.P.(MD)No.16506 of 2023 have been filed for issuance of a Writ of Certiorari, to quash the impugned staff fixation settled by the second respondent DEO for the academic year 2022 – 2023 in Na.Ka.No.502/a1/2022 dated 14.06.2023 holding 16 post of Secondary Grade Teachers as surplus and the consequential impugned proceeding in Na.Ka.No.502/a1/2022 dated 03.07.2023 deputing 5 secondary Grade Teachers to Panchayat Union Primary Schools.

(iii)W.P.(MD)No.16508 of 2023 have been filed for issuance



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of a Writ of Certiorari, to quash the impugned staff fixation settled by the second respondent DEO for the academic year 2022 – 2023 in Na.Ka.No.502/a1/2022 dated 14.06.2023 holding 17 post of Secondary Grade Teachers as surplus and the consequential impugned proceeding in Na.Ka.No.502/a1/2022 dated 03.07.2023 deputing 6 secondary Grade Teachers to Panchayat Union Primary Schools.

(iv)W.P.(MD)No.16510 of 2023 have been filed for issuance of a Writ of Certiorari, to quash the impugned staff fixation settled by the second respondent DEO for the academic year 2022 – 2023 in Na.Ka.No.502/a1/2022 dated 14.06.2023 holding 31 post of Secondary Grade Teachers as surplus and the consequential impugned proceeding in Na.Ka.No.502/a1/2022 dated 03.07.2023 deputing 11 secondary Grade Teachers to Panchayat Union Primary Schools.”

2.Heard Ms.A.Amala, learned counsel appearing for the petitioners, Mr.R.Baskaran, learned Additional Advocate General assisted by Mr.N.Ramesh Arumugam, learned Government Advocate appearing for the respondents 1 to 3 and perused the entire materials available on record.



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The case of the petitioners in nutshell is as follows:-

3.All the writ petitioners are partly aided private schools receiving grant in aid from the Government except the petitioner school in W.P.(MD)No.16510 of 2023. The other writ petitioners are running from standard I to VIII and the Government grants aid for standard I to V, while the petitioner school in W.P.(MD)No.16510 of 2023 is running from standard I to VIII, receiving grant in aid from Government. The medium of instruction is both English and Tamil. The Government has prescribed separate norms for sanctioning teaching and non teaching staffs.

4.In so far as the teaching posts are concerned, the Government issued G.O.Ms.No.525 dated 27.12.1997. The ratio of one teacher for forty students is adopted in principle from standards I to X. After introduction of the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act), the ratio of one teacher for 30 students is adopted in primary sections (Standards I to V) and one teacher for 35 students is adopted for the middle school sections (Standards VI to VIII). While so the Government had issued G.O.Ms.No.148 School Education Department dated 20.07.2018 permitting the aided schools to have parallel English medium sections without causing



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any additional financial burdens. In view of the same, the petitioner school in W.P.(MD)No.16505 of 2023 have started parallel English medium section from standard I to V from the year 2019 – 2020, the petitioner school in W.P.(MD)No.16506 of 2023 have started parallel English medium section from standard I to V from the year 2022 – 2023. While so, the petitioner school in W.P.(MD)No.16508 of 2023 have started parallel English medium section from standard I to V from the year 2018 – 2019 and the petitioner school in W.P.(MD)No.16510 of 2023 have started parallel English medium section from standard I to V from the year 2018 – 2019 and from standard VI – VIII from the year 2019 – 2020. While fixing the staff strength, the entire school strength along with English medium is taken into account instead of taking the student strength based on the classes and sections.

5.In the meanwhile, the second respondent District Education Officer while staff fixation for the academic year 2022 – 2023, vide impugned proceedings in Na.Ka.NO.502/A1/2022 dated 14.06.2023 had rendered 9 teachers in Sahayamatha Middle School, 16 teachers in Madurai Muthu Middle School, 17 teachers in Manohara Middle School and 31 teachers in Mangayarkarasi Middle School respectively as surplus. While staff fixation, the second respondent failed to see that there are parallel English medium



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sections from standard I to V in all petitioner schools except W.P.(MD)No. 16510 of 2023 wherein there are parallel English medium section from standard I to VIII. The staff fixation was made by taking into account the entire school strength without considering the sections and classes.

6. Aggrieved by the same, the petitioner schools submitted objection to the second respondent District Education Officer on 16.06.2023. However, without passing any orders on the objections submitted by the schools, the second respondent vide impugned proceedings in Na.Ka.No. 502/A1/2022 dated 03.07.2023 issued a deputation order deputing three secondary grade teachers from Sahayamatha Middle School, five secondary grade teachers from Madurai Muthu Middle School, six secondary grade teachers from Manohara Middle School and eleven secondary grade teachers from Mangayarkarasi Middle school respectively to various Panchyat Union Primary schools. Such impugned order of deputation came to be issued without providing the petitioner schools with an opportunity of hearing. The second respondent did not even call for the name list of junior most teachers working in the petitioner schools before issuing the impugned order of deputation. Hence, challenging the impugned staff fixation order dated 14.06.2023 and consequential deputation order dated 03.07.2023,



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these writ petitions came to be filed.

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Submissions :-

7.The learned counsel Ms.A.Amala appearing for the petitioner vehemently submitted that the impugned order of deputation has been passed by the second respondent neither by issuing the same to the petitioner schools nor to the concerned teachers except the copy being marked to the petitioner schools and concerned teachers. The petitioner schools being private aided educational institutions, the petitioners are the appointing authority of the teaching and non teaching staffs in their respective schools. Without any intimation to the petitioner schools and without the knowledge of the petitioner schools, the impugned order of deputation passed by the second respondent would amount to interfere with the right to administer the educational institutions. When the question of transferring the standards from English medium section came up for consideration before this Court was back in W.A.(MD)No.76 of 2019 etc., batch, the Hon'ble Division Bench of this Court by order dated 31.03.2021, held that irrespective of medium of instructions whether Tamil or English, the Educational Department is bound to provide additional teachers for the additional sections or standards from the academic year 2021 – 2022.



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Though the Government preferred Special Leave Petition before the Hon'ble Apex Court as against the said order, no stay is granted for the said directions of the Hon'ble Division Bench.

8.As such the Educational Department is bound to count the entire students strength irrespective of medium of instructions for fixing the staff strength. That apart, the Hon'ble Division Bench has also prescribed compendium of schedule for fixing the staff strength and for deploying process. As per compendium of schedule, the department has to fix the staff strength after 1st August every year and complete the deployment process before 15th October. Once the academic 2023 – 2024 has commenced, the District Education Officer has no authority to pass deputation order based on the students strength of the previous academic year 2022 - 2023 without considering the students strength of current academic year.

9.In furtherance to that, the State Government already replaced the Tamil Nadu Private Schools (Regulation) Act, 1973 and Rules 1974 with the new Act of Tamil Nadu Private Schools (Regulation) Act, 2018 and Rules 2023, which came into force on 13.01.2023. When the petitioner schools are having time to admit the students till 31.07.2023, the second respondent in a



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haste manner with the students strength available in the last academic year 2022 – 2023 issuing impugned order of deployment would violate Rule 32 of Tamil Nadu Private Schools (Regulation). Once the new Act and Rules has come into effect on 13.01.2023, the same has to be mandatorily followed by the educational authority, wherein it provides that all deployment has to be done on or before 30th September, any order of deployment passed beyond 30th September after the new Act came into force such order of deployment would be illegal and unsustainable.

10.The very staff fixation for the year 2022 - 2023 itself was issued on 14.06.2023. Thereafter, in the beginning of the academic year 2023 - 2024 without taking into account, the current student strength for this academic year, issuing impugned order of staff fixation as well as impugned order of deputation is *per se* illegal. The impugned staff fixation by the second respondent District Educational Officer for the academic year 2022 - 2023 by not taking into account every classes/sections into consideration for the purpose of staff fixation and thereafter, holding 9 teachers in Sahayamatha Middle School, 16 teachers in Madurai Muthu Middle School, 17 teachers in Manohara Middle School and 31 teachers in Mangayarkarasi Middle school as surplus is arbitrary, *per se* illegal and



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unconstitutional and on that basis, this Court is liable to allow the writ petitions.

11.Per contra the second respondent has filed a counter in all the writ petitions and Mr.R.Baskaran, learned Additional Advocate General, for the learned Government Advocate Mr.Ramesh Arumugam submitted that in Madurai Education District, as per staff fixation for the year 2022-2023, 449 Secondary Grade teachers, 28 BT Assistants, 2 PET and 8 PVI were rendered surplus.

12.On the basis of the above staff fixation, the following deputation orders for 54 teachers was issued out of which, 23 teachers were relieved from their schools. Out of which, only four schools have challenged the impugned order. Staff fixation for academic year 2022 - 2023 was issued on 16.06.2023. Even before the implementation of the above staff fixation order G.O.Ms.No.14 School Education dated 13.01.2023 came into force and subsequently, exams have started and there was no need to issue deployment orders, since the students in all the classes I to VIII have been declared as passed. Admissions for 2023 - 2024 has been started and going on, staff fixation as per Rules could be done only by first September and



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orders has to be issued by 31th September. The process of deployment could be started only after 31th September as per the fixation. As per the Act 2018 (35 of 2019) & Rules 2023, staff fixation has to be done as per Rule 32 and that has to be done only after 31th September. After completion of the assessment process only in case if surplus teachers are still available, they can be sent on deputation. No such process had commenced for the year 2023 – 2024.

13.As per Section 2(g), the District Educational Officer means an Officer who heads the School Education Department in the Educational District as a head of the district, in order to ensure that all the students in the district are imparted education equally. Since the process of deployment could be done after 31th September in order to ensure the equality, as an interim measure, the impugned order dated 03.07.2023 has been issued. In the said order, 7 teachers have already joined the seven schools, three schools have not chosen to question it, only the remaining four management have filed the above writ petitions. That apart individual teachers had not chosen to question it. Since the academic year had started and admissions are permitted till 31.07.2023, the counselling for promotion of teachers, head masters and counselling of teachers from one district to another district



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would be completed before 30th September as per Rule 32(B)(6).

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14.As orders of the District Educational Officer could be issued for deployment only after the counselling and staff fixation, till such time in order to ensure the running of Government schools, where there are only one teacher and posts of headmaster are vacant as a stopgap arrangement, the impugned order of deputation has been issued. On completion of counselling for promotion and staff fixation, the impugned order will be withdrawn and deployment would be effected. The present deputation cannot be equated to Section 32(7) and the present deputation will not disturb the status of the teachers in the very same management and they are free to go back to their schools/management and deployment if any after 30th September. There is no provision in the Act and Rules mandating such deputation or deployment could be done only through the correspondent or Headmaster. Here on deputation, they continue as staff of the same management and receive salary from them.

15.The learned AAG further insisted that the impugned staff fixation has been duly made in accordance with the mandates G.O.Ms.No.231 School Education Department dated 11.08.2010. Since G.O.Ms.No.231



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School Education Department has been superseded by G.O.Ms.No.148

School Education Department dated 20.07.2018, the petitioner schools cannot insist on fixation of staff based on G.O.Ms.No.525 School Education Department anymore.

16.To substantiate his arguments, the learned Additional Advocate General relied on the order passed by this Court in the case of ***Y.Elizabeth Rani v. The Convener and others*** in ***W.P.No.10574 of 2012*** dated 15.11.2012 and the relevant portion is extracted as follows:-

“7. The contention of the petitioner is threefold. One is that she is suffering from medical problems, which requires retention at Walaja. The second contention is that the order was contrary to the order passed by the Full Bench of this Court reported in 2006(5) CTC 385 # DIRECTOR OF ELEMENTARY EDUCATION, CHENNAI-6 AND OTHERS V. VIGILA and the third one is that G.O.Ms.No.525, passed by the School Education department, fixing the staff strength, was not followed by the respondent.

8. The question of the petitioner suffering medical disability will not arise in this case, as it is not in the case of routine transfer from one school to other school. But in this case, the transfer came to be made only because of the want of students strength and thereby making some teachers become surplus to



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the requirement of the said school. The Full Bench judgment of this Court relied on by the petitioner in Vijila's case has no application, as in that case, the Full Bench in Paragraph No. 23(5) had given liberty to the Government to formulate appropriate norms in consideration with the observation made thereunder and therefore, it cannot be universally said that every elementary school, irrespective of the students strength, should have 5 teachers. The said argument also goes contrary to the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977, wherein, the State Government has stipulated that even in respect to minority schools there should be economic strength prescribed by the Education Department in all the standards.

9. As rightly contended by the respondent, G.O.Ms.No.525 has no relevance in view of the subsequent G.O.Ms.NO.231 dated 11.8.2010, which prescribed the required strength of teachers in respect of the students available in a school, under 'the Right of Children to Free and Compulsory Education Act, 2009'."

17.He also relied upon the the judgment of the Hon'ble Division Bench of this Court in ***W.A.(MD)No.969 of 2017*** dated 03.06.2020, in which the Hon'ble Division Bench has observed that G.O.Ms.No.525 School Education Department has been superseded by G.O.Ms.No.231 School Education Department and the relevant portion of which extracted as



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follows:-

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“12. The entire case of the respondent rests on G.O.Ms.No.525 School Education(D1) Department dated 29.12.1997 as interpreted in Vigila's case. That is the sheet anchor of the impugned order passed by the learned Single Judge also. As already pointed out, the ground beneath has already shifted. That is why when a similar argument was canvassed before another learned Judge of this Court in (Y.Elizabeth Rani V. The Convener, Board of Elementary Education) reported in (2013) 1 MLJ 335, the learned Single Judge held as follows:-

'9. As rightly contended by the respondent, G.O.Ms.No.525 has no relevance in view of the subsequent G.O.Ms.No.231 dated 11.08.2010, which prescribed the required strength of teachers in respect of the students available in a school, under 'the Right of Children to Free and Compulsory Education Act 2009'.'

15. The precious financial resources of the Government cannot be frittered away by financially supporting institutions which are over-staffed but having poor students' strength. The issues relating to staff strength will have to be determined only with reference to G.O.(Ms).No.231 School Education(C2) Department dated 11.08.2010 as amended from time to time. In as much as the subsequent developments have not been taken in account, the order impugned in this appeal suffers from a clear error. We have no hesitation to set aside the order impugned in the writ appeal.”



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18. On the basis of the aforesaid order and judgment of this Court, the learned Additional Advocate General pressed for dismissal of the writ petitions.

Analysis:-

19. Now the pertinent questions which has to be decided by this Court is as follows:-

'(I) Whether the impugned order of staff fixation issued by the second respondent dated 14.06.2023 with respect to the petitioner schools are sustainable ?

(II) Whether the impugned order of deputation dated 03.07.2023 made during the academic year 2023 – 2024, on the basis of the staff fixation arrived at during the year 2022 – 2023 is sustainable.

20. No doubt the Government has prescribed the norms for sanctioning teaching post at the first instance vide G.O.Ms.No.525 dated 29.12.1997. The ratio of one teacher for forty students was adopted in principle in the said G.O., for the standards I to X. Subsequently, the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act) was



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introduced. The ratio of one teacher for 30 students for the primary sections (Standards I to V) and one teacher for 35 students for the middle school sections (Standards VI to VIII) has been adopted. Thereafter, on 20.07.2018, G.O.Ms.No.148 School Education Department came to be issued by which, aided schools were permitted to have parallel English medium sections. Following which, G.O.Ms.No.231 School Education Department dated 11.08.2010 came to be issued by which the State Government accepted the recommendations of the Advisory Committee on Free and Compulsory Education Act in terms of the Right of Children to Free and Compulsory Education Act, 2009.

21. In view of the same, the Director of School Education and Director of Elementary Education were directed to undertake the initial process of rationalizing the deployment of existing teachers as per the Pupil Teacher ratio specified in the schedule to the RTE Act. That apart the Director of School Education and the Director of Elementary Education were also directed to do a complete survey of the students enrolled and teachers working in elementary sections as on 01.09.2010 based on the Pupil Teacher ratio specified in the Act and further directed to initiate steps thereafter to rationalize the deployment of existing teachers to address the problem of



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imbalances in teacher placements. It was reiterated in the said G.O. that rationalizing the deployment of teachers should be done in respect of both the Government controlled and aided schools.

22.In view of the mandates of aforesaid G.Os., it is submitted by the learned Additional Advocate General that staff fixation for the academic year 2022 – 2023 was made vide impugned proceedings dated 14.06.2023. The petitioner schools challenges the said impugned order of staff fixation dated 14.06.2023 on the basis that while fixing the staff strength instead of taking students strength based on classes and sections, the second respondent had taken into account the entire school strength along with English medium.

23.The learned counsel appearing for the petitioner vehemently contended that such an exercise is *per se* illegal and the same ought to have been done by taking into account of each and every classes/sections in the school and if the said exercise had been done by taking into account of existing classes/sections then the staff fixation and consequential rendering of surplus teachers would have been different from what the second respondent has currently arrived at vide impugned proceedings dated



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14.06.2023.

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24.The learned counsel appearing for the petitioner relied upon the judgment of the Hon'ble Full Bench of this Court in the case of ***Director of Elementary Education and others v. Vigila and others*** reported in **2006 5 CTC 385** and on the basis of G.O.Ms.No.525 dated 29.12.1997, attacked the impugned order of staff fixation and the subsequent impugned deputation order passed by the second respondent.

25.The learned Additional Advocate General vehemently contended that since G.O.Ms.525 dated 29.12.1997 has been superseded by the issuance of G.O.Ms.No.231 dated 11.08.2010, the petitioners arguments will not hold good. That apart in view of the change in circumstance, the judgment of the Hon'ble Full Bench of this Court in the case of ***Director of Elementary Education and others v. Vigila and others*** reported in **2006 5 CTC 385**, will also be irrelevant to the facts and circumstances of this case and in view of the contra arguments made by the learned counsel appearing for the petitioner and learned Additional Advocate General, a careful perusal of various judgments and materials available on record is essential and the same would reveal a different picture.



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26. Though the Hon'ble Division Bench of this Court in **W.A.(MD)No. 969 of 2017** vide its order dated 03.06.2020, held that G.O.Ms.No.525 has no relevance in view of subsequent G.O.Ms.No.231 and the issue relating to the staff strength will have to be determined only with reference to G.O.Ms.No.231 dated 11.08.2010 as amended from time to time, the same has been specifically dealt with further by the Hon'ble Division Bench of this Court in W.P.(MD)NO.76 of 2016 batch.

27. The Hon'ble Division Bench of this Court in **W.A.(MD)No.76 of 2016 etc. batch** specifically dealt with the same issue and the relevant portion of which is extracted as follows:-

“38. Even though it has been argued now by the learned Advocate General on behalf of the State that, in view of the RTE Act, the Judgment of the Full Bench in Vigila's case is nullified by issuance of subsequent enactment of RTE Act and the consequential G.O.Ms.No.231, School Education (C2) Department, dated 11.08.2010, whether the said argument would be sustained, is the important question to be answered.

39. In this context, if we look at the relevant provisions of the RTE Act as well as the objects and reasons of the said Act, it is stated that the RTE Act had been proposed to be enacted with a



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view to provide that every child has a right to be provided full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards. It aims to achieve the compulsory education, casts an obligation on the appropriate Government to provide and ensure admission, attendance and completion of elementary education. It has further been provided to aim at free education, which means that, no child other than a child who has been admitted by his parents to a school which is not supported by the appropriate Government, shall be liable to pay any kind of fee, charges or expenses which may prevent him or her from pursuing or completing the elementary education. It is also the duty and responsibility of the appropriate Government, local authorities, parents, schools and teachers in providing free and compulsory education.

40. In this context, if we look at Section 3 of the RTE Act, it reads thus:

"3. Right of child to free and compulsory education. -

(1) Every child of the age of six to fourteen years, including a child referred to in clause (d) or clause (e) of section 2, shall have the right to free and compulsory education in a neighbourhood school till the completion of his or her elementary education.

(2) For the purpose of sub-section (1), no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the elementary education."

41. The right of the children to free and compulsory education between 6 to 14 years since having been declared as a



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Fundamental Right, in view of the introduction of the Article 21A of the Constitution, no child can be compelled to pay for having the elementary education between 6 to 14 years, provided if the child is admitted in a school run by the Government or supported by the Government.

42. In this context, if we look at the schools which were established and recognised by the State Government and also for the teaching grant under the erstwhile Madras Education Rules as well as the grant in aid code and subsequently, under the Private Schools Regulation Act and the Rules, those schools which were established and running all along with the approval and aid of the state Government, whether can be denied the aid for the teaching staff appointed from time to time, in view of the enhancement of pupil strength in a particular standard is concerned? The stand of the State Government is that, by virtue of Section 14A of the Act, the school even though was recognised and was receiving aid, shall not be entitled to get any further aid for expansion of classes or enhancement of pupils strength, in other words, for appointment of additional staff the purpose of enhancement of additional pupil in recognised school which was getting aid prior to 1991-92, it would not be entitled to get such an aid with effect from Section 14A of the Act comes into force.

43. In this context, if we look at Section 14A of the Act, it reads thus :

"14A. Grant not payable to new private schools and new class and course of instruction. -



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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 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."

44. No doubt, no grant shall be paid to 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 1991-92. 45. Absolutely there can be no quarrel in the said decision taken by the State Government, as the wisdom of the State Legislature thought it fit to bring such an amendment by inserting Section 14A in the Act, by which, beyond Academic Year 1991-92, no further grant would be granted for any school established even by a minority as a staff grant and any class or course of instruction opened in such



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private school already established, on or after the commencement of the Academic Year 1991-92, even for such establishment of class or course of instruction, no such staff grant would be granted.

46. However, once the elementary education for the child between 6 and 14 years become a Fundamental Right and in view of the same, RTE Act having been enacted to achieve the said goal and especially in the context of Section 3 of the said Act as quoted above, whether the stand now taken by the State Government that, after 1991-92 whatever the enhancement of pupil for which any new course or classes are started, no aid can be granted from 1991-92 academic year onwards in view of Section 14A of the Tamil Nadu Private Schools (Regulation) Act, 1973, would still sustain even after the academic year 2010-11, in view of the RTE Act provisions, is a question to be answered.

47. Law is well settled in this regard that, since the education become the subject of the concurrent list under Entry 25 of List III of Schedule VII of the constitution, both the Parliament as well as the State Legislature concerned would have legislative competence to enact law on the subject.

48. Since RTE Act has been enacted by the Parliament and the same having been adopted by all States including the State of Tamil Nadu to implement the provisions of the said Act to ensure free and compulsory education of all students or children at the age between 6 to 14, no action shall be taken by



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the State Government detrimental to achieve the said avowed object and goal of RTE Act.

49. Since Section 3 of the RTE Act has made it very clear that, every child of the age between 6 to 14 years shall have the right to free and compulsory education till completion of his or her elementary education, the Government cannot shut the door for making such facilities by not extending the staff grant to the staff who are required to be employed for teaching to the students of elementary education between the age of 6 and 14 in any aided school notwithstanding the import of Section 14A of the Tamil Nadu Private Schools (Regulation) Act, stating that no such staff grant would be given for such additional staff required for the purpose of extension of course or section or enhancement of students in the existing recognised aided private school.

50. When that being the legal position, the blunt stand now taken by the State Government that, in view of Section 14A of the Tamil Nadu Private Schools (Regulation) Act, beyond the academic year 1991-92, since the institutions were not entitled to get additional grant for any additional class, course started in the school already established and getting aid, would not be entitled to get any aid for additional course or classes even now, may not hold good after the academic year 2010-11, in view of the provisions of the RTE Act.

51. Therefore we have no hesitation to hold that, if an elementary school was established and was getting aid from the



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State Government prior to 1991-92 and continue to get the same, and after the Academic Year 2010-2011, if that school has expanded its class or course in elementary education in view of the additional strength of pupil joined in the particular school, the necessary additional staff required for such school shall be fixed

and sanctioned by the State authorities with staff aid.

52. Otherwise, if the State Government deny to extend the staff grant for the staff or additional staff required for teaching of the pupil in elementary school based on the pupil strength, that would amount to be a denial of free and compulsory education to the child or children admitted in the school concerned, which is already an aided school prior to 1991-92, as that stand of the Government would run contra to the provisions of the RTE Act. Therefore the State Government cannot take such a rigid stand as they have taken in this batch of cases both in the affidavit filed on behalf of the State Government as well as the written submissions made on behalf of them by the learned Advocate General and the learned Special Government Pleader.

53. Since the issue of staff fixation is mainly on these points that, whether the school is a unit or not and for additional section opened in elementary education, whether the schools are entitled to get the State grant or not is concerned, since both the issues having been answered as discussed above, let us move on to the next issue as to how such excess staff of the already running school with aid, are to be identified and once



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the excess staffs are identified, whether they can be redeployed either by the school concerned or by the management concerned directly or by the Educational Authorities.”

28.In view of the elaborate discussion made by the Hon'ble Division Bench in the judgment discussed supra, I have no hesitation to come to a conclusion that the second respondent while fixing the staff strength ought to have taken into account the students strength based on the classes/sections instead of taking the entire school strength along with English medium for the purpose of staff fixation.

29.In view of the said observation, the impugned order of staff fixation dated 14.06.2023 is *per se* illegal and is liable to be quashed.

30.Now coming to the question of impugned deputation order dated 03.07.2023 issued by the second respondent, the same has been made with respect to the surplus teachers, who were rendered surplus on the basis of the impugned staff fixation order dated 14.06.2023. The said impugned order has been specifically issued by the second respondent that the same would be in force and cannot be cancelled or modified until further orders



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of the second respondent and thereby, deploying 9 teachers in Sahayamatha Middle School, 16 teachers in Madurai Muthu Middle School, 17 teachers in Manohara Middle School and 31 teachers in Mangayarkarasi Middle school as surplus to various Panchayat Union schools. To elucidate as to the validity of the impugned deputation order dated 03.07.2023, it is necessary to analysis the context of deputation of employees.

31. Technically it is neither a transfer nor deployment simpliciter. But it is a deployment by deputation. Transfer and deployment of an employee is always governed by the provisions of relevant statutes and the terms and conditions of service. Hence, transfer and deployment cannot traverse the provision of statute. In the instant case, the relevant statute is obviously the Right of Children to Free and Compulsory Education Act, 2019, Tamil Nadu Private Schools Regulation Act, 2018 and Rules 2023, G.O.Ms.No.525 dated 29.12.1997, G.O.Ms.No.148 dated 20.07.2018 and G.O.Ms.No.231 School Education Department dated 11.08.2010.

32. The learned Additional Advocate General drew my attention to the fact that the entire Tamil Nadu Private School Regulation Act 2018 and Rules 2023 has been challenged before the Hon'ble Division Bench of this



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Court and an order of interim stay has been granted by the Hon'ble Division Bench of this Court in the said case. In view of the same, the necessarily various compendium of guidelines which has been issued by the Hon'ble Division Bench of this Court in W.A.(MD)No.76 of 2019, etc., batch, on the basis of which the Tamil Nadu Private Schools Regulation Act, 2018 and Rules 2023, have been enacted would become applicable to the facts and circumstances of this case. The said compendium of schedule for fixing the staff strength and for deployment process mandates as follows:-

“95. In view of the aforesaid discussions, we are inclined to pass the following orders in this batch of cases :

"(a) For the purpose of fixing the students-teacher ratio, the provisions of RTE Act followed by the G.O. passed in this regard shall be taken as the basis and the student pupil ratio shall be either 1:30 or 1:35 as the case may be as per the provisions of RTE Act.

(b) For the purpose of fixing the staff strength of a school, school shall be the unit and not the Educational agency / joint management / corporate management.

(c) Once the staff strength is fixed in a particular academic year of a school, it is the duty of the Educational authorities to identify the excess staff and once the excess staff are identified, the same shall be intimated to the school concerned as per the compendium of schedule and thereafter, take steps to redeploy



those excess staff to the needy school.

(d) Once the excess staff are identified and after keeping the Institution intimated, if those excess staff are redeployed to the needy school within a stipulated time as per the compendium of schedule, the redeployed staff shall join duty in the redeployed school.

(e) The following compendium of schedule, for the aforesaid purpose, i.e., for fixing the teaching staff, identifying the excess teaching staff and to redeploy the identified excess teaching staff to the needy school, are framed as hereunder.

(f) COMPENDIUM OF SCHEDULE :

(i) Closing of Admission for the purpose of fixation of staff strength - 31st July of that academic year.

(ii) Fixation of staff strength of the school concerned, based on the student strength as on 31st July as per the strength of the pupil

updated in the EMIS - 10th August.

(iii) The aforesaid fixation of staff strength of the school shall be intimated to the school on or before 15th August.

(iv) On receipt of information from the Department, the School concerned shall give its objection if any, based on the teacher-pupil ratio

on such fixation of staff strength by 25th of August.

(v) On receipt of such objection, if any, from the school concerned, the final order of fixing the staff strength of the



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school, with the

provisional order for identification and redeployment of excess staff shall be passed by the Department by 5th of September.

(vi) On receipt of such intimation of provisional order on identification and

redemption of excess staff, the school under corporate or joint management, shall act upon to give its consent to the redeployment of excess teacher concerned after keeping the teacher informed, to the Department, by 15th of September.

(vii) On receipt of such reply / intimation from the school concerned, final

redemption order shall be made and communicated to the school from where redeployment is made with a copy marked to the teacher concerned and also to the needy school to which the deployment is to be made, by 25th

September.

(viii) On receipt of such orders by the teachers who are redeployed, they shall report to the school where they have been redeployed, on or

before 30th September.

(ix) After making this redeployment process, still excess staff are available, the Education Department shall take further effort, and those excess teachers still available at the hands of the Education Department to be

redployed to a needy school beyond the corporate management concerned, i.e., to any school located in the same Educational



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District or Revenue District and even beyond which if still excess staff are available, they can be redeployed to any school beyond the Revenue District of course after getting the choice of such teacher concerned and that shall be completed by 10th October.

(x) Those teachers who got such redeployment within the Revenue District or beyond the Revenue District by orders to be issued on or before 10th of October, shall report duty to the School where they have been redeployed on or before 15th of October.

(xi) It is made clear that beyond 15th October of every academic year, no redeployment of teacher shall be made or given effect to.”

33.It is clearly mandated in the compendium of schedule of the Hon'ble Division Bench of this Court that deployment of staff could be made every academic year only by 25th September on the basis of the staff fixation for the current academic year. However, in the instant case, the entire deployment of deputation has been effected by the impugned order of deputation dated 03.07.2023 on the basis of staff fixation for the previous year 2022 – 2023. Though nothing has been elaborated in the impugned order dated 03.07.2023 as to the deputation which has been made with respect to staff fixation for current academic year 2023 – 2024, later in the counter affidavit of the second respondent, it has been stated by the second



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respondent that the said order of deputation has been issued only as stopgap arrangement till the exercise of staff fixation of the academic year 2023 – 2024 is completed and the process of redeployment is commenced and thereafter, the employees are free to go back to the schools of original employment. The submissions made in the counter are not found in the impugned order dated 03.07.2023. The Hon'ble Apex Court in the case of ***Sarita Singh v. Shree Infosoft Private Limited*** in ***Civil Appeal No.346 of 2022*** has dealt with the case of deputation and the relevant portion extracted as follows:-

“A two-judge Bench of this Court in State of Punjab v. Inder Singh has clarified the concept of deputation and stressed on the particular rights and liabilities that are associated with a deputation, which occurs only with the consent of the employee. Justice D P Wadhwa, speaking for the Court, held:

“18. The concept of “deputation” is well understood in service law and has a recognised meaning. “Deputation” has a different connotation in service law and the dictionary meaning of the word “deputation” is of no help. In simple words “deputation” means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent



department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the Recruitment Rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post. The law on deputation and repatriation is quite settled as we have also seen in various judgments which we have referred to above...” (emphasis supplied)

A deputation would also involve a third party - the borrowing employer who discharges specific rights and obligations towards the employee and the lending employer. A three-judge Bench of this Court in Umapati Choudhary v. State of Bihar clarified the tripartite nature of a deputation in the following terms:

“8. Deputation can be aptly described as an assignment of an employee (commonly referred to as the deputationist) of one department or cadre or even an organisation (commonly referred to as the parent department or lending authority) to another department or cadre or organisation (commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of public service. The concept of deputation is consensual and involves a voluntary decision of the employer to



lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not. In the case at hand all the three conditions were fulfilled...”

Further, a two-judge Bench of this Court in Union of India v. S N Maity³ interpreted the terms of deputation strictly and disavowed acts of caprice on part of the employer. Justice Dipak Misra (as the learned Chief Justice then was) noted:

15. The controversy that has emerged in the instant case is to be decided on the touchstone of the aforesaid principles of law. We have already opined that it is not a case of simple transfer. It is not a situation where one can say that it is a transfer on deputation as against an equivalent post from one cadre to another or one department to another. It is not a deputation from a government department to a government corporation or one Government to the other. There is no cavil over the fact that the post falls in a different category and the first respondent had gone through the whole gamut of selection. On a studied scrutiny, the notification of appointment makes it absolutely clear that it is a tenure posting and the fixed tenure is five years unless it is curtailed. But... this curtailment cannot be done in an arbitrary or capricious manner. There has to have some rationale. Merely because the words “until further orders” are used, it would not confer allowance on the employer to act with caprice.” (emphasis supplied)

Thus, a deputation involves a tripartite consensual



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agreement between the lending employer, borrowing employer and the employee. Specific rights and obligations would bind the parties and govern their conduct.”

34. In the instance case, the impugned order of deputation has been issued by the second respondent without giving an opportunity of hearing to the employer and employee. The deputation being a tripartite consensual agreement between the lending employer and borrowal employer and the employee, any order of deputation passed without the consultation and consent of three consensual parties would be void of *ab initio*. That apart the second respondent having issued an order of deputation with specific terms that the same would be in force until further orders has improved the case of Government by filing counter affidavit explaining that the said deputation has been issued only as stopgap arrangement to meet the exigencies of administration of various government schools till the exercise of staff fixation is completed for the academic year 2023–2024 and the process of redeployment is commenced and thereafter, the deputed teachers are free to go back either to the employer schools or to the place of redeployment if any after 30.09.2023. Improving the case in the counter affidavit beyond the scope of impugned order cannot be encouraged and has



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to be necessarily **denounced**. The Hon'ble Apex Court in the case of

Mohinder Singh Gill and Ors. v. The Chief Election Commissioner and

Ors. reported in ***MANU/SC/0209/1977***, has adopted the similar line and the

relevant portion of which extracted as follows:-

“8.The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought ,out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji A.I.T.1952 S.C.16

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in Ms mind, or what he intended to, do. Public orders made by public authorities are meant to have public effect and are intended to effect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

Orders are not like old wine becoming better as they grow older: A Caveat.

We must, in limine, state that-anticipating our decision on the



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blanket ban on litigative interference during the process of the election, clamped down by Article 329(b) of the Constitution- we do not propose to enquire into or pronounce upon the factual complex or the (1) A.I.T. 1952 S.C. 16. 284 lesser legal tangles, but only narrate the necessary circumstances of the case to get a hang of the major issues which we intend adjudicating. Moreover, the scope of any actual investigation in the event of controversion in any petition under Article 226 is ordinarily limited and we have before us an appeal from the High Court dismissing a petition under Article 226 on the score that such a proceeding is constitutionally out of bounds for any court, having regard to the mandatory embargo. in Article 329(b). We should not, except in exceptional circumstances, breach the recognised, though not inflexible, boundaries of Article 226 sitting in appeal, even assuming the maintainability of such a petition. Indeed, we should have expected the High Court to have considered the basic jurisdictional issue first, and not last as it did, and avoided sallying forth into a discussion and decision on the merits, self-contradicting its own holding that it had no jurisdiction even to entertain the petition. The learned Judges observed :

"It is true that the submission at serial No. 3 above in fact relates to the preliminary objection urged on behalf of respondents 1 and 3 and should normally have been dealt with & St but since the contentions of the parties on submission No. 1 are inter-mixed with the interpretation of Article 329(b) of



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the Constitution, we thought it proper to deal with them in the order in which they have been made."

This is hardly a convincing alibi for the extensive per incuriam examination of facts and law gratuitously made by the Division Bench of the High Court, thereby generating apprehensions in the appellant's mind that not only is his petition not maintainable but he has been damned by damaging findings on the merits. We make it unmistakably plain that the election court hearing the dispute on the same subject under section 98 of the R.P. Act, 1951 (for short, the Act) shall not be moved by expressions of opinion on the merits made by the Delhi High Court while dismissing the writ petition. An obiter binds none, not even the author, and obliteration of findings rendered in supererogation must allay the appellant's apprehensions. This Court is in a better position than the High Court, being competent, under certain circumstances, to declare the law by virtue of its position under Article 141. But, absent such authority or duty, the High Court should have abstained from its generosity. Lest there should be any confusion about possible slants inferred from our synoptic statements, we clarify that nothing projected in this judgment is intended to be an expression of our opinion even indirectly. The facts have been set out only to serve as a peg to hang three primary constitutional issues which we will formulate a little later."



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35.The Hon'ble Apex Court in the case of ***Commissioner of Police v.***

Gordhandas Bhanji in Civil Appeal No.93 of 1951 has adopted a similar

line and the relevant portion of which is extracted as follows:-

“14.An attempt was made by referring to the Commissioner’s affidavit to show that this was really an order of cancellation made by him and that the order was his order and not that of Government. We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

16.If the Commissioner of Police had the power to cancel the license already granted and was the proper authority to make the order, it was incumbent on him to say so in express and direct terms. Public authorities cannot play fast and loose with the powers vested in them, and persons to whose detriment orders are made are entitled to know with exactness and precision what they are expected to do or forbear from doing and exactly what authority is making the order.”

36.The Hon'ble Apex Court in yet another case of ***Dipak Babaria and***



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Ors. v. State of Gujarat and Ors. Reported in *MANU/SC/0052/2014* has adopted a similar line. The relevant portion of which is extracted as follows:-

“53. It is well settled that where the statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. This proposition of law laid down in Taylor Vs. Taylor (1875) 1 Ch D 426,431 was first adopted by the Judicial Committee in Nazir Ahmed Vs. King Emperor reported in AIR 1936 PC 253 and then followed by a bench of three Judges of this Court in Rao Shiv Bahadur Singh Vs. State of Vindhya Pradesh reported in AIR 1954 SC 322. This proposition was further explained in paragraph 8 of State of U.P. Vs. Singhara Singh by a bench of three Judges reported in AIR 1964 SC 358 in the following words:-

“8. The rule adopted in Taylor v. Taylor is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted....”

This proposition has been later on reiterated in Chandra Kishore Jha Vs. Mahavir Prasad reported in 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka reported in 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Limited vs. Essar Power Limited reported in 2008 (4) SCC 755.

57. That apart it has to be examined whether the



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Government had given sufficient reasons for the order it passed, at the time of passing such order. The Government must defend its action on the basis of the order that it has passed, and it cannot improve its stand by filing subsequent affidavits as laid down by this Court long back in Commissioner of Police, Bombay vs. Gordhandas Bhanji reported in AIR 1952 SC 16 in the following words:-

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

This proposition has been quoted with approval in paragraph 8 by a Constitution Bench in Mohinder Singh Gill vs. Chief 69 Page 70 Election Commissioner reported in 1978 (1) SCC 405 wherein Krishna Iyer, J. has stated as follows:-

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out.”

In this context it must be noted that the Revenue Minister's direction merely states that it is a private land, and the Government's letter dated 18.12.2009 speaks of the financial



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incapability of Indigold. Neither the letter dated 18.12.2009 from the Government to the Collector, nor the order passed by the Deputy Collector on 15.1.2010 mention anything about:

- 1. the mineral policy of the Government of Gujarat.*
- 2. the time taking nature of the process of acquiring the land and re-allotting it.*
- 3. That the second sale was under the authority of the Collector available to him under the first proviso to Section 89(1) read with condition no. (4) of the 70 Page 71 permission dated 1.5.2003 granted to Indigold to purchase the concerned lands.*

In the absence of any of these factors being mentioned in the previous orders, it is clear that they are being pressed into service as an after-thought. The Government can not be allowed to improve its stand in such a manner with the aid of affidavits.”

37.Be that as it may, it has been held time and again by various Courts of this Country and it is well settled that where the statute provides for a thing to be done in a particular manner and then it has to be done in that manner and not in another manner. This proposition of law was laid down in Taylor v. Taylor (1875) 1 CH D 426 and in the case of ***Dhanajaya Reddy v. State of Karnataka*** reported in ***MANU/SC/0168/2001*** and the relevant portion reads as follows:-

“21.To the same effect is the judgment in Shamla Hardeo



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Teli v. Emperor [AIR 1941 Nagpur 17] with a rider that mere inadvertent omission to obtain signature of the accused to statement under [Section 164](#) would not vitiate confession where the accused himself has admitted that he made that particular statement.

22.It is settled principle of law that where a power is given to do a certain thing in a certain manner, the thing must be done in that way or not at all. This Court in [State of Uttar Pradesh v. Singhara Singh](#) [AIR 1964 SC 358] held "a Magistrate, therefore, cannot, in the course of investigation, record a confession except in the manner laid down in [Section 164](#). The power to record the confession had obviously been given so that the confession might be proved by the record of it made in the manner laid down".

38.In view of the discussions made supra, the Block Education Officer/third respondent and the District Educational Officer/second respondent cannot act contrary to the provisions and policy of the relevant statutes. The public authorities in exercise of administrative function should act fairly and reasonably and cannot supersede the mandates of the statute. When the law is usually enacted because the legislature feels that it is so necessary then the same has to be followed by the Executive Authorities in letter and spirit. Similarly if the Court of law by its precedent carves a compendium of guidelines to be followed scrupulously, the same has to be



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obliged in its fullest fervour. The respondents ought to have acted in accordance with the compendium of schedule mandated in W.A.(MD)No.76 of 2019, etc batch and ought not to have infringed the procedure carved out by the Hon'ble Division Bench of this Court in the name of proper administration of elementary and middle schools both the Government and aided.

39.In short the State itself has issued the impugned order of staff fixation contrary to the various mandates of statutes, relevant G.Os. and compendium of schedule in W.A.(MD)No.76 of 2019, etc batch. In the absence of any of the reasons mentioned in the counter affidavit, the impugned order of deputation dated 03.07.2023 sounds tyrannical, since the same mandates to be in force until further orders and that the same has to be obliged by the employee and employer without notice. It is clear that the entire narration of counter affidavit has been put forth before this Court as an after thought. The Government cannot be allowed to improve it's stand in such a manner with the aid of affidavits and there is no statutory scheme to effect deputation as stopgap arrangement during transitory period of every academic period till the completion of staff fixation and commencement of redeployment.



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40. In view of the same, the impugned order of deputation order dated 03.07.2023 is also liable to be quashed. Hence, this Court is inclined to quash the impugned order of staff fixation dated 14.06.2023 and consequential deputation order dated 03.07.2023 as *per se* illegal.

41. Accordingly, all the Writ Petitions stand allowed. There shall be no order as to costs.

01.11.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn



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To

- 1.The Director of Elementary Education ,
College Road,
Chennai – 600 009.

- 2.The District Educational Officer,
(Elementary Education),
Madurai District.

- 3.The Block Educational Officer,
Madurai North,
Madurai District.



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L.VICTORIA GOWRI, J.

Mrn

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