



W.A.(MD).Nos.1530, 1531 and 1722 to 1728 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 18.10.2023

CORAM

**THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN**

**W.A.(MD).Nos.1530, 1531 and 1722 to 1728 of 2023
and
C.M.P.(MD).Nos.11751, 11752, 13225 and 13227 to 13232 of 2023**

W.A.(MD).No.1530 of 2023

The Correspondent,
Carmel Boys Higher Secondary School,
Nagercoil – 629 004,
Kanyakumari District.

.. Appellant/Petitioner

Vs.

- 1.The State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort.St.George,
Chennai - 600 009.
- 2.The Director of School Education,
College Road,
Chennai - 600 009.
- 3.The Chief Educational Officer,
Kanyakumari District.



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4.The District Educational Officer,
Nagercoil,
Kanyakumari District.

..Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order of this Court dated 14.07.2023 in W.P.(MD).No.14320 of 2023.

For Appellant : Mr.Isaac Mohanlal
Senior Counsel
for M/s.Isaac Chambers
For Respondents : Mr.D.Sadiq Raja
Additional Government Pleader

COMMON JUDGMENT

(Judgment of the Court was delivered by V.LAKSHMINARAYANAN,J.)

This batch of Writ Appeals arises at the hands of the institution, namely, Carmel Boys Higher Secondary School, Nagercoil, Kanyakumari District. The institution claims to be 100 years old and was employing 27 BT Assistants and 7 Tamil teachers. For the academic year 2022-23, the staff fixation order was passed by the Chief Educational Officer of Kanyakumari on 23.01.2023 with reference to the students strength as on 01.08.2022. As per the staff fixation, the Chief Educational Officer found nine teachers in surplus, of which, four were tamil teachers, two were BT



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Assistant (Mathematics) and three were BT Assistant (Science). On the basis of staff fixation, the orders were issued by him in June 2023 deputing these teachers from the writ petitioner institution to other Government schools.

2. The consequential orders sending the teachers on deputation were put in challenge in a batch of Writ Petitions. These Writ Petitions were taken up for disposal before the learned Single Judge. The learned Single Judge held that the impugned fixation with respect to the four tamil teachers was correctly done. Insofar as the BT Assistants are concerned, it was found that the appellant School is entitled to 20 teaching posts and the Chief Educational Officer, Kanyakumari was called upon to revisit the deputation orders insofar as the BT Assistants are concerned. He held that two can be retained from the five and the remaining three will have to be deputed. This order is a subject matter of challenge before us.

3. We heard Mr.Isaac Mohanlal, learned Senior Counsel and Mr.D.Sadiq Raja, learned Additional Government Pleader for the respective parties.



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4. Mr.Isaac Mohanlal, learned Senior counsel for the petitioner would argue that originally, the Government had passed G.O(Ms)No.148 School Education Department dated 20.07.2018, whereby, the parity was directed to be maintained at 50% for tamil medium and 50% for english medium. This was the subject matter of challenge before this Court in a batch of Writ Appeals in W.A.(MD).No.76 of 2019 etc. By an order dated 31.03.2021, the ceiling had been removed by this Court and therefore, the demand for parity on the basis of the staff fixation order is wrong.

5. He would then invite our attention to G.O.Ms.No.525 School Education Department, which had been issued on 29.12.1997. In particular, insofar as tamil teachers are concerned, he would point out that irrespective of the strength of the institution, the Government had fixed, for institutions having classes 11 and above, the total number of language teachers as three. This ceiling imposed by G.O.Ms.No.525 dated 29.12.1997, according to him, had been removed by virtue of the letter of the Government in Letter No.33160/D1/1999 dated 17.09.1999. On this basis, he would submit that since the strength of the teachers has been removed from the scope of



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G.O.Ms.No.525 on the basis of the said letter, the staff fixation granting only three teachers to the institution is wrong.

6. He would further submit that if clause (i) of the order of this Court in W.A.(MD).Nos.76 of 2019 etc., batch dated 31.03.2021 had been stayed by the Supreme Court, the other portions of the order continued to be in force and therefore, the staff fixation falls foul of the said judgment and consequently, the impugned proceedings also have to be set aside.

7. Countering this objection, Mr.D.Sadiq Raja, learned Additional Government Pleader appearing for the respondents would submit that the orders that have been impugned in the Writ Petitions are all orders of deputation and not orders of re-deployment. He would raise an objection that if at all anyone is aggrieved, it is the individual teachers and not the institution. He would further submit that even assuming that the order in W.A.(MD).No.76 of 2019 had placed a time limit, the fixation order had been passed as early as on 23.01.2023 giving 15 days time to the institution. Yet the institution did not file its objection within the time granted. He would point out that the Division Bench had directed that as per the



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compendium of time line, 10 days should be granted. However, the Chief Educational Officer, Kanyakumari had granted 15 days time and yet the institution did not avail of the said opportunity. He would state that the objections had been filed belatedly on 21.03.2023 and therefore, the institution cannot be heard to say that it is in violation of compendium in the Writ Appellate order. He would further state that the staff fixation order itself has attained finality and has not been challenged and a Writ Petition challenging the consequential order alone is not maintainable.

8. The learned Additional Government Pleader would point out that G.O.Ms.No.525 dated 29.12.1997 had been challenged before this Court and the constitutional validity had been upheld. He would state that as per the clarification letter issued by the Government of Tamil Nadu dated 17.09.1999, the direction was that the post alone should be retained and that is what has been done in the present case. He would state that while the posts are still available with the institution, the teachers alone have been sent on deputation as they are in surplus. He would further add that the order of deputation is temporary and will not have any permanent effect on the right of the institution. He would point out from G.O.Ms.No.525 that



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the number of teachers required for the institution are only three, whereas, seven teachers are available and hence, four were sent on deputation and therefore, he would request that the appeals in W.A.(MD).Nos.1530, 1531, 1724 and 1728 of 2023 should be dismissed.

9. We have carefully considered the arguments of either side. At the outset, we have to point out that if any person is affected by the order of temporary deputation, it is the teachers who are so affected. None of the teachers are before us either as petitioners or as respondents. The institution itself cannot be said to be a person aggrieved by virtue of the fact that the teachers who are working in its institution and that too, in surplus, are sent on deputation. Therefore, the objections that have been raised by the learned Additional Government Pleader require acceptance. But we do not want to dismiss the Writ Appeals on this short ground alone as we have extensively heard the parties on the merits of the case also.

10. It is not in dispute that staff fixation order was passed on 23.01.2023. The staff fixation order has not been challenged by the appellant. The order specifically found that there are nine teachers in



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surplus, out of which, four are tamil teachers. The tabular column showing the respective students strength is extracted below for ready understanding in this case:

Class	Tamil Medium	English Medium
VI	45	123
VII	75	202
VIII	75	201
IX	94	226
X	104	240
Total	393	992

This would show that the calculation has been made by the Chief Educational Officer of Kanyakumari on the basis of G.O.Ms.No.525 dated 29.12.1997. It is pertinent to point out here that institutions challenged the constitutional validity of G.O.Ms.No.525 and the same was upheld by this Court at least three decades ago. The basis of staff fixation is the student-teacher ratio in an institution. A perusal of the above tabular column would show that the student-teacher ratio insofar as tamil medium as regards english medium schools is 1:3, i.e., to say for every student, who is in tamil medium, there are as many as three students who are studying in english medium. This has been taken into consideration by the Chief



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Educational Officer and by correctly applying G.O.Ms.No.525 dated 29.12.1997, he has arrived at the strength of the teachers that are necessary for the institution.

11. Briefly, the very purpose and object of the policy decision taken by the Government in G.O.Ms.No.525, School Education Department dated 29.12.1997 reveals that the establishment of new schools and increase of enrolment in the existing institutions made it difficult for the Government to support these schools with grants with its financial loss since 1980. The requirement of additional posts by such schools, as such, could not be accommodated within the annual sanction of additional posts allowed by the State legislature. Hence, while giving recognition of opening/upgradation of schools, they were informed that no State aid would be extended. Most of these managements, after accepting recognition without aid, started filing Writ Petitions in the High Court of Madras claiming the sanction of teaching grant for all the posts in their schools. Thus, the Government came out with the revised norms for assessment of grant to the teaching posts in the educational institutions. The Government Order since upheld by the Division Bench of this Court and is in force, the teachers-students ratio



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must be followed scrupulously in order to maintain financial interest of the State and to avoid any abuse of appointment of additional teachers by the aided schools as regards the State of Tamil Nadu.

12. It is here, we have to take note of the argument of Mr.Isaac Mohanlal that the Government had taken note of G.O.Ms.No.525 and had issued a letter on 17.09.1999. A perusal of the letter dated 17.09.1999 in the background would reveal as follows:

“ஏற்கனவே 3க்கு அதிகமான மொழி ஆசிரியர்கள் பணியாற்றிக் கொண்டிருக்கும் உயர்நிலைப் பள்ளிகளில் மேலே பத்தி 1ல் குறிப்பிட்ட நெறிமுறைகளின் 3க்கு அதிகமான மொழி ஆசிரியர் பணியிடங்கள் இருப்பின் அவற்றை நீக்கத் தேவையில்லை எனத் தெரிவித்துக் கொள்கிறேன்.”

This shows that the Government had taken a policy decision to abolish the post. The said clarificatory letter issued by the Secretary to Government on 17.09.1999, in our view, does not apply to the facts of the present case. This is because the posts had not been abolished, but a reading of the orders impugned in the Writ Petitions shows that there has only been “**temporary deputation**” of the staff. This view of ours would also answer the forcible argument of Mr.Isaac Mohanlal that the compendium, which had been



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prepared by the Division Bench in W.A.(MD).Nos.76 of 2019 etc., batch, had not been adhered to.

13. What was dealt with in the order in W.A.(MD).Nos.76 of 2019 etc., batch dated 31.03.2021 was “**re-deployment**” of teachers. In the present case, there is no re-deployment of teachers and what has been done is only temporary deputation of teachers from the institution to Government School. There is an ocean of difference between re-deployment and deputation.

14. Insofar as re-deployment is concerned, the institution will not have control over the teachers who have been so re-deployed. However, as far as deputation is concerned, the teacher concerned continues to have a lien over the post in the institution and is only called upon to work elsewhere.

15. A detailed perusal of the judgment in Writ Appeal shows that what was dealt with throughout was only re-deployment and not temporary deputation. Therefore, we are unable to accept the arguments of Mr.Isaac



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Mohanlal that even deputation is covered under the Writ Appellate order dated 31.03.2021.

16. It is here that we have to take note of the argument of Mr.D.Sadiq Raja that the order in W.A.(MD).Nos.76 of 2019 etc., batch was put to challenge before the Supreme Court of India in S.L.P(C)No.15702 of 2021 and by an order dated 14.03.2022, the directions contained in clause (i) of the said order had been stayed. As we have discussed above, the judgment of the batch of cases in W.A.(MD).Nos.76 of 2019 etc., batch dated 31.03.2021 deals only with re-deployment.

17. Apart from that, we have to take note of the fact that accepting the argument which was similar to have been placed by Mr.Isaac Mohanlal, this Court had passed orders insofar as approval of teachers was concerned in ***W.A.No.1177 of 2022 dated 27.04.2022*** in the case of ***the Chief Educational Officer and another Vs. E.K.M.Abdul Gani Matharasa Islamia High School***. This order was also put to challenge before the Supreme Court of India by the Government of Tamil Nadu in S.L.P(C) No.12693 of 2022 and the entire portion of the order has been kept in



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abeyance. When the matter has been seized off by the Supreme Court, it is not up to us to discuss the effect of such order.

18. The learned Single Judge has perused the staff fixation order and has come to the conclusion that the appellant has been sanctioned only with 17 BT Assistants and 1 Secondary Grade Teacher. This would make totally 18 teachers sanctioned to the writ appellant. Insofar as the school itself is concerned, the Chief Educational Officer has found that there are 20 sections available to the school. The learned Single Judge found that to have 18 teachers for 20 sections would be unreasonable and therefore, had added 2 more teachers to the 18 teachers and held that, to that extent, the shortfall has to be rectified by the Chief Educational Officer. But taking into consideration that the staff fixation itself was not challenged before him, he had only directed the Chief Educational Officer to revisit the orders of deputation insofar as the five BT Assistants are concerned. By this direction, it has been left open to the Chief Educational Officer, Kanyakumari to re-look at the strength of the students, the sections involved and the necessity for the number of teachers in the institution strictly in consonance with G.O.Ms.No.525 dated 29.12.1997. No exception can be



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taken to that direction. The learned Additional Government Pleader would factually dispute the same. Sitting in Article 226 of the Constitution of India, that too in Writ Appellate jurisdiction, we are not willing to investigate all disputes which have been raised by the learned Additional Government Pleader. It is always open to the Chief Educational Officer to look at the directions given by the learned Single Judge and act accordingly.

19. In fine, we find that the four tamil teachers are in excess of the strength fixed under G.O.Ms.No.525 and that their deputation does not fall foul of the letter issued by the Government dated 17.09.1999 as it is not an exercise of re-deployment. Consequently, the Writ Appeals in W.A.(MD).Nos.1724, 1728, 1530 and 1531 of 2023 stand dismissed.

20. Insofar as the other Writ Appeals are concerned, since the learned Single Judge has given a direction to re-visit the issue, the appellant institution cannot be said to be a “person aggrieved” insofar as that portion is concerned. The appellant is permitted to produce all records in possession before the Chief Educational Officer to convince him on the necessity of retaining two teachers as found by the learned Single Judge.



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Accordingly, the Writ Appeals in W.A.(MD).Nos.1722, 1723, 1725, 1726 and 1727 of 2023 are disposed of. The Chief Educational Officer is given liberty to revisit the issue as directed by the learned Single Judge. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(S.M.S.,J.) (V.L.N.,J.)
18.10.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Secretary,
The State of Tamil Nadu,
Department of School Education,
Fort.St.George,
Chennai - 600 009.
- 2.The Director of School Education,
College Road,
Chennai - 600 009.
- 3.The Chief Educational Officer,
Kanyakumari District.
- 4.The District Educational Officer,
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and
V.LAKSHMINARAYANAN,J.

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