



Writ Appeal No.2301 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON
24.04.2024

PRONOUNCED ON
29.04.2024

CORAM

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU

Writ Appeal No.2301 of 2019
and C.M.P.No.15194 of 2019

1.The Government of Tamil Nadu,
Represented by its Secretary to Government,
Fort St.George, Chennai – 600 009.

2.The Director of School Education,
DPI Campus, College Road, Nungambakkam,
Chennai – 600 006.

3.The Chief Educational Officer,
Salem, Salem District.

... Appellants

Vs

The Correspondent,
St.Mary's Girls Higher Secondary School,
Mettur Dam, Salem District.

... Respondent

PRAYER:- Writ Appeal has been filed under Clause 15 of Letter Patent to
set aside the order dated 19.01.2019 made in W.P.No.30313 of 2017 and



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pass such further order.

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For Appellants : Mr.R.Neelakandan
Additional Advocate General
Assisted by
Mr.U.M.Ravichandran
Special Government Pleader

For Respondent : Mrs.T.Ananthi

JUDGMENT

(Judgment of the Court was made by Mr.K.KUMARESH BABU.,J.)

The instant Intra-Court Appeal had been preferred as against the order of the learned Single Judge, wherein, the learned Single Judge had set aside the order of the third appellant in fixing the teachers strength, wherein one post of vocational instructor had been declared as surplus and the further order of the third respondent denying the approval of the appointment of the vocational instructor by the respondent school.

2. Heard Mr.R.Neelakandan, learned Additional Advocate General, assisted by Mr.U.M.Ravichandran, learned Special Government Pleader for the appellants and Mrs.T.Ananthi, learned counsel appearing on behalf of the sole respondent.



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3. Mr.R.Neelakandan, learned Additional Advocate General, appearing for the appellants would at the out set contend that the proposal of the respondent school seeking approval of the appointment of the Vocational Instructor for Computer Science subject was made on 02.01.2017. He would submit that on 15.09.2016, by proceedings of the third respondent, based upon the voluntary retirement of one teacher which had fell vacant, the said post was considered to be surrendered to the general category. He would submit that even though, the respondent school makes a claim that it had appointed a Vocational Teacher as early as on 01.06.2016, no proposal had been forwarded to the Department till 2017. There is no reason that had been attributed by the respondent school as to why such a request had been made belatedly.

4. Further, he would submit that it is an admitted case by the respondent in its affidavit that it had two Vocational Instructors for Commerce and Accountancy alone. They did not have a sanctioned post for Vocational Instructor in Computer subject. He would refer to the



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Government Order in G.O.Ms.No.9, School Education (VE) Department,

dated 06.01.2009 and contend that no new vocational course should be started from the academic year 2007-08 and that no new Vocational Instructor should be appointed either by the School Management or by the PTA and that new vocational course can be opened only with the permission of the Government. Therefore, he would submit that the Vocational Instructor, who had voluntarily retired from service was appointed to teach vocational course in the Commerce and Accountancy subject. He would further submit that the School had only been sanctioned for imparting vocational course in Commerce and Accountancy subject. He would reiterate that there was no sanctioned post for Computer Instructor nor was the school approved for conducting the vocational course in Computer subject. When that being so, in view of the aforesaid G.O.Ms.No.9, the School cannot unilaterally start a new course that too cannot try to seek approval of a person who had been appointed to teach Computer Science in the sanctioned post of Commerce and Accountancy Instructor.



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5. He would further submit that the learned Single Judge without considering the aforesaid factual matrix, had applied the decision of the learned Single Judge which firstly related to a non-approval of a sanctioned post and also in the facts of the case had placed reliance upon the Right of Children to Free and Compulsory Education Act, 2009. In that context, he would submit that firstly the respondent School is a minority school to which the said Act could not be applicable. Secondly, he would submit that even if the same is applicable, the said Act is applicable only for Primary and Middle School and not for Higher Secondary School in which the vocational course are being imparted. He would further submit that the learned single Judge had erred in wholly setting aside the order passed by the third respondent, dated 15.09.2016 which also related to various other subjects. For these reasons, he would submit that the order of the learned Single Judge would have to be interfered with.

6. Countering his arguments, Mrs.T.Ananthi, learned counsel appearing on behalf of the respondent would submit that when a Teacher who was imparting the vocational course had retired by taking voluntary



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retirement and therefore, there had occasioned a vacancy in the sanctioned post of the Vocational Instructor in which post it had appointed a person who already being imparting vocational course in Computer Science and whose appointment was sought to be approved. She would submit that there are about 70 students in the School, who have opted for vocational Instructor and reducing the sanctioned strength would affect the interest of the students. She would further submit that the said appointment had been made not only in the interest of the students, but also the welfare of the Management. She would further submit that there was no necessity to surrender the sanctioned post in view of the voluntary retirement of a teacher, since, the student-teacher ratio requires sanctioned Vocational Instructor. These facts have not been considered by the respondent while directing to surrender of the Vocational Instructor post, which became vacant on a voluntary retirement of a teacher. She would further submit that the learned Single Judge was right in referring to a judgment of this Court in granting the relief to the respondent School. Hence, she prays this Court to dismiss the Intra-Court appeal.



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7. We have considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record before this Court.

8. Admittedly the respondent School is an aided minority school. The learned Single Judge had relied upon a judgment of this Court, wherein, this Court had held by applying the provisions of the Right of Children to Free and Compulsory Education Act, 2009, it is incumbent upon the School to provide education and the Government cannot whittle down that mandatory duty on the part of the School by refusing to grant approval. Firstly, the course of Vocational Instructor is for Higher Secondary School and the Right to Education Act, 2009 does not apply to Higher Secondary School. Secondly, the RTE Act also does not apply to the minority institutions, as has been held by the Hon'ble Apex Court in the judgment in the *Pramati Case reported in 2014 (8) SCC 1*. Various judgments have also been relied upon by the learned counsel for the respondent in the issue of treating the Vocational Instructor as surplus and with regard to the post to be surrendered on the vacancy which arises out of



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the incumbent teacher demitting office on any grounds. We have analysed the aforesaid judgment and it is surprising that in none of the cases, the Government had placed on record the G.O.Ms.No.9, School Education (VE) Department, dated 06.01.2009.

9. In the present facts of the case, the aforesaid Government Order would have to be looked into. The said Government Order prohibits a school from starting a new vocational course without the permission of the Government. It also further prohibits that no new Vocational Instructor should be appointed either by the School Management or the Parents Teachers Association. In the present case, the sanctioned Vocational Instructor is for the subject of Commerce and Accountancy, as it is evidenced from the affidavit filed by the respondent/ Writ Petitioner in the Writ Petition.

10. It is also an admitted case that new vocational instructor had been appointed for Computer Science. When that being so, it is imperative that the respondent School ought to have got permission from the



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Department to start a new vocational course in Computer Science and then ought to have got the approval of the Department for making an appointment to the said post. That apart, even though, the respondent school claims to have made an appointment of a new teacher in the vocational course as early as on 01.06.2016. It had only forwarded the proposal to the Department in January 2017, that too much after the order directing surrender of the sanctioned post of Vocational Instructor in Commerce and Accountancy. There has been no explanation given by the respondent School as to why there was a delay in sending the proposal, which creates a doubt in the mind of this Court, as to the date on which the new Vocational Instructor had been appointed. These facts have not been analysed by the learned single Judge and he had mechanically followed the judgment passed by this Court and for the foregoing reasons, we are inclined to interfere with the order passed by the learned Single Judge.

11. In fine, this Writ Appeal is allowed and the order passed by the learned Single Judge which is impugned before us is set aside. However, there shall be no order as to costs. Consequently, connected miscellaneous



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petition is closed.

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(D.K.K.,J.)

(K.B., J.)

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Index: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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and
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A Pre-delivery Judgment made in
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