



W.A.(MD)No.1539 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Judgment Reserved on 15.07.2024	Judgment Pronounced on 29.07.2024
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CORAM

JUSTICE N. SESHASAYEE

and

JUSTICE P.VADAMALAI

W.A(MD) No.1539 of 2019

and

C.M.P(MD)No.12287 of 2019

1.The Director of Elementary Education,
College Road, Chennai – 600 006.

2.The District of Elementary Educational Officer,
Sivagangai, Sivagangai District.

3.The Assistant Elementary Educational Officer,
Devakottai, Sivagangai District.

... Appellants/Respondents

Vs

The Correspondent,
St.Joseph Middle School,
Sarukani,
Sivagangai District

... Respondent/Writ Petitioner

Prayer: Appeal filed under Clause 15 of the Letters Patent, against the order dated 11.02.2019 passed in W.P(MD)No.1352 of 2015.



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For Appellants :Mr.D.Sadiq Raja
Additional Government Pleader

For Respondent :M/s.A.Amala

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JUDGMENT

(Judgment of the Court was delivered by N.SESHASAYEE, J.)

This appeal is directed by the respondents in W.P(MD)No.1352 of 2015 challenging the order of a learned Single Judge, dated 11.02.2019 and this writ petition is directed challenging the staff-fixation for the respondent school herein for the academic year 2012-2013 and also 2013-2014.

2. The facts are:

- a) The respondent school had a post of pre-vocational Instructor (Sewing) sanctioned to it for 6th to 8th standard. While so, the second appellant vide his order dated 18.03.2013 issued his staff-fixation order for the respondent school whereby he had declared that one post of Pre-Vocational Instructor (Sewing) is surplus. At the relevant time, this Post was lying vacant.
- b) Thereafter, on 18.07.2012, the respondent proceeded to appoint a Pre-Vocational Instructor(Sewing) and sought the approval of the authorities. This was declined by the authorities citing the staff fixation



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order, dated 18.03.2013.

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- c) In the following academic year, the second appellant withdrew the surplus Post and absorbed it to the general pool, to be regulated by the Director of Elementary Education.
- d) The respondent school had 141 students for sewing course in the year 2011-2012 and in the following years (2012-2013) it dwindled to 92 and it further reduced to 84 in 2013-2014. Now, the staff fixation was essentially denied by the respondent the advantage of a teacher to teach sewing to the students.
- e) It is in this setting, the respondent challenged the staff-fixation order dated 18.03.2013 and also the subsequent order passed in the academic year 2013-2014 absorbing the surplus post to the general pool by the second appellant.
- f) The appellants resisting the writ-petition before the learned Single Judge contended that originally there were seven vocational courses which the Government sanctioned, and later it abolished five of them, retaining



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only two vocational courses and for filling up the vacancies of Vocational Instructors, it came out with G.O(MS).132 School Education (M1) Department, dated 27.04.1998. Since at the relevant time there was a moratorium on appointing Vocational Instructors. This moratorium was relaxed as regards two permitted vocational courses, and the schools were permitted to appointed Vocational Instructors for these courses subject to a rider that there should be a minimum strength of 250 girl students for Sewing. While this Government Order was issued for Government School, later it was extended to aided private schools vide G.O(MS).No.104 School Education(D1) Department, dated 12.07.2002. Subsequently, the Government had come forward with G.O.(Ms.)No.168, School Education Department, dated 18.09.2006 whereunder, the Government appears to have modified 250 students criteria which it prescribed in G.O.(Ms.)No.104, dated 12.07.2022 for classes 6 to 8 with a minimum of 5 Sections for the school to have full time Draft Instructor.

g) When the matter came up before the learned Single Judge, he was least impressed by the line of defence taken by the appellants. His line of reasoning is that when there is only one teacher, the appellants cannot declare it as a surplus post and for supporting his view he placed reliance



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on the following decisions: ***S.Sasitha Banu vs. State of Tamil Nadu, Rep. by its Secretary to Government and others*** [2012 (4) MLJ 198]; ***State of Tamil Nadu, Rep. by its Secretary to Government, School Education Department and others vs. S.Ranganayagi and another*** [W.A(MD)No.1207 of 2016, dated 23.08.2016]; and In ***Directorate of Elementary Education, Chennai and others vs. the Correspondent, St. Javions Middle School, Turicorin District*** [W.A(MD)No.1295 of 2016, dated 05.03.2018]

This order is now under challenge.

3.1 Heard both sides. The learned Additional Government Pleader appearing for the appellants made the following submissions:

- There have been a list of authorities of few Division Benches of this Court dated 23.08.2016 in W.A.(MD)No.1207 and dated 05.03.2018 in W.A(MD)No. 1295 of 2016 and followed by another learned single Judge of this Court in ***S.Rasheetha Banu Vs. State of Tamil Nadu, rep. By its Secretary to Government, Chennai – 9*** [2012(4) MLJ 198], wherein the Court has held that where the number of teacher is just one for a particular subject, then that post cannot be held as surplus. The rationale behind the same appears to be that anything will become surplus only when anything is in excess of one and not just one. However, this list of authorities are prior to the advent of the Right of Children to Free and Compulsory Education Act, 2009 (henceforth would be referred to as RTE Act).



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- There is however, one judgment of another Division Bench of this Court in W.A(MD)No.725 of 2016, which was delivered after the RTE Act has come into force and it makes a reference to a ratio in ***Secretary to Government Vs. S.Jeyalakshmi and another*** [2016 (7) MLJ 155]. But the ratio in ***Jeyalakshmi's case*** has very little relevance to the facts before the Court. In other words, none of these authorities of this Court have examined the implications of RTE Act meticulously. Indeed, the learned single Judge, even though makes a broad reference to RTE Act, still, has not chosen to examine its impact on the validity and legitimacy of the action involved in passing the order now impugned by the respondent.
- The scheme of RTE Act must have to be co-related with the provision of Tamilnadu Recognized Private Schools (Regulation) Act, 1973 and the Rules made thereunder including the Rules pertaining to the Tamil Nadu Minority School (Recognition and Payment of Grant) Rules 1977.

3.2 Developing his argument further, the learned Additional Government Pleader submitted:

- a) Under Sec.14 of the Tamilnadu Recognized Private Schools (Regulation) Act, grants could be paid only in terms of the rules framed for the purpose. Now, at least there are two set of Rules that deal with the payment of grants. The first



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one is Rule 11 of the Tamilnadu Private Schools (Regulation) Rules, 1974 and the other is Rule 6 of the Tamilnadu Minority Schools (Recognition and Payment of Grant) Rules, 1977. Both these rules provide that the grants payable would be subject to Government Orders and instructions issued from time to time. Those Government Orders and instructions referred to in these Rules includes the one enabling staff fixation in terms of Rule 15 of the Tamil Nadu Recognition Private Schools Regulation) Rules, 1974.

- b) If Rule 15 is referred to, it mandates that the teachers-students ratio in a private school shall not exceed the number of posts sanctioned by the Director of School Education, from time to time, with reference to the academic requirements, teachers-pupils ratio and over all financial considerations.
- c) Now, Rule 15 under which the teaching staff strength is determined by the authority, will also have a direct impact on the aid it may have to grant to the recognized private schools, which includes aided minority schools. However, when RTE Act came into force on 01.04.2010, it had an overriding effect on the provisions of the State Act to the extent the State Acts are inconsistent with the provisions of the RTE Act. While there are no major inconsistencies *vis-a-vis* between RTE Act and the various provisions of the State Act and the Rules referred to above, in the context of fixation of staff strength based on teachers-students ratio, the RTE Act does have a dominant effect. Section 25 stipulates



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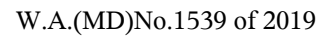
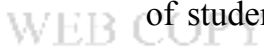
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that within 3 years from the date of commencement of RTE Act, the appropriate Government or local body, as the case may be, should ensure that teachers-students ratio as specified in the schedule is maintained in each school. Section 19 mandates that unless the condition stipulated under Section 25 is complied with, no school can seek recognition.

d) Now, in the context of the present case where a specialist teacher in sewing is declared to be a surplus teacher for classes 6 to 8, the schedule to the RTE Act provides that where the total number of students exceeds 100 for classes 6 to 8, then the school is entitled to have only one part-time instructor *inter alia* for work education. It could now be derived that where the total strength for work education falls short of the minimum stipulated 100 students, then, the school is not entitled to even a part-time teacher for the same.

e) This effect of the RTE Act is now required to be telescoped into Rule 15 of the Tamilnadu Recognised Private Schools (Regulation), Act, 1974. Accordingly, the authority determines the teachers-students ratio based on RTE Act and where the number of students for work education falls below 100, then the teacher for work education must be declared as a surplus teacher.

None of the earlier judgments of this Court dealing with the issue had an occasion to consider this angle of the controversy.



4. Per contra, the learned counsel for the respondent/writ petitioner submitted:

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surplus teacher abruptly, then, the respondent school should have been heard.

The action of the 2nd appellant is unilateral and is a product of violence of principles of natural justice. At any any rate, the RTE Act and the schedule thereof, can have effect only prospectively after it came into force on 01.04.2010, and it cannot be given retrospective effect to rob a sanctioned post which was available from 1952.

c) The interpretation which the appellants now come forward with creates an anomalous situation of having a course sanctioned and letting the school admit the students to those courses and still stopping a teacher to teach the students, who have joined the courses. It is hence this Court has taken a view that where the course is recognized and approved and if there is only one teacher for the said post, the same cannot be taken away or dispensed with. If the present case is tested on this plain, as long as the course is available, there is an object need for a teacher for the course. Hence, the only teacher cannot be held surplus even under the RTE regime.

d) This apart, the order now impugned in this appeal is followed by another learned single Judge in ***Correspondent, Amali Girls Higher Secondary School, Tirunelveli District Vs the State of Tamil Nadu*** [W.P(MD)No.1321 of 2020 dated 19.02.2020] and which was later confirmed by another Division Bench in ***Correspondent Vs the State of Tamil Nadu*** [W.A(MD)No.81 of 2022



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dated 02.03.2022] and the appellants have complied the same. Therefore, if not anything, this Court shall not deny the respondent parity in treatment with the other school involved in W.A.(MD)No.81 of 2022. This apart, in yet another appeal in *the Chief Educational Officer and another Vs D.Gnana Theeba Rani and another* [W.A.(MD)No.675 of 2021 dated 15.04.2024] another Division Bench of this Court has followed the same line of reasoning as could be seen from its order dated 15.04.2024.

e) This apart, even in the present case, the appellants have passed an order approving and sanctioning grant-in aid to the teacher concerned, but, it has only added a rider to the said order when it made it subject to the outcome of the present appeal.

f) At any rate, RTE Act will not apply to minority schools, both aided and unaided, as it is a traverse fundamental right of the minority under Article 30 of the Constitution as held by a Constitution Bench in *Pramati Educational & Cultural Trust and Others Vs Union of India* [AIR 2014 SCC 2114].

5. The learned Additional Government Pleader submitted that every time the staff fixation order is passed, any school affected thereby has a 15 days window to come out with its objection and the respondent has objected to the same.



6.1 The submissions on either side is carefully examined, more from the plane of common sense than of law. The contentious issue is not so much about whether RTE Act will apply to minority run schools, be it aided or unaided, but about the illogicality of stripping the school of its only sewing teacher even as the school is allowed to run a course in sewing. As long as the school is allowed to have a course in sewing and there are still students who opt to join the course, it is imperative that the only teacher it has for sewing is not declared as the surplus.

6.2 Did the authority concerned ever care to spare a thought for the wellbeing of the children, who are very surely bound to be stranded in the middle of their curriculum in sewing without a teacher? Administrative action shall not be infested with insensitivity to the implications of the action on the welfare of the children. The student-teacher ratio, be it under the RTE Act, or under any other mode of regulation of the schools, is intended for the benefit of the students, and the financial implications of accommodating a teacher will have to take a necessary back seat where the teacher for a particular subject or course is just one. While Rule of law insists that it be obeyed, yet it does not advocate nonsensical compliance to its process that leads to supremely absurd consequences. Every law and regulation must be understood in its contextual setting and the purpose it seeks to achieve. It will be an engine for promoting the legislative purpose if the statutory compliance is secured from arbitrary compliance, unmindful of the consequence it might unleash. In the instant case the 2nd appellant has precisely done when he has declared the only sewing



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teacher the school has for its approved course in sewing which still attracts students, even though in low number, as surplus. We cannot place a legal imprimatur on any executive act, the consequences of which is to place students in a limbo.

6.3 Now, even if the line of contention of the appellants are considered as tenable, then in terms of the RTE Act, it needs to be underscored that the Schedule to the Act should be understood as prescribing only the minimum teacher strength that a school shall have depending on the strength of the students. It is hence, the Act prescribes that if the school has 100 students in work education, it shall have (at least) one part time teacher for the work education. The Act nowhere says that if a school which was established even prior to the advent of the RTE Act runs an approved course in work education with students strength less than 100, then the teacher for work education should necessarily be withdrawn.

7. The 2nd appellant apparently got his understanding of the law wrongly. This necessarily means that this Court approves the decision of the learned Single Judge. Consequently, this Writ Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(N.S.S., J.)

(P.V.M., J.)

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Index : Yes / No

Neutral Citation : Yes / No

PM/CM



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N. SESHASAYEE, J.
and
P.VADAMALAI, J.

CM

Pre-delivery Judgment made in

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C.M.P(MD)No.12287 of 2019

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