



W.P.(MD).Nos.16056 of 2023 & 16153 to 16156 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 26.09.2024

ORDER PRONOUNCED ON : 03.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**W.P.(MD).Nos.16056, 16153, 16154, 16155 and 16156 of 2023
and WMP(MD).Nos. 13456, 13544, 16791, 16835, 16907, 16820, 13550,
16850, 13551 and 13547 of 2023**

W.P.(MD).Nos.16056, 16153 to 16156 of 2023

The Correspondent
St.Francis Xavier Higher Secondary School
Thoothukudi 628 001
Thoothukudi District

....Petitioner
in all the writ petitions

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
Thoothukudi, Thoothukudi District

4.The District Educational Officer
Thoothukudi, Thoothukudi District

....Respondents
in all the writ petitions



W.P(MD).Nos.16056 of 2023 & 16153 to 16156 of 2023

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Prayer in WP(MD).No.16056 of 2023: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records relating to the impugned proceedings of the third respondent CEO in Na.Ka.No.8438/Aa4/2022 dated 07.06.2023 (received on 14.06.2023) deputing Mr.Amirtharaj, BT Assistant (Science) from the petitioner school to Government Higher Secondary School, Pasuvanthanai, Kovilpatti, quash the same as illegal and void.

(In all the writ petitions)

For Petitioner : Mr.K.Ragatheesh Kumar
for M/s.Isaac Chambers

For Respondents : Mr.J.Ashok
Additional Government Pleader

COMMON ORDER

W.P(MD).No.16156 of 2023 has been filed by an aided minority institution challenging an order of the third respondent herein dated 08.12.2022 wherein a staff fixation order for the academic year 2022-2023 has been issued.

2.The above said staff fixation order declares surplus teachers in the



W.P.(MD).Nos.16056 of 2023 & 16153 to 16156 of 2023

cadre of B.T.Assistant in the subject of Tamil, Maths, Science and Social Science. Based upon the said staff fixation order, deployment orders have been issued to two B.T.Assistant Science Teacher and two other B.T.Assistant Maths Teachers. Those four deployments orders are under challenge in W.P.(MD).Nos.16153, 16154, 16155 and 16156 of 2023.

3(A).The staff fixation order is challenged by the School Management by raising the following grounds:

(i)Instead of calculating the entire students strength irrespective of medium of instruction, the department had excluded the students studying in the English medium section.

(ii)As per G.O.Ms.148, School Education Department dated 20.07.2018, the educational authorities are bound to consider the students strength in the English medium section also for issuance of staff fixation order.

(iii)When a similar order was passed in the academic year 2019-2020 excluding the English medium students, the same was put to challenge in W.P.(MD).No.8275 of 2020 and the said writ petition was disposed of along with the batch of writ petitions and writ appeal in W.A.(MD).No.76 of 2019 etc. batch case. As per the judgment of the Hon'ble Division Bench dated 31.03.2021, irrespective of medium of instruction, the education department is bound to provide additional teachers for additional sections/standards for the academic year 2021-2022.

(iv)The Hon'ble Supreme Court has stayed only one portion of the order at Paragraph No.95(i) of the Division Bench order in W.A.(MD).No.76 of 2019 etc., batch case and therefore, the



W.P(MD).Nos.16056 of 2023 & 16153 to 16156 of 2023

respondents are bound to count the entire students strength irrespective of medium of instruction.

(v)The School has each three sections in English and Tamil medium for students VI to X. The School has six Tamil medium section and three English medium section in each in IX standard and X standard. Therefore, the School is in need of at least 36 teachers. However, only 29 B.T. Assistants/Second Grade Teachers have been sanctioned as per staff fixation order.

(vi)As far as the case of Physical Education Teacher is concerned, only two teachers have been allotted without considering the fact that the School is having a total strength of 1365 students. Hence, he had prayed for allowing the writ petition and pass suitable orders.

4.(B)Contentions of the learned Additional Government Pleader in defence of the impugned order are as follows:

(i).The learned Additional Government Pleader had contended that the School was granted permission to start English medium section for VI standard students in the academic year 2008-2009 only with a condition that the said section should be run as a self-financing course. He had further contended that the teachers who are receiving grant-in-aid should not be used for taking classes in the English medium.

(ii). He had further contended that at no point of time, the petitioner has given any request to the authorities for starting an English medium section as contemplated under G.O.Ms.148, School Education Department



W.P(MD).Nos.16056 of 2023 & 16153 to 16156 of 2023

dated 20.07.2018. Only if any request had emanated from the School, invoking the above said Government Order, the question of considering the students of the English medium for calculating the total strength of students would arise. Even as on today, all the English medium sections are run only as a self-financing course. In such circumstances, the request of the petitioner for calculating the students studying in the self-financing course for the purposes of fixation of staff to confer grant-in-aid is not admissible.

(iii).He had further contended that considering the students strength, the adequate number of physical education teacher posts have been sanctioned and there is no question of further sanction of physical education teacher.

(iv).He had further contended that the order of the Hon'ble Division bench in W.A.(MD).No.76 of 2019 etc., batch case was challenged before the Hon'ble Supreme Court. The Hon'ble Supreme Court by their order dated 16.02.2024 after confirming other directions, has remitted back to the High Court for reconsidering the issue with regard to the directions in Paragraph No.95(i) in W.A.(MD).No.76 of 2019 etc., batch case which relates to the calculation of English medium students for fixing the total students strength. Therefore, as on today, the question of including the students strength in the English medium section for the purposes of calculating the students strength or for staff fixation does not arise. Hence, he prayed for sustaining the orders



W.P(MD).Nos.16056 of 2023 & 16153 to 16156 of 2023

impugned in the writ petitions.

WEB COPY 5.I have considered the submissions made on either side and perused the material records.

(C) Discussion:

6.The primary contention of the learned counsel appearing for the writ petitioner is that several B.T.Assistant teachers have been declared to be surplus under the impugned staff fixation order only because of the fact that, the education authorities have not taken into consideration the students studying in the English medium. In case, if they are taken into consideration, there will not be any surplus teachers and in fact, more teachers would be required for the School.

7.The Government Orders with regard to opening of English medium sections in the aided School are as follows:

(i)The Government had issued **G.O.Ms.No.705/Education/ dated 25.05.1990** wherein the recognized aided private institutions were permitted to open English medium section subject to several conditions. The Government had also fixed the rate of fees to be collected from the English medium students. The fee collected has to be remitted into the Government account. As per the said Government order, those Schools which desire to open new English medium section and those who want additional teachers posts should obtain orders from the Government for sanctioning of the posts. Therefore, it is clear that when the above said Government



W.P(MD).Nos.16056 of 2023 & 16153 to 16156 of 2023

order was passed, the Government wanted to treat the English medium section as an aided course and directed the School Managements to obtain prior permission, not only for opening English medium sections but also for having additional teacher posts to cater to the English medium section.

(ii)The Government of Tamil Nadu issued **G.O.Ms.No.601 Education (D1) Department dated 21.06.1993** modifying G.O.Ms.No.705 dated 25.05.1990. As per G.O.Ms.No.601, the Government had changed the policy and they have decided that new English medium sections could be permitted only as unaided ones notwithstanding the fact that the institution is an aided one. The Government also declared that no teaching grant or teaching post shall be sanctioned for English medium section.

(iii)It further declared that all the English medium sections permitted from 1991-1992 shall for all purposes, be considered an unaided one, notwithstanding the fact that the School is an aided private School. The Government Order permitted the Schools to collect reasonable tuition fee from the students and the said fee shall be utilised for payment of remuneration to the teachers appointing to handle English medium sections. It further declared that only one new section shall be sanctioned for each class at a time by the Government. Therefore, it is clear that all the English medium sections that were started from the year 1991-1992 were declared to be unaided one and the Schools were permitted to collect separate tuition fee for payment of remuneration to the teachers who are taking English medium sections.

(iv)The Government has passed **G.O.Ms.No.110 School**



W.P(MD).Nos.16056 of 2023 & 16153 to 16156 of 2023

Education Department dated 29.05.2008 cancelling special fee that was collected for English medium as well as Tamil medium students. However, the said Government Order clarified that the tuition fee collected from English medium students will be continued.

8.The Hon'ble Diviison Bench in **W.A(MD).No.76 of 2019 etc., batch case** while dealing with the issue relating to medium of instruction and its impact on the staff strength in Paragraph No.91.10 has held as follows:

“91.10. In this context, it is to be noted that, as we discussed elaborately in the earlier paras, after the RTE Act came into effect with effect from 2010, at least from the academic year 2010-11 whatever the schools as on the academic year 1991-92 which had been functioning in the State with recognition and aid with Tamil medium classes since they have been permitted to start the English medium courses by G.O.Ms.No.705, dated 25.05.1990, the teaching staff required for imparting education in English medium sections shall also be taken into account, atleast for the primary / elementary education level, i.e., for the students between the age of 6 and 14. Those students who had been admitted between the age of 6 and 14 shall have the Fundamental right to get free and compulsory education irrespective of the medium of instruction.”

9.While issuing direction in Paragraph No.95(i), the Hon'ble Division Bench has held as follows:

“95(i). Insofar as the teaching grant for the additional staff employed in the already aided school as on the academic year



W.P(MD).Nos.16056 of 2023 & 16153 to 16156 of 2023

1991-92, irrespective of the medium of instructions or irrespective of the students strength, as per the teacher pupil ratio as indicated above especially in the context of RTE Act and subsequent G.O. issued in this regard, the staff fixation shall be made and for those additional teaching staff, who are pressed into service for additional standard or additional class started, from the academic year 2021-22, staff grant shall be sanctioned by the State Government as such sanctioning of staff grant will be the essential requirement to meet the object of the provisions of the RTE Act, otherwise, the Fundamental Right guaranteed to the children between the age of 6 and 14 studying in those schools would get affected.”

10.The order of the Hon'ble Division Bench was challenged before the Hon'ble Supreme Court in **SLP (Civil) No.15702 of 2021** along with other appeals. The Hon'ble Supreme Court by an order dated 16.02.2024 disposed off the Special Leave Appeal. Paragraph Nos. 2 to 5 of the order of the Supreme Court are extracted as follows:

“2. The counsel would refer to this Court’s proceedings dated 27.09.2023 and the earlier proceeding dated 10.08.2022 to point out that following the liberty granted in Clause (m) of Paragraph 95 in the impugned judgment dated 31.03.2021, the Tamil Nadu Private Schools (Regulation) Act, 2018 and Rules were enacted w.e.f.20.01.2023. *Thus the enacted laws will govern the process of approval for teachers in the concerned schools provided*



W.P(MD).Nos.16056 of 2023 & 16153 to 16156 of 2023

the individual and the school concerned satisfy the criteria laid down in the 2023 Regulations.

3. However, the above 2023 Regulations and the Rules are subject matter of challenge before the Madras High Court and an interim order was passed therein on 21.04.2023, ordering status quo on the operation of the 2023 Regulations.

4. The suggestion made by the two senior counsel to this Court is to relegate the parties to the pending proceedings in the Madras High Court. It is however submitted that the Division Bench should limit itself to the core direction given in sub-clause (i) of paragraph 95 of the impugned judgment dated 31.03.2021 in the Writ Appeal (MD) No. 76 of 2019 and need not be concerned with the other aspects in the earlier judgment (31.3.2021).

5. Accepting the above submission, this matter is ordered to be closed by relegating the parties to the Madras High Court. It is made clear that the Court should decide the pending matter on merit without being influenced by any observation made by this Court during the pendency of the present proceeding or under the impugned order.”

11. The Government of Tamil Nadu has issued **G.O.Ms.No.148, School Education Department dated 20.07.2018** permitting aided School to start English medium sections with a condition that the students in the English medium section should be carved out from the students of the Tamil medium section. A further condition was imposed that the Government



W.P(MD).Nos.16056 of 2023 & 16153 to 16156 of 2023

should not incur any additional expenses. The Government has imposed a further condition that the School should approach the concerned authorities seeking permission to open English medium section. The said G.O.Ms.No. 148, School Education Department dated 20.07.2018 refers to G.O.Ms.No. 601 Education (D1) Department dated 21.06.1993 and it does not supersede G.O.Ms.No.601.

12.In the light of the above said Government Orders, judgment of the Hon'ble Division Bench and the judgment of the Hon'ble Supreme Court, let us consider the facts of the present case:

(i)For the first time, the petitioner management has approached the educational authorities seeking permission to start one English medium section in VI standard in the academic year 2008-2009 and an order was passed on 31.08.2009 permitting the petitioner School to start one English medium section for VI standard as unaided/self-financing course. In the said order, several conditions were imposed. Clause 5 of the said condition pointed out that the teachers who are receiving aid should not be used for taking classes in the English medium section which is run under self-financing mode.

(ii)When the students who got admitted in the VI standard for the academic year 2008-2009 were in X standard, the School has approached the educational authorities for ratification of opening of English medium section



W.P(MD).Nos.16056 of 2023 & 16153 to 16156 of 2023

in classes VII, VIII, IX and X and an order was passed by the Joint Director of School Education on 20.12.2011 granting ratification for opening of English medium section in the other standards subject to various conditions.

(iii) Again it was pointed out that the teachers who are receiving salary through aid should not be used for taking classes in English medium which are run under self-financing scheme. Even at the time of granting ratification, it was pointed out that all the English medium sections are completely self-financing sections.

(iv) The Hon'ble Division Bench in W.A(MD).No.76 of 2019 etc., batch case in Paragraph No.91.10 has taken into consideration, the Right of Children to Free and Compulsory Education Act, 2009, for Primary/Elementary School level, that is for the students between the age of 6 and 14. However, it seems that G.O.Ms.No.601 School Education Department dated 21.06.1993 has not been brought to the notice of the Hon'ble Division Bench wherein the State has taken a policy decision to withdraw aid to all the English medium sections and treat them as unaided/self-financing sections. Only referring G.O.Ms.601, dated 21.06.1993, the petitioner's School has been granted permission to open an English medium section in VI standard by way of an order dated 31.08.2009 and ratification has been granted for opening English medium section to other standards on 20.12.2011. G.O.Ms.No.601, dated 21.06.1993 has not been put



W.P(MD).Nos.16056 of 2023 & 16153 to 16156 of 2023

to challenge by the petitioner management.

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13.The learned counsel appearing for the petitioner has relied upon G.O.Ms.No.148, School Education Department dated 20.07.2018 wherein permission has been granted to all the aided Schools to open English medium section subject to various conditions. One of the conditions is that, in view of opening of English medium sections, the State should not incur any additional expenses. Apart from that, it has been pointed out that the Schools have to approach the concerned authorities, seeking prior permission for opening English medium sections subject to the conditions imposed in the said Government Order. Relying upon the said Government Order, the petitioner claims that the English medium sections have been converted into aided section and therefore, the students studying in the said section should also be taken into account for calculating the staff strength.

14.It is an admitted fact that the petitioner has not given any request before the authorities concerned seeking their permission to open an English medium section as contemplated under G.O.Ms.148, School Education Department dated 20.07.2018. The English medium sections that were opened by the petitioner management are only on the basis of G.O.No.601, School Education Department dated 21.06.1993. The ratification order has also been issued only based upon G.O.Ms.No.601. In such circumstances, the petitioner cannot rely upon G.O.Ms.No.148 dated 20.07.2018.



W.P(MD).Nos.16056 of 2023 & 16153 to 16156 of 2023

15.All the English medium sections in the petitioner School are run on an self-financing basis. If the petitioner wants to convert them as aided, the petitioner should have approached the concerned authorities as contemplated under G.O.Ms.No.148, dated 20.07.2018. Without obtaining any permission under G.O.Ms.No.148, the petitioner, cannot convert self-financing sections into aided sections and seek additional staff on the basis of the students studying in the English medium.

16.In the affidavit, the petitioner has not stated anything with regard to the tuition fee levied by the petitioner School for the students studying in English medium section. In fact, the School has been permitted to levy tuition fee on par with the matriculation Schools and from the said tuition fee, the School has been permitted to pay salary of the teachers taking classes for English medium sections. When such a detail is not available, this Court can only draw an adverse inference to the fact that the petitioner is running English medium sections only on self-financing basis.

17.The Hon'ble Division Bench in W.A(MD).No.76 of 2019 etc.,batch case, relying upon the Right of Children to Free and Compulsory Education Act, 2009 and G.O.Ms.No.705, dated 25.05.1990 have proceeded to issue a direction to calculate the English medium students also for fixation of staff strength. In the present case, the petitioner has not obtained any permission from the authorities as contemplated under G.O.Ms.No.705 dated 25.05.1990.



W.P(MD).Nos.16056 of 2023 & 16153 to 16156 of 2023

The permission obtained by the School is only relatable to G.O.Ms.No.601 dated 21.06.1992. That apart, the Hon'ble Division Bench has pointed out that the Right of Children to Free and Compulsory Education Act, 2009, being applicable to the students of the age 6 to 14, the benefit for English medium section should be extended atleast to Primary/Elementary education level.

18.As per Rule 2(f) of the Right of Children to Free and Compulsory Education Act, 2009, elementary education has been defined as an education from first class to eighth class. Therefore, it is clear that by invoking the provisions of Right of Children to Free and Compulsory Education Act, 2009, the petitioner management cannot seek aid to run English medium sections beyond VIII standard. Therefore, it is clear that as a matter of right, the petitioner cannot make a claim to include the English medium students in the IX standard to XII standard for calculating the total strength, for arriving at a staff fixation based upon the right to the Right of Children to Free and Compulsory Education Act, 2009.

19.The direction issued by the Hon'ble Division Bench in WA(MD).No.76 of 2019 etc., batch case in Paragraph No.95(i) deals with the staff fixation, based on English medium section also. In view of the order of the Hon'ble Supreme Court, the issue is now placed before the Hon'ble Division Bench and the same is pending. In such circumstances, until the Hon'ble Division Bench decides the issue, the petitioner cannot seek to



W.P(MD).Nos.16056 of 2023 & 16153 to 16156 of 2023

include the students studying in English medium section also, for the purposes of staff fixation.

20.As per G.O.Ms.No.525 School Education (D1) Department, dated 29.12.1997, if the students strength for the classes between VI to X exceeds 250, a physical education teacher will be sanctioned and for every additional strength of 300, one additional post of physical education teacher will be sanctioned subject to a maximum 3. The petitioner School, being a Higher Secondary School, if the strength exceeds 400, one post of physical Director will be sanctioned by up-gradation of the existing post of physical education teacher.

21.A perusal of the impugned staff fixation order dated 08.12.2022 reveals that one post of Physical Education Director has been sanctioned and there is no quarrel in the said staff fixation. As far as the Physical education Teacher post is concerned, two posts have been sanctioned and another one has been declared to be surplus. Considering the fact that the students studying in Tamil medium between VI to X standards are 716, the impugned staff fixation order, fixing two Physical Education Teachers is perfectly valid as per G.O.Ms.No.525, School Education (D1) Department, dated 29.12.1997.



W.P(MD).Nos.16056 of 2023 & 16153 to 16156 of 2023

22.It is clear that all the English medium sections in the petitioner School are managed only on a self-financing basis and tuition fee is collected by them as fixed by the Government, and from and out of the said tuition fee, the salary is being paid to them. As per the condition imposed to the petitioner School, while granting permission to open English medium sections, the aided teachers cannot be used to take classes for unaided /English medium sections. In case, if the petitioner's request is accepted for including the students studying in English medium section, that would result in converting the English medium sections from self-financing one to aided one. As pointed out earlier, the School has not approached the authorities, seeking permission to open, aided English medium sections as contemplated under G.O.Ms.148 dated 20.07.2018. When they are continuing English medium sections only under self-financing scheme, the authorities were right in fixing the staff strength based upon the students studying in the aided Tamil medium sections alone.

23.In W.P(MD).Nos.16153, 16154, 16155 and 16056 of 2023, the deployment order issued to the concerned teachers on being declared as surplus is under challenge. Since this Court has proceeded to hold that the staff fixation order is legally valid, there is no merit in the writ petitions challenging the deployment order.



W.P(MD).Nos.16056 of 2023 & 16153 to 16156 of 2023

24.In view of the above said deliberations, there are no merits in the writ petitions. All the writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

03.10.2024.

Internet : Yes/No
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W.P(MD).Nos.16056 of 2023 & 16153 to 16156 of 2023

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State of Tamil Nadu
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Fort.St.George, Chennai 600 009
- 2.The Director of School Education
College Road, Chennai 600 009
- 3.The Chief Educational Officer
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W.P.(MD).Nos.16056 of 2023 & 16153 to 16156 of 2023

R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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