



W.P(MD)Nos.16041 to 16044 of 2016 and 7634 to 7636, 7639 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 14.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)Nos.16041 to 16044 of 2016, 7634 to 7636 &
7639 of 2017 and
WMP(MD) Nos.11726 to 11733 of 2016 and 5947 to 5953 of 2017

W.P(MD)No.16041 of 2016:-

The Correspondent,
St.Joseph's Higher Secondary School,
Thirithuvapuram – 629 163,
Kanyakumari District.

... Petitioner

Vs

- 1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort.St.George,
Chennai 600 009.
- 2.The Director of School Education,
College Road,
Chennai 600 006.
- 3.The Chief Educational Officer,
Kanyakumari District.



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4.The District Educational Officer,
Kulithurai,
Kanayakumari District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned Staff -Fixation made by the 3rd respondent Chief Educational Officer in Mu.Mu.No.7014/Aa2/2015 dated 03.10.2015 and the consequential impugned proceedings issued by him in Oo.Mu.No.10220/Aa2/2015 and Oo.Mu.No. 3697/Aa1/2016 dated 15.02.2016 and 21.06.2016 respectively and quash the same insofar as the excludes the students strength in the English Medium Classes (Standards IX and X) and Computer Science Group in Higher Secondary Section from the assessment of grant-in-aid and thereby renders one PG Assistant (Sociology), one Tamil Pandit, one Malayalam Teacher, one BT Assistant (Maths) and six Secondary Grade teachers as surplus.

For Petitioner : Mr.Ragadeesh
For Respondents : Mr.R.Baskaran
Additional Advocate General
Assisted by
Mr.D.Sadiq Raja
Additional Government Pleader
(In all WPs)



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COMMON ORDER

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These writ petitioners are the aided Minority Educational Institutions and they have filed these writ petitions challenging the proceedings of the respective Chief Educational Officers on staff fixation in the petitioners' Schools for the academic years 2015-2016 and 2016-2017.

2.The learned counsel appearing for the petitioners submits that the petitioners' Schools are recognized and aided minority Educational Institutions and the medium of instruction is in both Tamil and English. The Government of Tamil Nadu has issued a Government Order in G.O.Ms.No.525 (School Education), dated 29.12.1997, with effect from 01.06.1998, wherein, the ratio of teacher students has been fixed as 1:40 and separate norms have also been prescribed for different stages of education. Subsequently, the Government has announced the revised norms on teacher student ratio under the Right of Children to Free and Compulsory Education



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Act, 2009. As per the norms fixed by the Government, the petitioner Schools are eligible for a minimum of 55, 57, 60, 60, 51, 63 and 10 teaching staffs and 8, 4, 6, 7, 4 & 7 non-teaching posts respectively. However, by the impugned orders passed by the Chief Educational Officers, the staff strength has been reduced without providing any opportunity to the petitioner Schools and the authorities have not considered the English medium sections conducted in the petitioner Schools.

3.The learned counsel further submits that the Division Bench of this Court in the Judgment passed in a batch of writ appeals in ***W.A(MD) Nos. 76 of 2019 etc., dated 31.03.2021*** has held that teaching grant for the additional staff employed in the aided institutions are irrespective of medium of instruction as per the teacher pupil ratio as indicated in the context of RTE Act. The learned counsel further submits that the aided institutions are also having english medium sections with recognition and therefore, the respondents ought to have fixed the staff fixation for the relevant



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sections, considering the Government Order passed in G.O.Ms.No.

148, Educational Department, dated 20.07.2018. The relevant

paragraphs from the above Judgment is extracted as under:-

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



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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 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 redeployment 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 redeployment order shall be



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

(g) Once the teachers are redeployed from a particular school, after the joining time as provided under the compendium of schedule, the school from



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which the teacher has been redeployed cannot get teaching aid for the next month salary for that redeployed teacher and that salary shall be paid only through the school, where the teacher has been redeployed, for which, teaching grant shall be sent by the Educational authorities only to the needy school, where the teacher has already been redeployed.

(h) While identifying the excess staff for redeployment purpose as indicated above, regard has to be given that as far as possible junior most teacher shall be subjected to such redeployment. Also in case of high and higher secondary schools, while making such redeployment based on teacher-pupil ratio, regard has to be given to ensure that, atleast the minimum required teacher, for each subject being taught in the school, are in possession.

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



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(j) Irrespective of the medium of instruction, whether Tamil or English, such a staff grant for additional sections or standard shall be provided with the same condition as indicated above from the academic year 2021-22.

(k) The State Government shall ensure that, the provisions of the Tamil Nadu Tamil Learning Act, 2006 are implemented in letter and spirit, of course subject to the judicial orders / court orders, if any, passed in this regard for giving exemption to a group or class of students as provided under Section 5 of the said Act.

(l) Until the Tamil Nadu Private Schools (Regulation) Act, 2018 and the Rules to be made thereunder are given effect to, these set of directions issued in this order shall mandatorily be followed by the stakeholders, i.e., both State Government as well as the Educational Institutions.

(m) Once the 2018 Act and the Rules to be made in this regard comes into effect and the issues which are covered under this order as per these mandatory directions are taken care, these mandatory directions shall be ceased to be in execution.

(n) In order to give effect to such comprehensive legislation, i.e., 2018 Act, the work of framing necessary Rules under the Act shall be completed as early as possible.

(o) In view of the aforesaid, the G.O.Ms.No.165, School Education [Tho.Ka.2(1)] Department, dated 17.09.2019 is hereby declared to be inoperative.

(p) In view of the statistics given by the



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communication of the Director of School Education and Director of Elementary Education, dated 28.10.2020, as the import of the same in entirety has already been quoted herein above, the Education Department shall take endeavour to identify the exact excess teaching staff in various category of Schools, i.e., Government schools (Panchayat Union, Municipality and Corporation) Primary and Middle Schools, Government aided primary and middle schools, Government High and Higher secondary schools and aided High and Higher Secondary Schools separately by taking into account the recent policy decision taken by the State Government, whereby the superannuation age of the Government servants including the teachers was enhanced from 59 to 60, thereby there would be no superannuation of teachers for the next one year and accordingly, the correct statistics shall be made ready within a period of two months

(q) Once the statistics of excess teaching staff under various category of schools as referred to above are made by taking into account the superannuation age of teachers as 60, such excess teaching staff identified in various category of schools with details of name of the school both Government as well as Private aided, shall be uploaded in the website / web portal of the School Education Department within the aforestated period of two months.

(r) Once such information are uploaded in the web portal by the Education Department, after verifying the same, the private aided schools, both minority and non-minority can point out any wrong information if given with regard to the identification of the excess teaching staff in the concerned school and such intimation or clarification can be given by



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the school concerned through the management to the DEO / CEO concerned within a period of one month thereafter.

(s) On receipt of such objections, information / clarification from the school concerned with regard to the alleged wrong information provided by the State Government / Education Department in the web portal as indicated above, the same shall be verified and rectified by the Education Department, within one month thereafter.

(t) This exercise shall be completed on or before 31st July 2021, so that the identification of excess staff and follow up action as indicated in the compendium of schedule herein above can be undertaken and be followed strictly.

(u) Till such excess teaching staff are identified under all category of schools as indicated above, no recruitment shall be made by the State Government / Education Department for the purpose of appointment of teachers under various categories like Secondary grade teacher, Graduate teacher, Post-Graduate teacher, Language teacher, Physical education teacher etc.,

(v) Like that insofar as aided minority institutions are concerned, if it is a stand alone institution, their right of appointing a teacher in a vacancy within the sanctioned strength for the academic year 2021-22 shall not be affected because of the identified excess teachers in other schools. At the same time, even if the school is a minority institution, however being administered by a joint management or corporate management, in respect of those schools, even though vacancy arose within the sanctioned strength



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of such school or schools under corporate management or joint management, those vacancies shall not be filled up unless the excess staff identified in all other schools under the same corporate or joint management are exhausted fully and only after exhausting the redeployment process on all excess teachers identified in the group of schools under the same corporate management, they shall be free to make appointment afresh from open market in the vacancy if any still, within the sanctioned strength."

4.The learned Additional Advocate General appearing for the respondents submits that by filing these writ petitions, the petitioner institutions have retained the teachers, who are in excess/surplus in their schools. Reference made by the learned counsel for the petitioner with regard to G.O.Ms.No.148, Educational Department, dated 20.07.2018 is for Self Finance Institutions and not applicable to the petitioner schools. He further submits that the Schools are permitted to start the english medium classes only after getting necessary permission from the respondent Department and certain conditions have to be adhered, for which, the learned Additional Advocate General has referred the conditions in



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paragraph 6 of G.O.Ms.No.148, Educational Department, dated 20.07.2018 that the School, which is intended to conduct English medium course, must have required permission from the department. In this case, the petitioner institutions have never obtained permission for conducting English medium courses and therefore, they cannot take advantage of above Government Order. The learned Additional Advocate General also points out that clause (i) of the Judgment of the Division Bench in ***W.A(MD) Nos. 76 of 2019 etc., dated 31.03.2021*** has been stayed by the Honourable Supreme Court in a Special Leave to Appeal (C) No. 15702 of 2021.

5.In reply, the learned counsel submits that petitioners' Institutions are conducting English medium courses after obtaining necessary recognition/permission from the Department and therefore, this contention of the learned Additional Advocate General is not correct.



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6.This Court considered the rival submissions made and also perused the materials placed on record.

7.These writ petitions have been filed with regard to the staff fixation of the academic years 2015-2016 and 2016-2017. The Division Bench of this Court in the judgment passed in *W.A(MD) Nos. 76 of 2019 etc., dated 31.03.2021* has held that the grant of additional staff employed in the aided school for the academic year 1991-1992 irrespective of medium of instruction or irrespective of student strength as per teacher pupil ratio is prospectively from 2021-2022. The petitioner cannot take advantage of G.O.Ms.No.148, Educational Department, dated 20.07.2018, based on the orders passed by this Court in the above batch of writ appeals. this Court has given a leverage for the Schools for having english medium sections in deciding the staff fixation and this issue with regard to the permission of these Institutions for the additional staff irrespective of medium of instruction is pending before the



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Honourable Supreme Court in the Special Leave to Appeal (C) No. 15702 of 2021.

8.In view of the above, these writ petitions are closed.

The petitioners are at liberty to work out their remedy based on the outcome of the orders of the Honourable Supreme Court in the Special Leave to Appeal (C) No. 15702 of 2021. The respondents shall settle the staff fixation as per the existing norms, which is available as on date. No costs. Consequently, connected Miscellaneous Petitions are closed.

14.02.2024

NCC: Yes/No
Index: Yes/No
Internet: Yes
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To
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- 1.The Secretary,
Department of School Education,
Fort.St.George,
Chennai 600 009.
- 2.The Director of School Education,
College Road,
Chennai 600 006.
- 3.The Chief Educational Officer,
Kanayakumari District.
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B.PUGALENDHI, J.

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Common Order made in
W.P(MD)Nos.16041 to 16044 of 2016, 7634 to 7636 &
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