



W.P(MD)Nos.22724 to 22746 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.22724 to 22746 of 2017
WMP(MD) Nos.19014 to 19059

W.P(MD)No.22724 of 2017

The Correspondent,
St.Joseph's Primary School,
Mulavilai,
Veeyanoor Post,
Kanyakumari District – 629 177.

Petitioner

Vs

- 1.The Director of Elementary Education,
College Road,
Chennai – 600 006.
- 2.The District Elementary Educational officer,
Nagercoil – 629 001,
Kanyakumari District.
- 3.The Assistant Elementary Educational Officer,
Thiruvavarur,
Kanyakumari District.

Respondents



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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 settled by the second respondent District Elementary Educational Officer for the academic year 2016-2017, dated 25.04.2017 respectively and quash the same, insofar as it renders one post of Secondary Grade Teacher in the petitioner School as surplus.

For Petitioner : Mr.Ragadeesh for
M/s.Isaac Chambers

For Respondents : Mr.Baskaran
Additional Advocate General
Assisted by
Mr.D.Sadiq Raja
Additional Government Pleader

(In all WPs)

COMMON ORDER

These writ petitions have been filed as against the order of District Elementary Educational officers, settling staff fixation for the academic years 2014-2015, 2015-2016 and 2016-2017 that the same has not been in accordance with the Government Order in G.O(Ms) No.525, School Education (D1) Department, dated



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29.12.1997 and on the directions issued by the Full Bench of this Court in ***Director of Elementary Education Chennai and others Vs.S.Vigila***, reported in ***2006 (5) CTC 385***.

2. Since all these writ petitions are arising out of the issue in respect of staff fixation in the aided Institutions, all these writ petitions are heard together and disposed of by this common order.

3.The learned counsel appearing for the petitioner Schools submits the petitioner Schools are recognized and aided Minority Educational Institutions owned and administered by the Roman Catholic Diocese of Kuzhithurai at Kanyakumari District. The Schools were established as a Primary School and the medium of instruction is Tamil. The Government has issued a Government Order in G.O(Ms) No.525, School Education (D1) Department, dated 29.12.1997, in and by which, the student teacher ratio has been



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fixed as one teacher for every 40 students and the same was interpreted by the Judgment of the Full Bench of this Court in ***Director of Elementary Education Chennai and others Vs.S.Vigila***, reported in ***2006 (5) CTC 385*** and the relevant paragraph is as under:

23. Keeping in view the various relevant aspects, we feel that G.O.Ms.No.525 dated 29.12.1997 should be interpreted in the following manner:-

(1)The ratio of students-teacher strength as indicated in the G.O. should be primarily considered by taking each individual standard/section as a unit.

(2)The minimum strength of teachers required obviously should not fall below the number of Standards/Section in a school. In other words, if there are five standards, obviously the minimum number of teachers should be five, out of which one would be the Headmaster.

(3)If the students' strength in a particular Standard exceeds 60, at that stage, an additional section is required to be created requiring the sanction of a



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second teacher and the strength reaches 100, the post of a third teacher is required.

(4) Even after maintaining the aforesaid ratio by taking into account the students strength of each individual standard and additional section, as the case may be, by keeping in view the teacher-students ratio 1:40 of the entire school if the teachers strength is required to be increased, the same has to be allowed, but in no case, the teachers strength should be less than the number of standards including the additional sections. If more teachers are thus sanctioned keeping in view the over all strength of the school, the authorities of the school should create additional section in respect of any particular Standard according to the need and convenience keeping in view the standard of education. This requirement is not only in respect of aided schools or Government schools, but also in respect of any private recognised school. In other words, this ratio is to be maintained for any school which requires recognition.



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(5) It would be obviously open to the Government to formulate appropriate norms in consonance with the above observation and provisions of the constitution

Therefore, according to the learned counsel for the petitioner, the ratio of the student and teacher strength has to be considered by taking into the number of sections as Unit. However, the staff fixation has been made in the petitioner Schools without considering the directions issued by the Full Bench of this Court as stated supra.

4. In response to these writ petitions, the learned Additional Advocate General assisted by Additional Government Pleader appearing for the respondents submits that G.O(Ms) No.525, School Education (D1) Department, dated 29.12.1997 and the order of the Full Bench of this Court reported in ***Director of Elementary Education Chennai and others Vs.S.Vigila***, reported in 2006 (5) ***CTC 385*** is not applicable at present, in view of the enactment of



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Right of Children to Free and Compulsory Education Act, 2009. The learned Additional Advocate General by referring the subsequent Judgment passed by the Division Bench of this Court in a batch of writ appeals in **W.A(MD) Nos. 76 of 2019 etc., dated 31.03.2021** submits that this Court has considered the submissions made on either side and pronounced the judgment that in view of the Government order in G.O.Ms.No.231, School Education (C2) Department, dated 11.08.2010, the students and teachers ratio shall be fixed in the Schools as per the provisions of the Right of Children to Free and Compulsory Education Act, 2009, which came into force with effect from 01.04.2010 and the relevant paragraphs from the above judgment is extracted as under:-

“61. Therefore, G.O.Ms.No.231, School Education (C2) Department, dated 11.08.2010 has made it clear that, the student teacher ratio shall be fixed in a school as per the provisions of the RTE Act and accordingly, the rationalization has to be undertaken by the School Education Department and once the rationalization is undertaken, wherever teachers are required, those teachers



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shall be sanctioned and appointed not only in Government schools but also in Government aided schools and in respect of redeployment of teacher, no teacher appointed in any school shall be made to serve in any other school, that means, the excess of teachers in a school shall be identified only by the authorities by taking into account the teacher- pupil ratio and the actual attendance and the strength of the pupil in a particular academic year.”

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

6.The petitioner Schools have questioned the staff fixation, which was made in the academic years 2014-2015, 2015-2016 and 2016-2017 that the staff fixation ought to have been made only as per the Government order in G.O(Ms) No.525, School Education (D1) Department, dated 29.12.1997. However, Right of Children to Free and Compulsory Education Act, 2009 has been enacted and came into force with effect from 01.04.2010. In view of



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the introduction of Right of Children to Free and Compulsory Education Act, 2009, the relevance of the aforesaid Government order in G.O(Ms) No.525, School Education (D1) Department, dated 29.12.1997 would not have any consequence in deciding the staff fixation for the above academic years. This contention has also been agreed by the Division Bench of this Court in a batch of writ appeals in W.A(MD) Nos.76 of 2019 etc.,batch, dated 31.03.2021, wherein, this Court has passed an order and the relevant paragraphs are 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.



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(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 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.



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(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 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*



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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 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.



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(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.*

(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*



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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 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



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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 aforesated 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 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.



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(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 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."*



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7.In fact, the Division Bench of this Court has permitted for additional staff irrespective of medium of instruction to the aided Institutions. However, clause (i) of the Judgment of the Division Bench has been stayed by the Honourable Supreme Court in a Special Leave Petition 15702 of 2021 and the same is still pending. In view of the enactment of Right of Children to Free and Compulsory Education Act, 2009, which came into force with effect from 01.04.2010, the staff fixation has to be done as per the said Act. Therefore, these writ petitions are not maintainable and accordingly, these writ petitions are dismissed. No costs. Consequently, connected Miscellaneous petitions are closed.

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NCC:Yes/No
Index:Yes/No
Internet:Yes
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- 1.The Director of Elementary Education,
College Road,
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Common Order made in
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