

W.A.(MD)No.1870 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 02.04.2025

PRONOUNCED ON : 28.04.2025

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU
and
THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.A(MD)No.1870 of 2023
and
C.M.P.(MD)No.14274 of 2023

- 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,
Dindigul, Dindigul District.
- 4.The District Educational Officer,
Dindigul, Dindigul District.

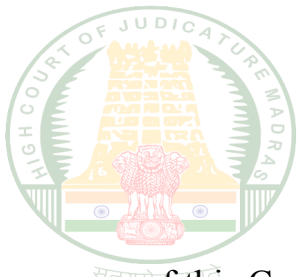
... Appellants

Vs.

The Correspondent,
St. Mary's Higher Secondary School,
Dindigul 624 001,
Dindigul District.

... Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order



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of this Court in W.P.(MD)No.7765 of 2018, dated 14.02.2023.

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For Appellants :Mr.J.Ashok
Additional Government Pleader
For Respondent :Mr.Issac Mohanlal
Senior Counsel
assisted by Mr.K.Ragatheesh Kumar

JUDGMENT

(Judgment of the Court was delivered by **S.SRIMATHY, J.**)

The present writ appeal is filed against the order passed in W.P.
(MD)No.7765 of 2018, dated 14.02.2023.

2. The writ petition was filed for issuance of a writ of Certiorarified Mandamus, to quash the order, dated 24.11.2017, passed by the 4th respondent and consequently, to direct the 4th respondent to approve the appointment of M.Karthikeyan as Physical Education Teacher in the petitioner school with effect from 07.06.2017 with salary and all attendant benefits forthwith.

3. The brief facts are that the petitioner school is run by St. Mary's Society, Dindigul, a society registered (Registration No. 2 of 1999) under the TN Societies Registration Act of 1860. The school was initially established as a High



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School in the year 1923, then upgraded as Higher Secondary School in the year 1979. It is a recognised aided minority educational institution from standards VI to XII with medium of instruction as Tamil. There are 88 teachers viz., one Headmaster, 13 PG Assistants, 1 Physical Director (Grade I), 2 Vocational Instructors (Grade-I), 38 BT Assistants, 10 Tamil Pandits, 13 Secondary Grade Teachers, 5 Physical Educational Teachers 3 Drawing Teachers and 2 Sewing Teachers working and the school is receiving aid from the State Government. There are 17 aided non-teaching staff in the school viz., 3 Junior Assistants, 2 Record Clerks, 2 Lab Assistants, 1 Librarian, 3 Office Assistants, 2 Watchman, 1 Sweeper, 1 Scavenger, 2 Waterman. There are 3371 students studying in the school. The Government announced the revised Norms on teacher student ratio under G.O.Ms.No.525 (School Education), dated 29.12.1997, with effect from 01.06.1998, wherein 1:40 was adopted and separate norms were prescribed for the different stages of education. The post of Physical Education Director in the School fell vacant on 01.06.2018 due to retirement of incumbent Fr.S.Marianathan on 31.05.2017 and the school promoted one Physical Education Teacher namely, S. Victor Raj with effect from 07.06.2017 Physical Education Director. The DEO approved the same, vide his proceedings in O.Mu.No. 3367/A2/17, dated 22.06.2017. In the resultant vacancy the school appointed



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M.Karthikeyan as Physical Education Teacher with effect from 07.06.2017, who possesses the qualification of B.A., (Co-operation) and Master of Physical Education. For the purpose of disbursement of grant-in-aid towards salary, the school submitted proposal to the 4th respondent DEO on 07.06.2017, but vide impugned proceedings dated 24.11.2017 denied approval by stating that the school is eligible for only three posts of Physical Education Teachers as per G.O.Ms.No.525 School Education (D1) Department dated 29.12.1997 and there are already four Physical Education Teachers working in the school, the approval to the appointment of the said M.Karthikeyan could not be granted. The contention of the petitioner the denial of approval is highly arbitrary, illegal and unconstitutional and is in complete violation of the norms fixed by G.O.Ms.No. 525, School Education (D1) Department, dated 29.12.1997. Further, notice or any opportunity of hearing was provided before passing of the impugned order. The school contended that the school is eligible for 5 Physical Education Teachers as per G.O.Ms.No.525 when the strength of classes VI to X in the High School exceeds 250, one post of Physical Education Teacher will be sanctioned and for every additional strength of 300 students, one additional post of Physical Education Teacher will be sanctioned subject to a maximum of 3 Physical Education Teachers. Accordingly, the school has the strength of 3371 students in



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the year 2017-2018 (standards from VI to X). The petitioner school is entitled for 5 posts of Physical Education Teachers. The 3rd respondent CEO, while settling the annual staff fixation for the year 2016-2017, vide proceedings Na.Ka.No. 4700/Aa2/2016, dated 07.11.2016 (signed on 26.12.2016), sanctioned one Physical Education Director and five Physical Education Teachers posts. Hence, the school appointed the said M.Karthikeyan in the fifth place, i.e., the vacancy due to the promotion of S.Victor Raj as Physical Education Director in the same school. As per the said G.O., in vogue as well as the staff-fixation order issued by the CEO, the petitioner school is eligible for five posts of Physical Education Teachers and the appointment of the said M.Karthikeyan as Physical Education Teacher was made within the sanctioned strength. Hence, the respondents are bound to approve the appointment of M.Karthikeyan as Physical Education Teacher in the petitioner school with effect from 07.06.2017. The said teacher is working without salary ever since from his date of appointment and the impugned proceedings liable to be set aside. Hence, the writ petition is filed.

4. The 4th respondent had filed counter affidavit stating that it is not in dispute that the petitioner's school is a religious minority institution, the school is receiving financial aid from the Government towards salary. Among other



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teachers there were one Physical Education Director and five Physical Education Teachers during the year 2016-2017. Due to the promotion of one Physical Education Teacher, namely, S.Victor Raj as Physical Education Director, there arose a permanent vacancy in the post of Physical Education Teacher on 07.06.2017 i.e., during 2017-2018. As per G.O.Ms.No.525 only three Physical Education Teachers are eligible for a Higher Secondary School irrespective of the students strength.

School year	Students Strength	No. of PET's eligible	Reasons for reduction
2016-2017	3753	5	-
2017-2018	3861	4	One Vacancy was reduced as per GO Ms.No.525
2018-2019	3958	4	One Vacancy was reduced as per GO Ms.No.525

The contents of G.O.Ms.No.525 are squarely applicable to all the aided High or Higher Secondary Schools whether they are minority or non-minority. The petitioner's school cannot have more than 3 PET's as the maximum number of PET's prescribed in the said G.O., is three and the students strength will have no impact on the number of PET to claim more than 3 PETs. The above G.O. came into force from 01.06.1998 and the school is well aware of the G.O. which remains in force for the last 20 years. All the aided schools whether minority or non-minority are bound to follow the above Government order and the school

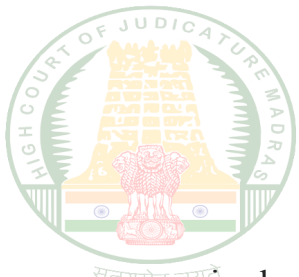


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cannot seek exemption. Based on the above G.O. and the norms for appointment of PETs the impugned order was passed as the petitioner's school had four Physical Education Teachers on 07.06.2017 which is more than the 3 Physical Education Teachers prescribed in the said G.O. The school is already having one post which is more than the prescribed norms in the said G.O. Therefore, the petitioner is not entitled to one more post additionally. The school was granted permission vide No.Rc.6447/Aa.2/ 2017, dated 12.10.2017 with a certain condition. In the said order, it has been specifically stated that if the incumbent has attained superannuation or becomes vacant for any other reason, the post shall be surrendered and the post gets lapsed. It is a service protection given to the incumbent and the school cannot appoint any new candidate. But violating the said condition, the school has appointed a candidate. Hence, the 4th respondent prayed to dismiss the writ petition.

5. After considering the rival contentions, the Writ Court relied on a Division Bench judgment in the case of *The Director of School Education, Chennai and Others Vs. K.Uma* reported in (2010) 2 MLJ 277, wherein it is held that there cannot be any ceiling with regard to the strength of teachers as the same is bound to vary/increase as per the strength of the students. The Writ Court held that when the students' strength is increased, the ceiling has to be removed and if



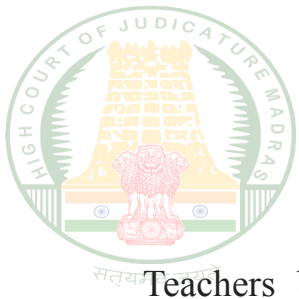
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required, more Physical Education Teachers are to be appointed and the G.O. (Ms)No.525, dated 29.12.1997, is not a mandatory, it is only a directory. Hence, the Writ Court quashed the impugned order passed by the fourth respondent, dated 24.11.2017, and remanded the matter remanded back to the fourth respondent for fresh consideration, in terms of the Division Bench judgment reported in **(2010) 2 MLJ 277**. Aggrieved over the same, the government has preferred the present writ appeal.

6. Heard Mr.J.Ashok, Learned Additional Government Pleader appearing for the appellants and Mr.Issac Mohanlal, Learned Senior Counsel assisted by Mr.K.Ragatheesh Kumar, Learned Counsel appearing for the respondent and perused the records.

7. The primary contention of the appellant is that the G.O.Ms.No.525 prescribes only three Physical Education Teachers for High School which is the maximum limit and if there are more than 400 students in Higher Secondary School, then the school is entitled to one Physical Education Director, thereby the school is entitled to two PET and one Director. On the other hand, the contention of the school is that they are entitled to have more than three Physical Education



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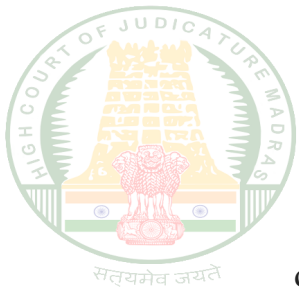
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Teachers based on the students' strength and they are having five Physical Education Teachers including Karthikeyan. The further contention of the school is that the Higher Secondary section is different from High School section, the High School strength 2643, hence maximum limit of three cannot be fixed, hence the school is entitled to four, then for Higher Secondary the strength is 748, hence the school is entitled to one more Physical Education Director, thereby the school is entitled to four PET and one Director.

8. In order to consider the rival contention, it is necessary to peruse the G.O. and the relevant portion para 5(III)(c) and 5(IV)(f) of the G.O. is extracted hereunder:

"5(III)(c): When the strength in classes VI to X in High Schools exceeds 250, one post of PET will be sanctioned and for every additional strength of 300, one additional post of PET will be sanctioned SUBJECT TO THE MAXIMUM OF 3

5(IV)(f): For school with strength of over 400, one post of Physical Director will be given by upgradation of existing post of Physical Education Teacher"



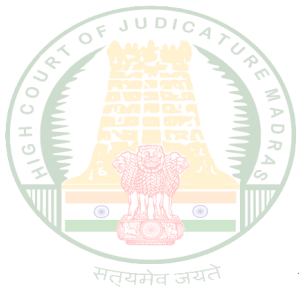
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9. It is seen that the students' strength is 2623 in High School section, then school is **entitled** to **three** Physical Education Teachers for High School which is the maximum limit. Since the school is having another 748 students in Higher Secondary School then the school is entitled to upgradation of **one** Physical Education Teacher as Physical Education Director. The G.O. states the upgradation is from the "**existing**" Physical Education Teacher, which means the school is entitled to two PET and one Director only. The school is entitled to upgrade from the existing PET and not a separate post of Director.

10. It is seen already four PET are serving in the school, which makes one post is over and above the maximum three. When already one post of PET is over and above the maximum limit, if approval for the appointment of the said M.Karithikeyan is granted then the school would be having five Physical Education Teachers, then two Physical Education Teachers would be over and above the limit of three prescribed under G.O.Ms.No.525.

11. Therefore, this Court is of the considered opinion that the approval cannot be granted for Karthikeyan appointment, since the said appointment is beyond the prescribed limit of three under G.O.Ms.No.525.



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12. The Learned Senior Counsel appearing for the respondent school submitted that the limit cannot be prescribed when the students' strength is more and the said issue is already settled by the Coordinated Bench in the case of Director of School Education and others Vs. K.Uma reported in (2010) 2 MLJ 277, wherein it is held as under:

“23. As stated above, the normal understanding of the above government order with regard to Physical Education Teachers is that the High Schools would have maximum number of three Physical Education Teachers and Higher Secondary School would be added one more Physical Education Director in the name of Physical Education Director. However there cannot be any ceiling with regard to the strength of teachers as the same is bound to vary/increase as per the strength of the student's. When the student strength is increased, the ceiling has to be removed and required more Physical Education Teachers are to be appointed, otherwise the students would suffer irreparably and the government order would go against the very scheme of education.

24. Hence G.O.Ms.No.525 needs to be given a liberal interpretation and the government is at liberty to reconsider the matter and issue reasonable viable and appropriate norms with regard to appointment of physical education teachers in the schools as per the strength of students, considering the observations made by this court expeditiously.”



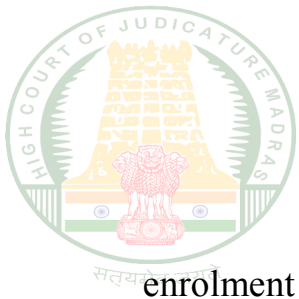
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The aforesaid judgment had held that the understanding of the aforesaid G.O. is that the High School can have three PET and the Higher Secondary can have one Director, there cannot be any ceiling, if the student strength is increased then the ceiling has to be removed and more PET can be sanctioned. Having held so, the Division Bench has not directed to sanction the post, but had held the government has liberty to reconsider the issue and issue appropriate norms based on the above observation. This Court is also of the considered opinion that the Mandamus cannot be granted against the government in the policy decision of the government.

13. The Hon'ble Supreme Court in the case of ***State of W.B. v. Subhas Kumar Chatterjee*** reported in ***(2010) 11 SCC 694*** has observed that “No court can issue Mandamus directing the authorities to act against provisions of law”. If literal interpretation is given, then each school would seek over and above the prescribed limit stated in the G.O.Ms.No.525, then the said G.O. would vanish. Therefore, Mandamus cannot be granted to act against the G.O.

14. This Court has perused the reason for passing the G.O.Ms.No.525, wherein it is stated that the establishment of new schools and increase of



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enrolment in the existing institutions made it difficult for the government to support these schools with grants. Hence it was informed to the institutions that recognition would be granted only if the institutions accept that the requirement of additional posts cannot be sanctioned, no grant-in-aid would be extended. Initially the institutions accepted but after granting recognition had filed writ petitions and based on the orders, the government was compelled to pay grant-in-aid. Hence, the “High Power Committee” was constituted and the committee suggested revised norms for sanction of teaching posts to aided schools. The committee after taking note of the changes in teaching methodology, improved availability of teaching and learning materials, a reappraisal of the teacher-pupils ratio has been made. Consultations with educationists were also held to obtain a clear picture of the norms that would be conducive for effective teaching. Thereafter, the government had issued G.O.Ms.No.525 fixing the norms. When the government is having complete data about effective teaching norms, when the government is having data about its financial viability, then the government is having power and authority to fix the norms. But the Courts are not having any such data and no data was placed before this Court, then the Courts cannot interfere in such matters. When the experts in the education field were consulted, then the Courts cannot interfere and substitute its opinion. Further this is within the purview of



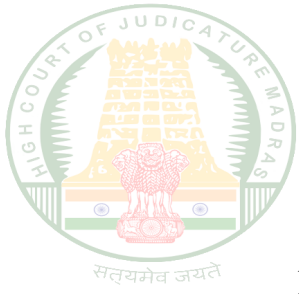
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the policy decision of the government. Therefore, the Courts cannot interfere and issue any direction to the government.

15. The Hon'ble Supreme Court in the case of the *State of Bihar Vs. Sachindra Narayan*, reported in *(2019) 3 SCC 803* had taken note of the discretionary nature of a grant and has held that “the release of grant is in discretion of the grantor and cannot be forced by the grantee”. In the case of *State of Odisha and another vs. Anup Kumar Senapati and another [Civil Appeal No. 7295 of 2019]*, in paragraph No.8, the Hon'ble Supreme Court had held that grant-in-aid cannot be claimed as a matter of right. Therefore, the respondent school cannot claim as a matter of right to grant approval and grant-in-aid.

16. The Writ Court had rightly directed the authority to consider but had further held that the same shall be considered in the light of Division Bench Judgment reported in *(2010) 2 MLJ 277*. But this Court is of the considered opinion that the government cannot be compelled to grant approval, consequently release grant-in-aid, de hors G.O.Ms.No.525. Therefore, the direction to consider in the light of above judgement is erroneous and the present appeal preferred by the State ought to be allowed.



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17. Accordingly, the writ appeal is allowed. The impugned order passed by the Writ Court is set aside. The respondent herein is not entitled to any posts beyond prescribed under G.O.Ms.No.525 and consequently, the appointment cannot be approved. No costs. Consequently, connected miscellaneous petition is closed.

[J.N.B., J.] [S.S.Y., J.]
28.04.2025

Index : Yes / No

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To

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Fort St. George, Chennai 600 009.
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