

(2010) 02 MAD CK 0064

In the Madras High Court

Case No : Writ Petition No. 1038 of 2010 and M.P. No. 1 of 2010

P.G. Manuel Stephens, Secretary and Correspondent,
Chandra Deva Prasad Aided Middle School

APPELLANT

Vs

The Director of Elementary Education, The District
Elementary Educational Officer and The Additional Assistant
Elementary Educational Officer

RESPONDENT

Date of Decision : 08-02-2010

Acts Referred:

Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 — Rule 15(1), 6(2)

Citation : (2010) 02 MAD CK 0064

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S.N. Ravichandran, for the Appellant; E. Renganayaki, GA, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard both sides. The petitioner is the Secretary and Correspondent of an Aided Middle School. He has come forward to

challenge the order, dated 16.11.2009 passed by the second respondent the District Elementary Educational Officer, Salem. By the said order, the

staff strength of the petitioner school for the year 2009-2010 was fixed.

2. It was stated that for the relevant year, the petitioner will have the following complement:

B.T. Headmaster - 1

Secondary Grade

Teachers to teach

1st to 5th Standards - 2

Graduate Teacher

to teach 6th to 8th

standards - 1

Craft teacher - 1

Total 5

3. For the previous year, the petitioner had complement of nine teachers. By this refixation, it was held that two secondary grade teachers and two

graduate teachers will become surplus. It was stated that the services of teachers who were declared surplus and their posts will be resumed by the

department and they will be allotted to the needy school along with the post. It is this order, the petitioner management came to challenge.

4. According to the petitioner, the school was inspected during August, 2008. The primary section of the school had an average attendance of 140

and in the middle Section 120 students, thereby the total was 260. For that 260, the department had allotted 8 teachers. But, in the present

impugned order, the same was reduced to 5. The petitioner placed reliance upon the judgment of this Court in C. Manonmony Vs. State of Tamil

Nadu and Others, . In that case, this Court undertook an exercise of fixing the staff strength in accordance with the Government Order. The

petitioner also filed an additional typed set containing inspection report, dated 24.8.2009 signed by third respondent showing that the student

strength was 165 and subsequently, in the inspection report, dated 27.8.2009, it was shown as 186. The petitioner also produced their staff

register and also produced a copy of the monthly report.

5. Mr. S.N. Ravichandran, learned Counsel for the petitioner also placed strong reliance upon a Full Bench judgment of this Court in Director of

Elementary Education, Chennai-6 and Ors. v. S. Vigila and Anr. reported in 2006 (5) CTC 385 presided by P.K. Misra, J. (as he then was). In

paragraph 23, the Full Bench gave the following directions:

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 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 sanction, 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.

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

Constitution.

6. It is not clear as to how this judgment will have any assistance to the petitioner. In paragraph 23.5, the Government was given power to

formulate appropriate norms in consonance with the observations and provisions of the Constitution.

7. This Court is not inclined to entertain the writ petition on two grounds. The sanctioned strength of teachers based on students strength is a matter

which exclusively for the State Government to decide on the basis of Rule 15(1) of the Tamil Nadu Recognised Private Schools Regulation Rules,

1974. From the staff attendance shown by the petitioner, nothing is made out

because ultimately one thing that emerges is the strength of students is going down year by year.

8. Further, the question raised by the petitioner in this writ petition is no longer *res integra*. The Supreme Court vide its judgment in *State of Tamil*

Nadu and Others Vs. Amala Annai Higher Secondary School, dealt with a similar case but in respect of a minority institution. In paragraphs 11 to

15 of the said judgment, the Supreme Court observed as follows:

11. Secondly, insofar as GOMs No. 340 dated 1-4-1992 is concerned, it is not attracted at all. GOMs No. 340 dated 1-4-1992 issued by the

Education Department mentions:

Accordingly, the following staffing pattern, was recommended by the Committee for deciding the eligibility for post for the schools in question

(opened in 1987-1988 and earlier)...

Thus, GOMs No. 340 dated 1-4-1992 containing norms for sanction of posts is applicable to the High Schools opened in 1987-1988 and earlier.

In the present case, the School was upgraded to High School in 1988-1989.

12. Thirdly, the Division Bench as well as the Single Judge overlooked and ignored Sub-rule (2) of Rule 6 of the Rules, 1977 which reads:

6.(2) Payment of monthly staff grant shall be made only in respect of qualified and admissible teachers actually employed in minority schools whose

appointments have been approved by the authorities concerned according to the number of posts sanctioned to the institution concerned.

Admittedly, in the present case, the management of the School appointed Ms. Rosary as Junior Assistant to a non-sanctioned post. The

explanation of the management that she was appointed in anticipation of orders from the competent authority hardly merits acceptance.

13. Fourthly, as per the norms issued in relevant GOMs the strength of the School during 1990-1991 was only 300 and above while the students'

strength of the School during 1990-1991 was only 281. As a matter of fact, it is not even the case of the management that during 1990-1991, the

student strength was 300 or more. The student strength during 1993-1994 and subsequent years has no relevance. It is here that the High Court

fell into a grave error because what was important under the relevant GOMs was that the student strength must have been 300 or more during the

years 1988-1989, 1989-1990 and 1990-1991.

14. Fifthly, the reliance placed by the High Court on GOMs No. 245/Education dated 21-2-1970 is misplaced inasmuch as the said G.O. applied

to clerks who were already employed in and around the year 1964 and has no application to a Junior Assistant appointed to a non-sanctioned

post in 1988-1989.

15. Last but not the least, the High Court erred in directing the present Appellant 1 to sanction one post of Junior Assistant to Respondent 1,

AAHS School from 1-6-1994 overlooking and ignoring that creation and sanction of posts is the prerogative of the executive and the courts

cannot arrogate to themselves a purely executive power.

Therefore, the petitioner cannot demand as a matter of right approval and payment of salary.

9. Subsequently, a similar question also came up before the Supreme Court in Kolawana Gram Vikas Kendra Vs. State of Gujarat and Others, .

In paragraphs 6 to 8, the Supreme Court observed as follows:

6. In our considered view, we do not view this to be the interference in the selection process. It would be perfectly all right for a minority institution

to select the candidates without any interference from the Government. However, the requirement of this prior approval is necessitated because it

is for the Government to see as to whether there was actually posts available in the said institution as per the strength of students and secondly,

whether the candidates, who were sought to be appointed, were having the requisite qualifications in terms of the rules and regulations of the

Education Department. That is precisely the stand taken by the State of Gujarat before us in its counter affidavit. Para 3 of the said affidavit reads

as under:

Minority institutions are free to select their teaching and non-teaching staff. No Government Officer or the representative of the Board was

appointed in the selection committee of the minority institution. There is no interference by the Government in the administration of the schools.

However, N.O.C. is required to be obtained to verify whether there is a vacancy of a teacher of a particular subject as per the workload fixed by

the Gujarat Secondary and Higher Secondary Education Board specially when the government is providing grant-in-aid and that he possesses

minimum required qualification for the post he is appointed.

7. From the reading of aforementioned para 3, it is clear that all that the Government wants to examine is as to whether the proposed appointments were within the frame work of the rules considering the workload and the availability of the post in that institution and, secondly, whether the selected candidates had the necessary qualifications for the subjects in which the said teachers were appointed. The same applies to the non-teaching staff also.

8. In view of this clear stand taken by the State Government, we cannot pursue ourselves to hold that the aforementioned circular amounts to any unconstitutional interference in the internal working of the minority institution....

10. If at all the petitioner wants to continue the school with adequate teaching staff, he should appoint appropriate staff and pay the salary out of their funds until the Government finds justification for releasing the grant in aid. In this regard, it is necessary to refer to the judgment of the

Supreme Court in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani*

and Others, . The Supreme Court has held that the employer is primarily responsible for the payment of salary and other benefits to their staff

without waiting for any grant. In paragraph 10 of the judgment, the Supreme Court observed as follows:

10. ...We heard counsel for the State. He disputes the appellants' claim. In fact, he challenges the claim on a number of grounds. He says that the

State is under no obligation to pay the appellants as against the sum due to the respondents. We do not think that we need rule today on this

controversy. It is indeed wholly outside the scope of these appeals. We are only concerned with the liability of the management of the college

towards the employees. Under the relationship of master and servant, the management is primarily responsible to pay salary and other benefits to

the employees. The management cannot say that unless and until the State compensates, it will not make full payment to the staff. We cannot

accept such a contention.

11. Ultimately, it is for the Government to redeploy teachers to the needy school in case of any surplusage. Insofar as teachers are concerned,

there is no question of their losing employment. On the contrary, they will be

getting their salary doing the same work in some other school.

12. Mr. S.N. Ravichandran, learned Counsel finally contended that at least teachers should be allowed to continue till the end of academic year. It

is needless to state that this issue will be considered by the respondents considering the welfare and academic interest of the present students. Even

otherwise, in normal circumstances, such redeployment orders are passed only before the summer recess, so that the teachers will have time to join

the needy school. But, on that ground, the impugned order cannot be quashed.

13. In the light of the above, the writ petition will stand dismissed. No costs. The connected miscellaneous petition stands closed.