
(2011) 06 MAD CK 0458
In the Madras High Court
Case No : W.P (M D) . No. 12463 of 2009

S.R.M. Higher Secondary School

APPELLANT

Vs

The Chief Educational Officer, The District Educational Officer
and The Director of School Education

RESPONDENT

Date of Decision : 24-06-2011

Acts Referred:

Citation : (2011) 06 MAD CK 0458

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Advocate : V. R. Shanmuganathan, for the Appellant; T. R. Janardhanan, Addl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

B. Rajendran, J.—The Writ Petitioner School was originally a high School which was later upgraded as a higher secondary School with effect from 1985-1986. According to them, they had ten sanctioned posts of graduate teachers and one post of lab attendant and the said posts are permanent. Out of ten teaching posts, the third Respondent had accorded and sanctioned five posts for the higher Secondary School. The School was entitled to get the posts under G.O. Ms. No. 702, Education Department. At that time, the Petitioner School was only offering the third group alone to the students. Thereafter, the Petitioner School decided to include two more new groups in the higher secondary section, as per their resolution dated 12.01.1988. Therefore, the Petitioner School requested for sanction of five posts of P.G. Assistants to expand the existing higher secondary education. However, it was not considered by the Respondents. Therefore, he filed a Writ of Mandamus in W.P.(MD). No. 8226 of 1998 seeking to consider his representation. This Court, by order dated 19.06.1988 directed to consider the said representation within one month. Subsequently, by order dated 13.08.1998, the representation was returned for submission of a declaration. Accordingly, on 20.11.1998, the Petitioner made a declaration. However, again, it was returned

and the Petitioner School made a further representation dated 11.01.1999. As no orders were passed, a contempt Petition was filed in Cont.P(MD). No. 138 of 1999 and final orders were passed on 01.09.1998 and said Contempt Petition was closed on 22.03.1999. Since there was a dispute in the management, he has taken over the management only now. Therefore, he would contend that the earlier proceedings could not be proceeded with. Now, the Petitioner made a new request for starting up new two groups and also for additional teachers by his representations dated 07.06.2008, 13.12.2008, 05.02.2009 and 13.03.2009. This was also not considered, hence, he filed another Writ Petition in W.P(MD). No. 4697 of 2009 to consider the representations of the Petitioner dated 15.02.2009 and 13.03.2009 which was ordered by this Court on 12.06.2009 to consider the representations and pass appropriate orders within six weeks. However, his request was rejected. Challenging the said rejection order, the present Writ Petition has been filed.

2. His main contention is that the rejection is bad, as originally the School was in existence even prior to 1990 and the School is upgraded as higher secondary School even in the year 1985 and the posts are sanctioned posts. Though it was not utilized, the post never ceases and the order which now says that no new course stated after 1990 could be given grants will not be applicable to the Petitioner School, because it was in existence even prior to that and hence, the order is not legal.

3. Mr. TR. Janardhanam, learned Special Government Pleader has filed a detailed counter affidavit stating that when the permission was granted to open science groups at that time of opening higher secondary School, the School had started only the third group in 1985 and 1986. As they have not started the science group, the other five posts were taken up and distributed to the needy Schools. In fact, as early as 12.01.2008, when a request was made to open two more groups, it was negated by the Government. When the request for starting new course has been negated as early as on 12.01.2008, there was no question of granting of additional five posts and therefore, the impugned order was passed correctly. In fact, in the earlier Writ Petition in W.P(MD). No. 8286 of 1998, when the request of the management was sought to consider and after the Court order, a declaration was insisted from the Petitioner School to the effect that at no point of time the post with grant will be claimed. Since they did not file the undertaking, the request of the Petitioner School was rejected. Further, as per G.O. Ms. No. 525 Education dated 29.12.1997, the request of the School cannot be considered and it could be considered only on the basis of self financing pattern. As the Petitioners have allowed the posts to lapse, after a long gap, they cannot now be permitted to revive the same. Any posts especially after G.O. Ms. No. 525, Education, dated 29.12.1987 and the amendment to the section and also in view of the fact that when the department has not permitted to open any additional group, the impugned order not permitting the Petitioner School to allow any additional posts is well within the competence of the Respondents. The original five sanctioned posts were not utilised by the Petitioner School within the

time limit and after several years, the request to start for additional groups and sanction additional teacher posts on that basis cannot be considered at this point of time. Therefore, the request of the School after 23 years cannot be revived.

4. The Petitioner has also replied to the counter stating that the posts which was originally sanctioned was never taken up by the Respondents. They would also contend that even though an undertaking that no infrastructure would be demanded was given as early as on 20.11.1998, they have not given any undertaking as regards the sanctioned posts. They would now contend that they have started the School earlier and any request has to be considered on the prevailing conditions.

Heard both parties. By consent, the Writ Petition itself is taken up for final disposal.

5. The only request of the Petitioner is that the Petitioner School which was started long back and later upgraded in the year 1985 had originally ten sanctioned posts. But when they started the higher secondary School since they had only the third group, they have availed initially five posts alone. The remaining five posts though not availed at that time as it is a permanent sanction posts they could avail this post at any time when the requirement is necessary is the main contention of the Petitioner.

6. They would also contend that after a period of twenty years when they wanted to expand and use additional classes, they sought permission to have the course sought the post which was originally there but not utilised till then. Since the representation was not considered, earlier round of litigations were there, but ultimately the request of the Petitioner was rejected on the ground that;

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7. As per the Tamil Nadu Private School Regulations Act 14(a)(d) any class or course which was started after the academic year 1991-1992 will not be eligible for any grant and those courses or classes of the Schools could be only opened under the self-financing scheme. In this connection, they would only contend that even though the School was opened and upgraded even in the year 1985 the present courses which is now sought to be opened was not available in the School in the academic year 1991 and 1992 and for the first time, they sought permission to open the concerned class or course, that too, only in the year 1998. It is also pointed out even though 10 posts were available in the year 1985, only five posts were utilised, thereafter, till 2008, it was never utilised. In fact, in the year 2008, the request for sanction of new posts with permission to start new course or class having been rejected, it is not open to the Petitioner at this point of time to seek additional posts.

8. For better appreciation of facts, Rule 14-A of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, is usefully extracted below:

14-A. Grant not payable to new private Schools and new class and course of

instruction:

Notwithstanding anything contained in this Act or in any other law for the time being in force in any judgment, decree or order of any Court or other authority, no grant shall be paid to

(a) any private School established and any class or course of instruction opened in such private School, on or after the date of commencement of the academic year 1991-1992.

(b) any private School in existence on the date of commencement of the academic year 1991-1992 to which no grant has been paid by the Government immediately before the date of such commencement;

(c) any class or course of instruction in a private School in existence on the date of commencement of the academic year 1991-1992 to which no grant has been paid by the Government immediately before the date of such commencement; and (d) any class or course of instruction opened on or after the date of commencement of the academic year 1991-1992 in a private School in existence on the date of such commencement

9. Specifically, Clause (c) would clearly state that any clause or instruction in a private School is in existence on the date of commencement of the academic year 1991-1992 to which no grant has been paid by the Government immediately before the date of such commencement, then they are not eligible. Here, on the date, namely, in the year 1985 when the sanctioned posts were 10, but they utilised only five posts and in 1991-1992, this additional courses were not available. First time, they ask for only in the year 1988 and even in the year 2008, the request was rejected. Therefore, the School which is not having the course or class in the academic year 1991-1992 cannot seek any grant now, even though originally, they had enjoyed the same. Unfortunately, as per the counter, since the grant was not utilised, the other five posts which was available to the School has been given to the other needy School, which has not been challenged in the court of law. Even though on the earlier occasions the Petitioner School had filed a Writ Petition for some other purpose, taking up of the posts from the Petitioner School was not challenged till today. No doubt, the Petitioner has raised a plea taking up of the post is arbitrary without notice, but that has not been challenged before the Court of law. Even if we take into consideration G.O. Ms. No. 525 School education department dated 29.12.1997, the sanction for additional posts would be considered will be applicable only to Schools or courses which were recognised upto 1991. The learned Counsel wanted to rely upon this ground that the words used that Schools established and any class or course of instruction opened in such a private School on or after 1991-1992, contends that this School was in existence way back in the year 1985. Hence, they would be eligible for the additional posts. Unfortunately, we will have to take into consideration that in the year 1997 those Schools which was in existence already were given for two additional posts in respect of the

classes also. This has not been done so by the Petitioner School. Whereas, after the amendment to the act, it is very clear that including any class or course cannot be included unless the same has been in existence on the crucial date. Here, they only started a new course after 1991 and that is why, the Respondents have rightly negated the request of the Petitioner. Therefore, the impugned order passed by the authority concerned is valid and correct and I do not find any reason with the reasoned order and the Writ Petition is liable to be dismissed.

10. In the result, this Writ Petition is dismissed. No costs.