

(2010) 07 MAD CK 0103

In the Madras High Court

Case No : Writ Petition No's. 2717 and 2718 of 2010 and M.P. No's. 1+1 and 2+2 of 2010

Thamizhthendral Thiru. Vi. Ka Aided Middle School

APPELLANT

Vs

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

RESPONDENT

Date of Decision : 16-07-2010

Acts Referred:

Citation : (2010) 07 MAD CK 0103

Hon'ble Judges : K.B.K. Vasuki, J

Bench : Single Bench

Advocate : N. Jothi, for the Appellant; Ranganayagi, GA, for the Respondent

Final Decision : Allowed

Judgement

K.B.K. Vasuki, J.—The writ petition is filed against the order of the first respondent dated Nil 1.2010 signed by the first respondent on

23.01.2010 in his proceedings made in Na. Ka. No. 440/B5/2010 thereby revoking the approval granted for the appointment of Thiru. M. Gopi,

as Physical Education teacher and Tmt. P. Gowri as Sewing mistress in the vacancy arising due to the retirement of M. Radhakrishnan as Physical

Education teacher on 31.08.2009 and Tmt. Vijaya as Sewing mistress on 31.10.2009 in the petitioner's school and to quash the same.

2. The petitioner school was commenced during 1946 and is well serving to cater the needs of Children of poor families in and around locality of

Ranipet and Pinchi and has earned good reputation of one of the best schools in the area. The school has Ist standard to VIIIth standard classes

having 216 students and sanctioned strength of Head Master - 1, B.T. Assistant -

2, Tamil teacher -1, Secondary Grade - 3, Sewing mistress - 1

and Physical Education teacher 1. The school has been from the beginning functioning with above the sanctioned strength of teachers as above

referred to including Physical Education and Sewing teachers Thiru. Radhakrishnan was after serving 35 years as physical education teacher retired

on 31.08.2009 and Tmt. Vijaya after serving 22 years as Sewing mistress retired on 31.10.2009 as such the petitioner school decided to fill up the

vacancies and duly passed resolution to the effect. Thereafter, the petitioner made request to the first respondent/District Elementary Education

officer to permit the school committee to fill up the vacancies so arose. The first respondent has in his proceedings Na. Ka. 6520/B5/2009 dated

30.11.2009 sanctioned the necessary permission to the School to fill up the vacancies, however, subject to certain conditions. The school

committee has on the strength of such permission appointed Thiru. Gopi and Tmt. P. Gowri in both the vacant posts on 30.10.2009 and they were

permitted to join duty with effect from 21.12.2009 and duly joined duty. Thereafter, petitioner school has by letter dated 22.12.2009 addressed

the first respondent for due approval of the appointments so made and the first respondent in his proceeding Nil.1.2010 dated 22.01.2010

sanctioned the necessary approval. However, the first respondent has on the very next day on 23.01.2010 passed the impugned order thereby

revoking the approval granted on 22.01.2010 on the ground that Physical Education teacher and Sewing mistress can be appointed only when the

strength of the students in classes 6 to 8 is above 150.

3. According to the Learned Senior Counsel appearing for the petitioner, the impugned order based on earlier letter of the 3rd respondent in his

proceedings letter No. 15880/D1/06 dated 02.06.2006 referred to as reference No. 1 in the impugned order is totally unreasonable, irrelevant

and misleading and is also against the teacher:pupil ratio fixed in the full bench judgment of our High Court reported in (2007) 1 MLJ 199 in

Director of Elementary Education Chennai and Ors. v. Tmt. S. Vigila and Anr. and Anr. Division Bench judgment reported in (2010) 2 MLJ 277

in Director of School Education, Chennai and Ors. v. K. Uma.

4. On the other hand the learned Government Advocate has by relying upon the letter dated 02.06.2006 referred to in the impugned order and by

relying upon G.O.Ms. No. 525 dated 29.12.2007 would argue that the very permission granted to fill up the vacancies is only subject to certain conditions one among which is that it shall satisfy the requirement of G.O.Ms. No. 525 and the appointments made are in contravention of not only such condition but also the teacher pupil ratio as fixed in the earlier letter dated 02.06.2006 referred in the impugned order as such the impugned order passed on the basis of G.O. and the instructions given by the appropriate authority is legally valid and sustainable.

5. Heard the rival submissions made on both sides.

6. The facts available herein would reveal that the school commenced in 1946 has from its commencement the posts under question duly

sanctioned and the both the posts as and when fell vacant were periodically filled up after obtaining due permission and sanction from the

authorities concerned in accordance with relevant rules and the incumbents also enjoyed all the service and monetary benefits from and out of the

aid granted by the Government. The appointment of Physical Education teacher and Sewing mistress under dispute herein are made only against

the vacancies arose due to retirement on attaining superannuation and voluntary retirement of previous Physical Education teacher and Sewing

mistress who served there for nearly 34 years and 22 years respectively. The second respondent has also in the course of his Annual inspection of

the school instructed the school to fill up the vacancy of Head Master, Physical Education teacher and Sewing mistress which were kept vacant at

the time of inspection and the recommendation was made by the second respondent is enclosed at Page 3 of the typed set of papers. The first

respondent at the instance of the petitioner school duly granted the permission to fill up vacancies arose recently and duly granted approval for the

appointment duly made by the school committee.

7. It is only in the impugned order, the first respondent has for the first time from the date of commencement of the school, introduced the theory

that the teachers pupil ratio should be 1:150 that means appointment to the post of physical education and sewing mistress can be made only

where the students strength in classes Vi to VIII is above 150. In support of such contention the copy of the letter above referred to in the

impugned order and the relevant G.O. are available before this Court. The

reading of the letter dated 02.06.2006 cited in the impugned order reveals that it is only a communication from the office of the first respondent to the management of all the schools to furnish certain particulars with regard to vacancies in various posts in the schools concerned and while calling for such vacancy position it is only mentioned therein that only those vacancies of Physical Education teacher and Sewing mistress in the schools having above 150 students in 6 to 8 classes shall be intimated to the authority concerned. It is nowhere stipulated in the said letter, that the posts above referred to shall be sanctioned only where the students strength is more than 150 students as such the proceeding relied upon by the first respondent in the impugned order does in no manner support the validity of the impugned order of withdrawal of sanction.

8. As far as Government Order in G.O.Ms. No. 525 is concerned the same is not referred to in the impugned order. The same is only pointed out

by the learned Government Advocate, in the course of hearing herein. It is true that one of the conditions subject to which the permission granted

by the first respondent, to fill up the vacancies which is enclosed at page 9 of the typed set of papers is that it shall satisfy the requirement of G.O.

525, dated 29.12.1997, to say that the posting shall be in accordance with the students strength, as laid down in the same. But the reading of the

G.O. reveals that the same does cover only the post of physical education teacher and not the post of sewing mistress. If that is so, any argument

advanced in support of the impugned order in so far as it relates to the appointment of sewing mistress is of no avail to the first respondent and the

authority concerned cannot seek the aid of the particular G.O. to justify the rejection of sanction already granted to the said post. In that event the

impugned order withdrawing the approval granted for the appointment of Tmt. Gowri to post of sewing mistress on the ground that the students

strength is not more than 150 is unfounded and warrants interference.

9. It is true that the relevant G.O. at Page 3 contains one such clause to the effect that when the students strength exceeds 250 one post of Physical

Education teacher will be sanctioned. But, the interpretation of the particular clause in the said G.O. if viewed in the light of the judgments reported

in (1) (2007) 1 MLJ 199 in Director of Elementary Education Chennai and Ors. v. Tmt. S. Vigila and Anr. and (2) (2010) 2 MLJ 277 in Director

of School Education, Chennai and Ors. v. K. Uma. cannot at all support the reasoning given in the impugned order. The reading of the authorities

above cited would throw light that the same G.O.525 came up for judicial review before our Hon''ble Full Court and Full Court of our High Court

after detailed discussion on every aspects interpreted the G.O. in the following manner:

23. keeping in view of the various relevant aspects in the G.O.Ms. No. 525 dated 29.12.1997 should be interpreted in the following manner:

1. The ratio of the 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 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 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 overall strength of the school, the authorities of the school should create additional sections 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.

10. In view of such interpretation given by Hon''ble Full Court of our High Court

the Government cannot be now permitted to say that the teacher pupil ratio strength shall be 1:150 as far as the Physical Education teacher is concerned. The Division Bench of our High Court has in the subsequent judgment also dealt with the post of Physical Education teacher in the light of the same G.O. and in the light of the full court decision. In the latest case dealt with by our Division Bench, the students strength is 3948 students and the number of Physical Education teachers working in the school was one Physical Director and three teachers in the ratio of 1:1000 and one post of Physical Education teachers was kept vacant and one of the remaining Physical Education teacher was transferred and while the the same was questioned it was contended on the side of the official/respondents that as per the teacher:pupil ratio fixed in the G.O. one of the teachers was surplus and the surplus teacher was along with the post transferred to the needy school. The Division Bench of our High Court has negatived such contention raised on the side of the official respondents. The Division Bench has after discussing all the relevant factors in the G.O. emphasised at Para.18, the importance of physical activities of the children and as to now every school should have minimum physical education activities to help the children to grow better and to bring more development and as to how the same is likely to help the nation to grow.

11. The observation of the Division Bench Judgment in paras 18 to 22 is for better appreciation extracted as follows:

18. Stressing the importance of physical activities for the children, National poet Mahakavi Subramania Bharathi wrote ""Xo tpisahL ghg;gh eP

Xa;e;jpUf;fyhfhJ ghg;gh"". Children are not having proper physical exercise nowadays and they are tied up with Television and books leading to

obesity. There is no occasion for the children to play in the urban areas and they are required to compulsorily go for physical education in the

school where they can have good exercise by playing. How the physical education is neglected is proved by recent survey. It is published as

students Turning Couch Potatoes"" (Down loaded from internet).

This is what a week-long survey carried out among 2,500 kids in 75 CBSE schools across the country has shown. Around 70% of the kids

surveyed had not exercised or played games for even an hour during the seven

days on which the survey was carried out. Not that the remaining

30% are sports crazy. For them, outdoor activities had been limited to just an hour every day.

The Board's Global Health Survey was carried out among students of 25 private schools, 25 Kendriya Vidyalayas and 25 Jawahar Navodhay

Vidyalaya (JNV) across the country. The 2500 students surveyed were aged between 13 and 15 years.

School principals says that the trend is dangerous and is having a disastrous effect on kids in the form of obesity, juvenile diabetes and

hypertension. "The shows that there is a serious lack of physical activity among children," says a senior CBSE board official. The board has

decided to make it mandatory for affiliated schools to set aside 30 minutes for games every day for students from classes I to VIII. Besides, these

kids will have to attend physical training (PT) classes. The board has recommended two 15 minute PT classes a week for students from classes IX

to XII.

...Lack of outdoor activities in school is taking a toll on kids' health, feel city school principals. "We often find children suffering from obesity,

juvenile diabetes and hypertension. Some also suffer because their bones didn't develop adequately as they were growing. It is important that

CBSE ensures its recommendations on physical activity is properly implemented by schools," said principal of Mahadevi Birla Girls Higher

Secondary School, Malini Bhagat.

...Children require at least two hours of swimming or outdoor playing time every day, especially during growing years. Playing should be made a

part of education.

If a child remains inactive, then his mental and physical growth will be hindered. He might also end up being a victim of hypertension or juvenile

diabetes." explained general physician Dipak Banerjee.

19. The report "Active Education" prepared by Department of Nutrition and Excise Sciences Oregon State University, USA with support from

Active Living Research, a national programme of the Robert Wood Johnson Foundation (Downloaded from Internet) reads as follows:

Schools serve as an excellent venue to provide students with opportunity for daily physical activity to teach the importance of regular physical

activity for health, and to build skills that support active life styles. Unfortunately, most children get little to no regular physical activity while in school

The findings of the survey are given as follows:

- (1) Sacrificing physical education for class room time does not improve academic performance.
- (2) Kids who are more physically active tend to perform better academically.
- (3) Kids who are physically active and fit are likely to have stronger academic performance and
- (4) Activity breaks can improve cognitive performance and classroom behaviour.

20. The above findings of the research prove the importance of physical education for the students. When such is the position, the government is

required to give much importance to physical education. Hence, the physical education is a must for students and the service of the teachers is very

much required for the students. When India is competing (sic) to get medals in Olympic. Asiad and Common Wealth games, more physical

education teachers are required to be appointed to motivate and give proper training to the students and then only our country would excel in

sports and games. When teachers give proper training in Physical Education, our country would be in a position to achieve excellence in the

international games and sports. If proper physical education is not given to the students, we would continue to watch performance of other country

sportsmen with awe. Our country cannot go near the achievements of the other countries in sports and games as most of the countries have very

good curriculum of physical education.

21. "Physical education" as the nomenclature denotes is a separate education distinct from academic education and it is required to be given special

attention. According to OXFORD ENGLISH DICTIONARY. "Physical Education" means:

Instruction in physical exercise and games especially in schools.

As per the American Heritage Dictionary of the English Language, Fourth Edition "Physical Education" means:

Education in the care and development of the human body, stressing athletics and including hygiene.

Physical education gives good health, builds self esteem, develops co-operation, team work and sportsmanship skill and physically active lifestyle,

apart from preventing diseases. Future of the country depends upon our children. If our children are not properly groomed up mentally and

physically in an appropriate proper manner, it will badly reflect on the future of our nation. Every one is concentrating on academic excellence

neglecting physical education, whereas both are like human eyes.

22. If physical education is appropriate, good sportsman and excellent athletes would be made. In mythology, Rama and Arjuna were able to

marry Sita and Drowpadi respectively and win in battles as they were good in ""Archery."" It was possible because of the excellent physical

education and training they underwent in their ""Gurukulam."" Nowadays gurukulams are ""Schools"" and therefore physical education needs to be

given more attention in schools. Achievements of Sachin (sic) Tendulkar, P.T. Usha, Abhinav Bindra are basically because of good physical

education and training. In schools alone, young talents could be identified and they could be groomed in the specific sports and games in

appropriate way for future excellence.

12. In the light of the discussion held by the Division Bench of our High Court which emphasised in unequivocal clear terms the need for at least

one Physical Education teacher in each school irrespective of pupil strength, the respondents stand cannot be legally sustained. The authority

concerned having sanctioned the post and having permitted the appointment and having sanctioned approval for the appointment of Physical

Education teacher for the petitioner school having 215 students, ought not to have suddenly withdrawn the concession which was enjoyed by the

students of the particular school since its inception for more than admittedly 35 years.

13. Viewing from any angle the impugned order passed by the first respondent is legally and factually unsustainable and the same is hence liable to

be set aside.

14. In the result both the writ petitions are allowed as prayed for. No costs. Consequently, connected miscellaneous petitions are closed.