

(2014) 06 MAD CK 0101
In the Madras High Court
Case No : W.P. (MD) No. 1629 of 2009

The Correspondent	Vs	APPELLANT
The Chief Educational Officer		RESPONDENT

Date of Decision : 03-06-2014

Acts Referred:

Citation : (2014) 06 MAD CK 0101

Hon'ble Judges : R. Mahadevan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R. Mahadevan, J.—Challenge in this Writ Petition is to the orders, dated 08.12.2007 and 18.10.2008, rendering one post of BT Assistant as surplus in the petitioner school and for a direction to the second respondent - District Educational Officer to approve the appointment of Smt. M.R.Shiju Rajan, as the second BT Assistant in the petitioner school, with effect from 04.06.2007 and disburse grant-in-aid towards her salary and allowances.

2. The case of the petitioner school is that it offers education from standards VI to XII. The total strength of the school is 366. There are 12 teachers [1 Headmistress, 7 PG Assistants, 2 BT Assistants and 2 Secondary Grade Teachers]. On account of retirement of the then incumbent, Smt.Y.Premavathy, with effect from 31.05.2007, one Smt.M.R.Shiju Rajan was appointed as BT Assistant, with effect from 04.06.2007. The petitioner school forwarded a proposal to the second respondent, on 14.08.2007, seeking to disburse grant-in-aid towards her salary. However, by the impugned orders, the first respondent rejected the claim of the petitioner school holding that one post of BT Assistant is surplus.

3. The learned counsel appearing for the petitioner school submits that it is not disputed that the petitioner school has been granted recognition with aid. Based on the assessment of the strength of the school only, additional posts were

sanctioned. He further submits that the impugned staff fixation orders passed by the first respondent are in violation of the norms fixed by the Government, in G.O.Ms.No. 525, School Education [D1] Department, dated 29.12.1997. The said Government Order was issued superseding the earlier norms, fixing teacher-pupil ratio issued in G.O.Ms.No. 250, Education Department, dated 29.02.1964, and the said Government Order, issued in G.O.Ms.No. 525, School Education [D1] Department, dated 29.12.1997, is held applicable to both the Government and Aided Recognized Private Schools.

4. In support of his contention, the learned counsel makes reliance upon the Judgment of a Full Bench of this Court in Director of Elementary Education, District Elementary Educational Officer and Assistant Elementary Educational Officer Vs. Smt. S. Vigila and Manager, Meerania Middle School, . By virtue of the said Judgment, each class shall have a teacher compulsorily based on the students-teachers ratio, which has been propounded by the Government of India as a National Policy, and therefore, on any account, there cannot be any reduction in staff strength particularly, when the petitioner schools is maintaining the students strength uniformly. Hence, declaring the post of BT Assistant as surplus is unsustainable.

5. The learned counsel appearing for the petitioner further submitted that the petitioner school is entitled to have 5 teachers for standard VI to X alone for the year 2007 - 2008. During the free hours, the High School teachers were taking classes for higher secondary students and upon retirement of one Smt. Y. Premavathy, on 31.05.2007, Mrs. M.R.Shiju Rajan was appointed as B.T. Assistant with effect from 04.06.2007, and therefore, the respondents cannot treat the appointment of Mrs. M.R.Shiju Rajan as surplus, and hence the staff fixation for the year 2007- 2008 is bad in law. With regard to 2008-2009, the number of students had considerably increased and crossed 40, and therefore, the petitioner school was entitled to have additional teachers. The learned counsel further contended that, on 05.06.2008, one teacher, by name, T.Delbi was transferred to another school and with one Graduate teacher for History for the Higher secondary standards and two teachers for Middle school, the school cannot be run.

6. Per contra, the learned Government Advocate appearing for the respondents submitted that the number of teachers was in excess for the year 2007 - 2008, as the strength of the students had fallen down and the Post Graduate teachers were left with 36 free hours and they can be utilized for taking classes to the students of standards VIII, IX and X, instead of stressing for approval of the second B.T Assistant post. The learned Government Advocate further contended that the post of B.T Assistant was surrendered by the first respondent, on 11.04.2008, as it was found surplus, and therefore, the same could not be considered for the year 2008 - 2009. In view of the fact that Mrs.M.R.Shiju Rajan was appointed in surplus vacancy, the salary and other emoluments should be paid only by the petitioner, and therefore, sought the dismissal of the Writ

Petition.

7. I have considered the above submissions and perused the records carefully.

8. The Full Bench of this Court in Director of Elementary Education, District Elementary Educational Officer and Assistant Elementary Educational Officer Vs. Smt. S. Vigila and Manager, Meerania Middle School, , giving interpretation to G.O.Ms.No. 525, School Education [D1] Department, dated 29.12.1997, in a meaningful manner, in Paragraph No. 23, held as follows:-

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 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 required 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.

9. As per the ratio laid down by the Full Bench of this Court, there is no embargo for sanctioning more teachers based on the strength of the school. Therefore, the stand of the first respondent that one post of B.T Assistant is surplus does not stand water. Further, Mrs.M.R.Shiju Rajan was appointed with effect from 04.06.2007, even before the surrender of the post by the first respondent, on 11.04.2008. It is pertinent to mention here that only in the vacant post, Mrs.M.R.Shiju Rajan was appointed and no additional post was created. The post of B.T.Assistant was declared as Surplus in the impugned proceedings, dated

08.12.2007, even before the post was surrendered. Therefore, the impugned proceedings, on the face of it, are unsustainable. The purpose of maintaining the ratio of 1: 40 is to sustain the quality of the education. Just because, the number of students for a particular year goes down, the existing teachers need not be disturbed. Fresh recruitment can be made if necessary in case of increase in students as per the dictum of the Full Bench, referred to supra. Upon examination of the impugned proceedings for the year 2008 - 2009, it can be seen that the number of students had gone up. It is not disputed that one teacher, T.Delpi, was also transferred to another school. Therefore, this Court is of the view that the first respondent should have approved the post of B.T Assistant. As held by the Full Bench, the student-Teacher ratio should be 1:40, considering the overall strength of the school with a minimum of one teacher for every standard/section. Therefore, the petitioner is entitled to have atleast 12 teachers for classes 1 to 12 irrespective of the number of students and in case of additional sections, more teachers have to be recruited based on the ratio laid down by the Full Bench. Approving the decision of the Division Bench, the Full Bench, in Paragraph No. 22, held as follows:

22. As rightly observed by the latter Division Bench, the G.O.Ms.No. 525 has to be interpreted in a meaningful manner keeping in view the background in which such G.O. came to be issued. As per the existing instructions applicable, the ratio of teacher was dependant upon students' strength in each individual standard, but it had been laid down that maximum strength in a particular section or a class should be 35 or 40. In other words, either no admission was required to be made in excess of 35 or 40 or if such admission was made taking relevant permission, an additional section was required to be created. In the context of the aforesaid background, the present G.O.Ms.No. 525 indicates that an additional section is required to be created only when the students' strength in a standard becomes 60 or more. It is evident that G.O.Ms.No. 525 has intended to change this aspect and that is the reason why it has been indicated that when the students strength becomes 100, a third teacher can be appointed. If it has to be understood that the ratio of 1:40 is to be maintained in respect of the entire school, it is not understood as to why it would be laid down in the G.O. that a third teacher would be available when the students strength reaches 100. In normal course, the third teacher would be provided only when the students strength reaches 120 and not 100. This is rather indicative of the fact that the G.O. was concerned about the creation of additional section. If the students' strength in a particular standard remains 60 and below, there is no necessity to create an additional section and the necessity to create additional section arises only when the student strength in a particular standard exceeds 60 and that is why it has been stated that if students' strength is further increased by 40 more, another teacher would be sanctioned or would be required. The G.O. cannot be interpreted to do away with requirement of having at least one teacher for each standard or section (wherever creation of additional section is justified).

10. Therefore, the Government Order, passed in G.O.Ms.No. 525, School

Education [D1] Department, dated 29.12.1997, is to be given a purposeful interpretation. Just because, there was a dip in the strength of the students, the respondents cannot surrender the post and treat the appointment as surplus.

11. In view of the above, the impugned orders, which are in contravention of G.O.Ms.No. 525, School Education [D1] Department, dated 29.12.1997 and the dictum laid down by the Full Bench are set aside. The respondents are directed to re-fix the staff strength by approving the appointment of Mrs. M.R.Shiju Rajan as B.T Assistant and release the grant-in-aid towards payment of salary and other allowances due to her. The Writ Petition is allowed, as indicated above. No costs. Consequently, connected Miscellaneous Petitions are closed.