
(2011) 09 MAD CK 0087

In the Madras High Court

Case No : Writ Petition No's. 7978, 7979 and 7980 of 2009 and M.P. No's. 1 to 1 of 2009

The Correspondent/Secretary Neelambal Subramaniam
Higher Secondary School

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 21-09-2011

Acts Referred:

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 14

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

Citation : (2011) 09 MAD CK 0087

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : P. Godson Swaminath, for the Appellant; I. Arockiasamy, G.A., for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The Correspondent cum Secretary of Neelambal Subramaniam Higher Secondary School, Suramangalam, Salem has filed all the three petitions. In the first writ petition (W.P. No. 7978/2009), the prayer is to set aside the order of the third Respondent viz., the Chief Educational Officer, Salem dated 05.08.2008 and his subsequent order dated 05.12.2008 in so far as it relates to surrendering the two posts of Secondary Grade Teacher of the Petitioner school to the Director of School Education.

2. In the second writ petition (W.P. No. 7979/2009), the prayer is to set aside the order dated 18.08.2007 passed by the Chief Educational Officer, Salem, wherein the staff's strength for the year 2007-2008 was fixed on the basis of the requirement of the Petitioner school.

3. The third writ petition (W.P. No. 7980/2009) is filed challenging the order dated 17.09.2008 passed by the Chief Educational Officer, Salem in fixing the staff strength vide order dated 17.09.2008 along with the revised order dated

03.12.2008.

4. All the three writ petitions were admitted on 28.04.2009. Pending the writ petitions, in the applications for grant of interim stay, only notice was ordered in all the three miscellaneous petitions.

5. On notice from this Court, the District Educational Officer, Salem has filed separate counter affidavits dated 01.11.2009 in all the three writ petitions on his behalf as well as on behalf of the other Respondents.

6. In the affidavits filed in support of the three writ petitions, more or less common grounds were raised. The case of the Petitioner School is as follows:

(i) The Petitioner's school is a recognised aided non-Minority school. The school was initially started as a High School in the year 1964. Subsequently, it was upgraded as a Higher Secondary School in the year 1978. As of now, the school is having both Tamil and English Medium from Standard VI to XII. While the Tamil Medium sections are supported by Government grant, English Medium sections are run on self-financing basis. It was claimed 1503 students are studying in the aided sections of the School. The breakup of the said strength for the Higher Secondary Sections is 391, High School Section is 503 and Middle School Section is 609. The School is catering to downtrodden, who are educationally and socially backward.

(ii) At the time of filing of the writ petitions, it was claimed that the school had engaged 1 Headmaster, 12 P.G. Assistants, 12 BT Assistants, 9 Secondary Grade Teachers, 1 Physical Director Grade-I, 13 Vocational Instructors Grade-I, 1 Vocational Instructor Grade-II, 2 Physical Educational Teachers and 1 Drawing Teacher. Apart from that, they are also having the staff strength.

(iii) During the year 1995, the number of Secondary Grade Teachers available in the school was 17. The Chief Educational Officer by his proceedings dated 28.02.1995 and 18.04.1995 permitted the school to fill up the posts of Secondary Grade Teachers with the existing qualified Vocational Teachers with effect from 01.03.1995. Accordingly, the School had to fill up 3 Secondary Grade Teachers as and when they fell vacant. M/S. R. Govindaraj and A. Pandian who were having B.E.(Mechanical) qualification were posted as Secondary Grade Teachers on 01.03.1995 as they were already working as Vocational Instructors in the School. Thereafter, on 01.06.1998, one N. Vasanthakumar, having B.E. (Electrical) qualification was also given the post of Secondary Grade Teacher.

(iv) Subsequently, during the year 2004-2005, three more posts of Secondary Grade Teachers fell vacant. But however, the State Government by G.O.Ms. No. 79 Secondary Education dated 14.06.2002 held that the posts of Secondary Grade Teachers falling vacant with effect from 01.06.2002 in the Middle School Sections should be upgraded as Graduate Teacher Posts and should be manned by Graduate Assistants. Therefore, the said three posts which became vacant were upgraded as Graduate posts and they were filled up with 3 BT Assistants M/

S. V. Karpagavalli (Physics), M. Kanaga Saraswathi (Biology) and P. Rajarathinam (Botany) on 05.07.2004. But the total number of Secondary Grade Teachers got reduced to 14 in the year 1997-98 on account of the accommodation of 3 Vocational Instructors and again got reduced to 11 in the year 2004-2005 on account of upgradation of 3 posts of Secondary Grade Teachers into BT Assistants. In the year 2005-2006, 2 posts of Secondary Grade Teachers fell vacant on 01.06.2005 on account of the retirement of M/S. K. Hussain Sheriff and N. Vasantha. In view of G.O. Ms. No. 79, these two Secondary Grade Posts were also upgraded as Graduate Assistant posts.

(v) At this stage, the Petitioner school sought for permission from the Chief Educational Officer to fill up the 4 vacant posts of BT Assistants by their letter dated 01.04.2005. The Chief Educational Officer granted permission on 17.05.2005 and the school took initiative to fill up the said 4 posts. In the meanwhile, the third Respondent Chief Educational Officer while settling the staff fixation for 2007-2008 vide proceedings dated 18.08.2007 held that 2 posts of Secondary Grade Teachers became surplus. In the same proceedings, the Chief Educational Officer under Annexure III declared that the school was eligible for 15 posts of Secondary Grade Teachers according to the available students strength. By proceedings dated 22.11.2008, the third Respondent refused to give permission to fill up the 2 Secondary Grade Posts. It is these two orders dated 18.08.2007 fixing the staff strength and the proceedings dated 22.11.2007 refusing to give permission to fill up the two posts of Secondary Grade Teachers are under challenge in W.P. No. 7979 of 2009.

(vi) Thereafter, by further proceedings dated 05.08.2008, the Chief Educational Officer issued that as per the staff fixation roster, 2 posts of Secondary Grade Teachers have been withdrawn and directed to be surrendered to the second Respondent Director of School Education and to send a consequential report.

7. It is the case of the School Management that the action of the Chief Educational Officer was arbitrary, illegal and contrary to G.O.Ms. No. 525 School Education dated 20.12.1997. As per the said GO, the Teacher-Pupil ratio was fixed as 1:40. For the I to VIII Standards, minimum of 2 Secondary Grade Teachers up to a strength of 80 will be sanctioned. For every additional strength of 40, one post of Secondary Grade Teacher will be sanctioned i.e, the third post at 100, the fourth post at 140, the fifth post at 180 and so on. Bifurcation of classes will be done and additional sections will be created if the students strength exceeds 60 on the slabs of 40 each. Therefore, according to the new norms, the school is eligible for 15 Secondary Grade Teachers, as in the Middle School Section, they were having 616 students during the year 2007-2008 and 609 students during the year 2008-2009. It was also stated that the children below 14 years have fundamental right for free education and it is the obligation of the State to provide compulsory education to such children and hence, the impugned orders are liable to be set aside.

8. In response to these allegations, in the counter affidavit, it was stated that the

school Management sought permission to fill up 4 Graduate Assistants posts. Permission was also granted on 17.05.2005. But in the Staff Fixation for the year 2007-2008 was done and proceedings were issued on 18.08.2007, it was found that 2 Secondary Grade Posts became surplus. The 15 posts of Secondary Grade Posts which were allowed were taken into account in the following manner viz., 3 Vocational Teachers who were absorbed against the Secondary Grade vacancies, 3 posts of Secondary Grade Post upgraded as BT Assistants and the balance 9 of Secondary Grade Posts. Therefore, by proceedings dated 21.11.2007 filling up 2 Secondary Grade Posts was not allowed as per the Staff Fixation. As per the students strength, the school was eligible only for 15 Secondary Grade Posts. Infact, subsequently when further inspection took place on 01.08.2009 regarding the students strength for the year 2009-2010, the staff strength was fixed as follows:

Headmaster

- 1

PG Assistant

- 11+1

BT.Assistant

- 12

Tamil Pandit

- 5

Secondary Grade Assistant

- 5

P.E.T.

- 2

Spl Teacher

- 1

Voc Instructor

- 9+2

Total

53

Therefore, their request for filling up two Secondary Grade posts which became surplus, no permission was granted.

9. In the present case, the Petitioner's school is admittedly governed by the

provisions of Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. u/s 14(i)(ii) of the Act, the Government subject to availability of the funds and the norms and conditions specified in the Grant-in-aid code of Tamil Nadu Government Education will pay to the Private School any grant or other financial assistance. Under Rule 15(1) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, the number of teachers employed in a private school shall not exceed the number of posts sanctioned by Director of School Education, from time to time, with reference to the academic requirements teacher-pupil ratio and overall financial considerations.

10. In the present case, the Department has undertaken the review of students strength not only in the year 2007-2008 but for the year 2008-2009 and found that they do not have the requirement of 2 extra posts of Secondary Grade Teachers which they are bound to return to the Department

11. The question whether they are entitled to fill up the posts and demand assistance to the said post as a matter of right came to be considered by the Supreme Court in State of Tamil Nadu and Others Vs. Amala Annai Higher Secondary School, . In paragraphs 12, 13 and 15, it was observed as follows:

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.

13. Fourthly, as per the norms issued in relevant GOMs the strength of the School during 1990-1991 ought to be 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.

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.

12. The Supreme Court subsequently in examining the question as to whether prior permission should be made to fill the posts even in relation to minority school considered the effect of the legal requirement of the Government satisfying the request of the school in relation to availability of the post on the

basis of the students strength vide its judgment in Kolawana Gram Vikas Kendra Vs. State of Gujarat and Others, . In paragraph 7, it observed as follows:

...the requirement of this prior approval is necessitated because it is for the Government to see as to whether there were actually posts available in the said institution as per the strength of students...

13. If it is seen in the light of the above, there is no illegality in the orders passed by the third Respondent Chief Educational Officer and the challenge made by the Petitioner Management to the three impugned orders is clearly misconceived. Hence, all the three writ petitions will stand dismissed. However, there will be no order as to costs. Consequently, connected miscellaneous petitions are closed.