

Congregation of the Brothers Vs. the State of Tamil Nadu

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Court : Chennai

Decided On : Feb-28-2012

Judge : K.Ravichandra Baabu, J.

Appeal No. : W.P(MD)No.2226 of 2007 And M.P(MD)No.1 And 2 of 2007

Appellant : Congregation of the Brothers

Respondent : The State of Tamil Nadu

Advocate for Def. : Mr.V.Pandi, Adv.

Advocate for Pet/Ap. : Mr.Issac Mohanlal, Adv.

Judgement :

PRAYER

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the second respondent Director of School Education in Na.Ka.No.104064/G3/2004 dated 07.04.2005, quash the same insofar as the petitioner School is concerned, and further direct the respondents to sanction forthwith 09 additional posts to St.Joseph's Higher Secondary School, Muthupettai (06 Secondary Grade posts- now Middle Grade B.T, 1 Tamil Pandit and 2 P.E.Ts) in terms of G.O.Ms.No.525(School Education) dated 29.12.1997.

ORDER

1. In this writ petition the petitioner has challenged proceedings of the second respondent dated 07.04.2005 and consequently seeking for a direction to sanction nine additional posts in terms of G.O.Ms.No.525 (School Education) dated 29.12.1997.

2. The case of the petitioner is that the petitioner is a Coordinator of the Schools of the Congregation of the Brothers of the Sacred Heart of Jesus, Palayamkottai. One such School is St.Joseph's Higher Secondary School, Muthupettai. The said School was established in the year 1988 as a High School and upgraded as Higher Secondary School in the year 1997. The School is aided up to High School level and insofar as the Secondary courses are concerned no financial aid is given by the Government. It is stated by the petitioner as per G.O.Ms.No.525(School Education) dated 29.12.1997, the School is entitled to have 15 Secondary Grade posts, 3 Tamil Pandits, and 3 Physical Education Teachers for the academic year 2006-2007. On the other hand, the Department has sanctioned only 9 posts of Secondary Grade Teachers, 2 post of Tamil Pandits and 1 post of Physical Education Teacher. Consequently, the School required additional posts in the cadre of Secondary Grade Teacher, Tamil Pandit and 1 P.E.T teacher. Therefore, the petitioner submitted a representation to the second respondent on 07.05.2004 seeking for sanctioning of the additional posts of 6 Secondary Grade Teachers, 1 Tamil Pandit and 2 P.E.T to the said School. To the said representation, the Director of School Education passed an order on 07.04.2005 stating that sanctioning of additional posts to the said School could be considered only when the Government creates new posts. Therefore, as against the said order, the present writ petition has been filed.

3. Notice of motion was ordered by this Court on 02.04.2007. On notice, the respondents entered appearance and filed a counter affidavit.

4. It is stated by the respondents that the staff fixation will be made every year as per G.O.Ms.525 School Education Department dated 29.12.1997, based on the students strength available as on first day of August of the particular year and the sanctioning of the additional posts to the School will be made only after the

Government creates new posts. As the Government has not created any posts for the particular academic year, the impugned order came to be passed on 07.04.2005, stating that the sanctioning of additional posts will be considered only when the Government creates new posts.

5. I have considered the rival submissions made by respective parties.

6. In this case, the petitioner is seeking additional posts to one of its School namely St.Joseph's Higher Secondary School, Muthupettai, based on the students strength available as on 01.06.2006. As per the claim of the petitioner, the said School is entitled to have 6 additional posts of Secondary Grade Teachers, 1 additional post of Tamil Pandit and 2 additional posts of P.E.T. teachers as per the student strength as on 01.08.2006. This has not been considered by the second respondent and on the other hand, he has simply informed the petitioner that the claim of the petitioner will be considered as and when the Government sanctions the additional posts.

7. The points for consideration in this case is as to whether the School is entitled to have additional posts if the student strength of the particular academic year requires and justified such claim as per G.O.Ms.No.525 (School Education (D1) Department dated 29.12.1997.

8. Admittedly, the relevant G.O governing the fixation of staff strength is G.O.Ms.No.525 (School Education (D1) Department dated 29.12.1997. When the Government has already passed such G.O it is for the respondents to fix the staff strength to a particular School based on the students strength available as on the first day of August of particular academic year. Therefore, the second respondent is not justified in saying that the requirement of additional posts as claimed by the petitioner will be considered only when the Government sanctions the additional posts. When the Government has already passed G.O.525(School Education (D1) Department dated 29.12.1997, thereby fixing the norms with regard to the teachers-student ratio, it is for the second respondent to consider the claim of the petitioner and to fix the staff strength taking note of the students strength for the particular academic year. Therefore, there need not be any further sanctioning of the posts by the Government as stated in the impugned order. The second

respondent has to take note of the total students strength and apply G.O.Ms.No.525(School Education (D1) Department dated 29.12.1997, and thereafter to arrive at the requirement of total number of teachers in the particular School as contemplated in the said G.O. Without doing so, by passing the present impugned order the respondents are only trying to shift the responsibilities in total ignorance of the students interest.

9. In my considered view that it is not a correct approach by the second respondent. This Court on very many occasions has held that if the School is in need of additional posts based on the students strength the authorities are bound to sanction the same if such request is in conformity with G.O.Ms.525 (School Education (D1) Department dated 29.12.1997. One such decision is in C.Manonmony -vs- State of Tamil Nadu represented by its Secretary, Education Department, Chennai-9 and others reported in (2006) 3 MLJ 242 in which it is stated at paragraphs 11,12 and 13 are as follows: 11. The validity of G.O.Ms.No.525 dated 29.12.1997 was challenged before this Court. The Government justified the issuance of Government Order and stated that only for equal distribution of posts to all aided schools the said Government Order was issued and an assurance was also given in the counter affidavit that whenever a school is in need of additional post as per the students strength, necessary steps will be taken to sanction additional post. The said portion of the counter affidavit was extracted in the judgment reported in 1999 (1) MLJ 635 which reads thus, ... In fact, there is an assurance in the counter itself (in para 23) that when the school is found eligible for additional post as per the revised norms, necessary steps will be taken to sanction additional posts."

From the above stand it is made clear by the Government before this Court that whenever School is in need of additional sanction of post, it will be sanctioned, if the norms issued in G.O.Ms.No.525 dated 29.12.1997 is satisfied.

12. G.O.Ms.No.525 dated 29.12.1997 was given effect from 1.6.1998. Hence the 5th respondent School is eligible to be sanctioned one additional post of B.T. Assistant at least from 1.6.1998 and on such sanction of post by the first respondent to the 5th respondent School, petitioner is entitled to get B.T Assistant

salary, at least from 1.6.1 998. In the impugned order, nowhere it is stated that the 5th respondent School is not entitled to get sanction of additional B.T. Assistant post. The impugned order only states that as and when need arises, request of the 5th respondent School will be considered.

13. The submission of the learned counsel for the petitioner that want of finance cannot be a ground to deny sanction of the post to an Aided School is also well founded.

(a) A Division Bench of this Court in the decision reported in 1988 WLR 130 (*Church of South India v. The Government of Tamil Nadu*) held that want of finance is not a ground to deny teaching post to an aided school.

(b) Similar issue arose before the Honourable Supreme Court in the decision reported in AIR 1996 SC 1 (*State of Maharashtra v. Manubhai Pragaji Vashi*). In the said judgment, non-extension of grant in aid to a private law college was considered by the Honourable Supreme Court. The Honourable Supreme Court held that a duty is cast on the State to extend the grant in aid and the same cannot be whittled down either by pleading paucity of funds or otherwise and ultimately directed the Government to extend the grant in aid scheme to all Government Recognised Private Law Colleges.

(c) In AIR 2000 SC 634 (*Chanigarh Administration v. Rajni Vali*) in paragraph 6 the Honourable Supreme Court held as follows: ... imparting primary and secondary education to the students is the bounden duty of the state administration. It is a constitutional mandate that the State shall ensure proper education to the students on whom the future of the Society depends. In line with this principle, the State has enacted Statute and framed Rules and Regulations to control/regulate establishment and running of private schools at different levels. The State Government provides grant-in-aid to private schools with a view to ensure smooth running of the institution and to ensure that the standard of teaching does not suffer on account of paucity of funds. It needs no emphasis that appointment of qualified and efficient teachers is a sine qua non for maintaining high standard of teaching in any educational institution. Keeping in mind these and other relevant factors this Court in number of cases has intervened for setting right any

discriminatory treatment meted out to teaching and non-teaching staff of a particular institution or a class of institutions.

In paragraph 10, the Supreme Court considered the contention of want of fund in the following manner,

Coming to the contention of the appellants that the Chandigarh Administration will find it difficult to bear the additional financial burden if the claim of the respondents 1 to 12 is accepted, we need only say that such a contention raised in different cases of similar nature has been rejected by this Court. The State Administration cannot shirk its responsibility of ensuring proper education in schools and colleges on the plea of lack of resources. It is for the authorities running the Administration to find out the ways and means of securing funds for the purpose. We do not deem it necessary to consider this question in further detail. The contention raised by the appellants in this regard is rejected. ...

(d) A constitution Bench of the Honourable Supreme Court in the decision reported in AIR 1992 SC 1630 (*St. Stephen's College v. University of Delhi*) considered the issue of aid to minority institutions. In paragraph 89 the Supreme Court held thus:

The educational institutions are not business houses. They do not generate wealth. They cannot survive without public funds or private aid. It is said that there is also restraint on collection of students fees. With the restraint on collection of fees, the minorities cannot be saddled with the burden of maintaining educational institutions without grant-in-aid.

They do not have economic advantage over others. It is not possible to have educational institutions without State aid. This was also the view expressed by Das, C.J., in *Re: Kerala Education Bill* case. The minorities cannot, therefore, be asked to maintain educational institutions on their own. (e) A Division Bench of this Court in a judgment reported in 1997 WLR 619 (*State of Tamil Nadu and 4 others v. Melapalayam Muslim Magalir Kalvi Sangam*)(DB) considered the plea of the Government as to the non-availability of funds and held that the Government having granted temporary recognition of approval of standards 6 to 8 with aid, the same cannot be denied on the plea of want of funds. In paragraph 6 the Court held

thus,. The citizens of the country have a fundamental right to education, which right flows from Article 21. This right is, however, not an absolute right. In other words, every child/citizen of this country has a right to free education until he completes the age of fourteen years. Thereafter, his right to education is subject to the limits of economic capacity and development of the State....

In fact, the Division Bench followed the Judgment of the Supreme Court reported in AIR 1958 SC 956 (In re The Kerala Education Bill, 1957) wherein it is held that the minorities cannot be asked to maintain the educational institutions of their own funds.

(f) The said right to education under Article 21 was considered by the Supreme court in Unnikrishnan J.P. v. State of Andhra Pradesh, AIR 1993 SC 2178. The said proposition of the law was also approved by the Constitutional Bench decision in TMA Pai Foundation and others V. State of Karnataka, (2002) 8 SCC 481.

(g) By Judgment dated 23.8.1990 in W.A.No.24 of 1990, a Division Bench of this Court held that once recognition is granted with aid to a private School, the sanction of posts shall be made automatically if the norms for the sanction of post is satisfied, otherwise the grant of recognition will be rendered meaningless. The Division Bench upheld the order of the learned single Judge made in W.P.No.4570 of 1987 dated 27.9.1989 (T.Sekarapillai and 5 others v. The State of Tamil Nadu and 2 others) with slight modification. In the decision reported in 1999 WLR 555 (The C.S.I. Kanyakumari Diocese v. Government of Tamil Nadu and others) another Division Bench of this Court while dealing with the request of a minority management to sanction additional posts, directed to sanction posts based on student strength as per G.O. Ms.No.250 dated 29.2.1964 from 18.2.1991 within three months. S.L.P.(Civil) No.19141 and 19142 of 1998 filed against the order of the Division Bench was dismissed by the Honourable Supreme Court by order dated 16.12.1999. The respondents 1 to 4 herein implemented the said order by sanctioning additional posts retrospectively to C.S.I. Primary School Venkanji, Kanyakumari District. (h) Insofar as the aided schools are concerned, the Hon'ble Mr. Justice K.Venkataswamy (as he then was) in W.P.No.15966 of 1990 dated 21.12.1993 allowed the writ petition filed by the management and directed

sanction of one Botany P.G. Assistant post. Earlier, a Division Bench of this Court in W.A.No.28 of 1990 by Judgment dated 10.1.1990 (Dr.A.S.Anand,J. (as he then was) & Nainar Sundaram,J.) took a similar view following the decision reported in 1988 WLR 130 (cited supra). The same view was taken by this Court in the following unreported decisions insofar as the sanction of posts to aided colleges are concerned.

(i) W.P.No.2093 of 1994 dated 10.4.1995 (R.Jayasimha Babu, J.) (ii) W.P.No.1048 of 1994 dated 17.4.1996 (M.Srinivasan, J, Acting Chief Justice (as he then was)). The said order was confirmed by the Division Bench in W.A.No.682 of 1996 dated 26.7.1996 (K.A.Swamy, J., Chief Justice & AR.Lakshman, J. (as he then was)).

(iii) W.P.No.6758 of 1993 dated 13.9.1996 (Shivraj patil, J. (as he then was)). (iv) W.P.No.5602 of 1996 dated 20.8.1997 (P.Sathasivam,J.)

10. In view of the above said categorical findings rendered by the learned Judge, I am of the considered view that the claim of the petitioner's School has to be considered by the third respondent based on G.O.Ms.No.525(School Education (D1) Department dated 29.12.1997. It is now represented by the learned Counsel for the petitioner that though they have claimed additional posts from the academic year 2006-07, now the Department can inspect the School and verify the students strength and fix the staff strength as on today in accordance with G.O.Ms.No.525(School Education (D1) Department dated 29.12.1997. Therefore, there cannot be any impediment for the Department to comply with such request because whatever the staff strength fixed should be in conformity with G.O.Ms.No.525(School Education (D1) Department dated 29.12.1997. Accordingly, the second respondent is directed to consider the claim of the petitioner seeking for additional posts of Secondary Grade Teachers/B.T. Assistants, Tamil Pandits and P.E.T Teachers in the St.Joseph's Higher Secondary School, Muthupettai based on G.O.Ms.No.525(School Education (D1) Department dated 29.12.1997 by taking note of the present students strength of the academic year 2011-2012 and pass appropriate orders on merits and in accordance with law within a period of eight weeks from the date of receipt of a

copy of this order.

11. With the above direction, this writ petition is disposed of. Consequently, connected Miscellaneous Petitions are closed. No costs.

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