IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31..03..2005

C O R A M

The Honourable Mr. MARKANDEY KATJU, Chief Justice
and
The Honourable Mrs. Justice PRABHA SRIDEVAN

Writ Appeal No.1 of 2002

1. The State of Tamil Nadu,
   rep. by its Secretary to Government,
   Education Department,
   Fort St. George,
   Chennai-9.

2. The Director of Elementary Education,
   College Road,
   Chennai-6.

3. The District Elementary Educational Officer,
   T.R. Naidu Street,
   Tuticorin-2.

4. The Assistant Elementary Educational Officer,
   Tuticorin (Urban),
   Tuticorin-8. ... Appellants/Respondents

Versus

1. C.M. Primary School,
   T.R. Naidu Street,
   Tuticorin-2, rep. by its
   Manager and Correspondent
   C. Stephenson Roobasingh.

2. S. Roselin Rajakani
   (R-2 Impleaded as per order of Court dated
   30.4.2004 in W.A.M.P. No.1523 of 2003)
   ... Respondents/Petitioner

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Prayer : Writ Appeal under Clause 15 of the Letters Patent as against the order dated 7.9.2001 passed in Writ Petition No.1356 of 2000.

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For Appellants : Mr. P.S. Sivashanmughasundaram,
Additional Government Pleader.

For Respondents : Mr. N. Paul Vasantha Kumar (For R-1)
Mr. T.S. Sivagnanam (For R-2)

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J U D G M E N T

PRABHA SRIDEVAN, J.

The second respondent herein is a Secondary Grade Teacher in the first respondent School. The first respondent school sought approval of the appointment of the second respondent. The approval was refused, against which the writ petition was filed.

2. The learned single Judge took note of the judgment in Writ Appeal No.1183 of 1999 which makes it clear that, "for the purpose of fixing the strength of the teachers, the average attendance during the month of August alone has to be taken into consideration" and on this short ground, the writ petition was allowed. During the hearing of the writ petition, the learned Government Advocate brought to the notice of the learned single Judge that there was an inspection subsequently in August, 2001 and the strength of the first respondent school was found to have dwindled. Therefore, liberty was given to the authorities to take suitable action as per law, if the first respondent school did not satisfy the minimum criteria for approval.

3. Before us, the learned Additional Government Pleader submitted that the norms for sanctioning posts for teaching staff was fixed by the Government vide G.O. Ms. No.525, School Education (D1) Department, dated 29.12.1997, which came into effect from 1.6.1998. According to the learned Additional Government Pleader, the first respondent school had 19 teachers, though their entitlement was only 15 and further, the question actually does not relate to the fixing of sanctioned strength, but the approval of the post, viz. the Secondary Grade Teacher.

4. Learned counsel for the first respondent school submitted that there can be no controversy in this matter as the issue involved in this case is squarely covered by the judgment of a Division Bench of this Court dated 22.1.2004 made in Writ Appeal No.1263 of 2001 as well as the order in 2004 W.L.R. 530 [THE DIRECTOR, TAMIL NADU ELEMENTARY EDUCATION VS. LAKSHMI NARASIMHA VIDYALAYA].

5. Both counsel submitted their written arguments as well.

6. The objection of the first respondent to the impugned order is that the average attendance of the students of the first respondent school should be taken on the basis of the attendance for the month of August and that the appellants ought not have fixed the staff strength at 15 based on the visit of the third appellant on 7.12.1999. It is also their case that G.O. Ms. No.525 was not implemented, and even if the said G.O. is applied, the school is entitled to have 16 teachers, and so the appointment of the second respondent must be approved.

7. The impugned order freely translated reads thus :-

> "Office of the District Elementary Educational Officer, Tuticorin
> Na.Ka.No.8501/A3/99 Dated 29.12.99
> . . . . . .
>
> Sub. : Elementary Education - Requisition to grant approval to the appointment of Tmt.Rosaline Rajakani appointed afresh in the vacant post of Secondary Grade Teacher, C.M. Primary School,Tuticorin - Regarding.
>
> Ref. : Letter of the Assistant Elementary Educational Officer,Tuticorin in Na.Ka. No.1873/A1/99, dated 2.11.99.
> . . . . .
>
> When the District Elementary Educational Officer inspected the aforesaid school on 7.12.99, and examined the average attendance of the students as per G.O. Ms. No.525 dated 29.12.97, it is seen that only 15 teachers are eligible to work. Hence, it is informed that approval cannot be granted for the appointment of the Secondary Grade Teacher appointed afresh in the aforesaid school. The Service Register and the Educational Qualification Certificates are annexed and sent herewith. It is requested to send the acknowledgment for the receipt of the same immediately to the Assistant Elementary Educational Officer, Tuticorin."

8. From the counter affidavit filed on behalf of the third appellant in the writ petition, it appears that the decision of the appellants was not based on their visit to the first respondent school dated 7.12.1999 alone. Two tabular columns have been given by the appellants and the relevant paragraphs of the counter affidavit read as follows:-

"I further state that the petitioner is not entitled for any concession after the court has dismissed all the writ petitions and the same was upheld by the Division Bench. At the time of my visit to the petitioner's school on 7.12.99, the strength of the school was adequate only for 15 teachers as per the norms prescribed in G.O. Ms. No.525, Education, dated 29.12.97. I state that whenever new appointments are made, the concerned Assistant Elementary Educational Officer will visit the school and forward the proposal. Then, the concerned District Elementary Educational Officer has to visit the school and if the attendance are found satisfied as per the norms fixed, the appointment will be approved. I respectfully state that fixation of staff strength is different from approval of new appointment, which should be made only by the norms prescribed in G.O. 525, Education, dated 29.12.97. I state that I visited on 7.12.99 and checked the attendance register of the students. Students present are as follows :

Class	No. of Sections	Pupil attendance at the time of visit	No. of teachers eligible as per G.O. Ms. No.525, Education, Dt.29.12.97
I	4	126	3
II	4	118	3
III	3	138	3
IV	4	123	3
V	4	123	3
TOTAL	19	628	15

As such, the school is eligible for the strength of 15 teachers, whereas 19 teachers were working at the time of the earlier visit of the AEEO on 6.8.99, the strength of the school was adequate only for 15 teachers. As per the report of the AEEO, even the roll of the school was not adequate which goes as follows :

Class	Roll		Attendance	
I	4 Division	126	109	(3)
II	4 Division	135	130	(3)
III	3 Division	143	135	(3)
IV	4 Sections	133	127	(3)

Class	Roll		Attendance	
V	4 Sections	133	120	(3)
				(15)

Therefore, there was excess of 4 teachers working in the school including Tmt. Roselin Rajakani. She was appointed on 2.6.99 in the retirement vacancy arose on 31.5.99. Therefore, the post became vacant, which was filled up by the management. Only existing teachers should not be disturbed as stated in G.O. Ms. No.525, Education, dated 29.12.97. Therefore, the management

has to surrender the vacant post. Without surrendering the post, the management illegally filled up the vacancy by appointing Tmt. Roselin Rajakani. The same can't be approved as per the norms fixed by G.O. 525, Education, dated 29.12.97."

It is clear from this that though the third appellant visited the first respondent school on 7.12.1999, even at the time of the earlier visit on 6.8.1999, the Attendance Register showed that the strength of the school required only 15 teachers. In fact, on 6.8.1999, there were three students less than the number of students that were "in attendance on 7.12.1999". Therefore, the basis of the objection of the respondents that the decision was arrived contrary to law falls to the ground. In fact, the impugned order makes it clear that the decision has been arrived at in accordance with G.O. Ms. No.525 which refers to the attendance in the month of August of every year.

9. We should also not lose sight of G.O. Ms. No.1820 (Education) dated 21.11.1984, which is referred to in 2000 (4) L.W. 530 (supra). In that case, there was only one day of inspection and that too, in the month of July, and the Division Bench had, therefore, held that the accidental inspection on one day cannot decide the fate of the school. As per G.O. Ms. No.1820, it was ordered that "the number of teachers in a school should be fixed on the basis of the average attendance of students in the month of August in a year and even if there is a fall in the attendance of students subsequently, the surplus teachers in the aided school should be permitted to continue their services in the same school till the end of the month of July in the next year". Therefore, even assuming that there was only one inspection and that was in the month of December, it was open to the appellants to fix the student strength after July in the next year on the basis of the fall in attendance.

10. In this case, as rightly pointed out by the learned Additional Government Pleader, what we are concerned with is not the fixation of the sanctioned strength, but according of approval for the appointment of a teacher. A teacher was appointed, ostensibly upon a vacancy arising due to the retirement of another teacher. The first respondent has not answered the objection of the appellants that when the sanctioned strength is only 15 and there are excess teachers, on the retirement of a teacher, the post will lapse and cannot be filled up. According to the appellants, the first respondent already had four teachers in excess of what it is entitled to on the basis of the student strength and it is only therefore that the approval accorded to the first respondent school for appointing the second respondent teacher was withdrawn.

11. Learned counsel for the respondents submitted that if the case of the appellants that there is excess of sanctioned strength is accepted, then the teacher must be re-deployed. In this case, the writ petitioner is not the teacher concerned, but it is the School and hence, it is not possible to grant the relief when the person aggrieved has not asked for such a prayer.

12. According to the learned Additional Government Pleader, the appointment of the second respondent could not be approved because the post to which the second respondent was appointed was in excess of what the school is entitled to, if G.O. Ms. No.525 is applied. In fact, the impugned order itself clearly states that,

> "மேற்காண் பள்ளியினை 07.12.99-ம் தேதியன்று மாவட்டத் தொடக்கக் கல்வி அலுவலர் பார்வையிட்டபோது உள்ள மாணவ, மாணவிகளின் சராசரி வருகையினை அரசாணை எண்.525 நாள் 29.12.97-ன்படி பரிசீலித்ததில், 15 ஆசிரியர்கள் தான் பணியாற்றிட தகுதி உள்ளது. எனவே மேற்காண் பள்ளியில் புதிதாக நியமனம் செய்துள்ள இடைநிலை ஆசிரியையின் நியமனத்திற்கு ஒப்புதலளிக்க இயலாது என தெரிவிக்கலாகிறது."

G.O. Ms. No.525 lays down the manner in which the posts are sanctioned in Elementary Schools. The relevant sentences are extracted :

> "The teacher-pupil ratio of 1:40 will be followed. Minimum of 2 Secondary Grade Teachers upto a strength of 80 will be sanctioned. One of the two posts will be in the grade of Headmaster. 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."

13. The tabular column extracted above shows that this is how the appellants have calculated. The respondents want the calculation to be made on total school strength to justify the appointment. Whereas, in their own reply affidavit, in paragraph 9, they have given the inspection report as on 18.10.2001, where the calculation is made for each class in the same manner in which the appellants have calculated the student-teacher ratio.

14. G.O. Ms. No.525 is the basis for fixing the teacher-pupil ratio, and it is futile to contend otherwise. This is seen from the judgment in Writ Appeal No.1263 of 2001 [Mahadeva Vilasam High School vs. The District Educational Officer, Thuckalay]. The norms laid down in G.O. Ms. No.525 were "in supersession of Rules 17 and 18 of the Madras Educational Rules and G.O. Ms. No.250, Education dated 29.2.2004. ..... These norms for assessment for grant will be applicable to the schools opened and recognised upto 1990-91". The G.O. directed re-deployment of "those who may be rendered surplus due to the application of these norms". The above G.O. was issued on 29.12.1997, whereas the second respondent was appointed on 2.6.1999 and there is no justification for us to conclude that G.O. Ms. No.525 was not implemented.

15. The impugned order is clearly in consonance with G.O. Ms. No.525 and G.O. Ms. No.1820, which is referred to in Writ Appeal No.1181 of 1999, wherein the First Bench of this Court had held, "The appellant-School is entitled to a teacher strength as per the inspection made in August and that no direction can be given for inspecting the school again". In this case, the school was inspected in August and again in December. So, the grievance of the respondents is not justified.

16. In 2001 (3) S.C.C. 328 [BUDDHINATH CHAUDHARY VS. ABHAY KUMAR], the Supreme Court extended equitable consideration to persons appointed improperly, but nevertheless, it was observed therein, "If the selection of these candidates was improper, the same should have been set aside". In 2001 (2) S.C.C. 480 [PABITRA MOHANDASH VS. STATE OF ORISSA] also, the Supreme Court held, "When an appointment is made contrary to the regulations, then the appointment would be invalid and the appointment would not confer any right on the appointee".

17. In the reply affidavit, the first respondent has stated that from the year 2000, the strength of the school has increased and the appellants were not justified in basing their decision on the inspection done in one year alone. We are not expressing any opinion in this regard. If the first respondent is entitled to submit any application for the sanction of more posts on the basis of the increased strength of the school after the year 2000, it is

open to them to do so in accordance with law, which will, of course, be considered by the appellants.

18. In 2002 (4) C.T.C. 385 [L. JUSTINE VS. THE REGISTRAR, CO-OPERATIVE SOCIEITIES, CHENNAI], the First Bench of this Court had held that confirmation or regularization of an irregularly appointed candidate would be possible only if permitted by the Rules and only against a post which is already sanctioned, vide A.I.R. 1992 S.C. 2130 [STATE OF HARYANA VS. PIARA SINGH] and 1994 (2) S.C.C. 630 [J.K. PUBLIC SERVICE COMMISSION VS. Dr. N. MOHAN]. However, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, the question of regularizing the particular candidate would not at all arise, since his very entry is illegal and void, vide 2005 (1) M.L.J. 680 [G. GANESAN VS. GOVT. OF TAMIL NADU].

19. In A.I.R. 1993 S.C. 1650 [STATE OF ORISSA VS. SUKANTI MOHAPATRA], the Supreme Court observed that appointment in disregard to the rules cannot be allowed to be regularized merely by invoking the provisions of relaxation. Invoking the power of relaxation in such cases will amount to total suspension of the rules, and regularization of such appointment by relaxation will be illegal.

20. In A.I.R. 1972 S.C. 1767 [R.N. NANJUNDAPPA VS. T. THIMMIAH & ANOTHER] (vide para.26), it was observed :-

> "If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution, the illegality cannot be regularized. Ratification or regularization is possible of an act which is within the power and province of the authority but there has been some non-compliance with the procedure or manner which does not go to the root of the appointment. Regularization cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of the rules or it may have the effect of setting at naught the rules."

21. It was also held in L. Justine's case (supra) that appointments must be made only on the basis of legal requirements, and the essential requirements are the cadre strength and the qualifications, and these requirements cannot be by-passed, and any infraction in observance of these requirements makes the appointment illegal. In the case on hand, the appellants have shown that the appointment of the second respondent by the first respondent school is contrary to G.O. Ms. No.525.

19. For all these reasons, the writ appeal is allowed and the impugned order of the learned single Judge is set aside. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government,
   Education Department,
   Govt. of Tamil Nadu,
   Fort St. George,
   Chennai-9

2. The Director of Elementary Education,
   College Road,
   Chennai-6.

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   T.R. Naidu Street,
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4. The Assistant Elementary Educational Officer,
   Tuticorin (Urban),
   Tuticorin-8.

+2ccs to Mr.N.Paul Vasatha Kumar, Advocate Sr 15605

PV (CO)
km/5.4.

Writ Appeal No.1 of 2002