

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.11.2006

Coram

The Honourable Mr. Justice P.SATHASIVAM  
and  
The Honourable Mr. Justice S.TAMILVANAN

Writ Appeal No.525 of 2001  
and  
W.P. Nos.21903 of 2000 & 1722 of 2001

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Association of Management of Hindu Educational Institution  
Tamil Nadu  
rep. by Secretary  
Dr.V.S.Narasimhan,  
Shri Ramakrishna Ashram,  
Thiruvengadam West,  
Madurai. ..Appellant in  
WA.525/01

The Tamil Nadu  
Recognised Private School Managers'  
Association (135/97)  
Rep. by its General Secretary  
Pulavar R.Palanisamy ..Petitioner in  
WP.21903/2000

North Arcot Ambedkhar and Sambuvarayar District  
Recognised Private Aided Primary and Middle Schools  
Managers and Teacher managers Association,  
Vellore,  
Tamil Nadu,  
rep. by its Secretary P.Shanmugham. ..Petitioner in  
WP.1722/2001.

vs.

The State of Tamil Nadu  
Rep. by its Secretary to Government,  
Education Department,  
Fort St. George,  
Chennai 9. ..R1 in  
the Appeal & WPs.

The Director of School Education,  
College Road,  
Chennai 6. ..R2 in  
WA.525/2001.

The Director of Elementary Education,  
College Road,  
Chennai 6. ..R3 in  
WA.525/2001 &  
R2 in the WPS.

The District Elementary Education Officer,  
Thanjavur. ..R3 in  
WP.21903/2000

The District Elementary Educational Officer,  
Vellore District. ..R3 in  
WP.1722/2001

The District Elementary Education Officer,  
Nagapattinam. ..R4 in  
WP.21903/2000

The District Elementary Educational Officer,  
Tiruvannamalai District. ..R4 in  
WP.1722/2001.

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WA. No.525/2001:

Appeal against the order of the learned single Judge, dated 14.12.2000, made in WP No.21047/2000.

WP.1722/2001:

For the issuance of a writ of certiorari as stated therein.

WP.21903/2000:

For the issuance of a writ of certiorarified mandamus as stated therein.

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For Appellant in WA.525/01 : Mr.S.N.Ravichandran

For Petitioner in WP.21903/2000 : Mr.D.Rajendran

For Petitioner in WP.1722/2001 : Mr.G.Jeremiah

For Respondents : Mr.V.Viswanathan, Addl. Govt. Pleader.

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## COMMON JUDGMENT

(Judgment of the Court, delivered by P.SATHASIVAM, J.)

Association of Management of Hindu Educational Institution, Tamil Nadu, has filed W.A. No.525 of 2001 as against the order of the learned single Judge, dated 14.12.2000, in W.P. No.21047 of 2000, in and by which, the learned Judge dismissed the said Writ Petition challenging the Government Order by which the "maintenance grant" was reduced from 4% to 2%.

The Tamil Nadu Recognised Private School Managers' Association, in W.P. No.21903 of 2000, seeks for the issuance of a writ of certiorarified mandamus to call for the records of the first respondent/State Government in connection with impugned G.O.D. No.174, School Education (B2) Department, dated 23.06.2000, quash the same and consequently direct the respondents to grant the "maintenance grant" at 4% as hitherto done.

In WP No.1722 of 2001, North Arcot Ambedkar and Sambuvarayar District Recognised Private Aided Primary and Middle Schools Managers and Teacher Managers Association, Vellore, prays for the issuance of a writ of certiorari to call for the records of the 1st respondent relating to G.O.(D) No.174, School Education (B2) Department, dated 23.06.2000, and quash the same.

2. Since the issued involved in the Writ Petitions and the Writ Appeal is one and the same, they are being disposed of by this Common Judgment.

3. For convenience, we shall refer the case of Association of Management of Hindu Educational Institution, Tamil Nadu, ie., petitioner in W.P. No.21047 of 2000.

According to them, originally, schools upto elementary level were granted maintenance grant even during the British period upto 24%. There were other grants like efficiency grant for good academic records. Apart from that, the schools were collecting tuition fees for a considerable sum. When the Government introduced free education system, private schools were asked to stop collecting tuition fees and in consideration therefor, the Government promised to pay maintenance grant at 12% regularly.

Under Rule 11(3) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, the grant payable to the recognised private schools are specified. Annexure I(i) speaks about staff grant and Annexure I(2) speaks about maintenance grant. As per the said Annexure, Educational Agencies running Elementary and Middle Schools may be paid upto 6% of the assessed teaching grant as maintenance grant. As far as the High Schools and Higher Secondary Schools are concerned, the procedure to determine the maintenance grant is entirely different.

There are several penal provisions in the Act and Rules to take action against the schools which do not maintain the buildings, furniture and other essential requirements properly. While so, it is the duty of the Government to provide adequate funds to meet out the expenditure so as to reach the standards, but, by reducing the grant and expecting more, the respondents have acted in an unreasonable manner.

Even though the grant was initially fixed at 6%, the Government passed G.O.422 Education, dated

16.3.1979, restricting the grant. In that G.O., the maintenance grant for the elementary schools was reduced to 4% on account of merger of the Dearness Allowance with total salary. Building and other facilities are very essential for a good and favourable atmosphere for the children and for the purpose of advancement of education. In the process of modernisation, the schools have to spend a huge sum of money to upkeep the standards. The Government is duty bound to provide sufficient and adequate funds for this purpose. The schools are striving hard to maintain the standards with poor funds. In the present economic trend and expensive cost of living, maintenance grant must be increased so as to enable the schools to maintain themselves effectively in a proper manner.

By the impugned Government Order, viz., G.O. (D) No.174, School Education (B2) Department, dated 23.06.2000, the Government reduced the maintenance grant from 4% to 2% under the guise of public policy, stating that in view of hike in the salary of the teachers, 2% itself is higher than the earlier grant viz., 4%. The said decision is unreasonable and arbitrary.

Similar averments have been made in the other two Writ Petitions.

4. The Deputy Secretary to Government, School Education Department, filed a counter affidavit, wherein, it is stated that the grant is intended for the upkeep of the school building, equipment, contingencies, provision of urinals etc. The system of total free education for all upto High School level was introduced from the academic year 1964-65. Aided schools are being paid aid by way of monthly teaching grant to cover the salaries of teachers. At the end of every calendar year, a Final Teaching Grant Conference is generally convened and the total teaching grant for the whole year is assessed. In that conference, the eligible maintenance grant is worked out by the District Elementary Educational Officer at such percentage as fixed by the Government from time to time. For assessment of maintenance grant, only the basic pay is taken into account. The Government, at periodical intervals, sets up Pay Commissions and the scales of pay are revised with reference to the recommendations of the Pay Commissions. On such revisions of pay scales, a major portion of the Dearness Allowance is merged with the Basic Pay of the previous pay and new scales of pay are formulated. The basic pay for each post is increased by 75 percent to 150 percent with every Pay Commission.

Maintenance Grant is not provided in the scheme of the Tamil Nadu Recognised Private Schools (Regulation) Act, however, it is provided in the Annexure, which is not mandatory in nature. The maintenance grant is worked out as per the percentage fixed by the Government with reference to the expenditure incurred towards pay of the teachers. Government at periodical intervals takes policy decision to reduce the percentage of maintenance grant payable to the managements as the Dearness Allowance drawn prior to the Pay Commission is merged with the Basic Pay. The Government have been reviewing the payment of maintenance grant and revised the percentage during 1977-98 upto a maximum of 6%; from 1979 to 2000, upto a maximum of 4%; and from 2000 onwards, upto a maximum of 2%. Whenever the pay of teachers increases, the maintenance grant will proportionately increase. In view of the steep increase in the basic pay of the teachers, the amount payable at 2% by way of maintenance grant is higher than the amount payable at 4% with reference to the earlier pay structure. Further, the maintenance grant cannot be demanded by the schools as a matter of right considering the heavy burden and also of the recent policy decision of the Government not to allow any teaching grant to the new schools started after 1991-92.

5. Heard Mr.S.N.Ravichandran, Mr.D.Rajendran and Mr.G.Jeremiah, learned counsels for the Schools and Mr.V.Viswanathan, learned Additional Government Pleader, for the respondents.

6. Learned Counsels appearing for the appellant and the writ petitioners mainly contended that, while reducing the maintenance grant to 2% on the ground that Dearness Allowance had been

merged with the Basic Pay, the Government failed to consider the economic criteria and inflation rates. They further contended that reduction of maintenance grant is unreasonable and unfair when the managements were suffering by the insufficient maintenance grants paid at the rate of 4%. They also contended that even if it is a policy decision of the Government, the reduction in maintenance grants is not warranted as it crippled the private schools in maintaining cleanliness and neatness, which are essential for providing education to small children. Finally, they contended that lack of funds is not an acceptable criteria to reduce the maintenance grant.

7. On the other hand, learned Additional Government Pleader submitted that only after considering various aspects including the expenditure incurred towards pay of the teachers, the Government has taken a policy decision by reducing the maintenance grant to 2% from 4%. He also submitted that in view of the steep hike in the salary of the teachers on the recommendations of the Pay Commission, the amount payable at 2% is higher than the amount at 4% based on the earlier pay structure.

8. We have perused the relevant materials and considered the rival contentions.

9. Section-14 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, speaks about [payment of grant], which reads as under:-

[14. Payment of grant.] (1) Subject to such rules as may be prescribed, the Government may continue to pay grant to the private school receiving grant from the Government, before the date of commencement of the academic year 1991-1992 at such rate and for such purpose as may be prescribed.

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Annexure-I of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, refers to Payment of Grant. As per Clause(2) in Annexure-I, the Educational Agency may be paid up to 6% of the assessed teaching grant as "maintenance grant" for the calendar year. The same is applicable to pre-primary, primary and middle schools. Though the Act does not provide for separate amount towards maintenance grant, Clause(2) in Annexure-I vide Rule-11(3) provides for maintenance grant in respect of pre-primary, primary and middle schools and the maximum ceiling is prescribed as 6% of the assessed teaching grant.

10. With the above background, let us consider the contentions raised.

11. As per Section 14-A of the Act, no grant shall be paid to any class or course of instruction opened on or after the date of commencement of academic year 1991-92. The said provision was challenged by several educational institutions/agencies and parents-teachers Associations on various grounds including the one that right to education being a fundamental right, paucity of funds cannot be a reason/justification to dispense with the grant after 1991. The Division Bench, in 2006 (5) CTC 193 (Marie Grace Rural Middle School v. the Government of Tamil Nadu), after referring to relevant provisions and considering various decisions of the Apex Court starting from Mohini Jain (Miss) v. State of Karnataka and others (1992 (3) SCC 666), Unni Krishnan, J.P. and others v. State of Andhra Pradesh and others (1993 (1) SCC 645); T.M.A.Pai Foundation and others v. State of Karnataka and others (2002 (8) SCC 481), In Re: The Kerala Educational Bill (AIR 1958 SC 956), Islamic Academy of Education vs. State of Karnataka (2003 (3) CTC 719) etc., and the facts and figures supplied by the State, upheld the said provision, dismissing all the Writ Petitions. The Division Bench concluded that Section 14-A is constitutionally valid and that Grant-in-Aid is neither a fundamental right nor a statutory right and it depends upon the economic capacity of the State. The Bench has also recorded the specific claim of the State that the Government is providing free education to the children below

14 years. It was also pointed out from the particulars furnished therein that no Government School or Aided School is denied the right of imparting free education to the children. The Bench, after observing that policy decisions are exclusively within the executive domain and, accepting the facts and figures furnished in the Annexure by the State, rejected all the contentions. The effect of policy decision by the Government as adverted to and the conclusion arrived at by the Division Bench are squarely applicable to the cases on hand. Following the same, we are of the view that there is no need to elaborate further and suffice it to hold that the said decision is an answer to the contentions raised.

12. It is brought to our notice that at periodical intervals, the Government sets up Pay Commissions and the scales of pay of the teachers are revised with reference to the recommendations of the Pay Commissions. It is highlighted by the State that on such revisions of pay scales, a major portion of the Dearness Allowance is merged with the Basic Pay of the previous pay and new scales of pay are formulated. It is also brought to our notice that the Basic Pay for each post is increased by 75 percent to 150 percent with every Pay commission. It is not in dispute that the salary of a teacher is increasing every year when the D.A. is merged with the salary. In those circumstances, the State is right in contending that it would be highly improbable to consider the percentage on the basis of the merged salary as it would work out a heavy burden on the exchequer of the Government. It is also demonstrated before us that the Maintenance Grant is worked out as per the percentage fixed by the Government with reference to the expenditure incurred towards pay of the teachers.

13. It is not in dispute that, after considering various factors, the Government have reviewed the payment of maintenance grant and reduced the percentage. During 1977-1978, maintenance grant was fixed upto a maximum of 6%; from 1979 to 2000, it was up to a maximum of 4% and from 2000 onwards, upto a maximum of 2%. The maintenance grant depends upon the pay of the teachers. In other words, whenever the pay of teachers increases, the maintenance grant will proportionately increase. Further, the scale of pay of several categories of teachers in Primary and Middle Schools has been revised pursuant to the recommendations of different Pay Commissions as tabulated in Annexure-A.

## ANNEXURE A

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### SCALE OF PAY AS PER THE II PAY COMMISSION

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S.G. : Ordinary 210-5-245-10-325

Sel. Gr. 250-10-400

Spl. Gr. --

B.T. : Ordinary 300-15-420-20-500

Sel. Gr. 400-15-430-20-550-25-650

Spl. Gr. --

Priv. School HM : Ordinary

Sel. Gr.

Spl. Gr. No separate scales of pay

Middle School HM: Ordinary 250-10-400

Sel. Gr.

Spl. Gr.

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#### SCALE OF PAY AS PER THE III PAY COMMISSION

S.G. Ordinary 350-10-420-15-600

Sel. Gr. 400-15-490-20-650-25-700

Spl. Gr. 450-20-590-25-740-30-800

B.T. Ordinary 450-20-590-25-740-30-800

Sel. Gr. 600-30-750-35-890-40-1050

Spl. Gr. 675-35-885-45-1200

Pry.School HM : Ordinary

Sel. Gr.

Spl. Gr. No separate scales of pay

Middle School HM: Ordinary 400-15-490-20-650-25-700

Sel. Gr. 450-20-590-25-740-30-800

Spl. Gr. ----

#### SCALE OF PAY AS PER THE IV PAY COMMISSION

S.G. : Ordinary 610-20-730-25-955-30-1075

Sel. Gr. 705-20-745-25-845-35-1230

Spl. Gr. 780-35-1025-40-1385

B.T. : Ordinary 780-35-1025-40-1385

Sel. Gr. 1045-45-1450-65-1775

Spl. Gr. 1160-50-1460-70-1950

Pry. School HM : Ordinary

Sel. Gr.

Spl. Gr. No separate scales of pay

Middle School HM: Ordinary 705-20-745-25-845-35-1230

Sel. Gr. 780-35-1025-40-1385

Spl. Gr. 905-45-1445-50-1545

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Spl. Gr. 1640-60-2600-75-2900

Spl. Gr. 2000-60-2300-75-3200

Spl. Gr. 2000-60-2300-75-3200

Spl. Gr. 2200-75-2800-100-4000

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Spl. Gr. 5900-200-9900

Spl. Gr. 8000-275-13500

Spl. Gr. 8000-275-13500

Spl. Gr. 9100-275-14050

As rightly pointed out, if the pay of the teachers remained without any revision from 1978, it may be accepted that the reduction in the rate of maintenance grant is an injustice meted out to the managements. As said earlier, from 1978, the pay of teachers has been revised on three occasions, viz., during 1984, 1988 and 1996, by ten folds resulting in an increase of maintenance grant by nearly four times. In the counter affidavit, the Education Department has explained that, for the implementation of Noon Meal Programme, sufficient staffs such as a noon-meal organiser, a cook and a helper are appointed. It is further stated that the expenditure on payment of salaries to them



is borne by the Government, hence, the management need not pay any amount to the noon meal employees from the management fund.

14. An illustration showing increase in the maintenance grant consequent to the revision of scale of pay given in respect of different categories of teachers is mentioned in Annexure-B, which is extracted below:-

ANNEXURE B

| II PAY | III PAY | IV PAY | V PAY | VI PAY  
| COMMISSION | COMMISSION | COMMISSION | COMMISSION | COMMISSION

POST | B | PER | P | E | B | PER | P | E | B | PER | P | E | B | PER | P | E | B | PER | P | E  
| A | | E | L | A | | E | L | A | | E | L | A | | E | L | A | | E | L  
| S | A | R | I | S | A | R | I | S | A | R | I | S | A | R | I | S | A | R | I  
| I | N | C | G | I | N | C | G | I | N | C | G | I | N | C | G | I | N | C | G  
| C | N | E | I | C | N | E | I | C | N | E | I | C | N | E | I | C | N | E | I  
| | U | N | B | | U | N | B | | U | N | B | | U | N | B | | U | N | B  
| P | M | T | L | P | M | T | L | P | M | T | L | P | M | T | L | P | M | T | L  
| A | | A | E | A | | A | E | A | | A | E | A | | A | E | A | | A | E  
| Y | | G | | Y | | G | | Y | | G | | Y | | G | | Y | | G |  
| | E | M | G | | E | M | G | | E | M | G | | E | M | G | | E | M | G  
| P | M | | | P | M | | | P | M | | | P | M | | | P | M | | | |
| | | A | | | A | | | A | | | A | | | A | | | A | | |  
| | | M | | | M | | | M | | | M | | | M | | | M | | |  
| | | O | | | O | | | O | | | O | | | O | | | O | | |  
| | | U | | | U | | | U | | | U | | | U | | | U | | |  
| | | N | | | N | | | N | | | N | | | N | | | N | | |  
| | | T | | | T | | | T | | | T | | | T | | | T | | |  
| | | | | | | | | | | | | | | | | | | | | |

1. | | | | | | | | | | | | | | | | | | | | | |  
SECO- | | | | | | | | | | | | | | | | | | | | | |  
NDARY | 210 | 2520 | 6 | 151 | 350 | 4200 | 6 | 252 | 610 | 7320 | 4 | 293 | 1200 | 14400 | 4 | 576 | 4500 | 54000 | 2 | 1080  
GRADE | | | | | | | | | | | | | | | | | | | | | |

| | | | | | | | | | | | | | | | | | | | | |  
| 210 | 2520 | 6 | 151 | 350 | 4200 | 6 | 252 | 610 | 7320 | 4 | 293 | 1400 | 16800 | 4 | 672 | 5300 | 63600 | 2 | 1272

2. | No separate scale of pay. | | | | | | | | | | | | | | | | | | | | | |  
Pri- | Secondary Grade scale of pay | | | | | | | | | | | | | | | | | | | | | |  
mary | was allowed. | | | | | | | | | | | | | | | | | | | | | |  
School | | | | | | | | | | | | | | | | | | | | | |

HM |||||

3. |||||

B.T. |300|3600|6|216|450|5400|6|324|780|9360|4|374|1400|16800|4|672|5500|66000|2|1320

Asst. |||||

4. |||||

Middle|250|3000|6|180|400|4800|6|288|705|8460|4|338|1640|19680|4|787|5900|70800|2|1416

School| |||||

HM |||||

The particulars furnished above, particularly Annexure-B, clearly show that notwithstanding the fact that the percentage of maximum admissible maintenance grant is reduced as the Dearness Allowance is merged with pay at the time of Pay Commissions, the maintenance grant payable is definitely on the higher side and suited to the cost of materials on inflation. The Government have clarified that the maintenance grant is worked out on the major portion of the DA even though the policy of Government is that the maintenance grant is payable with reference to the Basic Pay.

15. The illustration given in the counter affidavit of the Government shows that the maintenance grant payable towards the pay of a Secondary Grade Teacher during 1977 was Rs.151 when the rate of maintenance grant payable was 6% and it became Rs.252/- in 1979, Rs.292 in 1985 and Rs.576 in 1988 when the maintenance grant was revised to 4%. It is further brought to our notice that after 1979, even though recommendations of many Pay Commissions were implemented during 1984, 1988 and 1996, the rate of maintenance grant was not revised and it remained to be 4%. It is also demonstrated before us that the maintenance grant payable to the same Secondary Grade teacher at 2% works out to Rs.1080/- which is four times the earlier amount. As rightly pointed out by the learned Additional Government Pleader, if we consider the quantum of maintenance grant, it cannot be claimed that the amount is considerably reduced. Because of the increase in the Pay and merging the D.A. with the basic pay, undoubtedly, the present maintenance grant at 2% is higher than the amount payable at 4% with reference to the earlier pay structure. The above facts and figures clearly disprove the claim of the writ petitioners.

In these circumstances, we do not find any valid reason or ground for interference. Consequently, the Writ Appeal and the Writ Petitions fail and they are dismissed. No costs.

Jl.

To

1. The Secretary to Government,  
Education Department,  
Fort St. George,  
Chennai 9.

2. The Director of School Education,

College Rd.,  
Chennai 6.

3. The Director of Elementary Education,  
College Rd.,  
Chennai.

4. The District Elementary Education Officer,  
Thanjavur.

5. The District Elementary Educational Officer,  
Vellore Dt.

6. The District Elementary Education Officer,  
Nagapattinam.

7. The District Elementary Educational Officer,  
Tiruvannamalai District.

[PRV/8842]