

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2010

CORAM :

THE HONOURABLE Mrs. JUSTICE R.BANUMATHI
and
THE HONOURABLE Mr. JUSTICE B.RAJENDRAN

Writ Appeal Nos. 1236, 1238, 1239 1337, 1906 and 1908 of 2001

W.A.No.1236 of 2001:

1. The Government of Tamilnadu,
rep. by its Secretary,
Education Department,
Fort St. George, Madras-9.
 - 2.The Director of School Education,
(Secondary),
College Road, Madras-6.
 - 3.The District Educational Officer,
Periyakulam-626 501,
Madurai District.
- ... Appellants

Versus

St. Aloysius Higher Secondary School,
Royappanpatti-626 526,
Madurai District, rep. by its
Correspondent, Rev.Bro.S.Amalraj.

... Respondent

W.A.No.1238/2001:

1. The Government of Tamilnadu,
rep. by its Secretary,
Education Department,
Fort St. George, Madras-9.
 2. The Director of School Education,
(Secondary),
College Road, Madras-6.
- ... Appellant.

Versus

The Tamil Nadu Catholic Educational
Association, Madras, rep. by its
Secretary Rev. Fr. S.M.Charles Borrromeo.

... Respondent

W.A.No.1239 of 2001:

1. The Government of Tamilnadu,
rep. by its Secretary,
Education Department,
Fort St. George, Madras-9.
2. The Director of School Education,
(Secondary),
College Road, Madras-6.
3. The District Educational Officer,
Periyakulam-626 501,
Madurai District.

... Appellants

Versus

St. Aloysius Higher Secondary School,
Royappanpatti-626 526,
Madurai District, rep. by its
Correspondent, Rev.Bro.S.Amalraj.

... Respondent

W.A.No.1337 of 2001:

1. The Government of Tamilnadu,
rep. by its Secretary,
Education Department,
Fort St. George, Madras-9.
2. The Director of School Education,
(Elementary),
College Road, Madras-6.

... Appellant

Versus

The Tamil Nadu Catholic Educational
Association, Madras, rep. by its
Secretary Rev. Fr. S.M.Charles Borromeo.

... Respondent

W.A.No.1906 of 2001:

1. The Government of Tamilnadu,
rep. by its Secretary,
Education Department,
Fort St. George, Madras-9.
2. The Director of School Education,
(Secondary),
College Road, Madras-6.
3. The District Educational Officer,
Periyakulam-626 501,
Madurai District.

... Appellants

Versus

St. Aloysius Higher Secondary School,
Royappanpatti-626 526,
Madurai District, rep. by its
Correspondent, Rev.Bro.S.Amalraj

... Respondent

W.A.No.1908 of 2001:

1. The Government of Tamilnadu,
rep. by its Secretary,
Education Department,
Fort St. George, Madras-9.
2. The Director of School Education,
(Secondary),
College Road, Madras-6.
3. The District Educational Officer,
Periyakulam-626 501,
Madurai District.

... Appellants

Versus

St. Aloysius Higher Secondary School,
Royappanpatti-626 526,
Madurai District, rep. by its
Correspondent, Rev.Bro.S.Amalraj.

... Respondent

Appeals filed under Clause 15 of the Letters Patent against the common order of the learned single Judge made in W.P.Nos.16233 of 1995, 10890 of 1994, 16236 of 1995, 10889 of 1994; 16234 of 1995 and 16235 of 1995 dated 16.08.1999.

filed under Article 226 of the constitution of India to issue a writ of Mandamus, calling for the records relating to the proceedings of the second respondent in Na.Ka.No.54568/D2/94 dated 25.4.1994 and the consequential proceedings of the third respondent in A.T.Mu.No.7612/A3/94 dated 12.7.1994 and quash the same and direct the respondents herein to approve the appointment of a qualified teacher, Mr.S.E.Emmanuel Maria Joseph, record clerk in the promoted vacancy in St.Aloysius Higher Secondary School, Royappanpatti, Madurai District with all salary and emoluments from 9.6.1994 onwards in so far as the petitioner school, St.Aloysius Higher Secondary School, Royapanpatti, Madurai District is concerned -WP No.16233/95

Order of the 2nd respondent passed in his proceedings Na.Ka.54568/D2/94 dt.25.4.94, and quash the same and direct the respondents to approve all the appointments of qualified teachers including Head Master and Head Mistress in the vacancies which arises in the petitioner's school mentioned in Annexure 'A' Aided recognised High Schools), and Annexure 'B', (Aided recognised Higher Secondary Schools) in the academic year 1.6.1994, in so far as the petitioner's schools are concerned-WP No.10890/94.

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calling for the records relating to the proceedings of the 2nd respondent in Na.Ka.54568/D2/94 dated 25.4.1994 and the consequential

proceedings of the third respondent in A.T.Mu.No.15626/A3/94 dated 17.11.1994 and quash the same and direct the respondents herein to approve the appointment of a qualified teacher Rev.Bro.A.Charles, Tamil Pandit in the vacancy in St.Aloysius Higher Secondary School Royappanpatti, Madurai District, with all salary and emoluments from 3.6.1994 onwards in so far as the petitioner school, St. Aloysius Higher Secondary School, Royappanpatti, Madurai - WP No.16236/1994.

Relating to the proceedings of the 2nd respondent in Na.Ka.No.7070/Tho Ka.J1/93, dated 20.5.1994 and quash the same and direct the respondents to approve all the appointments of qualified teachers including Headmasters and Headmistress in the vacancies which arises in the petitioner schools mentioned in Annexure 'A', (Aided Recognised Primary Schools), and Annexure 'B' (Aided Recognised Middle Schools) in the academic year 1.6.1994, in so far as the petitioner's Schools are concerned-WP 10889/1994.

Relating to the proceedings of the second respondent in Na.Ka.No.54568/D2/94 dated 25.4.1994 and the consequential proceedings of the third respondent in A.T.Mu.No.7613/A3/94 dated 12.7.1994 and quash the same and direct the respondents herein to approve the appointment of a qualified teacher's S.Jeyapaul, M.A.,B.Ed., Secondary grade teachers, in the transfer vacancy in St. Aloysius Higher Secondary School, Royappanpatti, Madurai District with all salary and emoluments from 7.6.1994 onwards in so far as the petitioner school, St.Aloysius Higher Secondary School, Royappanpatti, Madurai District is concerned -WP No.16234/1995.

Relating to the proceedings of the second respondent in Na.Ka.54568/D2/94 dated 25.4.1994 and the consequential proceedings of the third respondent in A.T.Mu.No.7614/A3/94, dated 12.7.1994 and quash the same and direct the respondents herein to approve the appoint of a qualified teacher Mr.J.Joseph, M.A., B.Ed., Secondary Grade Teacher, in the retirement vacancy in St.Aloysius Higher Secondary School, Royappanpatti, Madurai District, with all salary and emoluments from 4.6.1994 onwards in so far as the petitioner school, St.Aloysius Higher Secondary School, Royappanpatti, Madurai District -WP No.16235/1995.

For Appellants : Mr. P.Wilson,
Addl. Advocate General
assisted by
Mr. G.Sankaran,
Spl. Government Pleader (Edn)

For Respondents : Mr. A.Xavier Arulraj

COMMON JUDGMENT

B. RAJENDRAN, J

These Writ Appeals arise out of the order of learned single Judge dated 16.08.1999 quashing the Circular Na.Ka.No.54568/D2/94 dated 25.04.1994 and Circular Na.Ka.No.7070/Tho.ka. J1/93 dated 20.05.1994

issued by the Appellants 2 and 3 restricting the appointments until the teacher pupil ratio is determined by the Government for the period from 01.06.1994 to 31.05.1995. Since, all the Appeals are arising out of common order and the point for consideration are one and the same, all the Appeals were taken up together and disposed of by this common Judgment.

2. We may briefly refer to the factual background which led to the issuance of the Circulars (i) Na.Ka.No.54568/D2/94 dated 25.04.1994 and (ii) Na.Ka.No.7070/Tho.ka.J1/93 dated 20.05.1994 are as follows:-

(i) Since 1980 number of new schools were established which made it difficult for Government to support these schools with grants particularly with its financial and budgetary constraints. While giving recognition to opening new schools/upgradation of the schools, they were informed that no State aid would be extended. Most of these Managements, after accepting recognition without aid, started filing Writ Petitions before the High Court claiming sanction of teaching grant for all the posts in their schools. In view of the pressure from the institutions for sanction of grants and number of Writ Petitions filed, Government studied the entire issue in depth with reference to availability of resources. In order to provide teaching grant to the schools opened up to 1987-88 and also to formulate revised norms, orders were issued in G.O.Ms.No.340 Education dated 01.04.1992 which is superseded the earlier norms - teacher pupil ratio at 50:1.

(ii) Not being satisfied with the new norms issued in G.O.Ms.No.340 Edn. dated 01.04.1992, certain institutions moved the High Court and obtained interim orders against the new norms. However, Government obtained interim stay from Supreme Court with the result that G.O.Ms.No.340 Edn. dated 01.04.1992 became applicable to all private aided schools.

(iii) Fearing deployment of teachers who would be rendered surplus as per the new norms, Management of several aided schools represented to the Government to revise the norms issued in G.O.Ms.No.340 Edn. dated 01.04.1992. Government constituted a High Power Official Norms Committee in G.O.4(D) No.1, Education dated 16.08.1995 with the Secretary to Government, Education, Science and Technology Department and others to formulate and suggest the revised norms for sanction of teaching posts to aided schools. On the basis of the recommendations of High Power Official Norms Committee, G.O.Ms.No.525 School Education dated 29.12.1997 was issued fixing the staff strength that Elementary schools, High schools and Higher Secondary Schools with effect from 01.06.1998.

(iv) After the constitution of High Power Official Norms Committee to suggest the norms for teacher pupil ratio for various kinds of educational institutions, the Director of School Education/Director of Elementary Education [Appellants 2 and 3] sent the impugned Circulars to all the Chief Educational Officers (CEO) and District Educational Officers (DEO) dated 25.04.1994 and 20.05.1994 respectively. The said Circulars requested the CEO/DEO and Inspector of Girls School to inform the Headmasters of the respective school not to fill up the vacancies arising out of resignation, death, voluntary resignation (both teaching and non-teaching vacancies) till the amended

regulations were framed by the Government relating to the teacher pupil ratio. The said Circulars were in force from 01.06.1994 to 31.05.1995 and those Circulars were impugned in the Writ Petitions.

(v) The aided schools challenged the said Circulars on the ground that the Proceedings of the Appellants 2 and 3 in Na.Ka.No.54568/D2/94 dated 25.4.1994 and Na.Ka.No.7070/Tho.ka.J1/93 dated 20.05.1994 is arbitrary, illegal and void and violative of Article 41, 45 and Article 21 and 30(2) of Constitution of India. Most of the students studying in the schools are below 14 years of age who are having right to free education and the right to education directly flows from the right to life guaranteed under Article 21 of Constitution of India. According to the Writ Petitioners - viz., The Tamil Nadu Catholic Educational Association, Madras and St. Aloysius Higher Secondary School, Royappanpatti, their educational institutions are non-fee levying schools giving free education to its children and all the schools are established and administered for the benefit of poor Christian children. Further case of Writ Petitioners is that the schools cater to these children who come from the economically and socially weaker sections of Society - Scheduled Caste, Scheduled Tribes, Most Backward and Backward Caste. According to the Writ Petitioners, Writ Petitioners challenged the Circulars Na.Ka.No.54568/D2/94 dated 25.04.1994 and Na.Ka.No.7070/ Tho.ka.J1/93 dated 20.05.1994 on the ground that the State is prevented from withholding the services of the teachers to the students and prayed for Certiorarified Mandamus to quash the Proceedings of the 2nd and 3rd Appellants in Na.Ka.No.54568/D2/94 dated 25.04.1994 and Na.Ka.No.7070/ Tho.ka.J1/93 dated 20.05.1994 and also prayed for a direction to the Appellants to approve the appointments of qualified teachers including Headmasters and Headmistress in the vacancies arisen in the schools.

3. The appellants resisted the Writ Petitions by filing counter contending that only after considering the then budgetary provisions and the then forced circumstances by exercising the delegation of powers vested with them issued orders banning the filling up of vacancies arising out of resignation, death, voluntary resignation till the amended regulations were framed by the Government relating to teacher pupil ratio. According to the Appellants, powers are conferred to the Director of School Education to issue instructions and therefore, it was well within the power of Director of School Education to issue such instructions. Further case of Appellants is that any law intended to regulate the appointments will not amount to interference with the over all administrative control of the Management.

4. In the batch of Writ Petitions, learned single Judge held that by the imposition of the ban on filling up of vacancies of teachers, the fundamental right of the pupils to get education is affected. Learned single Judge held that when statute confers right and Management to get grant from the Government, it is not open to the Director of School Education to place embargo on the appointment of teachers resulting in denial of statutory right to provide educational institutions. the learned single Judge quashed the impugned Circulars on the following grounds:-

- Orders was passed in violation of the provisions of the

Constitution of India providing free education up to middle class level.

- Orders are in violation of the provisions of Tamil Nadu Private Schools (Regulation) Act.
- Orders were issued by the Director of School Education, but the Government has not issued the said order
- When there are sanctioned posts of teachers, it is not open to the Director of School Education to issue a general instruction to the effect that even the sanctioned post should not be filled up till the Government takes the decision on the determination of teacher and pupil ratio.

5. Being aggrieved by the order of learned single Judge, Government has preferred batch of Writ Appeals. In G.O.4(D) No.1 Edn. dated 16.08.1995, Government appointed High Power Official Norms Committee to go into the issues relating to teacher pupil ratio in all kinds of aided schools and to submit a report to the Government. Subsequently, Government issued G.O.Ms.No.525 School Education dated 29.12.1997 fixing the ratio of Elementary schools, High schools and Higher Secondary Schools w.e.f. 01.06.1998. During the period of ban [01.06.1994 to 31.05.1995] some of the private aided schools obtained order/direction from the High Court and made appointments in the vacancies. Government also issued G.O.Ms.No.297 School Education dated 05.08.1998 sanctioning the amount of Rs.1,32,64,300/- in respect of 1109 appointments made in the vacancies during the period 01.06.1994 to 31.5.1995. Since the ban was also lifted and Government also issued the said G.O.Ms.No.297 dated 05.08.1998 sanctioning for payment of salary to the appointments made in the vacancies during the ban period, most of the Writ Appeals were disposed off.

6. But in these Writ Appeals, the grievance of the 1st Respondent particularly, Writ Petitioner - Tamil Nadu Catholic Educational Association, Madras is that inspite of issuance of G.O.Ms.No.297 Edn. dated 05.08.1998, as many as 504 appointments made in the vacancies during the ban period were not paid salary and that their appointments were neither approved nor salary was disbursed nor their services were regularised. Learned counsel for Respondent/Writ Petitioner [Tamil Nadu Catholic Educational Association, Madras] Mr.Xavier Arulraj insisted for hearing the batch of Writ Appeals on merits particularly on the question of authority of Director of School Education to issue such a Circulars banning the appointments in the sanctioned posts.

7. Mr. P.Wilson, learned Additional Advocate General contended that any law intended to regulate the service conditions of the employees of educational institutions and any law regulating the grants do not amount to interference with over all administrative control of the Management over the staff and it was well within the powers of the Director of School Education to issue such instructions. It was further contended that the finding of the learned single Judge that Director of School Education has no power is without proper appreciation of various powers conferred under the Act and Rules. The order of learned single Judge was challenged contending that when

fixing the teacher pupil ratio, the vacancies arising due to retirement, death or other wise could not have been filled up and the learned single did not keep in view the financial burden on the State exchequer.

8. As pointed out earlier, in G.O.Ms.No.495 Edn. dated 29.04.1991, Government constituted High Power Official Norms Committee. The said committee analyzed the data collected by the Inspection Committee constituted by the Director of School Education and examined the claims of the schools given recognition and permitted up to 1987-88 for payment of teaching grant. Accepting the recommendations of the Committee, Government issued G.O.Ms.No.340 Edn. dated 01.04.1992 and accepted the norms of teacher pupil ratio for Elementary schools, High schools and Higher Secondary schools. The recommendation of the Committee was accepted for sanction of posts in private aided Primary/Middle/Secondary/Higher Secondary Schools opened in the year 1987-88 and earlier.

9. The Government again constituted High Power Official Norms Committee vide G.O.Ms.No.809 Edn. dated 27.08.1992 to review the norms relating to staff fixation stipulated in G.O.Ms.No.340 Edn. dated 01.04.1992 so as to find out the possibilities to minimise the release of teaching grant depending upon the forced circumstances and limited budgetary provisions existed then. The Director of School Education and Director of Elementary Education expecting the revised norms from the Government within a short period, exercising delegation of power vested with them issued Proceedings in Na.Ka.No.54568/D2/94 dated 25.04.1994 and Na.Ka.No.7070/Tho.ka.J1/93 dated 20.05.1994 respectively banning the appointment for the vacant posts arising out of retirement, death and voluntary resignation w.e.f. 01.06.1994.

10. The learned single Judge observed so long as the teacher posts remain sanctioned posts, it is not open to the Director of School Education to issue a Circular to the effect that sanctioned posts will not be filled up and it is not open to the Director of School Education to impose a ban of appointment of teachers. Learned single Judge further held that it is not open to the Director of School Education to issue general instructions to the effect that even the sanctioned posts should not be filled up till Government takes decision on the determination of teacher pupil ratio.

11. The Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 provides qualifications, conditions of service of teachers. Rule 6 deals with payment of grant. Rule 6(2) states that payment of monthly grant shall be made only in respect of qualified and admissible teachers actually employed in minority schools whose appointments have been approved by the concerned authorities according to the number of posts sanctioned to the institutions concerned. Rule 8 deals with qualification for appointment of teachers in minority schools as specified in Annexure III appended to these rules. As per Explanation (3) to Annexure III, the Director of School Education shall be the authority competent to evaluate and accept other qualification for the purpose of appointments. Since grant paid to the minority institutions and private schools, the schools have to get

prior permission for filling up vacancies as contemplated in Rule 15 of Tamil Nadu Recognised Private Schools (Regulation) Rules 1974 which states that payment of grant shall be made only in respect of qualified and admissible teachers actually employed in minority schools whose appointments have been approved by the concerned authorities.

12. The Power of authorities has been clearly set out in Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 and Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. Rule 6 of Tamil Nadu Minority Schools (Recognition and Payment of Grant), 1977 contemplates that approval for appointment of teachers is mandatory before receiving any grant and therefore, minority institutions cannot say merely some teachers have been appointed in regular vacancies, release of grant is automatic even before the approval of appointment of teachers made by the competent authorities. Granting approval to the appointments of staff in minority educational institutions by the Government was upheld by the Supreme Court in *[Kolawana Gram Vikas Kendra v. State of Gujarat and others]* (2010) 1 SCC 133.

13. Observing that Circular dated 06.10.1988 issued by the State of Gujarat provides that Government aided educational institutions of the State such as Primary schools, Middle Schools, Higher Secondary Schools, Colleges, Sanskrit Pathshalas, Sangeet Vidhyalayas will not give effect to any appointment in teaching and non-teaching posts without prior approval from the State Government or the competent authority. Holding that the said Circular dated 06.10.1988 would not amount to any unconstitutional interference in the internal administration of minority institution and dismissing the appeals, in (2010) 1 SCC 133 *[Kolawana Gram Vikas Kendra v. State of Gujarat and others]*, the Supreme Court held as follows:-

"7. In our considered view, we do not view this to be interference in the selection process. It would be perfectly all right for a minority institution to select the candidates without any interference from the Government. However, 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 and secondly; whether the candidates, who were sought to be appointed, were having the requisite qualifications in terms of the rules and regulations of the Education Department. That is precisely the stand taken by the State of Gujarat before us in its counter-affidavit.

8.

From the reading of aforementioned Para 3, it is clear that all that the Government wants to examine is as to whether the proposed appointments were within the frame work of the Rules considering the workload and the availability of the post in that institution and, secondly, whether the selected candidates had the necessary qualifications for the subjects in which the

said teachers were appointed. The same applies to the non-teaching staff also.

9. In view of this clear stand taken by the State Government, we cannot pursue ourselves to hold that the aforementioned Circular amounts to any unconstitutional interference in the internal working of the minority institution. In that view, we would choose to dismiss these appeals."

14. In the light of the above facts, when we analyse the impugned circulars dated 25.04.1994 and 20.05.1994, in the first circular, it was clearly stated that the Government had proposed to issue revised norms for teachers; pupil ratio and the matter is now under the active consideration of the Government. Hence, the vacancies existed due to death, retirement, voluntary retirement, resignation etc., in the aided High School and Higher Secondary Schools should not be filled up with effect from 01.06.1994 till the revised norms are issued. Further, it was stated that the Chief Educational Officer, District Educational Officer and Inspectors of Girls Schools were requested to give suitable instruction to the management and heads of the aided school (both minority and non-minority) under their control not to fill up vacancies which existed due to the above reasons and keep them vacant from 01.06.1994 until further orders. This circular was issued by the Director of School Education. Subsequently, in the second Circular dated 20.05.1994 issued by the Director of Elementary Education, it was stated that all the District Educational Officers are informed that granting permission to fill up teachers post which fell vacant due to retirement, resignation, death or voluntary retirement in aided primary/middle school from 01.06.1994 has to be stopped temporarily. Further it was stated that they are requested to inform this to all the Assistant Educational Officer who in turn shall inform the matter to all the management of the school and to keep an acknowledgment from them. It was further stated that the District Educational Officers are requested to send a report on the action taken by them. Thus, by virtue of these two circulars dated 25.04.1994 and 20.05.1994, the Government has given a direction that the appointments arising out of vacancies, including on the death or retirement of a teacher, even in respect of the aided schools, should be stopped temporarily. Though these instructions came with effect from 01.06.1994, subsequently, it was stated that this ban was for a period of one year. This ban was intended for the ostensible purpose to regulate the appointments to suit the convenience in the matter of appointment of teachers by taking note of the relevant teacher;pupil ratio. Therefore, the Government thought it fit to regulate, to upgrade and to maintain high standards in respect of the teacher;pupil ratio and for this purpose the circulars were issued. Therefore, merely because the ban was in force prohibiting appointment of teachers, it cannot be said that it had infringed the rights of the respondents school.

15. In this connection, we will have to take into consideration the changes in the teaching methodology, improved availability of teaching and learning materials To ascertain this, the teacher;pupil ratio has to be made. In fact, the Government issued G.O. 4(D) No.1,

Education dated 16.08.1995 constituting high powered official norms committee to formulate and suggest revised norms for sanctioning of teaching post to aided schools. Therefore, until such time, the Director of School Education as well as the Director of Elementary Education have issued the impugned circulars to all the subordinate officers directing to issue suitable instructions to all the schools not to fill up the vacancies till the amended regulations were framed by the Government after ascertaining the teacher;pupil ratio. Subsequently, based on the various representations received from the schools, the Government issued G.O. Ms. No.685, Education and Science and Technology Department dated 31.08.1995 an interim arrangement was made pending final decision of the Government based on the suggestions to be received from the high powered norms committee. As per the interim arrangement, from 01.06.1995, the ban for appointment imposed in the earlier Government Order was lifted. Subsequently, the Government passed G.O.Ms.No.525 dated 29.12.1997 fixing the ratio for elementary schools, high schools and higher secondary schools with effect from 01.06.1998. Therefore, according to the learned Additional Advocate General, the impugned circulars were originally issued in the larger public interest specifically to determine the teacher;pupil ratio for the purpose of granting state aid and to raise the academic standards and welfare of students. Therefore, according to the learned Additional Advocate General, the impugned circulars are valid and in accordance with law.

16. According to the respondents, the right to appointment itself was curtailed by the impugned circulars. The association mainly contended that appointments sought to be made is only in respect of sanctioned post and they being minority institution, there is no need or necessity for getting any prior approval from the educational authorities for making such appointment. According to the association, the ban imposed on appointment had infringed their right prohibiting them from appointing teachers. This argument of the respondents is legally not sustainable. It is clear that even though it is a minority institution, in so far as appointment in the case of sanctioned post is concerned, though no prior approval is necessary, such appointments made has to be approved by the Government. The appointment of teacher cannot be made unilaterally if there is a disqualification or other defects in the candidate. The person who possess requisite qualification alone can be appointed.

17. The learned Additional Advocate General has also brought to the notice of this Court Rule 6 of Tamil Nadu Minority Schools (Recognition and Payment of Grant) 1977 which contemplates that approval for appointment of teacher is mandatory before receiving any grant and therefore, minority institutions cannot say merely some teachers have been appointed in regular vacancies, grant has to be released to those teachers or school even before the approval of appointment of teacher is made by the competent authority. Therefore, it is clear that the minority institutions cannot be heard to say that the Government has no right at all in the matter of appointment of teachers. The receiving of grant is not a fundamental right and neither it is automatic. In order to see that the Government funds are properly spent by the institutions and to formulate and suggest

revised norms for sanction of teaching posts to Aided Schools and thereby to improve the standards of Education, the Government thought it fit to revise the norms of teachers;pupil ratio. Pursuant to this avowed object, the circulars dated 25.04.1994 and 20.05.1994 were issued by the educational authorities. The circulars contained instructions so as to maintain academic standard and to safeguard the interest of the teachers as well as the students.

18. As per the decision of the Honourable Supreme Court reported in (*Kolawana Gram Vikas Kendra v. State of Gujarat and others*) 2010 1 SCC 133 it is for the Government to see as to whether there was any post available in an institution as per the strength of the student and consequently a candidate, who is sought to be appointed is having the requisite qualification in terms of the Rules and Regulations. In this context, when we analyse the impugned circulars, the Government thought it fit to impose a ban for appointment of teachers, even in the case of approved posts, to have a viable strength in so far as it needed for the number of students i.e., to say the ratio between the students versus teachers has to be ascertained and the teachers have to be utilised to the optimum extent without rendering a teacher to get paid without any work. This is all the more so where there are certain schools in which there are not huge number of students, but sanctioned post is more. Contra, in some other schools, the student strength is higher but no sanctioned posts is available. The Government, therefore, thought it fit to ascertain the requirement of the teachers based on the student strength. For ascertaining this, a high powered committee was constituted. Pending the recommendations of the committee, to arrive at the correct conclusion, a ban was imposed for appointment of teachers pending final decision of the Government. Therefore, we do not think that there is any infringement of the rights of the school or they were unlawfully prohibited or prevented from making appointment of teachers for a particular period. At this juncture, it is pertinent to point out that this ban was in force for a period of one year from 01.06.1994 and 31.05.1995 and immediately after the enforcement of ban, based on the representations received from the school, as an interim measure, pending final decision by the Government, some methodology was arrived at for appointment of teachers. Therefore, the contention of the respondents that the impugned circulars have invaded into their right to appoint teachers has no force and it cannot be accepted.

19. Apart from this, the learned Additional Advocate General pointed out that by virtue of G.O. Ms.No.297, School Education Department dated 05.08.1998, the appointments which were made by the schools, including the minority schools, in violation of the ban for appointment, were regularised by issuing appropriate orders by the Government. In fact, in the G.O. Ms.No.297, School Education Department dated 05.08.1998, it was categorically stated that various institutions have filled up many posts by obtaining interim orders from the Court and as many as 1109 teachers have been appointed between the period 01.06.1994 to 31.05.1995. Even these appointments, which were made on the basis of the sanctioned strength, was subsequently regularised by the Government and a sum of Rs.1,32,64,300/- was allotted towards salary due and for payment of

other emoluments to the teachers. By this Government Order, all the 1109 posts of teachers, which were filled up during the interregnum period were accorded approval and the only exception stated therein was that the approval accorded will be subject to the result of the writ petition. In fact, this order was passed even prior to the order passed in the writ petition, but unfortunately, this was not brought to the notice of the learned single Judge.

20. A specific question was put to the respondents counsel to clarify as to whether those teachers, who have alleged that their appointments were not regularised or salary paid, will come within the 1109 teachers appointed by the various schools pending the ban period and which was subsequently regularised by the Government, the learned counsel replied in the affirmative. Therefore, the respondents have no grievance to be ventilated by virtue of the order passed by the Government in G.O. Ms.No.297, School Education Department dated 05.08.1998. By this Government Order, all the appointments which were made during the ban period were regularised. It was also clarified in the proceedings dated 14.05.1999 of the Director of Elementary Education, which was issued in response to the representation dated 28.04.1998 sent by the Tamil Nadu Catholic Association, that all the appointments made during the ban period has been regularised and directions were given for payment of salary and other emoluments. Therefore, the contention of the appellants, at this point of time, that the writ appeals have become infructuous in view of the subsequent development can be accepted when it is clearly admitted that the appointments were in violation of the ban order by the minority institutions and 1109 teachers were appointed and regularised by the Government subsequently. Therefore, the question to be decided in these writ appeals have naturally become academic. In fact, the learned Additional Advocate General, even before the hearing of the appeals have commenced, had brought to our notice that even during the pendency of the writ petition, G.O. Ms. No. 297, School Education Department dated 05.08.1998 was issued by the Government according approval for the appointments made during the ban period however, because of the order passed by the learned single Judge allowing the writ petitions on the ground that the respondents have no power to issue the impugned circular, the writ appeals were filed. The learned Additional Advocate General also contend that various other schools have filed writ petitions and the same were allowed, against which the appellants have preferred appeals. In those cases, the respondents in the batch of writ appeals have submitted that the appointments made during the ban period from 01.06.1994 and 31.05.1995 were regularised and recording the same, the writ appeals were dismissed as infructuous by the other Division Bench. The respondents alone are specifically contesting the appeals that the appeals have not become infructuous inspite of the order passed in G.O. Ms.No.297, School Education Department dated 05.08.1998. Unfortunately, till the last minute, it was not brought to the notice of the learned single Judge as to who are the individual teachers who were appointed during the ban period and whose services were not regularised. Only at the time of argument in the appeals, a list was produced stating that still, there are teachers whose appointments were not regularised. But it is clearly admitted that those teachers were also included in the list of 1109

teachers whose services were subsequently regularised by the Government. It is not known as to how many of them have retired, how many of them are continuing in service and for what reason their appointments were not regularised or approved by the Government or whether any enquiry conducted or whether there is any eligibility difference. All these aspects were not brought to the notice of the learned single Judge.

21. The learned Additional Advocate General appearing for the appellants pointed out that all the appointments made during the ban period were subsequently regularised. If any appointment is not regularised, it is open for either the management or the individual teachers to approach the educational authorities by relying on G.O. Ms. No.297, School Education Department dated 05.08.1998 and if such a representation is received, it will be favourably considered by the Government on merits and in accordance with law. Under those circumstances, the respondents cannot have any grievance at all in so far as the instructions given for imposing a ban for a particular period before ascertaining the student;pupil ratio. In any view of the matter, the learned Additional Advocate General submitted that the respondents have already accepted that as per the G.O.Ms.No.297, School Education Department dated 05.08.1998, the appointments of all the teachers, who were appointed during the ban period, were regularised and merely because some of the teachers were not extended such a benefit of regularisation, that too without furnishing such details, it is not open to the respondents to contend that nothing survives in the original order passed by the learned single Judge for consideration.

22. The Honourable Supreme Court in TMA Pai Foundations case reported in 2007 1 SCC 386 has categorically held that a minority institution does not cease to be so, merely on receipt of aid from the State or its agencies. In other words, receipt of aid does not alter the nature or character of the minority educational institution receiving aid. Article 30(1) clearly implies that any grant that is given by the State to the minority institution cannot have such conditions attached to it which will in any way dilute or abridge the rights of the minorities to establish and administer educational institutions. But all conditions that have relevance to the proper utilization of the aid by an educational institution can be imposed. Further, the rights conferred on minority institutions under Article 30 is only to ensure equality with the majority and not intended to place the minorities in a more advantageous position and the right to establish and administer educational institutions is not absolute nor does it include the right to maladministration. It was further held that there can be regulatory measures for ensuring educational character and standards and maintaining academic excellence. There can be checks on administration, as are necessary to ensure that the administration is efficient and sound so as to serve the academic needs of the institution.

23. In *Breethi Srivatsa Case* (1999) 7 SCC 120, the Honourable Supreme Court held that standards of education in an institution or college depend on various factors namely the caliber of the teaching

staff, a proper syllabus designed to achieve a high level of education in a span of time and the student; teacher ratio.

24. The Constitutional Bench of the Honourable Supreme Court, in the decision rendered in (Arnit Das vs. State of Bihar) 2001 7 SCC 657 while considering as to whether the accused is a juvenile on the crucial date namely the date on which the offence was committed or the date on which the accused first appeared before the Court in enquiry proceedings, held that the Supreme Court need not decide matters which are academic in nature on the facts of a particular case. In our case on hand, the respondents contend that even though their grievance were redressed by issuance of subsequent Government Order, yet this Court, in academic interest, has to decide the authority of the appellants to issue the circulars dated 25.04.1994 and 20.05.1994, which in our considered opinion is not warranted. In any view of the matter, we have given our considered reasons for upholding the authority of the appellants to issue the circulars dated 25.04.1994 and 20.05.1994. This Court can go into the question only if such question is alive for consideration.

25. In yet another case, the Honourable Supreme Court in the decision reported in (Banaras Hindu University and others vs. Mahendra Kumar Gupta and others) (2000) 9 SCC 460 held that in view of the subsequent development, what remained is only is of an academic interest, which the Court need not take up and dismissed the appeal as infructuous. Similarly, in our case on hand, by issuance of the subsequent Government Order, the apprehensions raised by the respondents were dispelled and therefore, there is nothing survives in these appeals barring one question that the impugned circulars had affected the rights of the minority institutions for which we have already answered that the circulars have not affected or infringed the rights of the minority institutions and the authority who have issued the circular has got legal right to issue the same.

26. The learned single Judge was not appraised of the subsequent Government Order issued even though, on the date when final orders were passed in the writ petitions, the Government Order was in force. In any view of the matter, the learned single Judge has only held that the appellants have no power to issue the circular under Rule 9 (g) and that the circular issued by the Director of School Education was an embargo for continuous education. Such a reasoning assigned by the learned single Judge does not survives for our consideration since by issuance of subsequent Government Order all the appointments made even during the ban period was regularised. Therefore, we hold that the apprehensions raised by the respondents have been dispelled in every aspect. The Government has got the authority and legal right to maintain high standards in education and to enhance the quality of education. For achieving this object, the circulars dated 25.04.1994 and 20.05.1994 were issued for the limited extent of getting a report from the high powered committee constituted, *inter alia* to evaluate the teacher;pupil ratio. Under those circumstances, we do not find any force in the argument of the respondents that the Government has no right to issue the impugned circulars.

27. Before concluding, it has to be mentioned that there is no representation sent by any individual complaining that he or she was appointed during the ban period and that his or her services were not regularised till date. Therefore, the writ petitions filed by the Association is not at all maintainable as per the decision of the Division Bench of this Court in (Tamilaga Asiriyar Kootani rep. By General Secretary vs. The Government of Tamil Nadu, rep. By its Secretary, School Education Department, Fort St. George, Chennai - 9 and 19 others) 2005 Writ Law Reporter 389 wherein it was categorically held that an association has no locus standi to file the writ petition and the relief under Article 226 of the Constitution is based on the existence of a right in favour of the person invoking the jurisdiction. Therefore, in the light of the order of the Division Bench of this Court, the association has no right to file the writ petition at all before this Court.

28. In view of the above discussions, we hold that the circulars dated 25.04.1994 and 20.05.1994 issued by the appellants 2 and 3 are not unconstitutional and they are well within the powers of the appellants 2 and 3. Consequently, we allow the writ appeals. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

bbr/rsh

To

1. The Secretary,
Education Department,
Fort St. George, Madras-9.

2.The Director of School Education,
(Secondary),
College Road, Madras-6.

3.The District Educational Officer,
Periyakulam-626 501,
Madurai District.

4.The Correspondent,
St. Aloysius Higher Secondary School,
Royappanpatti-626 526,
Madurai District.

5.The Secretary,
Tamil Nadu Catholic Educational
Association, Madras.

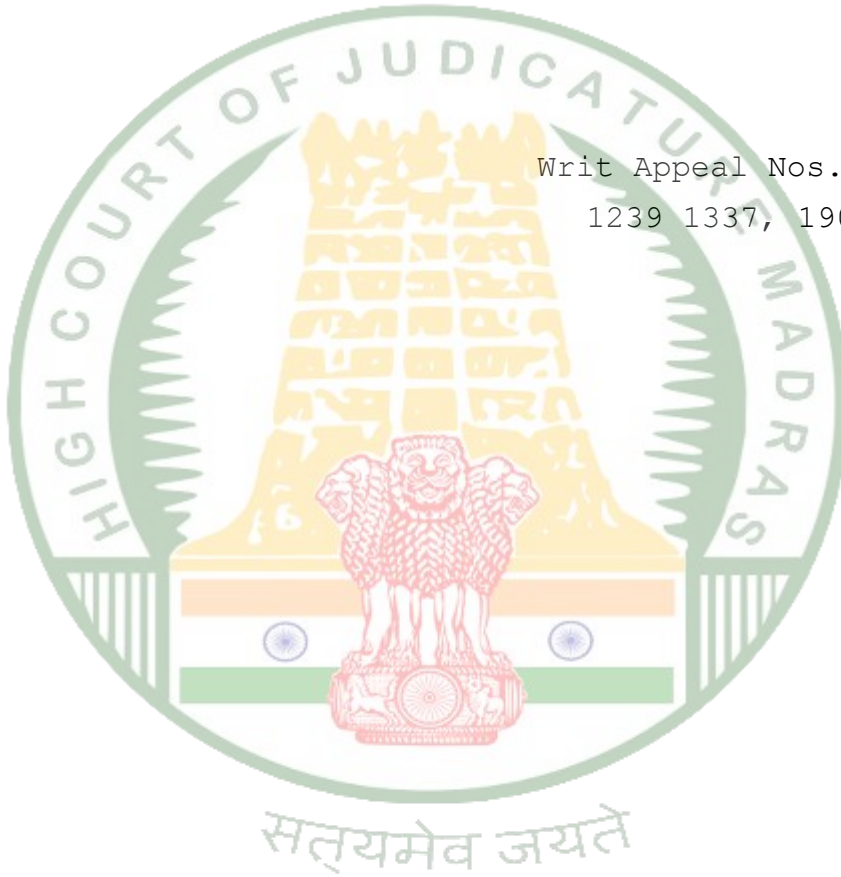
6.The Director of School Education,
(Elementary) ,Madras-6.

+1cc to Govt. Pleader Sr 92391

+1cc to Mr.Fr.A.Xavier Arul Raj, Advocate Sr 91980

TS (CO)
km/31.12.

Writ Appeal Nos. 1236, 1238,
1239 1337, 1906 and 1908/2001



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