

STATE OF TAMIL NADU & ORS.

v.

AMALA ANNAI HIGHER SECONDARY SCHOOL
(Civil Appeal No. 5855 of 2009)

AUGUST 28, 2009

[TARUN CHATTERJEE AND R.M. LODHA, JJ.]

Service law – Sanction of post of Junior Assistant – Upgradation of school from middle school to high school – Appointment of Junior Assistant by school management without approval from competent authority – Subsequently, representation to State Government for sanction of one post of Junior Assistant – School also filing writ petition – Rejection of representation by State Government – Decision not challenged – Filing of another writ petition seven years later – Direction by Single Judge of High Court to State Government to sanction one post of Junior Assistant to school – Upheld by Division Bench – Sustainability of – Held: Not sustainable – Management of the school did not challenge the decision of State Government, thus could not file second writ petition for the same relief – G.O. containing norms for sanction of posts for high schools not applicable – Junior Assistant appointed to a non-sanctioned post – Required strength of the student not fulfilled – Creation and sanction of posts is the prerogative of executive and Courts cannot arrogate to themselves a purely executive power – Tamil Nadu Minority Schools (Recognition and Pay of Grant) Rules, 1977 – Rule 6(2) – G.O.Ms. No. 340, dated April 1, 1992; G.O.Ms. 245/Education, February 21, 1970.

The question which arose for consideration in this appeal was whether both the Division Bench and the Single Judge of High Court were justified in directing the appellant no.1-State Government to sanction one post of

A Junior Assistant to the respondent no.1-school.

Allowing the appeal, the Court

B HELD: 1.1. The judgment of the Division Bench affirming the order of the Single Judge cannot be sustained. In the first place, the management of the school had already filed writ petition in 1997 praying therein that the state government and its functionaries be directed to consider their representation dated January 20, 1997 for the grant of one post of Junior Assistant and in furtherance thereto, the state government, after hearing the school, rejected the representation. The management of the school did not challenge the decision of the state government and, therefore, it was not open to the school to file another writ petition for the same relief, i.e., for direction to the state government to sanction one post of Junior Assistant to the school from the academic year 1991-92. The controversy stood concluded in the earlier round of litigation and the decision of the state government dated July 3, 1998 having not been challenged, the second writ petition could not have been entertained by the High Court. Merely because, few subsequent representations were made by the management to the state government reiterating the request for sanction of post of Junior Assistant, no new cause of action for filing second writ petition can be said to have arisen. In the facts and circumstances of the case, second writ petition by the management of the school for the same relief is nothing but an abuse of the process of the court. [Para 10] [918-G-H; 919-A-G]

G 1.2. The G.O.Ms. No. 340, dated April 1, 1992 is not attracted at all. The said G.O.Ms containing norms for sanction of posts is applicable for the high schools opened in 1987-88 and earlier. In the instant case, the school was upgraded to high school in 1988-89. [Para 11] H [919-G-H; 920-A-B]

1.3. The Division Bench as well as the Single Judge overlooked and ignored sub-Rule (2) of Rule 6 of the Tamil Nadu Minority Schools (Recognition and Pay of Grant) Rules, 1977 which reads: "Payment of monthly staff grant shall be made only in respect of qualified and admissible teachers actually employed in minority schools whose appointments have been approved by the concerned authorities according to the number of posts sanctioned to the institutions concerned." In the instant case, the management of the school appointed R as Junior Assistant to a non-sanctioned post. The explanation of the management that she was appointed in anticipation of orders from the Competent Authority hardly merits acceptance. [Para 12] [920-B-D]

1.4 As per the norms issued in relevant G.O.Ms., the strength of the school during 1990-91 ought to be 300 and above while the students' strength of the school during 1990-91 was only 281. As a matter of fact, it is not even the case of the management that during 1990-91, the student strength was 300 or more. The student strength during 1993-94 and subsequent years has no relevance. High Court fell into a grave error because what was important under the relevant G.O.Ms. was that student strength must have been 300 or more during the years 1988-89, 1989-90 and 1990-91. [Para 13] [920-E-G]

1.5. The reliance placed by the High Court on G.O.Ms. 245/Education, dated February 21, 1970 is misplaced inasmuch as the said G.O. applied to clerks who were already employed in and around the year 1964 and has no application to a Junior Assistant appointed to a non-sanctioned post in 1988-89. [Para 14] [920-G-H; 921-A]

1.6. The High Court erred in directing the appellant no. 1 to sanction one post of Junior Assistant to the

A respondent No. 1-AAHS School from June 1, 1994 overlooking and ignoring that creation and sanction of posts is the prerogative of the executive and the courts cannot arrogate to themselves a purely executive power. [Para 15] [921-A-B]

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5855 of 2009.

C From the Judgment & Order dated 18.3.2008 of the High Court of Madras, Madurai Bench in Writ Appeal (MD) No. 103 of 2008.

E. Padmanabhan, S. Thananjayan for the Appellants.

D C. Selvaraju, Mary Mitzy, Deepak Jain, Anil Kaushik, G.S. Chauhan, Shiv Prakash Pandey, for the Respondent.

The Judgment of the Court was delivered by

R.M. LODHA, J. 1. Leave granted.

E 2. The State of Tamil Nadu and its functionaries have preferred this appeal by special leave against the judgment dated March 18, 2008 passed by the Division Bench of Madras High Court whereby it dismissed writ appeal preferred by the appellants and affirmed the order dated December 4, 2006 of the Single Judge directing the 1st appellant herein to sanction one post of Junior Assistant to the Respondent No. 1 from June 1, 1994.

G 3. Amala Annai Higher Secondary School (hereinafter referred to as, 'AAHS School') was originally a middle school. AAHS School was upgraded as high school from academic year 1988-89 w.e.f. June 13, 1988. All the posts of the middle school were absorbed in the high school. At the time of upgradation of the school from middle school to high school, the strength of students was less than 300. One Ms. Rosary was

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appointed by the management as a Junior Assistant on the very same day the school was upgraded from middle school to high school without getting approval from the Competent Authority. The management of the school then made a request to the Competent Authority for sanction of one post of Junior Assistant which was not acceded to. The said request was renewed from 1991-1992 onwards but without any favourable response from the appellants. The management then made a representation to the state government on January 20, 1997. While the said representation was under consideration before the state government, the management of the school filed a writ petition (W.P.No.4536/1997) before the High Court of Judicature at Madras. That writ petition was disposed of by the Single Judge on October 15, 1997 directing the present appellants to consider the representation dated January 20, 1997 and pass final order on the same after hearing the management of the school.

4. In terms of the order dated October 15, 1997, the state government considered the representation made by the school and rejected the same vide communication dated July 3, 1998 indicating therein that, as per the norms issued in G.O.Ms. No. 340/Education dated April 1, 1992, the strength of school during 1990-91 was below 300 and, therefore, there is no compulsion under the said G.O.M. to give non-teaching staff as and when school raises the strength.

5. The aforesaid communication dated July 3, 1998 was not challenged by the school, although further representations were made. After about seven years, the management of the school filed another writ petition before the High Court of Judicature at Madras, Madurai Bench, Madurai, praying for a direction to the government of Tamil Nadu to sanction one post of Junior Assistant to the school from the academic year 1991-92 and approve the appointment of the incumbent who was appointed to that post and confer all consequential benefits.

6. The state government and its functionaries stoutly

A opposed the writ petition and, inter alia, set up the defence that at the relevant time, the strength of school was below 300 and, therefore, the school was not entitled to any post of Junior Assistant.

B 7. The learned Single Judge, after hearing the parties by his order dated December 4, 2006, disposed of the writ petition with the following direction :

C "Taking note of the said fact which is undisputed, the 1st respondent is directed to sanction one post of Junior Assistant to the petitioner school in terms of G.O.Ms. No. 245 Education Department dated 21.02.1970 from 01.06.1994. Necessary orders shall be passed by the 1st respondent taking note of the recommendation made by the 4th respondent dated 12.10.1994 and also in terms of D G.O.Ms. No. 245 dated 21.02.1970 within a period of eight weeks from the date of receipt of a copy of this order on sanction given to the appointment of the said Rosary as Junior Assistant shall be approved."

E 8. An intra court appeal was preferred by the present appellants before the Division Bench. However, as noticed above, the Division Bench by its order dated December 18, 2008 dismissed the appeal and maintained the order of the Single Judge.

F 9. We heard Mr. E. Padmanabhan, learned Senior Counsel for the appellants and Mr. C. Selvaraju, learned Senior Counsel for the school and considered the relevant provisions of Tamil Nadu Minority Schools (Recognition and Pay of Grant) Rules, 1977 (hereinafter referred to as 'Rules, 1977') and G various G.O.Ms., particularly, G.O. (4D) No. 4, dated November 23, 1991; G.O.Ms. No. 340, dated April 1, 1992 and G.O.Ms. No. 50, dated January 20, 1995.

H 10. In our view, the judgment of the Division Bench affirming the order of the Single Judge cannot be sustained for

more than one reason. In the first place, the management of the school had already filed writ petition in 1997 praying therein that the state government and its functionaries be directed to consider their representation dated January 20, 1997 for the grant of one post of Junior Assistant and in furtherance thereto, the state government, after hearing the school, rejected the representation on July 3, 1998 indicating the following reasons

"At the time of sanction of posts G.O. Ms. No. 50 Education dated 20-1-95 as per the norms issued in G.O.Ms. No. 340 Education Dated 1-4-92 the strength of your school during 1990-91 was below 300. The orders in G.O.Ms. No. 340 are clear. It says that there is no compulsion to give non-teaching staff as and when the school increases the strength. Therefore your request for sanction of one post of Junior Assistant is not feasible of compliance."

The management of the school did not challenge the aforesaid decision of the state government and, therefore, it was not open to the school to file another writ petition for the same relief, i.e., for direction to the state government to sanction one post of Junior Assistant to the school from the academic year 1991-92. The controversy stood concluded in the earlier round of litigation and the decision of the state government dated July 3, 1998 having not been challenged, the second writ petition could not have been entertained by the High Court. Merely because, few subsequent representations were made by the management to the state government reiterating the request for sanction of post of Junior Assistant, no new cause of action for filing second writ petition can be said to have arisen. In the facts and circumstances of the case, second writ petition by the management of the school for the same relief is nothing but an abuse of the process of the court.

11. Secondly, insofar as G.O.Ms. No. 340, dated April 1, 1992 is concerned, it is not attracted at all. G.O.Ms. No. 340

- A dated April 1, 1992, issued by the Education Department mentions, "Accordingly, the following staffing pattern, was recommended by the Committee for deciding the eligibility for post for the schools in question (opened in 1987-88 and earlier) -." Thus, G.O.Ms. No. 340 dated April 1, 1992 containing norms
 B for sanction of posts is applicable for the high schools opened in 1987-88 and earlier. In the present case, the school was upgraded to high school in 1988-89.

12. Thirdly, the Division Bench as well as the Single Judge overlooked and ignored sub-Rule (2) of Rule 6 of the Rules, 1977 which reads : "Payment of monthly staff grant shall be
 C 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."
 D Admittedly, in the present case, the management of the school appointed Ms. Rosary as Junior Assistant to a non-sanctioned post. The explanation of the management that she was appointed in anticipation of orders from the Competent Authority hardly merits acceptance.

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 13. Fourthly, as per the norms issued in relevant G.O.Ms., the strength of the school during 1990-91 ought to be 300 and above while the students' strength of the school during 1990-91 was only 281. As a matter of fact, it is not even the case of
 F the management that during 1990-91, the student strength was 300 or more. The student strength during 1993-94 and subsequent years has no relevance. It is here that High Court fell into a grave error because what was important under the relevant G.O.Ms. was that student strength must have been 300 or more during the years 1988-89, 1989-90 and 1990-91.

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 14. Fifthly, the reliance placed by the High Court on G.O.Ms. 245/Education, dated February 21, 1970 is misplaced inasmuch as the said G.O. applied to clerks who were already employed in and around the year 1964 and has no application
 H to a junior assistant appointed to a non-sanctioned post in

1988-89.

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15. Last but not the least, the High Court erred in directing the present Appellant No. 1 to sanction one post of Junior Assistant to the Respondent No. 1 – AAHS School from June 1, 1994 overlooking and ignoring that creation and sanction of posts is the prerogative of the executive and the courts cannot arrogate to themselves a purely executive power.

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16. The appeal must, accordingly, succeed and is allowed with no order as to costs.

C

N.J.

Appeal allowed.