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W.A.No.1155 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2023

CORAM:

THE HONOURABLE Mr.JUSTICE R.SUBRAMANIAN  
AND  
THE HONOURABLE Mrs.JUSTICE K.GOVINDARAJAN THILAKAVADI

**W.A.No.1155 of 2020**  
**and**  
**C.M.P.No.14233 of 2020**

1.The State of Tamil Nadu,  
Rep. by its Secretary,  
Department of School Education,  
Fort St. George, Chennai – 600 009.

2.The Director of School Education,  
College Road, Chennai – 600 009.

3.The Chief Educational Officer,  
Tiruvannamalai, Tiruvannamalai District.

4.The District Educational Officer,  
Polur, Tiruvannamali District.

...Appellants

Vs.

The Correspondent,  
St. Joseph Boys Higher Secondary School,  
Susainagar – 632 326.  
Tiruvannamalai District.

...Respondent



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**Prayer:** Writ Appeal filed under Clause 15 of the Letters Patent Act, against the order dated 21.02.2020 made in W.P.No.661 of 2020.

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For Appellants : Mr.K.V.Sajeevkumar,  
Special Government Pleader  
For Respondent : Ms.A.Amala

### **J U D G M E N T**

(Judgment was made by **R.SUBRAMANIAN, J.**)

The Government is on appeal aggrieved by the direction to approve appointment of two P.G. Assistants in the respondent school.

2. The respondent school is a Higher Secondary School having four groups under the aided category and one group under the self-financing category. Out of the four groups under the aided category, one group consisting of subjects Tamil, English, Commerce, Office Management, Accountancy and Typing in Tamil Medium is a vocational stream. The first group viz., the group consisting of Tamil, English, Physics, Chemistry, Biology has two sections one in English Medium and the other in Tamil Medium.



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**3.** The school had approval for two P.G. Assistants in Tamil. A vacancy arose due to the retirement of one Mr.S.Gnanasekar, who was working as P.G. Assistant Tamil on 31.05.2018. The said post was filled up with one Mr.Anandan with effect from 01.08.2018. The other P.G. Assistant in Tamil Tmt.Josephine Parimala was transferred to another school giving raise to another vacancy with effect from 01.08.2018. The school appointed one Mr.V.Aravindsamy in the said vacancy. By its letter dated 28.01.2019, the School sought for approval of the above two appointments.

**4.** The District Educational Officer by his proceeding dated 26.02.2019 refused to approve the appointment of Mr.V.Aravindsamy, since he found that the students' strength did not require two P.G. teachers in Tamil. This was based on the calculation that 40 students constituted one section and there was a total of 270 students in XI and XII standards which would require only 28 hours of teaching per week at 4 periods per section consisting of 40 students. Since the duration of 1 period is 45 minutes, the 28 periods will translate to 21 teaching hours which is less than 24 hours.



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Therefore, according to the Department, one P.G. Teacher was sufficient, if reckoned on the basis on the student strength.

5. The School challenged the said order as well as the staff fixation done, on the ground that staff fixation for higher secondary sections cannot be done on the basis of students' strength. It also contended that once the teacher has been appointed in a sanctioned post, the Authority cannot refuse approval, it has to grant approval and thereafter re-deploy the teacher in a school where there is vacancy. The third contention based on principles of natural justice was also raised stating that the school was not heard before the fixation of staff strength.

6. The writ petition was resisted by the Government justifying the fixation of staff strength on the basis of the students' strength. It was also contended that there was no need for notice before re-fixing the staff strength based on the students' strength.



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7. The writ Court rejected the contention of the Government and agreed with the submissions of the learned counsel for the school on all the three grounds. The consequence was the writ petition being allowed and the proceedings being quashed, with a further direction to the Authority to approve the appointment. The Government is on appeal as against the said order.

8. We have heard Mr.K.V.Sajeevkumar, learned Special Government Pleader for the Government and Ms.A.Amala, learned counsel for the school.

9. The learned Special Government Pleader would submit that the students' strength in the respondent school does not require two Tamil P.G. Assistants. He would reiterate the claim made in the counter affidavit based on the number of students in XI and XII Standard. He would also submit that there are enough of surplus teachers who are yet to be re-deployed. The Government is finding it difficult to deploy the surplus teachers. Therefore, granting further approvals would only result in loss to the exchequer. The



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contention that the students' strength cannot be a determining factor for deciding the staff strength, according to him, is totally mis-placed and therefore he would seek interference with the order of the writ Court.

**10.** Contending contra, Ms.A.Amala, learned counsel appearing for the School would submit that as far as the higher secondary classes are concerned G.O.Ms.No.525, School Education Department, dated 29.12.1997 would govern staff fixation. Inviting our attention to the said Government Order, the learned counsel, would contend that insofar as the higher secondary classes are concerned, for two groups of study, there should be one P.G. Assistant in Tamil. Therefore, if the number of groups exceed two, automatically, the school will be entitled to one more P.G. Assistant in Tamil.

**11.** In support of the said contention, the learned counsel for the respondent would rely upon the judgment of this Court in W.P.(Md.)No.7711 of 2014 dated 16.03.2017. This Court while dealing with the said issue has observed as follows:-

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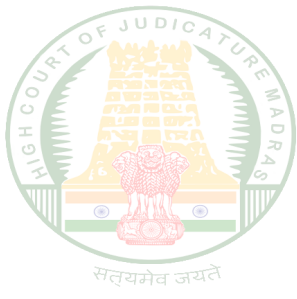


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4. *Specific case of the learned counsel for the petitioner is that all along the concerned school was having one post of P.G. Assistant in Political Science and it is only by virtue of the impugned order passed one post was rendered surplus. When the staffs' strength is required to be fixed only on the basis of criteria prescribed in G.O.Ms.No.525 (School Education), dated 29.12.1997, the reduction of strength of teaching staff without there being any reduction of groups or strength of the students, by the impugned proceedings is arbitrary and contrary to the settled principles of law.*

5. *The learned Government Advocate for the respondents referred to the stands taken by the third respondent in the counter affidavit wherein, it is stated that the post of P.G.Assistant in Political Science had not been sanctioned to the said school from the Academic Year 2013-14. Though this is a fact, there is no explanation for rendering the post of P.G.Assistant in Political Science as surplus with effect from the academic year 2013-2014.*

6. *As pointed out by the learned counsel for the petitioner, the reduction of students' strength cannot*



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*be the reason for denying the post of P.G.Assistant in Political Science in terms of G.O.Ms.No.525 (School Education), dated 29.12.1997. Though the staffs' strength is fixed on the basis of students' strength for Middle School and High School, student's strength is not relevant in the present case where the post is in relation to the Higher Secondary School.*

**12.** She would also point out that this Court had taken a consent view that once there is a sanctioned post, the Authority cannot refuse approval. The Authority has to grant approval and if there are not enough students, it can think of re-deploying the teacher in other school. In support of the contention, the learned counsel for the respondent relied upon the judgment of the Division Bench in W.A.(Md).No.628 of 2014 dated 24.01.2017. On the third contention regarding notice also, the learned counsel would submit that reduction of staff strength/ removal has to be done after notice to the staff concerned.

**13.** We have considered the rival submissions. We find that the second contention of the learned counsel for the respondent viz., the





fixation of staff strength based on students' strength will not apply to higher secondary classes has considerable force in it. The relevant Government Order G.O.Ms.No.525, dated 29.12.1997 prescribes the following recommendations for sanctioning of post in schools.

*IV. HIGHER SECONDARY SCHOOLS (11<sup>th</sup> AND 12<sup>th</sup> Standards)*

*a) The norms will be 8 Post – Graduate Teachers for a Higher Secondary School with a minimum of two groups as follows*

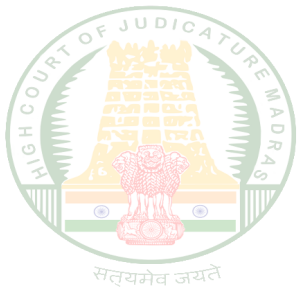
- |                         |           |                                   |
|-------------------------|-----------|-----------------------------------|
| <i>(i) For 2 Groups</i> | <i>--</i> | <i>6 Post-Graduate Assistants</i> |
| <i>(ii) For English</i> | <i>--</i> | <i>1 Post-Graduate Assistants</i> |
| <i>(iii) For Tamil</i>  | <i>--</i> | <i>1 Post-Graduate Assistants</i> |

*b) Additional Post of Post-Graduate Assistants will be sanctioned based on work-load i.e., 24 hours of teaching per week*

*c) Regarding bifurcation of standard additional section will be formed when the strength exceeds 60 and so on in slab 40 as in the case of High Schools.*

*d) For Vocational stream, 2 posts of teachers (full time) will be sanctioned irrespective of the number of courses.*

*e) The Post Graduate Assistant for languages in the main stream will handle the language classes of vocational stream students also.*



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*f) For Schools with a strength of over 400, one post of Physical Director will be given by up gradation of existing post of Physical Educational Teachers.*

**14.** A reading of the above would show that the fixation of staffs' strength is based on the number of sections and groups and not on the number of students. As already adverted to, the respondent school is offering four groups in aided section, of which one is vocational group. There are atleast three regular groups. Apart from offering three regular groups, the respondent school is offering English and Tamil medium in First group which consists of Tamil, English, Maths, Physics, Chemistry and Biology. Therefore, there have to be eight sections, four in XI Standard and four in XII Standard. Each section of students will have to be given atleast four hours of lecture in Tamil per week. That means the number of lecturing hours in Tamil would be 32 hours, which is essentially more than the 24 hours fixed for P.G. teachers in Tamil. Therefore, there has to be two P.G. teachers in Tamil in the respondent school. We have taken care to exclude the vocational stream, as the Government Order itself provides vocational group students will be taught by the language teachers in the main stream.

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**15.** We can justify the order of the learned Single Judge based on this alone. However, even on the next question as to whether the Authorities will have the power to refuse approval to an appointment made to a sanctioned post, in view of the judgment of the Division Bench in *Meada Vs. The Secretary to Government and others* made in *W.A.(MD).No.628 of 2014*, the answer has to be a firm no. Paragraph 7 of the said judgment reads as follows:-

*7. It is a well settled legal principle that if a person is appointed in a sanctioned post, the approval of appointment cannot be rejected and if there is fall in strength and the post become surplus, after granting approval for the post, the said teacher along with post could be transferred/ deployed to a needy school.*

**16.** Therefore, once a teacher is appointed to the sanctioned post, the Government cannot refuse approval. We do not think we should go into the question as to whether school should be given an opportunity before staff strength is reduced or withdrawn. In view of the above facts, the writ appeal will have to fail on these two grounds itself.

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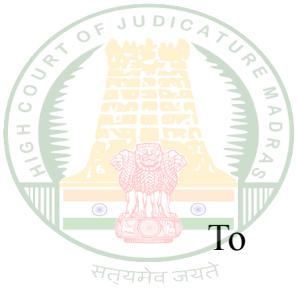
**17.** The writ appeal fails and it is accordingly dismissed, confirming the judgment of the writ Court. There will be a direction to the Government to grant approval and sanction all financial benefits within a period of twelve (12) weeks from the date of receipt of a copy of the order. No costs. Consequently, the connected miscellaneous petition is closed.

**18.** Post for reporting compliance on 5<sup>th</sup> June 2023.

(R.S.M., J.) (K.G.T., J.)  
15.02.2023

**Note: Issue order copy by 20.02.2023.**

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Index : Yes  
Internet : Yes  
Neutral Citation : Yes  
Speaking order

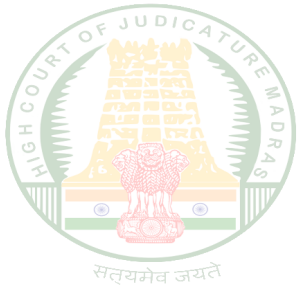


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To

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State of Tamil Nadu,  
Department of School Education,  
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**R.SUBRAMANIAN, J.**  
**and**  
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**15.02.2023**