



W.A.(MD)Nos.1375 of 2015 and 1138 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
02.01.2024	09.01.2024

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN**

W.A.(MD)Nos.1375 of 2015 and 1138 of 2017

W.A.(MD)No.1375 of 2015:-

- 1.The Secretary to Government,
School Education Department,
State of Tamil Nadu,
Secretariat, St. Fort George, Chennai – 9.
- 2.The Director of Elementary Education,
College Road, Chennai – 6.
- 3.The Joint Director of Elementary Education,
College Road, Chennai – 6.
- 4.The District Elementary Educational Officer,
Tirunelveli.
- 5.The Assistant Elementary Educational Officer,
Palayamkottai Rural,
Tirunelveli District.

... Appellants

vs.

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1.Regina, W/o.David Gnanaraj

2.The Manager,
TDTA Primary and Middle Schools,
CSI Diocese of Tirunelveli,
Diocese of Tirunelveli,
Tirunelveli.

... Respondents

PRAYER : Writ Appeal filed under Clause 15 of the Letters of Patent, against the order dated 02.08.2013, made in W.P.(MD)No.11804 of 2008.

For Appellants : Mr.D.Sadiq Raja
Additional Government Pleader

For 1st Respondent : Mr.T.A.Ebenezer

For 2nd Respondent : No Appearance

W.A.(MD)No.1138 of 2017:-

Rajendran, S/o.P.Joseph

... Appellant

vs.

1.The Secretary to Government,
School Education Department,
State of Tamil Nadu,
Secretariat, Fort St. George, Chennai – 9.

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

3.The Joint Director of Elementary Education,
College Road, Chennai – 6.

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4.The District Elementary Educational Officer,
Tirunelveli.

5.The Assistant Elementary Educational Officer,
Palayamkottai Rural,
Tirunelveli District.

6.The Manager,
TDTA Primary and Middle Schools,
CSI Diocese of Tirunelveli,
Tirunelveli.

... Respondents

PRAYER : Writ Appeal filed under Clause 15 of the Letters of Patent, against the order dated 17.02.2010, made in W.P.(MD)No.11428 of 2008.

For Appellant : Mr.T.A.Ebenezer

For Respondents 1 to 5 : Mr.D.Sadiq Raja
Additional Government Pleader

For 6th Respondent : Mr.A.Robinson

COMMON JUDGMENT

DR.G.JAYACHANDRAN, J.

and

C.KUMARAPPAN, J.

TDTA Primary and Middle School at Keelapattam Village, Tirunelveli District, is an educational institution managed by CSI Diocese of Tirunelveli. It is a declared aided minority educational institution. During the year 2005-2006,

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there was a large scale communal riot in the Village and as a consequence, eight murders took place between two rival groups, which effected the education of the children in that Village. The students' strength gone down from 78 to single digit. The Education Department taking note of the reduction of the students' strength to single digit, thought fit to close the school and to redeploy the staff and the students to the nearby school established and managed by the same Management, *i.e.*, CSI Diocese, which has nearly more than 400 Educational Institutions.

2. Hence, the Director of Elementary Education, Chennai, issued proceedings, dated 20.05.2006, instructing the Management to close the school and to redeploy the students and teachers to the nearby school. In this regard, the District Elementary Educational Officer, Tirunelveli, sought for report from the Assistant Elementary Educational Officer, Palayamkottai, Tirunelveli District, vide proceedings, dated 12.06.2006. After considering the report and the factual scenario prevailing in the Village, the District Elementary Educational Officer, Tirunelveli, issued proceedings in Na.Ka.No.12/A3/2006, dated 19.12.2006, instructing the authorities and the Management to close down the school and redeploy the two teachers to other school and admit the two students in the nearby

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school after getting their consent. In this proceedings, the District Elementary Educational Officer, Tirunelveli, has also recorded his displeasure about the inaction on the part of the Management for not acting upon the earlier advice issued on 12.06.2006.

3. The Management had complied the direction only after the end of the academic year 2006-2007. The two teachers namely, Regina and Rajendran, who were working in the TDTA Primary School, Keelapattam Village, Tirunelveli District, were relieved by the Management on 11.06.2007 and deployed in the neighbouring school. Being an aided school, when the Management claimed salary of these two teaching staff, the same was declined by the Education Department, as they failed to close the school and refused to redeploy the two teachers soon after the end of the academic year 2005-2006. Further, the students' strength did not improve even during the subsequent academic year 2006-2007. Therefore, the Director of Elementary Education, by proceedings, dated 07.07.2008, in O.Mu.No.15121/G3/2008, declined to pay salary for these two teaching staff for the period from 01.07.2006 to 11.06.2007.



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4. Being aggrieved, the two teaching staff namely, Rajendran and Regina had approached this Court, seeking Certiorarified Mandamus, to quash the proceedings of the Director of Elementary Education, dated 07.07.2008, and the consequential proceedings of the District Elementary Educational Officer, Tirunelveli, dated 09.09.2008.

5. The Writ Petition filed by Rajendran namely, W.P.(MD)No.11428 of 2008 came up for consideration before the learned Judge on 17.02.2010, wherein the learned Judge after considering the facts, has held that since the Management has opted to run the school contrary to the instruction of the Government, they themselves are responsible to pay the salary. The learned Judge also held that the liability cannot be mulcted on the Government. The relevant portion of the order is extracted hereunder:-

"7. On a perusal of the counter, it is very clear that the school was not functional even prior to 01.07.2006, when the students were very meager in number from the tabulation as given by the Department. Furthermore, as rightly pointed out by the learned Government Advocate even as early as on 21.09.2006, the third respondent has given a specific instruction that the management should immediately transfer



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these two teachers to the other connected schools on the same management, so that the further payment atleast will not arise at all by the Government for which also the management has not chosen to adhere to this advise and even in the impugned orders itself, the authorities have categorically brought out that inasmuch as the management is responsible and liable for the payment of salary because of the fact that as early as on the earlier inspections itself they have advised to transfer to the other connected school and they have failed to do so. It is not open to the Government to pay the money and furthermore, the right of the petitioner has been safeguarded in the impugned order itself that it is always open for the petitioner to recover this amount from the management concerned and it is also fairly submitted by the petitioner that he is continuing of the employment of the very same management in the other school. Since in the Writ Petition, the management also was impleaded as a party, though notice has been served, there was no appearance and their name was also printed in the cause list. Inasmuch as the right to safeguard the salary amount from 01.07.2006 was duly safeguarded by the authorities concerned from collecting the same from the respondent management, the Government cannot be held to pay the salary at all.



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8. Therefore, the orders passed by the concerned authority is correct and this Court does not find any reason to interfere with the orders of the authorities concerned."

6. The other teaching staff by name, Regina filed W.P.(MD)No.11804 of 2008, which came up for hearing before the another learned Judge and the same was allowed on 02.08.2013. The earlier order dated 17.02.2010, passed by the learned Judge in W.P.(MD)No.11428 of 2008, was not brought to the notice of the learned Judge, who heard the Writ Petition in W.P.(MD)No.11804 of 2008, filed by Regina. The learned Judge after referring to Section 26 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and taking note of the fact that it is a Christian Minority Institution, which has the right to manage the affairs of the institute, held that the Government cannot force to close down the institute run by them and took a contrary view, by allowing the Writ Petition, thereby, quashed the impugned order dated 07.07.2008, passed by the Director of Elementary Education and the consequential order passed by the District Elementary Educational Officer, Tirunelveli, dated 09.09.2008. In Regina's Writ Petition in W.P.(MD)No.11804 of 2008, the learned Judge directed the State to



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disburse the salary for a period from 01.07.2006 to 11.06.2007, within a period of six weeks.

7. The said Rajendran being aggrieved by the order dated 17.02.2010, passed by this Court in W.P.(MD)No.11428 of 2008, has preferred W.A.(MD)No. 1138 of 2017. Whereas, the State being aggrieved by the order dated 02.08.2013, passed in W.P.(MD)No.11804 of 2008, filed by Regina, has preferred W.A. (MD)No.1375 of 2015. Both the Writ Appeals were tagged together and heard by this Bench.

8. It is submitted that the Institution, which was established 100 years ago, suffered due to communal riot in the Village and the Management thought fit to revive its operation and therefore, waited for one academic year. However, since it cannot be achieved, they decided to close down the school and deploy the teaching staff to the nearby school under the same Management. For that purpose, the State cannot deprive the grant. However, the learned Additional Government Pleader appearing for the State would vehemently argue that despite the advice and instruction given by the Government, the Management declined to



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accept the instruction and thought fit to run the school. The learned Additional Government Pleader also contended that the State is not against their discretion to manage the school, but it should be at the cost and risk of the Management and that the monetary liability cannot be fastened on the State Exchequer. Therefore, the learned Additional Government Pleader submitted that the order dated 17.02.2010, passed by this Court in W.P.(MD)No.11428 of 2008, filed by Rajendran, has to be upheld and the subsequent order dated 02.08.2013, in W.P. (MD)No.11804 of 2008, filed by Regina, has to be set aside.

9. This Court after considering the submissions, agrees with the submissions made by the learned Additional Government Pleader, since the Statute does not prevent a minority institution from managing the institute. However, while exercising such right, it should be in comity with the instructions given by the Government, else they have to manage the institution on their own source and fund and should not seek grant from the State. This is a case, where despite the instructions given by the State, the Management thought fit to run the school with two students. Neither the Court nor the State can question the discretion to run the school with two students. But, the State has every right and

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authority to decline grant to that school, which is paid from the public money.

Just because, it is a minority educational institution, they cannot manage their institute contrary to the instructions of the Government when the instructions are in accordance with law. Therefore, this Court while allowing W.A.(MD)No.1375 of 2015 filed by the State, dismiss W.A.(MD)No.1138 of 2017 filed by the individual / Rajendran.

10. In the result,

(i) W.A.(MD)No.1375 of 2015 is allowed.

(ii) W.A.(MD)No.1138 of 2017 is dismissed.

There shall be no order as to costs.

Index : Yes
NCC : Yes / No
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[G.J., J.] & [C.K., J.]
09.01.2024

To

1. The Secretary to Government,
School Education Department,
State of Tamil Nadu,
Secretariat, Fort St. George, Chennai – 9.

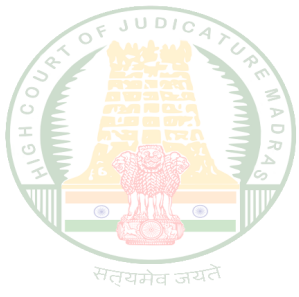
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DR.G.JAYACHANDRAN, J.
and
C.KUMARAPPAN, J.

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PRE-DELIVERY COMMON JUDGMENT MADE IN
W.A.(MD)Nos.1375 of 2015 and 1138 of 2017

09.01.2024

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