

## **Jayalakshmi Vilas Middle School Vs The Director of Elementary Education, The District Elementary Educational Officer and The Asst. Elementary Educational Officer**

**Court:** Madras High Court

**Date of Decision:** Nov. 18, 2010

**Acts Referred:** Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 â€” Section 14, 14(3), 18  
Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 â€” Rule 19

**Citation:** (2011) 2 MLJ 100

**Hon'ble Judges:** B. Rajendran, J

**Bench:** Single Bench

**Advocate:** S.N. Ravichandran, for the Appellant; A. Suresh, Government Advocate, for the Respondent

**Final Decision:** Allowed

### **Judgement**

@JUDGMENTTAG-ORDER

1. By consent of counsel for both sides, the writ petition itself is taken up for final disposal.

2. The petitioner school started as a Middle School on 08.08.1986. The petitioner school was granted permanent recognition with the aid by

District Educational Authorities and it is governed by the Tamil Nadu Private School Regulations Act, 1973. It is stated that the school was closed

for a brief period due to natural calamity and due to non-cooperation of the educational authorities and it was re-opened only on 01.07.1999.

After re-opening, temporary recognition was granted with deployment of secondary grade teachers. According to the petitioner, two teaching staff

namely Tmt. Ezhil and R. Kumar were not teaching the students properly and were acting against the interest of the students. On 31.08.2009, the

petitioner issued show cause notice to Tmt. Ezhil and she submitted her explanation. Thereafter, on 29.09.2009, the petitioner terminated the said

Tmt. Ezhil from her service. Aggrieved against the same, the said Tmt. Ezhil filed WP No. 22591 of 2009 and on 06.01.2010, this Court set aside

the order of termination. While so, the third respondent issued a show cause notice to the petitioner as to why the educational authorities should

not resort to direct payment as one of the teachers Tmt. Ezhil was not allowed to take classes and the management failed to send their teachers for

training conducted by the Government under the Sarva Shiksha Abiyan Scheme. The petitioner submitted their explanation on 30.03.2010, but

without considering the explanation and the fact that the petitioner school has already submitted a proposal for upgradation as High School by

depositing Rs. 1,00,000/-, the second respondent passed the impugned order in and by which direct payment was ordered. Challenging the same,

the present writ petition has been filed.

3. The learned Counsel for the petitioner submits that as on date there is no dispute pending before any court of law. Even assuming that there was

some dispute between the management and the teachers, that will not be a ground for resort to direct payment by the educational authorities.

Further, the impugned order was passed without affording sufficient opportunity to the petitioner and therefore also, the impugned order is liable to

be set aside.

4. The learned Government Advocate appearing for the respondents, relying on the counter affidavit filed by the third respondent, contended that

pursuant to the order passed by this Court on 06.01.2010 allowing the writ petition filed by Mrs. Ezhil in WP No. 22591 of 2009, the

management refused to allow the said teacher to join duty. Therefore, the second respondent made an amicable solution with the management and

the said teacher was allowed to join duty on 16.02.2010. However, from the next day i.e., 17.02.2010, the said Teacher was not allowed to join

duty by the management. Therefore, an inspection was conducted which revealed that the petitioner school is conducting classes 9 and 10 without

any approval. Under those circumstances, the second respondent thought it fit to issue a show cause notice to the petitioner on 18.03.2010. After

receipt of explanation from the petitioner and in order to protect the services of teachers and to increase the enrollment of students for better

administration, the school was brought under direct payment as per rule.

5. Heard both sides. The learned Counsel for the petitioner submitted that the management of the school was taken over by the respondents

without any valid reasons. The petitioner is a 100 year old school and it was running with adequate student strength and teachers. The learned

Counsel for the petitioner would further contend that two teachers, who have been transferred to the petitioner school on their re-deployment,

were not cooperating with the management and there was a dispute between the two teachers and the management. The petitioner issued a show

cause notice to one of the teachers, obtained explanation and then passed an order of termination against her. That order was challenged by the

individual teacher before this Court and the writ petition was allowed. Thereafter, the respondents 2 and 3 inspected the school and found that the

management and the teachers are on a loggerhead. The learned Counsel for the petitioner further submitted that it is evident that non-cooperation

of the two teachers with the management is the root cause in the reduction in the students ratio. Even otherwise, the petitioner would contend that

there is no dispute with the rest of the staff. The teachers were not sent for training due to the fact that the students are more when compared to the

less number of teachers. According to the learned Counsel for the petitioner, unless the teacher strength is increased, it is not possible to deploy the

teachers for training. The learned Counsel for the petitioner also contend that the management is ready to send their teachers for training during

vacation, holidays, Saturdays and Sundays and that is the reason the teachers were not sent for training and not otherwise. In any event, dispute

between two teachers and the management will not be a ground for the educational authorities to resort to direct payment and prayed for quashing

the impugned order.

6. It is seen from the records that during the course of inspection by the respondents 2 and 3, it was found that the petitioner school is conducting

classes 9 and 10 without approval but only an approval petition was pending with the respondents/educational authorities. It was also complained

that the management was not sending their teachers for regular training for which the management was issued with a show cause notice to explain

as to why they did not depute their teacher for training. The management also sent their explanation on 30.03.2010 stating that there are only five

teachers available in the management to impart education to 282 students from classes I to VIII and if those teachers were deputed for training

during week days, it will hamper the functioning of the school, however, they are prepared to depute the teachers during Saturdays and Sundays. It

was also contended that two of the teachers are not cooperating with the management. On receipt of the explanation, without any further enquiry,

the second respondent passed the impugned order by which direct payment was ordered. In the impugned order, it is stated as follows:

7. The learned Counsel for the petitioner would mainly contend that in so far as the right of the Government to take over the management for direct

payment, there should be a dispute for the management, or there should be an external or special circumstances warranting direct payment. In this

case, none of these circumstances exist and nothing also has been mentioned in the impugned order warranting direct payment. Even in the show

cause notice, it was only alleged that there is a dispute between the staff and the management and that by itself cannot be a reason for taking away

the valuable rights of the management, especially the right of the management in financial matters, which will hamper the management and the

management will be put to serious loss and hardship. In support of his contention, the learned Counsel for the petitioner relied on the decision

reported in The Management of Papanasam Labour Welfare Association Higher Secondary School Vs. The Chief Educational Officer, Tirunelveli

- 9 and six others, wherein it was held that ordering direct payment has to be made only under special circumstances and the Government has only

controlling powers under the Act and the Government is not a master or employer for teaching and non-teaching staff. Further, the fact that the

relationship between the management and the faculty is not cordial or they were under loggerheads cannot be a reason to invoke the provisions

under Rule 19 Annexure III to Tamil Nadu Private Schools Regulation Rules, 1974 to order for direct payment. In para Nos. 14 and 15, it was

held thus:

14. While considering the scope of the Tamil Nadu Recognised Private Schools (Regulations) Act, 1973, it is clear that the Government has got

only a controlling power over the institution and the Act regulates the power that has to be exercised. From the very heading of the enactment, it is

clear that it is the management that has established the school, and has also appointed the staff according to their qualification. It takes disciplinary

proceedings and also pays the salary. The activities of the management and also the smooth functioning of the school are regulated by the

provisions of the Act. The Government is not the Master, nor the Employer. The Employer is the school of management, who pays the salary to

the staff. The Employer has the duty to pay salary, though the amount is paid by the Government. It is an action on the part of the employer to have

a control over his employee/employees. It is the school committee which is responsible for the smooth functioning of the school. u/s 18 of the Act,

the School Committee is having the power to carry on the general administration of the private school. It has the power to appoint teachers and

other employees of the private school, fix their pay and allowances and define their duties and the conditions of their service, and to take

disciplinary action against teachers and other employees of the private school. Even if the Management gets a grant, that is also on the basis of the

statement of the Secretary of the School Committee. The Government is only extending financial assistance; the actual control is only with the

management. When we go by the Rules, the right of the Management is recognised and that it is said that the statement must be prepared by the

Secretary and signed both by the Secretary and the Headmaster, and the Bill is also handed over to the Secretary, who encashes the same for

payment to the teachers. If that is the ordinary procedure contemplated under the Act and Rules, it only means that the Management has got the

absolute control over the teachers. It cannot be disputed that the payment of salary is one of the acts of the management and general

administration. The Management may not have any right to get a grant, but the right to pay the salary is only with the Management, unless special

circumstances are made out.

15. When the Government says that it will pay the salary to the teachers directly, that means that the management is now incapacitated to pay the

salary, or that there are special circumstances which have made the Management. Naturally, the right of the employer in managing the School is

seriously affected by such an action on the part of the Government. It has got civil consequences. Therefore, the principle of natural justice will

have to be applied in such cases.

8. The learned Counsel for the petitioner also relied on the decision reported in A. Fathima Fareedunnissa Vs. T.A.H. Zubaida Ummal and Others,

, it was held as follows:

3. In view of the clear position in law, it is not necessary to consider the factual question whether the petitioner is guilty of violation of any of the

provisions of the statute or the rules framed thereunder. The law laid down by Sathiadev, J in P.A.K. Palanisamy High School Vs. The Joint

Director of School Education (Secondary) and Appellate Authority, under Section 23 of the Tamil Nadu Recognised Private Schools

(Regulations) and Another, is that u/s 14 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, the Government may withhold

permanently or for any specified period, the whole or part of any grant in respect of any private school under the circumstances set out therein, but

before withholding the grant, the Government shall give the educational agency an opportunity of making its representations. The learned Judge has

ruled that it is only the Government which could withhold any portion of the grant and that could be done only after issue of a notice u/s 14(3) of

the Act and that the power of the Government cannot be abdicated in favour of its subordinates, as the Act does not contemplate such surrender

of powers. In the present case, the requirements u/s 14(3) of the Act are not satisfied. There has been no notice by the Government under the

Section giving an opportunity to the management of the school to make its representations. Hence, the respondents have failed to do their duty

enjoined by law in not releasing the grant payable to the petitioner.

4. Consequently, the prayer in the writ petition has to be granted and the Writ Petition is allowed accordingly. There will be a mandamus directing

the respondents 1 and 2 to release the monthly staff grant and annual maintenance grant payable to the petitioner school for the period from

November 1983 upto date and for future periods. The respondents are directed to pay the entire amount due as on date to the petitioner within six

weeks from this date.

9. The learned Counsel for the petitioner also relied on the decision of this Court made in *The Secretary, Balakrishnavilas Aided Primary School v.*

*The State of Tamil Nadu, rep. By its Secretary, Department of School Education and Ors.* CDJ 2009 MHC 3288; WP No. 5916 of 2009 dated

09.07.2009 wherein in para-6, it was held as follows:

The learned Counsel appearing for the petitioner had relied on a decision of this Court, reported in *The Management of Papanasam Labour*

*Welfare Association Higher Secondary School Vs. The Chief Educational Officer, Tirunelveli - 9 and six others*, wherein, it had been held that

when direct salaries are paid to the teachers, there is a serious encroachment on the principles of the management on the educational institution.

Since it has certain civil consequences, principles of natural justice would have to be followed in such cases.

10. A reading of the aforesaid decisions would indicate that when the educational authorities resort to direct payment, it should be done only after

complying with principles of natural justice as it has certain civil consequences. In this case, except a show cause notice issued by the educational

authorities and on receipt of an explanation from the petitioner, the impugned order straightaway passed ordering direct payment without affording

sufficient opportunity to the petitioner. Even in the impugned order, except referring to the dispute between the management and the staff, no

special circumstances have been shown warranting direct payment. Under those circumstances, the impugned order is per se against the principles

of natural justice and therefore it is set aside.

11. The learned Government Advocate appearing for the respondents brought to the notice of this Court that the school has violated the Rules and

conducting classes for IX and X standards without approval. Admittedly, there is no approval given for the petitioner to conduct classes IX and X

and that the petition seeking approval is pending with the respondents. Therefore, the respondents are directed to consider the application filed by

the petitioner seeking approval for conducting Classes IX and X and pass orders on merits and in accordance with law.

12. With the above observation, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.