

(2010) 11 MAD CK 0226

Madras High Court

Case No: Writ Petition No. 10609 of 2010 and M.P. No's. 1 and 2 of 2010

Jayalakshmi Vilas Middle School

APPELLANT

Vs

The Director of Elementary
Education, The District
Elementary Educational Officer
and The Asst. Elementary
Educational Officer

RESPONDENT

Date of Decision: Nov. 18, 2010

Acts Referred:

- Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 - Section 14, 14(3), 18
- Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 - 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 reasonable 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 Sathiadav, 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.