**IN THE HIGH COURT OF MADRAS**

W.P. No. 18827 of 2011 & M.P. Nos. 1, 2 of 2011 and W.P. No. 30041 of 2007

Decided On: 24.02.2012

Appellants: **St. Annes Girls Higher Secondary School, Cuddalore - 1of the Congregation of the Immaculate Heart of Mary, Pondicherryrep. By its Co-Ordinator for Education, Rev. Sr. Deva Aseer Mary, Immaculate Generalate St. Therese Street, Pondicherry - 605001**
**Vs.**
Respondent: **The Secretary, Government of Tamil Nadu, Education Department, Fort St. George, Chennai - 600009, The Director of School Education, (Secondary Education) College Road, Chennai - 600006 and The District Educational Officer, District Educational Office, Cuddalore New Town, Cuddalore District**
[Alongwith W.P. Nos. 18828, 18829, 18830 and 18831 of 2011 & M.P. Nos. 1, 2 of 2011]

**AND**

Appellants: **D.G.M. Higher Secondary School, rep. by its Secretary G. Ramachandran, Sethiyathoppu -608702,Cuddalore District**
**Vs.**
Respondent: **The State of Tamil Nadu, rep. by its Secretary to Government, School Education Department, Fort St. George, Chennai -600009, The Director of School Education, College Road, Chennai -600006, The Joint Director of School Education, (Higher Secondary), College Road, Chennai -600006 and The Chief Educational Officer, Cuddalore**

**Hon'ble Judges/Coram:**
Honourable Mr. Justice N. Paul Vasanthakumar

**ORDER**

**Honourable Mr. Justice N. Paul Vasanthakumar**

1. In all these cases, the petitioners are aided Schools and are challenging the order rejecting sanction of additional posts and pray for sanction of teaching and non-teaching posts. As the issue involved in these cases are identical, all these writ petitions are dealt with by this common order.

2. Brief facts of each case in nutshell, necessary for disposal of these writ petitions are as follows:

(I) W.P.No. 18827 of 2011: (a) This writ petition is filed by St. Annes Girls Higher Secondary School, Cuddalore, which is one of the School established and is being administered by the congregation of the Immacuate Heart of Mary, Pondicherry. The congregation and all its institutions including the petitioner school are declared as Christian Religious Minority Educational Institutions by the Division Bench of this Court in W.P.No. 652 of 1975 dated 24.9.1976 and the same is implemented by the Department by order dated 20.11.1976.

(b) The petitioner School was established in the year 1882 as a Primary School and upgraded as a High School in the year 1935, again upgraded as Higher Secondary School in the year 1978 when the Plus Two pattern of education was introduced in the State of Tamil Nadu. The petitioner School is a fully aided and permanently recognised private minority School.

(c) In this writ petition, petitioner is seeking sanction of additional posts to standards 1 to 10. Lastly for the petitioner School, teaching posts were sanctioned in the year 1980. Thereafter no post is sanctioned. The management of the institution approved several staff and is maintaining Teacher-Pupil norms in terms of G.O.Ms.No. 525 School Education Department, dated 29.12.1997. Since required number of staff as per the said ratio was not sanctioned, a representation was sent on 12.9.2006, followed with reminders dated 15.7.2007, 13.9.2010, 14.9.2010, etc.

(d) It is stated in the affidavit that the strength of the school is more than 2500 in standards 1 to 10 in Tamil medium sections and the department sanctioned the following posts:

|  |  |  |
| --- | --- | --- |
| Headmaster | .. | 1 |
| B.T. Assistants | .. | 14 |
| Tamil Pandits | .. | 8 |
| PET | .. | 3 |
| Physical Director | .. | 1 |
| Secondary Grade Teachers | .. | 30 |
| Junior Assistants | .. | 3 |
| Office Assistants | .. | 3 |
| Librarian | .. | 1 |
| Lab Assistant | .. | 1 |
| Gardener | .. | 1 |
| Watchman | .. | 1 |
| Sweeper | .. | 1 |

No additional post is sanctioned in terms of G.O.Ms.No. 525 dated 29.12.1997, which was implemented from 01.06.1998 in terms of the Full Bench Decision of this Court reported in 2006 (5) CTC 385. According to the petitioner, apart from the above mentioned sanctioned posts, the management appointed the following additional teachers and prayed for sanction of the said posts.

|  |  |  |
| --- | --- | --- |
| Tamil Pandits | .. | 4 |
| B.T. Assistants (English) | .. | 6 |
| B.T. Assistants (Maths) | .. | 2 |
| B.T. Assistants (Science) | .. | 3 |
| B.T. Assistants (Social Science) | .. | 4 |

According to the petitioner School, the Department is bound to sanction the above posts as Right to Education upto the age of 14 years of age is declared as compulsory as per Article 21A of the Constitution of India and the Right to Free Education Act, 2009, which came into force from 01.04.2010 mandates one teacher for 30 students in standards 1 to 5 and one teacher for 35 students in standards 6 to 8.

(e) The petitioner institution having not been sanctioned with additional posts, W.P.No. 22711 of 2010 was filed with a prayer to implement G.O.Ms.No. 525 dated 29.12.1997 and sanction teaching and non-teaching posts from 20.6.2007 onwards. This Court by order dated 7.12.2010 directed the Department to pass orders on merits and in accordance with law and thereafter the second respondent passed the impugned order dated 9.7.2011 stating that no posts have been sanctioned as per the above Government Order as of now and the petitioner's claim will be considered on allocation of additional posts. The said order is challenged in this writ petition raising various contentions.

(II) W.P.No. 18828 of 2011: (a) The very same Educational Agency established the petitioner School viz., St. Philomenas Girls High School, Cuddalore. The said School was established as an Aided Primary School in the year 1910; upgraded as Middle School in the year 1960; further upgraded as High School in the year 1991. High School sections are run on self-financing basis. Primary and Middle school sections are granted permanent recognition with full aid. The petitioner School is claiming sanction of posts in middle school sections i.e., standards 6 to 8.

(b) The petitioner School is having students strength of more than 610 in standards 6 to 8 and the Department sanctioned following posts:

|  |  |  |
| --- | --- | --- |
| Secondary Grade Teachers | .. | 9 |
| Physical Education Teacher | .. | 1 |
| Sewing Mistress | .. | 1 |

As per Teacher -pupil requirement, the management appointed teachers in the following posts:

|  |  |  |
| --- | --- | --- |
| Tamil Pandits | .. | 2 |
| B.T. Assistant (English) | .. | 2 |
| B.T. Assistant (Maths) | .. | 2 |
| B.T. Assistant (Science) | .. | 2 |
| B.T. Assistant (Social Science) | .. | 1 |

According to the petitioner School, as per G.O.Ms.No. 525 dated 29.12.1997, the School is entitled to get one more Physical Education Teacher. In spite of making representations for sanction of additional posts, no order having been passed, even after issuance of G.O.Ms.No. 525 dated 29.12.1997, petitioner filed W.P.No. 22714 of 2010 and prayed for a direction. The said Writ Petition was disposed of on 07.12.2010 directing the Department to pass orders in accordance with law. The second respondent passed an order on 9.7.2011 stating the very same reason that no additional post is sanctioned by the Government after issuance of G.O.Ms.No. 525 dated 29.12.1997. The said order is challenged in this writ petition.

(III) W.P.No. 18829 of 2011: (a) This Writ Petition is filed by the Beschi Higher Secondary School, Ulundurpet, Villupuram District, which was also established and administered by the very same Educational Agency, which was declared as a minority Educational Agency, accepted by the Department. The School was initially established as a primary school and upgraded as High School in the year 1987; further upgraded as a Higher Secondary School. The Higher Secondary sections are granted recognition on self-financing basis. Standards 1 to 10 are granted recognition with aid. The petitioner is seeking additional posts for standards 6 to 10.

(b) Petitioner School having been discriminated by the department in allotment of posts, filed W.P.No. 3089 of 1995 before this Court and this Court directed the department to sanction two posts of B.T. Assistants, one post of Tamil Pandit and one post of Physical Education Teacher with effect from 1.6.1991 and the said posts were also sanctioned. After issuance of G.O.Ms.No. 525 dated 29.12.1997, petitioner School is not sanctioned with any additional post as per the norms, in spite of making several representations, lastly on 14.9.2010.

(c) The School is having student strength of more than 1200 in standards 6 to 10 and the department has so far sanctioned the following posts:

|  |  |  |
| --- | --- | --- |
| Headmaster | .. | 1 |
| B.T. Assistants | .. | 2 |
| Tamil Pandit | .. | 1 |
| Physical Education Teacher | .. | 1 |
| Secondary Grade Teachers | .. | 7 |
| Junior Assistant | .. | 1 |
| Office Assistant | .. | 1 |

The management has appointed additional teachers in the following posts and prayed for sanction of the said posts.

|  |  |  |
| --- | --- | --- |
| Tamil Pandits | .. | 2 |
| B.T. Assistants (English) | .. | 7 |
| B.T. Assistants (Maths) | .. | 6 |
| B.T. Assistants (Science) | .. | 9 |
| B.T. Assistants (Social Science) | .. | 3 |
| Librarian | .. | 1 |
| Drawing Instructor | .. | 1 |
| Sewing Mistress | .. | 1 |
| Music Teacher | .. | 1 |
| Physical Education Teacher | .. | 1 |
| Record Clerk | .. | 1 |
| Office Assistant | .. | 1 |

No order having been passed, petitioner has filed W.P.No. 22710 of 2010 seeking implementation of the G.O.Ms.No. 525 dated 29.12.1997, which was disposed of by this Court by order dated 07.12.2010 with a direction to the department to consider the claim and pass orders. The second respondent passed an order on 21.07.2011 stating very same reasons and rejected the request. Hence the petitioner has filed this writ petition.

(IV) W.P.No. 18830 of 2011: (a) This writ petition is filed by the Immaculate High School, Velanthangal, Villupuram District, which was also established and administered by the very same Educational Agency, which was declared as a minority Educational Agency and accepted by the Department. The School was initially established as a primary school in the year 1928 and upgraded as an aided middle school in 1971 and further upgraded as High School in the year 1998. The High School sections are granted recognition on self-finance basis. The petitioner is seeking additional posts for standards 6 to 8.

(b) The School is having students strength of 335 in standards 6 to 8 and the department so far sanctioned the following posts to the petitioner school:

|  |  |  |
| --- | --- | --- |
| B.T. Assistant | .. | 1 |
| Secondary Grade Teachers | .. | 3 |
| Sewing Mistress | .. | 1 |

According to the petitioner, no teaching and non-teaching posts have been sanctioned after issuance of G.O.Ms.No. 525 dated 29.12.1997. Hence the management has appointed additional teachers in the following posts and prayed for sanction of the said posts.

|  |  |  |
| --- | --- | --- |
| Tamil Pandit | .. | 1 |
| B.T. Assistants (English) | .. | 1 |
| B.T. Assistants (Maths) | .. | 6 |
| B.T. Assistants (Science) | .. | 9 |
| B.T. Assistants (Social Science) | .. | 3 |
| Librarian | .. | 1 |
| Drawing Instructor | .. | 1 |
| Sewing Mistress | .. | 1 |
| Music Teacher | .. | 1 |
| Physical Education Teacher | .. | 1 |
| Record Clerk | .. | 1 |
| Office Assistant | .. | 1 |

No order sanctioning the above posts having been passed, petitioner has filed W.P.No. 22713 of 2010 seeking implementation of the G.O.Ms.No. 525 dated 29.12.1997, which was disposed of by this Court by order dated 7.12.2010 with a direction to the department to consider the claim and pass orders. The second respondent passed an order on 15.7.2011 stating very same reasons and rejected the request. Hence the petitioner has filed this writ petition.

(V) W.P.No. 18831 of 2011: (a) This writ petition is filed by the Sirumalar Higher Secondary School, Chinna Salem, Villupuram District, which was also established and administered by the very same Educational Agency, which was declared as a minority Educational Agency and accepted by the Department. Petitioner School was initially established as a primary school in the year 1945 and had been upgraded as aided middle school in the year 1950 and aided High School in the year 1995; further upgraded as Higher Secondary School in the year 1998. The Higher Secondary sections are granted recognition on self-finance basis. Standards 1 to 8 are granted recognition with aid. The petitioner is seeking additional posts for standards 6 to 8.

(b) Petitioner school is having students strength of 818 students in standards 6 to 8 and so far the department sanctioned only the following posts:

|  |  |  |
| --- | --- | --- |
| Physical Education Teacher | .. | 1 |
| Secondary Grade Teachers | .. | 15 |

No teaching posts have been sanctioned after issuance of

G.O.Ms.No. 525 dated 29.12.1997. As per the requirement, the management has appointed additional teachers in the following posts and prayed for sanction of the said posts.

|  |  |  |
| --- | --- | --- |
| Tamil Pandits | .. | 3 |
| B.T. Assistants (English) | .. | 1 |
| B.T. Assistants (Maths) | .. | 1 |
| B.T. Assistants (Science) | .. | 2 |
| B.T. Assistants (Social Science) | .. | 2 |
| Physical Education Teacher | .. | 1 |

No order sanctioning the said post having been passed, in spite of submitting representations petitioner has filed W.P.No. 22712 of 2010 seeking implementation of the G.O.Ms.No. 525 dated 29.12.1997, which was disposed of by this Court by order dated 07.12.2010 with a direction to the department to consider the claim and pass orders. The second respondent passed an order on 21.7.2011 stating very same reasons and rejected the request. Hence the petitioner has filed this writ petition.

(VI) W.P.No. 30041 of 2007: (a) This writ petition is filed by D.G.M. Higher Secondary School contending that the School was originally established as Arulanand High School in the year 1956 and change of management was effected and approved in the year 1966 and the schools was named as Devankudi Gopalakrishna Malavarayar High School. The school was upgraded as a Higher Secondary School in the year 1979. The School is having recognition and aid from standards 6 to 12.

(b) For the year 2006-2007 the students strength in Tamil medium sanction of standards 6 to 12 was 1930 and in English medium the strength was 332. The school having not been sanctioned with required number of teaching posts, the management submitted a representation on 22.09.2006 and requested to sanction the following posts:

|  |  |  |
| --- | --- | --- |
| P.G. Assistant | .. | 1 |
| P.G. Tamil | .. | 1 |
| P.G. English | .. | 1 |
| P.G. Commerce | .. | 1 |
| P.G. Physics | .. | 1 |
| Additional Tamil Pandit | .. | 1 |
| B.T. Assistant | .. | 2 |
| Junior Assistant | .. | 1 |
| Office Assistants | .. | 2 |
| Sweeper | .. | 1 |

(c) The 4th respondent on inspection found that the School is eligible to get sanction of PG Assistant Posts in terms of G.O.Ms.No. 525 School Education Department dated 29.12.1997, which came into effect from 1.6.1998. The 4th respondent by his proceedings dated 30.11.2006 recommended to sanction six teaching and three non-teaching posts. However, the impugned order was passed by the 4th respondent on 6.2.2007 stating that as there is no surplus post available in other schools, the School cannot be sanctioned with additional posts. The said order is challenged in this writ petition.

3. (i) The District Educational Officer concerned, who is the third respondent in W.P.Nos. 18827 to 18831 of 2011 filed separate counter affidavits in all these cases. It is admitted in the counter affidavit that the petitioner in W.P.No. 18827 of 2011 is a minority school functioning as a Higher Secondary school, recognised with aid for standards 1 to 12. 58 teaching staff and 13 non-teaching staff were sanctioned to the school, which is having 41 sections in standards 1 to 10. The School management has submitted the students strength and staff requirement as on 1.8.2010. For additional sections in standards 1 to 10, the management should have obtained permission from the competent authority and if additional sections are created without any permission from the department the department cannot be held responsible for paying salary to such teachers. G.O.4D No. 4 Education Department dated 25.11.1991 was issued stating that no new school or upgradation of the existing school or opening of higher standards or additional sections in an existing school is eligible for any grant. It is further stated that even though right to education upto 14 years of age has been declared as free and compulsory as per the Right to Education Act, 2009, the respondents are unable to sanction additional posts for additional sections, which were opened without obtaining permission from the department. Hence the order passed on 9.7.2011 is valid and no interference is called for.

(ii) In W.P.No. 18828 of 2011 the contention of the department is that the school is a minority school granted recognition upto 10th standard and aid is granted only upto 8th standard. Nine sections were permitted in standards 6 to 8 in Tamil medium and required number of posts for those sections are already sanctioned. While upgrading the school as high school, an undertaking was given by the management that they will run the high school sections on self-financing basis. The posts sanctioned to middle school sections are in terms of G.O.Ms.No. 525 Education Department dated 29.12.1997 and the additional posts can be sanctioned subject to the availability of funds from the Government with reference to budgetary provisions.

(iii) In the counter affidavit filed in W.P.No. 18829 of 2011 it is contended that the school is a minority school, granted recognition upto 10th standard and the Higher Secondary sections are granted recognition without aid. English medium sections in standards 6 to 10 of one each is permitted. The school was sanctioned post by G.O.Ms.No. 447 Education Department dated 08.05.1992. The eligible posts for permitted nine sections in terms of G.O.Ms.No. 525 dated 29.12.1997 has been sanctioned. The management is bound to appoint sufficient teachers at their own cost without expecting grant from the Government. Grant-in-aid cannot be demanded as a matter of right and grant of aid to schools depend upon the economic capacity of the State Government.

(iv) Similar contentions are raised in the counter affidavits filed in W.P.Nos. 18830 and 18831 of 2011.

(v) In W.P.No. 30041 of 2007, the Chief Educational Officer, Cuddalore has filed counter affidavit contending that the staff fixation was made for the year 2006-2007 from standards 6 to 12 and the students strength found in each standards are as follows:

|  |  |  |
| --- | --- | --- |
| 6th Std. | .. | 190 |
| 7th Std. | .. | 214 |
| 8th Std. | .. | 171 |
| 9th Std. | .. | 350 |
| 10th Std. | .. | 305 |
| 11th Std. | .. | 280 |
| 12th Std. | .. | 261 |
| Grand Total | .. | 1,771 |

It is also stated in the counter affidavit that additional posts required are 5 PG Assistants of one each in Tamil, English, Maths, Physics and Commerce. However, additional posts are not sanctioned due to the fiscal position of the Government and the Government have not sanctioned additional posts in recent years. One additional PG Maths post was sanctioned to the School by the Proceedings of the Director of School Education dated 17.04.2008 and the School is not entitled to get sanction of additional B.T. Assistant post as well as non-teaching posts and there is a ban on creation of additional non-teaching posts. G.O.Ms.No. 525 dated 29.12.1997 nowhere states that additional posts have to be sanctioned to aided schools. The sanction of additional posts involves budgetary sanction from the legislature and the Government cannot divert its entire resources to the Education Department. The management can share the responsibilities and therefore the request to sanction additional posts to the petitioner school cannot be sustained.

4. Mr. Joseph Thathus Gerome, learned counsel appearing for the petitioners in W.P.Nos. 18827 to 18831 of 2011 argued that the petitioner schools are seeking sanction of posts based on the strength for the standards recognised with aid and wherever undertaking was given to run the standards without seeking aid, the petitioners are not praying for sanction of posts and the managements are willing to run those standards on self-financing basis. The learned counsel also submitted that G.O.Ms.No. 525 Education department dated 29.12.1997 which came into force from 01.06.1998, came up for consideration regarding sanction of posts before the Full Bench of this Court in the decision reported in 2006 (5) CTC 385 (Director of Elementary Education v. S. Vigila) and the Full Bench, taking note of the fundamental right guaranteed to children upto the age of 14 years under Article 21A of the Constitution of India, ordered sanction of posts for each section in each standard. The learned counsel also relied on the decision of this Court reported in (2009) 7 MLJ 527 (Francis Edward v. Government of Tamil Nadu) to emphasis the proposition that the respondents are bound to sanction the required number of posts as it is a fundamental right of the students and constitutional obligation of the Government to provide free education as per Article 21A of the Constitution of India. The learned counsel also cited the Judgement of a Division Bench of this Court in the decision in Director of School Education v. K. Uma reported in 2010 (1) CWC 141 : 2010 (2) MLJ 277, wherein a direction was issued to sanction teachers post as per the strength of the students. The learned counsel also argued that there is discrimination in the grant of posts between minority and non-minority schools; Aided minority and Government schools; Aided Minority and Panchayat Schools; Aided Minority and Municipal Schools, and all the schools should be treated alike, particularly when recognition is granted with aid and the private managements are carrying out the obligation/duty of the State of imparting education to certain extent. The said right is also recognised by the Honourable Supreme Court. So far as the contention of want of funds is concerned, the learned counsel relied on the judgments of the Supreme Court in  : AIR 1996 SC 1 (State of Maharashtra v. Manubhai Pragaji Vashi);  : AIR 2000 SC 634 (Chandigarh Administration v. Rajni Vali);  : (2011) 3 SCC 436 (State of Orissa v. Mamata Mohanty) and the Full Bench decision reported in 2006 (5) CTC 385 (Director of Elementary Education v. S. Vigila). In all the above cases, it is emphatically held that want of finance is not a ground to deny grants to schools and it is the duty of the administration/State to find out the source for extending grant-in-aid to schools. The learned counsel also submitted that when G.O.Ms.No. 525 dated 29.12.1997 was challenged before this Court, a solemn undertaking was given by the Government to sanction additional posts to the needy schools and only to maintain equality regarding the sanction of posts, new norms were issued and the said undertaking is binding on the respondents and therefore the impugned orders are liable to be set aside and the writ petitions are to be allowed.

5. Mr. T. Sellapandian, learned counsel appearing for the petitioner in W.P.No. 30041 of 2007, while adopting the arguments of the learned counsel for the petitioners in other writ petitions, submitted that the Chief Educational Officer in his counter affidavit has clearly stated that the school is eligible to get additional posts and the only reason stated is want of funds and there is no excess teacher available in the nearby schools to order deployment to the petitioner school and the said reasons cannot be treated as valid reasons and the respondents are bound to sanction additional posts, as the school is a fully aided recognised private school.

6. The learned counsels also submitted that the respondents cannot rely on G.O.4D No. 4 dated 25.11.1991, after the implementation of Right of Children to Free and Compulsory Education Act, 2009, which came into force from 01.04.2010. As per the said Act, it is the mandatory duty of the Government to give free and compulsory education to the students upto the age of 14 years and want of funds or any other reason cannot be pleaded to deny sanction of posts as per the teacher-pupil ratio.

7. The learned Advocate General, on the other hand, submitted that Section 14A of the Tamil Nadu Recognised Private Schools Regulation Act, 1973, states that any private school established after the date of commencement of academic year 1991-1992 is not entitled to get any post and sanction of teaching and non-teaching posts due to non-availability of funds. Even in Government, Corporation, Municipal or Panchayats Schools, posts are not sanctioned as per G.O.Ms.No. 525, School Education (D-1) Department, dated 29.12.1997. The schools of the petitioners having opened new sections without prior permission from the department and conducting classes, grant-in-aid/additional posts cannot be claimed as a matter of right, as the Government is not having sufficient funds to sanction posts. Hence, the Writ Petitions are liable to be dismissed. The learned Advocate General also relied on certain decisions in support of his contentions.

8. I have considered the above rival submissions made by the learned counsels for the petitioners and the learned Advocate General appearing for the respondents.

9. It is an admitted case that the petitioners schools in W.P.Nos. 18827 to 18831 of 2011 are minority schools, which are granted recognition with aid i.e., assuring sanction of posts. Now the petitioners schools are praying sanction of additional posts for the standards already recognised with aid, based on the students strength. The petitioners schools are not claiming the posts for standards, for which recognition without aid was ordered. In W.P.No. 30041 of 1997, the school is a non-minority school, which was also granted recognition with aid up to Higher Secondary Courses. The contentions of the respondents in these cases are that since no new post was sanctioned by the Government, after the issuance of G.O.Ms.No. 525, School Education (D-1) Department, dated 29.12.1997, the minority schools have opened additional sections without the permission of the Department and there is want of funds for sanction of the additional posts, as there is no budgetary allocation.

10. The issues arising for consideration in these Writ Petitions are:

(i) Whether the Government/respondents can deny sanction of posts to the petitioners schools on the ground of non-availability of funds.

(ii) Whether the Management can claim additional posts based on the students strength in recognized and aided standards as per the teacher-pupil ratio fixed in G.O.Ms.No. 525, School Education (D-1) Department, dated 29.12.1997, which came into force from 01.06.1998.

(iii) Whether the petitioners schools can be discriminated in the matter of grant-in-aid, while sanctioning posts to Government, Municipal and Panchayat Union Schools, even though they are having sufficient strength to demand sanction of additional posts.

(iv) Whether the denial of eligible posts to recognized and aided schools for the students, who are within the age group of six to fourteen, is denial of free and compulsory education, in the light of Article 21(A) of the Constitution of India, which guarantees free and compulsory education.

11. The petitioners schools were granted recognition with aid as per the recognition orders issued to them. The recognized and aided schools are prohibited from collecting fees under the provisions of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973, and the Rules framed there under and only special fees/permitted fees other than tuition fees can be collected from the students. Under the Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009, fee payable by the students can be fixed by a Committee insofar as unaided schools are concerned and as per Section 2(j) of the said Act, the Act is not applicable to recognized aided schools/aided standards. As per Section 2(3) of the said Act, aided schools conducting any classes or courses, for which no money is paid as aid out of the State funds, shall be construed as a private school insofar as such classes or courses are concerned. Section 3 of the said Act prohibits collection of excess fee. Thus, it is beyond doubt that for recognised and aided standards, the Fee Committee is not competent to fix any fee.

12. In the decision reported in  : AIR 1958 SC 956 [Kerala Education Bill, 1957], the Hon'ble Supreme Court held that the Minority Institutions cannot be asked to maintain the Educational Institutions on their own funds, i.e., without State aid. In the decision in Church of South India v. Government of Tamil Nadu reported in 1988 WLR 130, a Division Bench of this Court held that want of funds is not a ground to deny teaching post to aided schools. A Constitution Bench of the Hon'ble Supreme Court in the decision in St. Stephen's College v. University of Delhi, reported in  : AIR 1992 SC 1630, held that the Educational Institutions are not business houses. They do not generate wealth. They cannot survive without public funds or private aid.

13. The Hon'ble Supreme Court in the decision in Chandigarh Administration v. Rajni Vali reported in: AIR 2000 SC 634 : 2000 (2) SCC 42, considered the issue as to whether grant-in-aid can be denied to private schools on the ground of want of funds/paucity of funds. In Paragraph Nos. 6 and 10, it is held as follows:-

6.......... imparting primary and secondary education to students is the bounden duty of the State Administration. It is a constitutional mandate that the State shall ensure proper education to the students on whom the future of the society depends. In line with this principle, the State has enacted statutes and framed rules and regulations to control/regulate establishment and running of private schools at different levels. The State Government provides grant-in-aid to private schools with a view to ensure smooth running of the institution and to ensure that the standard of teaching does not suffer on account of paucity of funds. It needs no emphasis that appointment of qualified and efficient teachers is a sine qua non for maintaining high standards of teaching in any educational institution. Keeping in mind these and other relevant factors this Court in a number of cases has intervened for setting right any discriminatory treatment meted out to teaching and non-teaching staff of a particular institution or a class of institutions.

10. Coming to the contention of the appellants that the Chandigarh Administration will find it difficult to bear the additional financial burden if the claim of Respondents 1 to 12 is accepted, we need only say that such a contention raised in different cases of similar nature has been rejected by this Court. The State Administration cannot shirk its responsibility of ensuring proper education in schools and colleges on the plea of lack of resources. It is for the authorities running the Administration to find out the ways and means of securing funds for the purpose. We do not deem it necessary to consider this question in further detail. The contention raised by the appellants in this regard is rejected..........

14. The Division Bench of this Court in Writ Appeal No. 24 of 1990, judgment dated 23.08.1990 and in several other cases, allowed similar Writ Petitions and set aside the orders passed by the Department denying aid only on the ground of want of funds/paucity of funds.

15. The Hon'ble Supreme Court in the decision in Rohit Singhal v. Jawahar N. Vidyalaya reported in: AIR 2003 SC 2088 : 2003 (1) SCC 687, declared that "education is an investment made by the nation in its children for harvesting a future crop responsible adults productive of a well-functioning society. It is also held that children are not only the future citizens, but also the future of the earth. The State must ensure that children suffer no harm in exercising their fundamental rights and civic duty. The States, thus, bear the additional burden of regulation, ensuring that schools provide safe facilities as part of a compulsory education".

16. In the decision in Ashok Kumar Thakur v. Union of India reported in  : 2008 (6) SCC 1 : 2008 3 MLJ 1105, the Hon'ble Supreme Court held that for fully implementing Article 21(A) of the Constitution of India, the Government should suitably revise budgetary allocations for education. The priorities have to be set correctly. The most important fundamental right may be Article 21(A), which, in the larger interest of the nation, must be fully implemented. Without Article 21(A), the other fundamental rights effectively rendered meaningless. Education stands above other rights, as one's ability to enforce one's fundamental rights flows from one's education. This is ultimately why the judiciary must oversee the Government spending on free and compulsory education.

17. In State of Orissa v. Mamata Mohanty reported in  : 2011 (3) SCC 436, the Hon'ble Supreme Court held that standard of teaching shall not suffer on the ground of want of funds/paucity of funds cannot be a ground for the State for not maintaining the standard of education and not providing quality education to its citizens. In Paragraph No. 33, the Hon'ble Supreme Court held thus:

33. In view of the above, it is evident that education is necessary to develop the personality of a person as a whole and in totality as it provides the process of training and acquiring the knowledge, skills, developing mind and character by formal schooling. Therefore, it is necessary to maintain a high academic standard and academic discipline along with academic rigour for the progress of a nation. **Democracy depends for its own survival on a high standard of vocational and professional education. Paucity of funds cannot be a ground for the State not to provide quality education to its future citizens.** It is for this reason that in order to maintain the standard of education the State Government provides grant-in-aid to private schools to ensure the smooth running of the institution so that the standard of teaching may not suffer for want of funds.

[Emphasis Supplied]

18. From the above referred Judgments of the Hon'ble Supreme Court as well as this Court, it is crystal clear that the petitioners schools cannot be denied additional posts insofar as the recognized and aided standards are concerned on the ground of want of funds/non - allocation of budgetary provisions.

19. A Full Bench of this Court in Director of Elementary Education, Chennai and others vs. S. Vigila reported in2006 (5) CTC 385 has issued directions as to how posts are to be sanctioned to aided schools. It is held in the said case that the ratio of teacher depends upon the students strength and in each individual standard, an additional section is required to be created only when the students strength in the standards become 60 or more. In Paragraph No. 23 of the said Judgment, it is held thus:-

23. Keeping in view the various relevant aspects, we feel that G.O.Ms.No. 525, dated 29.12.1997 should be interpreted in the following manner:

(1) The ratio of students-teacher strength as indicated in the G.O. Should be primarily considered by taking each individual standard/section as a unit.

(2) The minimum strength of teachers required obviously should not fall below the number of Standards/Section in a school. In other words, if there are five standards, obviously the minimum number of teachers should be five, out of which one would be the Headmaster.

(3) If the students' strength in a particular Standard exceeds 60, at that stage, an additional section is required to be created requiring the sanction of a second teacher and the strength reaches 100, the post of a third teacher is required.

(4) Evenafter maintaining the aforesaid ratio by taking into account the students' strength of each individual standard and additional section, as the case may be, by keeping in view the teacher-students ratio 1:40 of the entire school if the teachers strength is required to be increased, the same has to be allowed, but in no case, the teachers' strength should be less than the number of standards including the additional sections. If more teachers are thus sanctioned keeping in view the over all strength of the school, the authorities of the school should create additional section in respect of any particular Standard according to the need and convenience keeping in view the standard of education. This requirement is not only in respect of Aided Schools or Government Schools, but also in respect of any Private Recognized School. In other words, this ratio is to be maintained for any school which required recognition.

(5) It would be obviously open to the Government to formulate appropriate norms in consonance with the above observation and provisions of the Constitution.

20. The learned counsel for the petitioners submitted that the said Judgment of the Full Bench has become final, as no appeal was filed before the Hon'ble Supreme Court. A Division Bench of this Court in G. Sahadevan Nair v. Government of Tamil Nadu reported in 2008 (4) MLJ 289, repelled the contentions of the Government that the Minority Institutions, which are starting additional sections, without the permission of the Department, cannot demand additional posts for additional sections. The Division Bench in the said Judgment considered the statutory provision, i.e., the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 and the Rules 1974, wherein it is stated that permission is not required to be obtained by the Minority Institutions either for establishing Educational Institutions or for upgrading existing standards and they need to send only the statement and application for recognition. It is not the case of the respondents that the standards, for which the petitioners schools sought for additional posts, are not recognized and aided. Creation of additional sections in recognized standards is based on the need of the school and the same is also permitted as per G.O.Ms.No. 525, School Education (D-1) Department, dated 29.12.1997 which came into force from 01.06.1998.

21. In G. Sahadevan Nair's case (cited supra), a direction was issued to the Government of Tamil Nadu to consider the application of each of the institution for grant-in-aid within a period of sixteen weeks without being influenced by the fact that such institutions had been established without any prior permission and even without reference to the fact that such institutions had given letter in writing indicating that after obtaining recognition, they will not claim any grant-in-aid. In the said Judgement, the Division Bench pointed out that it is open to the Department to consider all relevant facts, such as, existence of necessary infrastructure, teacher-student ratio and the eligibility of the teacher concerned to hold the post. It was further ordered that if any institution is found eligible to receive such aid, orders should be passed within a period of four months and necessary payments shall be made within a further period of four months from the date of such sanction. While considering the sanction of posts, the Government was directed to keep in mind the relevant Government Orders issued from time to time fixing teacher-pupil ratio.

22. The learned counsel for the petitioners schools also contended that there is discrimination in sanctioning posts to the petitioners schools. Insofar as the aided schools as well as Minority Institutions are concerned, the learned counsels pointed out that as per Article 30(2) of the Constitution of India, there shall not be any discrimination in grant-in-aid. Insofar as W.P.No. 30041 of 2007 is concerned, the learned counsel submitted that other schools similarly placed like that of the petitioner schools were granted additional Posts, and the petitioner School is discriminated and the same is violative of Article 14 of the Constitution of India. The issue as to whether the Government can discriminate the institutions in respect of grant-in-aid was considered by the Hon'ble Supreme Court in the decision in State of Maharashtra v. Manubhai Pragaji Vashi reported in : AIR 1996 SC 1 : 1995 (5) SCC 730. In the said case, non-extension of grant-in-aid to private Law Colleges was considered by the Supreme Court. It was held that a duty is cast on the State to extend grant-in-aid and the same cannot be whittled down either by pleading paucity of funds or otherwise.

23. The Supreme Court noticed the grant-in-aid extended to Government Law Colleges and the denial of aid to Private Law Colleges and ordered grant-in-aid to Private Law Colleges. Thus, the issue regarding grant-in-aid without discrimination on the basis of the availability of strength in a recognized institution is well settled.

24. The Government issued G.O.(4D) No. 5, School Education Department, dated 28.02.2011 sanctioning thousands of posts to minority schools in compliance with the Judgment of the Division Bench reported in 2008 (4) MLJ 289 (cited supra). The said Government Order was cancelled by the Government by a subsequent order issued in G.O.(4D).No. 18, Education Department, dated 27.10.2011. In the said Government Order, the Government ordered sanction of 9446 BT Assistant posts in Government/Municipal/Panchayat Union High and Higher Secondary Schools coming under the Director of School Education and ordered sanction of 32 Secondary Grade Teacher posts as well as 1036 BT Assistant Posts in Government/Panchayat/Municipal Schools coming under the directorate of Elementary Education. The posts already sanctioned to aided/minority schools through G.O.(4D) No. 5, School Education Department, dated 28.02.2011 were cancelled. Thus, there is a discriminatory treatment meted out towards aided schools and minority schools. The said discriminatory treatment is illegal as held by the Hon'ble Supreme Court in the decision in State of Maharashtra v. Manubhai Pragaji Vashi reported in : AIR 1996 SC 1 : 1995 (5) SCC 730 and is in violation of Articles 30(2) and 14 of the Constitution of India.

25. The next point to be considered is as to whether by denying sanction of eligible posts to the petitioners schools, the respondents are violating the fundamental right guaranteed to the students of the petitioners schools under Article 21(A) of the Constitution of India, which is also declared as a statutory right under the Right of Children to Free and Compulsory Education Act, 2009. Section 3 of the said Act gives right of child to free and compulsory education between the age group of six and fourteen years in a neighbourhood school till completion of elementary education. As per Section 3(2) of the said Act, no child shall be liable to pay any kind of fee or charges or expenses, which may prevent him or her from pursuing and completing the elementary education. The said Act mandates the appropriate Government, i.e., State Government and the Local Authority to establish schools. The Central Government and the State Governments shall have concurrent responsibility for providing funds for carrying out the provisions of the said Act. The Central Government shall provide to the State Governments, grants-in-aid of revenues, such percentage of expenditure referred to in sub-section (2), as it may determine from time to time in consultation with the State Governments. Responsibilities of Schools and Teachers are also stated in Chapter IV. No capitation fee for admission can be collected. The norms and standards for schools are also fixed. The qualification for appointment of teachers and terms and conditions of service of teachers are also fixed. Teacher - Pupil ratio to be followed for appointment of teachers is also to be mandatorily followed. Rules were also issued in the year 2010 to carry out and implement the Act. The State Government also issued Rules recently. Thus, it is too late of the day to raise a contention by the Government that due to want of funds, posts cannot be sanctioned to the schools, for which recognition and aid are already granted.

26. Another question was raised before a Division Bench of this Court in the decision in the Director of School Education v. K. Uma reported in 2010 (1) CWC 141 : 2010 (2) MLJ 277 is as to whether the Physical Education Teacher post is required to be sanctioned based on the students strength without any ceiling in terms of G.O.Ms.No. 525, School Education (D-1) Department, dated 29.12.1997. The Division Bench held that the Physical Education is one of the curriculum subjects, and therefore, sanction of additional post as per the students strength is required. The learned counsel for the petitioners schools submitted that the Special Leave Petition filed as against the said Judgement was also dismissed by the Hon'ble Supreme Court and the said Judgement is also implemented. The said fact is not disputed by the learned Advocate General. Thus, the petitioners are entitled to succeed on all the issues raised in these writ petitions.

This Court cannot issue a direction for sanction of posts by issuing a Writ of Mandamus. However, on the facts and circumstances of these cases and having regard to the admitted position that the petitioner schools are granted recognition with Aid and the reasons stated by the respondents being want of funds and not sanctioning additional posts to other schools, which are found against the respondents, I am constrained to pass the following order:

\* The impugned orders issued by the respective respondents are set aside and the

respondents are directed to consider and sanction additional posts to the petitioner schools based on the availability of students strength in aided standards/subjects, for which the petitioner schools sought for sanction of additional posts within a period of three months from the date of receipt of a copy of this order.

\* While considering the said aspect, the claim of the petitioner schools shall not be

rejected on the ground of want of funds and also on the ground that the petitioner schools admit the students in additional sections without prior permission from the department and on the alleged reason that other schools are not sanctioned with posts as per G.O.Ms.No. 525, School Education (D-1) Department, dated 29.12.1997, as the said issues are already held against the respondents.

\* It is made clear that if the petitioner schools are found eligible to get sanction

of additional posts and if qualified teachers are appointed, such posts shall be sanctioned from the academic year, in which the schools are eligible to get sanction of additional posts and arrears of salary from the date of appointment to such teachers who are qualified, are to be paid.

\* While assessing the claim of the petitioner schools, the respondents are bound to

consider the students strength assessed from time to time by the appropriate authority for each academic year, i.e., average attendance of August.

These Writ Petitions are disposed of on the above terms. No costs. Consequently, connected Miscellaneous Petitions are closed.