

THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

**WRIT PETITION Nos.16956, 17146, 18182, 17580,
17591, 17809, 17581 OF 2023**

COMMON ORDER:-

1. These writ petitions are filed under Article 226 of the Constitution of India, challenging G.O.Ms.No.59 School Education (PS) Department dated 22.06.2023, wherein, the State of Andhra Pradesh proposed for rationalization of services of aided staff in private aided schools and norms to be followed for filling up of vacant aided teacher posts.

2. Sri M. Gangaiah Naidu, leaned Senior Counsel appearing for Sri N. Bharat Babu, learned counsel for the petitioners submits that the guidelines issued under G.O.Ms.No.59 dated 22.06.2023, more particularly, Guideline Nos.8(viii) (a) to (e) and (ix) are illegal and contrary to Rule 10(17) of the Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration And Control Of Schools Under Private Managements) – Rules, 1993. He further submits that, G.O.Ms.No.59 dated 22.06.2023 is also contrary to Sections 19 & 25 of The Right of Children to Free and Compulsory Education Act, 2009 (Act No.35 of 2009).

3. He further submits that, G.O.Ms.No.59 dated 22.06.2023, Guideline Nos.8(viii) (a) to (e) and (ix) contemplates rationalization of the services of teachers working against Grant-in-aid posts in private aided schools, which reads as under:

“viii. As per RTE norms, the following categories of teachers shall be identified as surplus teachers in a school for the purpose of rationalization:

- a. Aided teachers working Primary School with less than 30 enrollments in I to V Classes, provided, there is a Government managed/Aided Primary School/Upper Primary school already existing in same habitation within the safe walking distance of 1 KM.*
- b. Aided teachers working in Upper Primary School with less than 35 enrolment in VI to VII Classes (For upper primary stage) provided, there is a Government managed/Aided upper Primary school already existing in the same habitation within safe walking distance of 3 KM.*
- c. Aided teachers working in High School with less than 75 enrollment in VI to X classes provided, there is a Government managed/Aided High School already existing in same habitation within a safe walking distance of 3 KM.*
- d. In each category of the post if aided teachers working in the said school/institution are found in excess, then the surplus teachers shall be worked out as per Annexures to the G.O.*
- e. Aided Teachers of already closed schools and zero enrolment schools if any including all aided teachers who are drawing a salary from the school but working in other schools.*

ix. Resultant to this rationalization, if an aided post in any institution is rendered surplus, the same shall stands suppressed on transfer of the incumbent to another aided institution with effect from the date of such transfer.”

4. Learned counsel further submits that, for any such rationalization, the authorities are under obligation to observe the Pupil-Teacher Ratio for two subsequent academic years. But the G.O.Ms.No.59 dated 22.06.2023 is issued in violation of such rule and proposed to take-up rationalization taking into consideration adopting the UDISE of previous academic year as well as the present academic year, rather than two subsequent academic

years, as proposed in Rule 10(12) & 10(17) of the Rules, 1993, which are as follows:

“(12) That the Teacher Pupil ratio in respect of the Pre-Primary Schools shall not exceed 1:20 and in respect of all other schools, the ration shall not exceed 1:40.

(17) When private aided schools are forced to the closed down for any reason or whenever the management of the school goes out of the way to remove any of its staff members or whenever there is fall in strength in a private aided school for two subsequent academic years, the Competent Authority may transfer the staff along with the posts to any other needy private aided school within the District.”

5. He further submits that, G.O.Ms.No.59 dated 22.06.2023 was issued by way of executive instructions by the State Government, but whereas, G.O.Ms.No.1, Education (P.S.2) dated 01.01.1994 was issued in exercise of the powers conferred by Section 99 read with Sections 20,21,79,80 and 83 of the Andhra Pradesh Education Act, 1982, in supersession of the Andhra Pradesh Educational Institutional (Establishment, Recognition, Administration and Central) Rules, 1988. Therefore, the Rules made under G.O.Ms.No.1 dated 01.01.1994 are the statutory rules and the guidelines issued in G.O.Ms.No.59 dated 22.06.2023 cannot over-ride the statutory rules. Therefore, Guideline No.8(viii) (a) to (e) and (ix) of G.O.Ms.No.59 dated 22.06.2023 are liable to be suspended.

6. Learned counsel for the petitioners further submit that, in similar circumstances, this Court time and again upheld the contentions of the learned counsel for the petitioners in respect of rationalization of services of teachers of private aided institutions and relied upon the common

judgment of this Court in W.P.No.30927 of 2022 & batch dated 05.01.2023, wherein this Hon'ble Court observed as follows:

“As per Rule 12 (3A) of the above said Rules, vacancies will be filled up by surplus candidates. At this juncture, learned Senior Counsel states that respondent authorities are not sending surplus candidates and they are sending candidates only by way of adjustment and thereafter, recalling them, which happened in many cases. At this juncture, this Court directed the learned Government Pleader to inform the stand of the Government with regard to sub-rule 3(A) of Rule 12. In such circumstances, learned Government Pleader filed affidavit of the Commissioner of School Education. Para-5 of the said affidavit reads as follows:

“.....Further to submit that instructions were issued to all the Regional Joint Directors of School Education and District Educational Officers with a request to identify the surplus teachers/ existing teachers of defunct aided schools as per Rule 10(12) in G.O.Ms.No.1, Education, dated 01.01.1994 and transfer the surplus teachers as per Rule 10 (17) in G.O.Ms.No.1, Education, dated 01.01.1994 on a permanent basis and the same is under process”.

7. He further submits that, as per Sections 19 & 25 of The Right of Children to Free and Compulsory Education Act, 2009, the prescribed teacher-student ratio is not followed and G.O.Ms.No.59 dated 22.06.2023 is also contrary to the teacher-student ratio, as envisaged under Sections 19 & 25 of The Right of Children to Free and Compulsory Education Act, 2009. Sections 19 & 25 reads as follows:

“19. Norms and standards for school.—

(1) No school shall be established, or recognised, under section 18, unless it fulfils the norms and standards specified in the Schedule.
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(2) Where a school established before the commencement of this Act does not fulfil the norms and standards specified in the Schedule, it shall take steps to fulfil such norms and standards at its own expenses, within a period of three years from the date of such commencement.

(3) Where a school fails to fulfil the norms and standards within the period specified under subsection (2), the authority prescribed under sub-section (1) of section 18 shall withdraw recognition granted to such school in the manner specified under sub-section (3) thereof.

(4) With effect from the date of withdrawal of recognition under sub-section (3), no school shall continue to function.

(5) Any person who continues to run a school after the recognition is withdrawn, shall be liable to fine which may extend to one lakh rupees and in case of continuing contraventions, to a fine of ten thousand rupees for each day during which such contravention continues.

25. Pupil-Teacher Ratio.—

(1) 1 [Within three years] from the date of commencement of this Act, the appropriate Government and the local authority shall ensure that the Pupil-Teacher Ratio, as specified in the Schedule, is maintained in each school.

(2) For the purpose of maintaining the Pupil-Teacher Ratio under sub-section (1), no teacher posted in a school shall be made to serve in any other school or office or deployed for any non-educational purpose, other than those specified in section 27.”

THE SCHEDULE
(See Sections 19 and 25)
Norms and Standards for a School

Item	Norms and Standards	Number of teachers
Number of teachers	Admitted children	Number of teachers
(a) For First class to 5 th Class	Upto Sixty Between sixty-one to ninety Between ninety one to one hundred and twenty Between one hundred and twenty one to two hundred Above one hundred and fifty children Above two hundred children	Two Three Four Five Five Plus one Head Teacher Pupil-Teacher Ratio (Excluding Head Teacher) shall not exceed forty
(b) For Sixth class to eighth class	(1) Atleast one teacher per class so that there shall be at least one teacher each for (i) Science and Mathematics; (ii) Social Studies; (iii) Languages (2) At least one teacher for every thirty five children (3) Where admission of children is above one hundred- (a) A full time head-teacher For (A) Health and Physical Education (B) Work Education	

8. Sri N. Subba Rao, learned Senior Counsel appearing for Sri M. Devi Prasad, while adopting the arguments of Sri M. Gangaiah Naidu, learned Senior Counsel, submits that, G.O.Ms.No.59 dated 22.06.2023 is in violation of Rule 10 (12) & (17) of the Rules, 1993, and now the exercise of rationalization of service of the teachers in private educational institutions by way of G.O.Ms.No.59 dated 22.06.2023 is nothing but taking away all the teachers in private schools without observing two years towards Pupil-Teacher ratio and without keeping minimum two teachers in a school, as per Sections 19 & 25 of the Right to Education Act, 1982, amounts to closure of the private aided schools. In such an event, it requires prior notice to the concerned management of the institution for making institution for rejection or withdrawal of the total strength of the teachers.

9. On the other hand, learned Government Pleader for Education submits that the impugned G.O is issued in concurrence with Sections 19 & 25 of The Right of Children to Free and Compulsory Education Act, 2009 and also in furtherance of the orders of this Hon'ble Court in W.P.No.30927 of 2022 & batch dated 05.01.2023, wherein this Court issued the following directions:

"In view of the above stand taken by the Government, all the Writ Petitions are disposed of with the following directions :

i) The respondent-authorities are hereby directed to permit the petitioners-institutions to fill up all the Aided vacancies in terms of G.O.Ms.No.1, Education, dated 01.01.1994 and also as per the Schedule prescribed under Sections 19 & 25 of the Act,2009 ;

ii) In future also, whenever vacancies arise, the institutions have to make applications to the Competent authorities for filling up the vacancies ;

iii) On such applications, the Competent authorities shall inform the institution about the availability of qualified surplus staff, within a period of four (04) weeks from the date of application and allot said surplus staff on permanent basis ;

iv) If surplus staff are not available, the Competent authority shall inform the same and permit the petitioners institutions to fill up the vacancies in accordance with the above said Rule, preferably within a period of two (02) months ;

v) So far as minority institutions are concerned, the above procedure is not applicable insofar as allotment of surplus staff are concerned, in view of the Judgments of Division Bench of this Court rendered in Modern High School, Zamisthanpur V. Government of Andhra Pradesh and Others¹ and Ester Axene Res. High School and Others V. State of Andhra Pradesh and Others

vi) The entire exercise shall be completed by the respondent-authorities within a period of three (03) months from the date of receipt of a copy of this order”

10. He further submits that, there is no violation of Rule 10 (12) & (17) of the Rules, 1993, as the authorities have observed the Teacher-Pupil ratio for the academic year 2022-2023 and therefore, there is no violation of Rule 10 (12) & (17) of the Rules, 1993, so also, Sections 19 & 25 of The Right of Children to Free and Compulsory Education Act, 2009, as claimed by the petitioners herein.

11. He further submits that, G.O.Ms.No.59 dated 22.06.2023 is issued to achieve the object of rationalization of the services of teachers working against Grant-in-aid posts in private aided schools and for filling-up vacant aided posts, basing upon the Teacher-Pupil ratio, as prescribed under Rule 10 (12) & (17) of the Rules, 1993 and Sections 19 & 25 of The Right of Children to Free and Compulsory Education Act, 2009. Therefore, the

impugned G.O warrants no interference at this juncture and requested time to file counter affidavit in all these writ petitions.

12. Heard Sri M. Gangaiah Naidu, learned Senior Counsel appearing for Sri N. Bharat Babu, Sri N. Subba Rao, learned Senior Counsel appearing for Sri M. Devi Prasad, Sri T.R.S. Kumar, Sri N. Siva Reddy and Sri C. Sunil Kumar Reddy for the petitioners and learned Government Pleader for Education.

13. On perusal of the material available on record, it is observed that G.O.Ms.No.59 dated 22.06.2023 is issued for rationalization of the services of teachers working against Grant-in-aid posts in private aided schools and norms to be followed for filling up of vacant aided teacher posts. Guideline No.8(iv) of the said G.O says that the District Educational Officer, shall work out the requirement of teachers in each private aided school as per the staff pattern norms indicated, taking into consideration adopting the UDISE of that particular academic year for this purpose. Similarly Guideline No.8(v) says that the requirement of the teacher of that particular institution/school is based on the UDISE data only.

14. On reading of both the clauses i.e. Guideline Nos.8(iv) & 8(v), they are contrary to Rule 10(17) of the Rules, 1993, for the reason that two years data of the Teacher-Pupil Ratio should be taken into consideration for determination of staff pattern in private aided schools. Therefore, Guideline Nos.8(iv) & 8(v) of G.O.Ms.No.59 dated 22.06.2023 are contrary to Rule 10(17) of the Rules, 1993.

15. Further, Rule 10(12) of the Rules, 1993 as well as Sections 19 & 25 of The Right of Children to Free and Compulsory Education Act, 2009 contemplates that the Teacher-Pupil Ratio should be maintained in every school as per the determination. But, Guideline Nos.8(i) & (iii) are contrary to the object of Sections 19 & 25 of The Right of Children to Free and Compulsory Education Act, 2009, as well as Rule 10 (12) of the Rules, 1993, for the reason that, if the strength is increased in any private educational institution, as per the determination for two academic years, the petitioners herein are liable to increase or rationalize the staff pattern. But, Guideline Nos.8(i) & (iii) are contrary to the object of Sections 19 & 25, the Schedule contained therein, of The Right of Children to Free and Compulsory Education Act, 2009.

16. Indeed, as per the Schedule contained in Sections 19 & 25 of The Right of Children to Free and Compulsory Education Act, 2009, it is stipulated that a school must have a minimum of two teachers for the children enrolled up to a total of sixty students. This requirement ensures that no school should operate with just a single teacher, and every school should function with a minimum of two teachers to meet the educational needs of the students adequately. Therefore, the Teacher-Pupil ratio as contemplated under G.O.Ms.No.59 dated 22.06.2023 is contrary to the Schedule contained in Sections 19 & 25 of The Right of Children to Free and Compulsory Education Act, 2009

17. Hence, for the reasons stated above and on perusal of the provisions mentioned above, G.O.Ms.No.59 dated 22.06.2023 is not in accordance with Rule 10 (12) & (17) of the Rules, 1993, Sections 19 & 25, the Schedule contained therein of The Right of Children to Free and Compulsory Education Act, 2009.

18. Accordingly, there shall be an interim suspension of G.O.Ms.No.59 dated 22.06.2023 and Memo No.ESE02-17024/1/2023-PS-1/CSE dated 04.07.2023 & Memo No.ESE02-17024/1/2023-PS-1/CSE-Part(1) dated 16.07.2023, until further orders.

19. Post after three (03) weeks for filing counter affidavit(s).

JUSTICE VENKATESWARLU NIMMAGADDA

Date:03.08.2023

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