

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 7/12/2016

C O R A M

The Honourable **Mr.Justice S.Manikumar**  
and  
The Honourable **Mr.Justice M.Govindaraj**

Writ Appeal No.13 of 2010

1. The Government of Tamil Nadu  
rep. By its Secretary  
Department of School Education  
Fort St. George  
Chennai 9.
2. The Director of School Education  
Chennai 600 006.
3. The Chief Educational Officer  
Kancheepuram.
4. The District Educational Officer  
Office of the District Educational Officer  
Chengalpattu. ... Appellants

Vs

1. Miss.S.Mary Victoria  
St. Mary's Girls' Higher Secondary School  
Kancheepuram High Road  
Natham  
Chengalpattu 603 002.
2. The Correspondent  
St. Mary's Girls' Higher Secondary School  
Kancheepuram High Road  
Natham  
Chengalpattu 603 002. ... Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 21/10/2009 made in W.P.No.19225 of 2009.

|                 |     |                                                                |
|-----------------|-----|----------------------------------------------------------------|
| For appellants  | ... | Mr.K.Venkatramani,<br>Additional Advocate General              |
| For respondents | ... | Dr.Fr.A.Xavier Arulraj<br>Senior Counsel<br>for Ms.A.Arul Mary |

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### **J U D G M E N T**

(Judgment of the Court was made by S.Manikumar,J)

In W.P.No.19225 of 2009, the first respondent herein has sought for a writ of certiorarified mandamus, to quash the order, dated 31/7/2006 of the District Educational Officer, Chengalpattu, and consequently prayed for a direction, to the respondents therein, to accord approval, to the appointment of the first respondent herein, as Library Record Clerk in St. Mary's Girls' Higher Secondary School, Kancheepuram High Road, Natham, Chengalpattu 603 002, with effect from 9/2/2006, with all attendant benefits.

2. Before the writ Court, opposing the prayer sought for, the appellants herein have filed a counter affidavit stating that St. Marys Girls' Higher Secondary School is a minority institution, subject to the approval of the District Educational Officer. It is further stated that the Government have laid down a policy decision that vacant posts will

have to be referred, to the Staff Committee and that the same should be filled up only after obtaining the approval of the Staff Committee.

3. The respondents therein have further contended that the policy framed by the Government in respect of non-teaching staff for direct recruitment has to be uniformly followed in all the Government Schools and Aided Schools and therefore, St. Mary's Girls' Higher Secondary School, cannot appoint non-teaching staff on their own, without reference to the Staff Committee.

4. Before the writ Court, on the strength of an order made in W.A.No.456 of 2008, (S.Rajkumar Vs. The Government of Tamil Nadu), contention has also been made by the writ petitioner that this Court had already declined to accept the contentions of the respondents.

5. Placing reliance on the decision made in W.A.No.456 of 2008, learned Single Judge of this Court, vide order, dated 21/10/2009, made in W.P.No.19225 of 2009, allowed the writ petition, and further directed the respondents, to pass appropriate orders, which reads thus:-

“It has been brought to our notice that in similar circumstances, the Government has issued orders in respect of similar employees approving their services from the date of their initial appointment. When once the ban is revoked, the Government should have considered and approved the appointment of the petitioner from the date of this initial appointment. Therefore, the orders of the learned Single Judge need to be modified to this extent. Accordingly, the Writ Appeal is allowed modifying the order of the learned Single Judge dated 30/10/2007 made in W.P.(MD) No.484 of 2007 and directing the respondents to approve the appointment of the petitioner from the date of initial appointment. No order as to costs.”

6. Though Mr.K.Venkatramani, learned Additional Advocate General assailed the correctness of the order made in W.P.No.19225 of 2009, dated 21/10/2009, on the grounds raised, in the Memorandum

of Appeal, he has not disputed the fact that the challenge made to one of the similar orders passed by a Hon'ble Division Bench had been taken on appeal to before the Hon'ble Supreme Court in SLP (Civil) 987 and 9838 of 2010 (***Secretary to Government and Others Vs. D.Samuel Raj Thomas & another***), dated 26/3/2010, and that the same has been dismissed.

7. Learned Senior Counsel for the respondents, drew the attention of this Court, to the similar orders passed by the Hon'ble Division Benches, which are extracted hereunder:-

(i). In W.A.No.258 of 2009, etc., batch, (***1. The Government of Tamil Nadu, rep. By its Secretary, Department of School Education, Fort St. George, Chennai 600 009 and three others Vs. Corlay Higher Secondary School, Tambaram***) dated 12/7/2010, a Hon'ble Division Bench held as follows:-

“When the matter was taken up for hearing, the learned counsel appearing for the respondent has submitted that in a connected matter, viz., Special Leave to

Appeal (Civil) Nos.987 and 9838 of 2010, **(Secretary to Government and Others Vs. D.Samuel Raj Thomas & another)**, dated 26/3/2010, dismissed the Special Leave Petitions on the ground of delay and on merits and the question of law was left open. Producing a copy of the order in a connected matter in Special Leave to Appeal (Civil) 4732 of 2009 **(Secretary Education Department & Others Vs. S.D.Rajkumar & Another)**, the learned counsel for the respondent has also submitted that in the said case, the Supreme Court has stayed the contempt proceedings, if any, and not the judgment passed in Writ Appeal. Therefore, it is submitted that since the main issue has been dealt with by the Supreme Court, nothing remains in the present writ appeals and they are liable to be dismissed."

(ii). In W.A.(MD) No.83 of 2010, (***The District Educational Officer, Paramakudi, Ramanathapuram District Vs. Sourashtra Higher Secondary School, rep. By its Correspondent, Paramakudi, Ramanathapuram District***), dated 31/8/2010, a Hon'ble Division Bench held as follows:-

"2. The Writ Appeal pertains to appointment of a Watchman in a Private School. Admittedly, the said appointment was made prior to G.O.Ms.No.115 Education (2D) Department, dated 30/5/2007, which stipulates that in the event of any such appointment is made, it shall be subject to the condition that expenses of such appointment shall be met by the concerned private School.

3. This issue has already been decided in more than one Writ Appeals and one of the judgments dated 29/9/2008 made in W.A.(MD) No.609 of 2008, wherein, it has been held that in respect of appointments already made prior

to issuance of G.O.Ms.No.115, Education (2D) Department, dated 30/5/2007, such Government Order should not be made applicable, was taken on appeal to the Supreme Court and the same was dismissed on 22/3/2010 on the ground of delay.”

(iii). In W.A.No.1121 of 2009 (**1. *The Government of Tamil Nadu, rep. By its Secretary, Department of School Education, Fort St. George, Chennai 600 009 and three others Vs. Punitha Bagaya Annai Boys' Higher Secondary School, Tiruvannamalai***) dated 18/10/2010, a Hon'ble Division Bench held as follows:-

“2. When the matter was taken up for hearing, learned counsel appearing for the respondent submitted that the issue is covered by the judgment of the Division Bench of this Court in Government of Tamil Nadu, rep. By its Secretary and Others Vs. Corley Higher Secondary School (W.A.Nos.258 of 2009 etc., batch).

3. In view of the same and following the earlier decision, this Writ Appeal is dismissed. No costs. Connected Miscellaneous Petition is closed.”

(iv). In W.A.(MD) No.306 of 2011, (**1. The Director of School Education, Chennai 600 006 and Another Vs. 1. P. Govil Pillai and Another**) dated 4/3/2011, a Hon'ble Division Bench held as follows:-

“6. The learned counsel appearing for the first respondent submits that the said order dated 30/10/2007 made in W.P.(MD) No.484 of 2007, was challenged by the respondents – Education Department in Writ Appeal (MD) No.308 of 2008 and the said Writ Appeal was also dismissed by a Division Bench of this Court on 4/8/2008. In the said judgment, the Division Bench, in paragraph Nos.4 and 5, has held as follows:-

4. After considering the rival submissions made on either side, following the judgment of the Supreme Court and the order of this Court, the learned Single Judge set aside the orders of the appellants with a direction to approve the appointment of the respondent/petitioner as Lab Assistant with effect from 7/2/2006 and the third respondent was directed to pass orders approving the appointment of the first respondent with effect from 7/2/2006 within a period of four weeks from the date of receipt of copy of the order.

5. We find no infirmity or illegality in the order of the learned Judge dated 30/10/2007 passed in W.P.(MD) No.484 of 2007. Therefore, the writ appeal fails and the same is dismissed.”

(v). In W.A.No.1916 of 2009 (***S. Arul Raj Vs. The Government of Tamil Nadu, rep. By its Secretary, Department of School Education, Fort St. George, Chennai 600 009 and three others***) dated 19/9/2011, a Hon'ble Division Bench held as follows:-

"5. Learned counsel for the appellant submitted that this case is squarely covered by the decision of this Court dated 12/7/2010 in W.A.No.276 of 2009, wherein this Court has held as follows:-

"4. When the matter was taken up for hearing, the learned counsel appearing for the respondent has submitted that in a connected matter viz., Special Leave to Appeal (Civil) Nos.987 and 9838 of 2010 (Secretary to Government & Others Vs. D. Samuel Raj Thomas & Another), the Supreme Court by order dated 26/3/2010 dismissed the Special Leave Petitions on the ground of delay and on merits and the

question of law was left open. By producing a copy of the order in a connected matter in Special Leave to Appeal (Civil) 4734 of 2009 (Secretary Education Department & Others Vs. S.D.Rajkumar & Another), the learned counsel for the respondent has also submitted that in the said case, the Supreme Court has stayed the contempt proceedings, if any, and not the judgment passed in the Writ Appeal. Therefore, it is submitted that since the main issue has been dealt with by the Supreme Court, nothing remains in the present writ appeal and it is liable to be dismissed.

5. Learned Special Government Pleader appearing for the appellants, though not disputed the above position, sought time for getting instructions. However, he submitted that the stay granted by the Supreme Court relates only

to contempt proceedings and there is no stay of the judgment made in the writ appeals.

6. In view of the fact that there is no stay in the Special Leave Petitions preferred against the judgment of the writ appeals relating to approval of appointment during the ban period and some of the SLPs were dismissed, the present writ appeal is dismissed.

6. Following the said decision, this writ appeal is allowed. No costs."

8. Mr.K.Venkatramani, learned Additional Advocate General submitted that the directions of this Court, are being considered by the High Level Committee and the matter is pending with the Government.

9. Dr.Fr.A.Xavier Arulraj, learned Senior Counsel for the respondents submitted that order impugned before us has been implemented, subject to appeal.

10. He further added that in respect of non-teaching staff, based on the orders, passed by the Hon'ble Division Benches of this Court and the order passed by the learned Single Judge in W.P.(MD) Nos.11481 of 2008 batch, dated 15/3/2016, the appellants have also complied with the directions and granted approval of appointments made.

11. In as much as the matter had already reached finality, at the Apex Court and consistently when the Division Benches of this Court have declined, to accept the contentions of the Government, we find the issue is no longer res integra.

12. In the result, this **writ appeal is dismissed**. No costs. Consequently, the connected Miscellaneous Petition is closed.

(S.M.K.,J) (M.G.R.,J)  
7<sup>th</sup> December 2016.

mvs.

Index: yes

website: Yes

S.MANIKUMAR,J

a n d

M.GOVINDARAJ,J

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<http://www.judis.nic.in>