



W.A(MD) No.526 of 2022

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 02 .12.2022**

**CORAM:**

**THE HONOURABLE MR.JUSTICE R.MAHADEVAN  
and  
THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD**

**W.A(MD) No.526 of 2022**

1.The State of Tamil Nadu,  
Rep. by its Secretary,  
Department of School Education,  
Fort St.George, Chennai – 600 009.

2.The Director of School Education,  
College Road, Chennai – 600 006.

3. The Chief Educational Officer,  
Tirunelveli, Tirunelveli District.

4. The District Educational Officer,  
Cheranmahadevi, Tirunelveli,  
Tirunelveli District.

... Appellants

-VS-

The Correspondent,  
St.Mary's Higher Secondary School,  
Vickramasingapuram,  
Tirunelveli District – 627 425.

... Respondent

**Prayer:** Writ Appeal filed under Clause 15 of Letters Patent, against the  
order dated 23.03.2021 made in W.P(MD) No.215 of 2021.



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For Appellants : Mr.S.Saji Bino  
Special Government Pleader

For Respondent : Ms.A.Amala

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

**(Judgment of the Court was  
made by J.SATHYA NARAYANA PRASAD, J.)**

The challenge made in this writ appeal is to the order dated 23.03.2021 passed by the learned Judge in W.P(MD) No.215 of 2021, by which, the appellants were directed to forthwith approve the writ petitioner's appointment as Office Assistant, with effect from 03.10.2007, in the school namely, Sr.Mary's Higher Secondary School, Vickramasingapuram, and to disburse the grant-in-aid towards his salary with all attendant benefits from 03.10.2007.

2. The Government is the appellants and the writ petitioner – School is the respondent herein.

3. The brief facts leading to the filing of the writ appeal are as follows:



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3.1. The respondent herein is a minority institution recognised in terms of Article 13(1) of the Constitution of India. It was established as middle school in the year 1944. Later, it was upgraded as High School in the year 1949 and as Higher Secondary School in the year 1979. Now, the School is permanently recognised and fully aided by the Government of Tamil Nadu and it offers education from Standards VI to X both in Tamil and English Medium. There are around 2000 students studying in the school and it provides education at free of charges, except the meagre sum specified by the Government and it is known for its academic excellence and extra-curricular activities.

3.2. The post of Office Assistant in the School fell vacant from 01.07.2007, due to the retirement of one S.Pattabiramanon on 30.06.2007 and in that vacancy, the respondent School appointed one A.Jeyaraj as Office Assistant with effect from 03.10.2007 and for the purpose of disbursement of grant-in-aid towards his salary, they submitted a proposal to the fourth appellant / District Educational Officer on 17.10.2007, seeking approval of the said appointment, however, no orders were passed on the same.



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3.3. The respondent repeatedly approached the fourth appellant herein to approve the appointment of the said A.Jeyaraj as Office Assistant, but there was no response for nearly ten long years. They again sent a proposal to the fourth appellant on 03.11.2017 and on receipt of the same, the fourth appellant *vide* proceedings in O.Mu.No. 3931/A3/2017, dated Nil.01.2018, sought for certain information and *vide* proceedings dated 16.11.2018, also sought additional particulars. In response to the same, the respondent *vide* letter dated 26.02.2019, furnished all the documents to the fourth appellant. Thereafter, the third appellant / Chief Educational Officer *vide* proceedings dated 25.09.2020, returned the said proposal by directing the respondent to comply with the provisions of Clause 3(x) of G.O.Ms.No.238, School Education [Pa.Ka. 6(1)] Department, dated 13.11.2018, wherein, it has been stated that if there is any sanctioned vacancy to be filled up in the aided school, it should be filled up by the surplus post available in the other aided schools, instead of making fresh appointments. Aggrieved by the same, the respondent filed the writ petition, which was allowed by the Writ Court. Therefore, the Government has come forward with the present writ appeal, to set aside the order of the learned Judge.



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4. The learned Special Government Pleader appearing for the appellants submitted that the appellants have specifically imposed ban in respect of the direct recruitment of non-teaching posts in aided schools *vide* its letter No.11462/D2/2006-1, dated 26.05.2006 and letter No. 8884/D1/2011-2, dated 09.07.2012. Moreover, the Government Order in G.O.Ms.No.238, dated 13.11.2018, has set out certain guidelines for filling up the posts of non-teaching staff in the Government aided private schools. In such circumstances, the respondent ought to have redeployed the surplus Office Assistant from other school, but they have appointed the said A.Jeyaraj as Office Assistant on 03.10.2007 and sought approval of the same. Thus, according to the learned counsel, the appointment made during ban period, that too in regular time scale, is in violation of G.O.Ms.No.238, dated 13.11.2018, which was in vogue and therefore, the order impugned in this writ appeal, directing the appellants to approve the said appointment forthwith and pay the consequential benefit, has to be set aside.

5. On the contrary, the learned counsel for the respondent / writ petitioner submitted that the respondent School being a minority educational institution, is the appointing authority as per Article 30(1) of



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the Constitution of India and no appointment can be made by deploying some surplus staff from other schools, as it infringes the absolute right of administration conferred to the Minority Educational Institution under Article 30 of the Constitution of India. The learned counsel further submitted that the said A.Jeyaraj was appointed as Office Assistant on 03.10.2007 in a regular sanctioned vacancy due to the retirement of the previous incumbent and is working without any break or blemish from the date of appointment and hence, the proposal seeking approval of the said appointment cannot be rejected, by citing G.O.Ms.No.238, dated 13.11.2018. It is also submitted by the learned counsel that Clause 3(x) of the said G.O.Ms.No.238, can be applied only to the appointments made on or after 13.11.2018, whereas the incumbent was appointed on 03.10.2007. Therefore, the learned Judge has rightly allowed the writ petition and directed the appellants to approve the appointment made by the respondent school.

6. The learned counsel for the respondent in support of her submissions, placed reliance on a Division Bench judgment of this Court in *The State of Tamil Nadu, Department of School Education vs. The correspondent, Holy Family Girls Higher Secondary School W.A(MD)*



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**No.1052 of 2020 dated 06.12.2021**, wherein, in an identical case, this

Court directed the appellants to confirm the appointment and disburse the grant-in-aid to the employees therein. The relevant paragraphs of the judgment read as follows:

“3.The Government is the appellants herein, challenging the direction given by this Court to disburse the grand-in-aid towards salary of certain employees namely, S.Ignatius and D.Jeya Seela Rajathi, who were appointed as Record Clerk and Office Assistant respectively from the date of their appointment with all other attendant benefits. The appellants have rejected the approval by stating that G.O. (Ms)No.238, School Education(Pa.Ka. 6(1))Department, dated 13.11.2018. The said Government Order does not recognize these two posts namely, the Record Clerk and the Office Assistant. Admittedly, for the above said posts, sanction was granted by virtue of Government Order in G.O(Ms)No.1731, Education Department, dated 28.12.1996. G.O.(Ms)No.238, School Education(Pa.Ka.6(1)) Department, dated 13.11.2018 has set out certain guidelines for filling up the posts of non-teaching staffs in Government Aided Private Schools and it does not refer to the post of Record Clerk or Office Assistant. Therefore, it is now argued by the learned Additional Government Pleader appearing for the appellants that since the Government has taken a policy decision to limit the non-teaching staffs, it is a power to



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restrict the grant-in -aid for such posts, taking into account the reduction in expenses to be incurred by the Government and it is stated that the said Government Order could not be issued with retrospective effect from the date of issuance of the said Government Order. Admittedly, the staffs in question were promoted or appointed on 1.6.2018 and the Government Order was issued only on 13.11.2018. The Writ Appeal filed by the appellants is based on the said grounds, cannot be maintained.

4. Accordingly, the Writ Appeal is dismissed, confirming the order of the learned Single Judge and the appellants are directed to disburse the grant-in-aid to the said two employees namely, S. Ignatius and D. Jeya Seela Rajathi from the date of their promotion or appointment together with all other attendant benefits, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is dismissed.”

Thus, the learned counsel prayed for dismissal of this writ appeal.

7. Heard the learned Special Government Pleader appearing for the appellants and the learned counsel for the respondent and also perused the materials placed before this court.



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8. Admittedly, in the present case, the appointment of Office Assistant in the respondent – School was made on 03.10.2007, that too, in the sanctioned vacancy, however, the appellants after relying upon G.O.Ms.No.238, School Education [Pa.Ka.6(1)] Department, dated 13.11.2018, have rejected the proposal of grant-in-aid for the post of Office Assistant. On the other hand, the learned judge, after relying on the judgment of this Court in *the Correspondent, Holy Family Girls Higher Secondary School* (cited supra), came to the conclusion that the reliance placed on G.O.Ms.No.238, dated 13.11.2018 by the appellants for the purpose of rejecting the respondent's proposal seeking approval of appointment, cannot have retrospective effect and therefore, the rejection of the proposal by the appellant authorities cannot be sustained. Accordingly, the learned Judge allowed the writ petition and directed the appellants to forthwith approve the said appointment and grant consequential benefits. This court finds no reason to interfere with the said order of the learned Judge, as the said G.O.Ms.No.238, cannot be applicable with retrospective effect from the date of its issuance, to the case of the respondent.



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9. In fine, this Writ Appeal deserves to be dismissed as devoid of merits and is accordingly, dismissed. As a sequel, the appellants are directed to comply with the order of the learned Judge within a period of eight weeks from the date of receipt of a copy of this judgment. No costs.

[R.M.D., J.] [J.S.N.P., J.]  
02.12.2022

Index : Yes / No  
Internet : Yes / No  
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