



W.P.(MD).No.12958 of 2021

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

**DATED : 30.06.2022**

**CORAM**

**THE HONOURABLE MR. JUSTICE M.S.RAMESH**

**W.P.(MD).No.12958 of 2021**

**and**

**W.M.P.(MD).Nos.10028 and 10029 of 2021**

J.Jesudas

... Petitioner

**Vs.**

- 1.The State of Tamil Nadu,  
Represented by its Secretary,  
Department of Higher 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,  
Tirunelveli,  
Tirunelveli District.
- 5.The Correspondent,  
St.Xavier's Higher Secondary School,  
Palayamkottai-627 002,  
Tirunelveli District.

...Respondents



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**Prayer** : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the fourth respondent District Educational Officer in Oo.Mu.No.2844/Aa2/2021, dated 15.06.2021 denying approval of the petitioner's appointment as BT Assistant (Science) and quash the same as illegal, and further direct the third Respondent CEO to approve forthwith of the petitioner's appointment as BT Assistant (Science) in fifth respondent school with effect from 07.06.2017, with all attendant benefits including arrears of salary.

For Petitioner : Mr.Aayiram.K.Selvakumar  
For R-1 to R-4 : Mr.S.Shaji Bino,  
Special Government Pleader.  
For R-5 : No appearance

### **ORDER**

The fifth respondent School is a minority aided educational institution. When a vacancy arose owing to the promotion of a BT Assistant (English), the petitioner herein was appointed to the post of BT Assistant (Science) with effect from 07.06.2017. The proposal of the fifth respondent School, dated 28.01.2021, seeking for approval of the petitioner's appointment as BT Assistant (Science) came to be rejected by the fourth respondent herein through the impugned order, dated 15.06.2021, predominantly, on two grounds. Firstly,



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that the School Management had not sought for permission for converting the sanctioned post of BT Assistant (English) to BT Assistant (Science). Secondly, since the Government letter, dated 04.12.2019, stipulates that unless the surplus teachers in Government run middle schools and high schools are deployed to other needy schools, no recruitment or appointment can be done.

2. The letter of the Government, dated 04.12.2019, referred to in the impugned order was the outcome of the decision of this Court passed in a batch of Writ Petitions in the case of ***Secretary to Government and others Vs. Iruthaya Amali and another***, reported in ***2021 SCC OnLine Mad 1285***. In the said decision, what was ordered is that the excess teaching staffs are required to be identified in all category schools and till such time, the "Government" shall not appoint Teachers under any category. The order does not speak about appointments that have already been made and which are awaiting approval of the authorities. This decision has been ratified in several judgments passed by this Court in identical circumstances. As such, placing reliance on the Government Letter, dated 04.12.2019 and rejecting the petitioner's claim on the ground that until surplus teachers are filled, no approval can be granted, is misplaced and liable to be set aside.



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3. Insofar as the first reason assigned by the fourth respondent that the conversion of the sanctioned post is impermissible is concerned, this aspect has been considered in the light of various decisions of this Court, including the case of ***C.V.Sreeja Vs. The Chief Educational Officer and others*** passed in ***W.P.(MD)No.16293 of 2020, dated 18.02.2021***, whereby, it is held as follows:

*"2.2. Insofar as the second reason assigned in the impugned order that the approval for conversion of the subject was not obtained is concerned, the issue was already dealt with by the Hon'ble Division Bench of this Court in the case of **State of Tamil Nadu vs. the Correspondent, St.Thomas Higher Secondary School** in W.A.(MD) No.716 of 2014 and the relevant portion of the order reads thus:*

*"4. The learned Single Judge, while considering the matter referred to the decision of the Division Bench, in W.A. No.1198 of 2007 and allowed the writ petition. The legal question involved in this matter is as to whether the Minority Institution can be compelled to follow a subject roaster without there being appropriate amendment to the relevant Rules. This issue was considered by the Division Bench and it was held in favour of the institution. It was pointed out by the learned counsels on either side that the case of the appellants / respondents itself is based on G.O.(Ms).No.144, Education (D1) Department, dated 04.07.2008. This Government Order was subject matter of challenge in R.Emerson Udaisingh vs. The State of Tamil Nadu, Rep. by its Secretary, Department of School Education and others, W.P.(MD).No. 2750 of 2012 and this Court by order, dated 22.08.2013, allowed the said writ petition and quashed the*



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*said Government Order. The operative portion of the said order, dated 22.03.2013, reads as follows:*

*" 3. Similar issue was considered by this Court in the decision reported in 2006(5) CTC 504 - The Corporate Management, CSI Corporate Schools, CSI Diocese of Kanyakumari, Nagarcoil vs. The State of Tamil Nadu, rep by its Secretary, Chennai and others and this Court quashed the Circular, dated 26.10.2004 issued, restricting the number of teachers having degrees in the same subject in a school.*

*4.The said decision was considered by a Division Bench 4 of the Principal Seat in the Judgment dated 20.09.2007 made in W.A.No.1198 of 2007 wherein it is held thus:*

*'3. In fact the legal implication of the said proceedings dated 26.10.2004, was considered by this Court in the light of Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 (in short T.W. Act 29 of 1974) in the Correspondent, Britannia Higher Secondary School, Chennai vs. State of Tamil Nadu, rep. by its Secretary, Department of School Education, Chennai and others (2007 (2) MLJ 760) and held that the said Act 29/74 does not contemplate any subject roster to be followed regarding the appointment of Middle Grade Graduate teachers. That was also the decision taken earlier by the Madurai Bench of Madras High Court in the corporate Manager, CSI Corporate Schools Vs. State of Tamil Nadu (2006 (5) CTC 504). It was also considered*



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*in the above said cases that the executive instruction cannot supersede the statutory provision, by relying upon the decision of the Supreme Court in B.N. Nagarajan Vs. State of Karnataka (1979 II LLJ 209 (SC), which was subsequently reiterated by the Supreme Court in V.Sreenivasa Reddy Vs. Government of A.P. (AIR 1995 SC 586). Therefore, by virtue of the above said judgments, it is the categoric decision of this Court that the proceedings of the second appellant dated 5 26.10.2004 by imposing subject roster in making appointment is not Valid and is in violation of the provisions of the Act 29/74. In view of the same, there is absolutely no reason to interfere with the order of the learned Single Judge. Consequently, the writ appeal fails and the same is dismissed with direction to the appellants to approve the appointment of V.J. Titus Prabhakar (Mathematics) with effect from the date of his appointment with salary and other benefits within a period of four weeks from the date of receipt of copy of this order' ”.*

4. The aforesaid extract is self explanatory. As such, the reason assigned by the fourth respondent that prior approval for conversion of the sanctioned post was not obtained, as a pre-requisite for granting approval of the appointment, is opposed to the aforesaid decision of the Hon'ble Division Bench of this Court.



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5. Accordingly, the impugned order, dated 15.06.2021, on the file of the fourth respondent is quashed. Consequently, the fifth respondent is called upon to re-submit the earlier proposal, dated 28.01.2021, to the fourth respondent herein and on the receipt of the said proposal, the fourth respondent shall forthwith pass orders, approving the appointment of the petitioner to the post of B.T.Assistant (Science) in the fifth respondent School, with effect from 07.06.2017. Such orders shall be passed within a period of eight (8) weeks from the date of receipt of a copy of this order.

6. With the above direction, this Writ Petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous Petitions are closed.

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Index : Yes / No  
Internet : Yes/ No  
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To

1. The Secretary,  
The State of Tamil Nadu,  
Department of Higher 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,  
Tirunelveli,  
Tirunelveli District.



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**M.S.RAMESH, J.**

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