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W.P.No.20161 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **29.09.2023**

CORAM

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.20161 of 2020
and W.M.P.No.24901 of 2020

R.Kavitha

... Petitioner

Vs.

1.The Director of School Education,
D.P.I. Buildings, College Road,
Chennai – 600 006.

2.The Chief Educational Officer,
Thiruvannamalai District,
Thiruvannamalai – 600 601.

3.The District Educational Officer,
Thiruvannamalai District,
Thiruvannamalai – 600 604.

4.The Correspondent,
Danish Higher Secondary School,
Thiruvannamalai – 606 601.

5.The Correspondent,
A.L.C. Higher Secondary School Saron,
Thiruvannamalai – 606 601.

... Respondents

Writ petition filed under Article 226 of the Constitution of India
praying for the issuance of a Writ of Certiorarified Mandamus calling for the



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records pertaining to the impugned proceedings dated 09.10.2020 in Na.Ka.No.006979/D1-E2/2020 on the file of the first respondent and quash the same, consequently direct the first respondent to approve the order of transfer of vacant post of B.T.(Science) from 4th respondent school to the 5th respondent as B.T(Maths) by considering the proposal of the 5th respondent vide Letter No.98/2018 dated 28.03.2018 and consequently direct the 2ndd respondent to accord approval of appointment of the petitioner as B.T.(Maths) w.e.f. 28.03.2018, with all monetary benefits in the 5th respondent school.

For Petitioner : Mr.G.Anandaraj

For Respondents 1 to 3 : Mr.T.Cheziyan,
Additional Government Pleader

ORDER

The petitioner has filed this writ petition seeking to call for the records pertaining to the impugned proceedings dated 09.10.2020 in Na.Ka.No.006979/D1-E2/2020 on the file of the first respondent and quash the same, consequently direct the first respondent to approve the order of transfer of vacant post of B.T.(Science) from 4th respondent school to the 5th respondent as B.T(Maths) by considering the proposal of the 5th respondent vide Letter No.98/2018 dated 28.03.2018 and consequently direct the 2ndd respondent to accord approval of appointment of the petitioner as



B.T.(Maths) w.e.f. 28.03.2018, with all monetary benefits in the 5th respondent school.

2. The case of the petitioner is that the petitioner is graduate in B.E., Electronic Communication Engineering and belongs to Adi-dravida Christian Community. As per the Government Order in G.O.(1D) No.168, dated 07.07.2015, Higher Education Department, the petitioner was permitted to pursue her B.Ed Maths Course in the year 2015 to 2017 in the regular stream and passed out in the year 2017. She has registered all her educational qualifications in the District Employment Exchange and in the year 2017, she applied for TET examination for the post of B.T. Assistant (Maths) as per G.O.Ms.No.139, (P&AR) Department dated 07.10.2009. After qualifying the said examination, the petitioner was initially appointed as management staff on 02.01.2018 and later, she was selected for appointment of the permanent post of B.T.Assistant (Maths) on 28.03.2018 onwards.

2.1. The 4th and 5th respondent school is an aided religious minority institution, which comes within the control of 'The Arcot Lutheran Church' having cluster of schools. This being so, a vacancy arose for the post of B.T.



Assistant (Science) with effect from 01.06.2014 in the fourth respondent school, due to superannuation of I.Luban Kumar B.T.(Science) on 31.05.2014 and due to shortfall of students strength, the said post was found surplus. In turn, during the year 2017-2018, there were 400 students in the fifth respondent school and 10 sections were functioning. Hence, two B.T. Assistant (Maths) could not be able to handle all the 10 sections. Being a Corporate body, the Secretary of the 'Arcot Lutheran Church' has transferred the surplus vacant post of B.T.Assistant (Science) from fourth respondent school to fifth respondent school by an order dated 28.03.2018.

2.2. The fifth respondent being a minority institution and since, the vacancy arose in permanent sanctioned post, taking into consideration the academics of the students studying in VI to X standards, the Arcot Lutheran Church vide its proceedings dated 28.03.2018, selected the petitioner as B.T.Assistant (Maths) in the fifth respondent school and she was joined the said school on 28.03.2018. This being so, the fifth respondent school submitted a proposal dated 28.03.2018 before the first respondent, requesting approval of transfer of vacant surplus post of B.T.Assistant (Science) from



the fourth respondent school to fifth respondent school as B.T.Assistant (Maths) and also seeking approval for petitioner's appointment.

2.3. The first respondent has not passed any order on the said proposal. Hence, the fifth respondent submitted another proposal dated 25.06.2018 before the third respondent for approval of petitioner's appointment. The third respondent by proceedings dated 22.11.2018, returned the proposal raising certain quarries and the same was clarified by the fifth respondent and resubmitted on 07.06.2019 vide letter No.51 of 2019. In view of the pendency of the proposal before the first respondent, the fifth respondent school has preferred a writ petition before this Court in W.P.No.30134 of 2019 seeking direction to the first respondent to consider the proposal and this Court vide order dated 23.10.2019 disposed of the said petition with a direction to the first respondent. In pursuant to the order of this Court dated 23.10.2019, the first respondent in his proceeding dated 09.10.2020 in Na.Ka.No.006979/D1-E2/2020, rejected the fifth respondent proposal dated 28.03.2018. Challenging the said proceeding, the petitioner has come forward with the present writ petition.



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3. Learned counsel for the petitioner drew the attention of this Court to Letter No.11332/J1/2019-2, dated 30.12.2019, issued by the Additional Secretary to Government, Higher Education (J1) Department, dated 30.12.2019 to the petitioner along with the copy of G.O.Ms.No.270, Higher Education (J1) Department, dated 03.12.2019. In the said G.O., it is pertinent to extract Resolution No.2.30 and the same is reads as follows:

<u>Resolution No.2.30</u> <i>Public Services – Educational Qualification – Consideration of B.E. (any discipline) with B.Ed. whether eligible to the post of B.T. Assistant (Mathematics) for the purpose of employment in Public Services.</i>	<i>Eligible to teach from 6th Standard to 8th Standard</i>
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4. Learned counsel for the petitioner further relied on the judgments passed by this Court and the same is reads as follows: (i)

W.A.MD.No.828 of 2014 and 129 to 132 of 2015 dated 22.04.2016.

(ii) W.A.MD.No.1350 of 2017 dated 14.12.2017

(iii) W.A.MD.No.1292 of 2017 and W.A.No.461 of 2014 dated 29.11.2017.



5. Learned counsel for the petitioner submitted a copy of G.O.(Ms) No.151, School Educational SE1(1) Department, dated 09.09.2022, in which annexure II, clause (iii) deals with Approval Authority for filling of posts in Aided Schools:

Duties and Responsibilities of Chief Educational Officers:

iii) Approval Authority for filling of posts in Aided Schools:

He shall be competent to accord prior permission for filling up of Teaching and Non-Teaching posts in Aided High and Higher Secondary Schools and to accord approval for the said posts.

6. Learned Additional Government Pleader appearing for the respondents has filed a counter affidavit dated 29.03.2021 and for better appreciation, the relevant paragraphs are extracted hereunder:

“5. The first respondent herein had considered the proposal to the fifth respondent dated 28.03.2018 in accordance with law and rules in force and found the following facts:-

(a) Since 01.06.2014, there was a surplus vacant post of B.T.Assistant (Science) in the fourth respondent school. On 28.03.2018, the said post was transferred to the fifth respondent school and filled up with educationally unqualified petitioner herein.



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(b) *The surplus vacant post of B.T. Assistant (Science) had converted to B.T.Assistant (Maths) by the fifth respondent and it remained as the surplus vacant post in the fifth respondent as there was no need for the additional post as per Staff fixation report for the academic year 2017-2018, in other words, there was sufficient teachers were working in the fifth respondent school with reference to student strength.*

(c) *The qualification to be appointed as B.T.Assistant in a private school as per Tamil Nadu Recognized Private Schools (Regulations) Rules, 1974 is :-*

Name of the Post	Qualifications
<i>B.T.Assistant</i>	<i>B.A. or B.Sc., or its equivalent; and, B.T. Or B.Ed., r L.T.; and Trained Teachers Certificate to Collegiate Grade</i>
<i>But in the Petitioner's case the qualification is</i>	
<i>B.T.Assistant</i>	<i>Bachelor of Engineering (Electronics and Communication Engineering) and B.Ed.,</i>

As such the petitioner is not eligible to be appointed as B.T.Assistant with reference to the Educational qualification prescribed in the rules stated supra.

(d) *No additional post of B.T.Assistant was sanctioned to the fifth respondent school by the first respondent. But the management itself created the additional post of B.T.Assistant in the fifth respondent school.*

(e) *Appointment should be made only after approval accorded by the first respondent for the conversion of the surplus post of B.T.Assistant (Science) to B.T.Assistant (Maths).*

(f) *The Management itself converted the surplus post of B.T.Assistant (Science) to the surplus B.T.Assistant (Maths)*



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without the approval of the first respondent and further in that converted surplus post appointed the petitioner who is not eligible to be appointed as B.T.Assistant (Maths) as per rules mentioned supra.

8. On 28.09.2018, the surplus vacant post of B.T.Assistant (Science) which was transferred from fourth respondent school to the fifth respondent school remains as a surplus vacant post of B.T.Assistant (Science) in the fifth respondent as there is no need for the additional post as per Staff Fixation Report for the academic year 2017-2018, in other words, there is sufficient teachers are working in the fifth respondent school with reference to the students strength.

7. Heard the learned counsel on either side and perused the materials available on record.

8. In the case on hand, the petitioner was appointed as B.T.Assistant (Maths) on 28.03.2018 in the fifth respondent school and the petitioner has joined duty in the same day itself. This being so, the fifth respondent submitted a proposal dated 23.08.2018 before the first respondent, requesting for approval of transfer of vacant surplus post of B.T.Assistant (Science) from the fourth respondent school to fifth respondent school and seeking



approval of petitioner's appointment, however, the same was not considered.

Hence, the fifth respondent filed a writ petition before this Court and the same was disposed of on 23.10.2019. Pursuant to which, the first respondent passed an order dated 09.10.2020, rejected the claim of the fifth respondent. The said order is impugned in the present writ petition.

9. The impugned order passed by the first respondent is not sustainable for the following reasons:

(i) The Government Order in G.O.Ms.No.165 of 2019 dated 17.09.2018 is not applicable to this case, since the petitioner was appointed on 28.03.2018 that is prior to issuance of the said Government Order dated 17.09.2019.

(ii) As per the Equivalence degree certificate issued by Higher Education (J1) Department in G.O.Ms.No.270/J1/2019 dated 03.12.2019, the B.E., B.Ed., degree obtained by the petitioner is equivalent to B.Sc., B.Ed., and eligible to teach from 6th standard to 8th standard mathematics subject, which was also communicated to the petitioner in Letter No.11332/J1/2019, Higher Education (J1) Department, dated 30.12.2019. It is pertinent to



extract Resolution No.2.30 of the aforesaid G.O., and the same is reads as follows:

<u>Resolution No.2.30</u> <i>Public Services – Educational Qualification – Consideration of B.E. (any discipline) with B.Ed. whether eligible to the post of B.T. Assistant (Mathematics) for the purpose of employment in Public Services.</i>	<i>Eligible to teach from 6th Standard to 8th Standard</i>
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(iii) **Getting prior permission for appointment is not necessary** and the same was held by this Court in ***W.A.MD.No.1350 of 2017 dated 14.12.2017*** and the relevant paragraphs of the said judgment are extracted hereunder:

“26. Article 30 (1) of the Constitution of India gives linguistic and religious minorities a fundamental right to establish and administer Educational Institutions of their choice. These rights are protected by a prohibition against their violation. The prohibition is contained in Article 13 of Constitution which declares that any law in breach of the fundamental rights would be void to the extent of such violation. It is well settled that Article 30 (1) cannot be read in a narrow and pedantic sense and being a fundamental right, it should be given its widest amplitude. The width of Article 30 (1) cannot be cut down by introducing in it considerations which are destructive to the substance of the right enshrined therein.

27. Furthermore, it is not the contention of the Appellants that the First Respondent is not qualified and eligible to hold the B.T. Assistant (Social Science) post. It is also not the



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contention of the Appellants that there is no vacancy in the Second Respondent Institution for a B.T. Assistant (Social Science) post. In fact, Rule 6 (2) of the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977, does not stipulate that appointments can be made only after getting prior approval from the concerned authorities. It only says that for the eligibility of grant to a Minority Institution, all appointments made by the Minority Institution will have to be approved by the concerned authorities. In the case on hand, the appointment of the First Respondent was made by the Second Respondent Institution and after the appointment, the Second Respondent Institution sought for approval from the concerned authorities, which is in agreement with Rule 6 (2). Further, it is not the case of the Appellants that they have stopped giving grant to the Second Respondent Institution due to the breach of Rule 6 (2) of the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977. Therefore, the submission of the Learned Special Government Pleader that the Second Respondent Institution has not followed Rule 6 (2) of the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977, cannot be accepted by this Court.

29. After considering the various decisions, the Hon'ble Supreme Court in paragraph 15 of the judgment cited supra has held as follows:

“15. The above decisions clearly show that autonomy of a minority institution does not dispense with the requirement to act fairly and in a transparent manner and the High Court in exercise of its power of judicial review is entitled to examine fairness of selection process. Grievance of a citizen that he was



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treated unfairly cannot be ignored on the ground that a minority institution has autonomy or right of choice. Exercise of right of choice has to be fair, non-discriminatory and rational.”

30. In the case on hand, it is not the case of the Appellants that the appointment procedure as regards the First Respondent was not fair, discriminatory and irrational. Therefore, applying the ratio held in the judgment reported in (2017) 3 SCC 619, cited supra, it is held by this Court that the grounds raised by the Appellants for sustaining the impugned proceedings dated 19.05.2014 and 21.09.2015, does not deserve any merit.

31. This Court opines that eventhough the State has the power to regulate Minority Educational Institutions in the interest of 'Efficiency', 'Discipline', 'Health', 'Sanitation', 'Morality', 'Public Order', the impugned proceedings dated 19.05.2014 in O.Mu.No.1143/83/2014, on the file of the Third Appellant and the consequential proceedings dated 21.09.2015 in O.Mu.No.4309/AA1/2015, on the file of the Fourth Appellant, do not come within those parameters and therefore, the said impugned proceedings interferes with an overall administrative control of the Second Respondent Minority Institution over its staff and abridges/dilutes their right to establish and administer their Educational Institution.

(iv) Prior approval for post transfer in a corporate body school is also not necessary and it was also held by this Court in ***W.A.MD.No.1292 of 2017 and W.A.No.461 of 2014 dated 29.11.2017***. For better appreciation, the relevant paragraphs are extracted hereunder:



“15. The Learned Special Government Pleader referring to G.O.Ms.No.1376 dated 06.07.1981 submitted that in a Corporate body running more than one School, the Schools under the body shall be treated as one unit for the purpose of this Rule. Therefore, according to him, a Corporate body which runs various Schools including the Respondent school shall be treated as one unit and therefore, surplus Teachers from other Schools in the same group will have to be first utilized for filling up the vacant post in the concerned school.”

By following the aforesaid G.O., a surplus teaching post was transferred from fourth respondent school to fifth respondent school.

(v) G.O.(Ms) No.151, School Educational SE1(1) Department, dated 09.09.2022, in which annexure II, clause (iii) deals with Approval Authority for filling of posts in Aided Schools:

Duties and Responsibilities of Chief Educational Officers:

iii) Approval Authority for filling of posts in Aided Schools:

He shall be competent to accord prior permission for filling up of Teaching and Non-Teaching posts in Aided High and Higher Secondary Schools and to accord approval for the said posts.

9. In view of the above factual matrix of the case and the ratio laid down in the various judgments of this Court, the impugned order passed by



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the first respondent in Na.Ka.No.006979/D1-E2/2020 dated 09.10.2020 is liable to be quashed and the same is hereby quashed.

10. In the result, this writ petition stands allowed and the first respondent is directed to approve the order of transfer of vacant post of B.T.Assistant (Science) from the fourth respondent school to the fifth respondent school as B.T.Assistant (Maths) by considering the proposal of the fifth respondent vide Letter No.98/2018 dated 28.03.2018 and the second respondent to further accord approval of appointment of the petitioner as B.T. Assistant (Maths) with effect from 28.03.2018 with all monetary benefits in the fifth respondent school, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

29.09.2023

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Internet : Yes/No

Index : Yes/No

Speaking order/Non-speaking order

Neutral Citation : Yes/No



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To:

- 1.The Director of School Education,
D.P.I. Buildings, College Road,
Chennai – 600 006.
- 2.The Chief Educational Officer,
Thiruvannamalai District,
Thiruvannamalai – 600 601.
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