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W.A.Nos.245 of 2019 and 622 of 2022

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Judgment Reserved on : 20.06.2023

Judgment Pronounced on : **28.06.2023**

CORAM :

**THE HON'BLE MRS.JUSTICE J.NISHA BANU**  
**AND**  
**THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.A.Nos.245 of 2019 and 622 of 2022

C.Palani .. Appellant  
in both the Writ Appeals

**Versus**

1. The District Educational Officer,  
Thirupattur, Vellore District.
2. The Secretary,  
Hindu Girls Higher Secondary School,  
Ambur, Vellore District.

3. S.Umadevi .. Respondents  
in both the Writ Appeals

**Prayer in W.A.No.245 of 2019 :** Writ Appeal filed under Section 15 of Letter Patents Act to set aside the order passed by the learned Single Judge in W.P.No.7680 of 2010, dated 27.09.2016 and thereby allow the Writ Petition.

**Prayer in W.A.No.622 of 2022 :** Writ Appeal filed under Section 15 of Letter Patents Act to set aside the order passed by the learned Single Judge in



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Rev.Appln.No.24 of 2017, dated 05.10.2018 and thereby allow the Writ Petition.

For Appellant : Mr.S.N.Ravichandran  
(in both the Writ Appeals)

For Respondents : Mr.Abishek Murthy,  
(in both the Writ Appeals) Government Advocate, for R1

: Mr.V.R.Rajasekar, for R2

: Mr.L.Chandrakumar, for R3

### **COMMON JUDGMENT**

The Writ Appeal No.245 of 2019 is directed against the order of the learned Single Judge dated 27.09.2016, whereby, the Writ Petition filed by the petitioner, challenging the orders dated 09.01.2009 and 25.05.2009, by which, the proposal to approve the appointment of the appellant as B.T. Assistant (Tamil) was refused and returned, was dismissed. The Writ Appeal No. 622 of 2022 is against the rejection of Review Application which was filed against the same order. As such, both the Writ Appeals are taken up and disposed off by this common order.

2. The facts are not in dispute. The second respondent, namely, the Secretary, Hindu Girls Higher Secondary School, Ambur, Vellore district is an



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aided private school. One *K.Jayashree*, working as a Secondary Grade Teacher in the second respondent, was promoted on 01.07.2006, consequent upon which, a regular approved vacancy arose. By an order dated 27.08.2007, the vacancy was upgraded to be as B.T. Assistant and the school was permitted to fill up the vacancy by calling for list from Employment Exchange who are qualified graduates. As per the order, the subject shall be decided as per G.O.No.100 dated 27.06.2003. It seems that as per the same, the relevant subject was to be reckoned as English, but, however, by an order dated 30.08.2008, post was converted into B.T. Assistant in Tamil with a condition that again the subject will not be changed.

3. Thereafter, the second respondent school advertised the post for selection in *DailyThanthi* Tamil Newspaper on 05.09.2008. List of eligible candidates were also obtained from the District Employment Officer, Vellore, *vide* his communication dated 05.09.2008. After conducting selection, by a resolution of the School Committee dated 16.09.2008, the second respondent decided to appoint the appellant, *C.Palani*, a Schedule Caste candidate with effect from 17.09.2008 and accordingly, an order of appointment was made by the Secretary, School Committee on 17.09.2008 and he joined the service.



4. The second respondent school sent the name of the appellant for approval of the first respondent *vide* their communication dated 19.09.2008.

Immediately thereupon, it seems that a query was raised as to why a Schedule Caste (Woman) candidate was not appointed as per the roster. A clarification dated 25.09.2008 was submitted stating that the eligible female candidates who attended the interview were not willing to join the service and hence, the appellant was appointed.

5. By the impugned order dated 09.01.2009, the request for approval was rejected stating that when as per the *Rules*, only a Schedule Caste (Woman) candidate to be appointed, appointing a male candidate was in violation of the rules. The second respondent school again re-sent the proposal by explaining the position by its communication dated 17.04.2009. However, this time, by the second impugned order dated 25.05.2009, the same was rejected stating that as per G.O.No.241 dated 29.10.2007, 200 point roster has to be followed while making appointments. Therefore, the second respondent school was directed to make fresh appointment from among General Candidates.

6. The second respondent therefore again re-notified the vacancy for fresh selection on 03.10.2009 and selected the third respondent and appointed



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her with effect from 22.10.2009 and relieved the appellant from the service.

The appointment of the third respondent was also approved by the first respondent on 11.01.2010 and she is working in the post till date.

7. Feeling aggrieved, the appellant filed Writ Petition challenging both the impugned orders rejecting to approve his appointment by making the third respondent, who was subsequently appointed, also as a party contending that his approval was rejected on erroneous reasons. The Writ Petition was resisted by the respondents and separate counter affidavits were filed by the first and second respondents. After considering the submissions made on either side, the learned Single Judge, by the order dated 27.09.2016, dismissed the Writ Petition. The reasons for dismissal are contained in paragraph No.9 of the order. The appellant was non-suited on the ground that he filed the Writ Petition only on 29.03.2010, while the third respondent was already appointed on 22.10.2009 and that he did not specifically challenge the appointment of the third respondent.

8. The appellant filed Review Application No.24 of 2017, however, the same was also rejected by the order dated 05.10.2018 by holding that the grounds raised could only be raised in an appeal. Thereafter, the present appeal



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in W.A.No.622 of 2022 is filed by the appellant, challenging the original order

in the Writ Petition.

9. Heard *Mr.S.N.Ravichandran*, learned Counsel for the appellant, *Mr.Abishek Murthy*, learned Government Advocate for the first respondent, *Mr.V.R.Rajasekar*, learned Counsel for the second respondent and *Mr.L.Chandrakumar*, learned Counsel for the third respondent.

10. *Mr.S.N.Ravichandran*, learned Counsel for the appellant, by drawing attention of this Court to G.O.(Standing) No.85 dated 06.05.2000, contended that Sl.No.1 of the 100 point roster is reserved for Schedule Caste candidates with further horizontal reservation for women. Pointing out to the amendment to Rule 21 of the *Tamilnadu State and Subordinate Services Rules*, with effect from 28.03.2009, he would submit that it can be seen from the scheme contained therein that if woman candidate is not available, then the post shall be filled up from among the male candidates of the respective category. He would submit that thus, as per these *Rules* which were in force, the appellant was rightly appointed. However, the first respondent, by the impugned orders, wrongly rejected the approval. The first reason that only woman candidate



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should be appointed is erroneous in view of the above Rule 21 of the *Rules*.

The reason in the second impugned order that the post should only be filled up as per 200 point Roster as per G.O.Ms.No.241 is incorrect since even though the said order is dated 29.10.2007, subsequently, it was superseded by G.O.Ms.No.206 dated 06.11.2008. However, finally, only by G.O.Ms.No.55 dated 08.04.2010, amendment was brought to the *Rules* and as per which, the 200 point roster will be applicable only for the vacancies which arose subsequent to 29.04.2009 and the selections conducted subsequent therein.

11. *Mr.S.N.Ravichandran*, learned Counsel would contend that this position has been categorically laid down by the Division Bench judgment of this Court in *N.Santosh Kumar and Ors. Vs. The Tamil Nadu Public Service Commission, rep. by its Secretary and Ors.*<sup>1</sup>. He would therefore submit that when there was no delay and laches on the part of the appellant, merely because the third respondent's appointment order is not specifically questioned, he cannot be non-suited.

12. *Mr.Abishek Murthy*, the learned Government Advocate for the first respondent, drawing the Court's attention to the counter affidavit, would submit

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<sup>1</sup> (2015) 4 Mad LJ 281



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that though the vacancy arose in the year 2006, it should be treated as having

arisen from the date of grant of permission to be converted into one as B.T.

Assistant (Tamil) and that would be with effect from 30.08.2008. By the time, *vide* G.O.Ms.No.241 dated 29.10.2007, 200 point roster had already been introduced and therefore, when the same is raised as a query in the impugned order, without persisting with the appointment and challenged the said order, the second respondent school itself reversed its decision by appointing the third respondent and accordingly, the said appointment was duly approved and therefore, the appellant is not entitled to the relief.

13. *Mr.V.R.Rajasekar*, the learned Counsel for the second respondent school, would submit that since the post is an aided post, approval of the first respondent was duly needed. As per the existing 100 point roster, they conducted the selection and when the appointment of the appellant was made, by the impugned order, the first respondent rejected the same and therefore, as per the direction of the first respondent, the second respondent again conducted the selection among Open Category candidates and filled up the post by appointing the third respondent.

14. *Mr.L.Chandra Kumar*, the learned Counsel appearing for the third



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respondent, would submit that the Employment Exchange had duly sponsored the name of the third respondent and she appeared for selection and after due selection, she was appointed as B.T. Assistant (Tamil) in the second respondent school with effect from 22.10.2009 and from the said date onwards, she is working in the said post and she cannot be put to prejudice for any fault of the other respondents.

15. We have given due consideration of the above submissions and perused the material records of the case. Firstly, as pointed out by the learned Government Advocate, the date of vacancy should be deemed to be that of the date, on which, post was converted as B.T. Assistant (Tamil) i.e., 30.08.2008. It was filled up on 17.09.2008 and approval was sought on 19.09.2008. During the relevant period, even though G.O.Ms.No.241 introduced 200 point roster, for the purpose of carrying out horizontal reservation in respect of Backward Class Christians and Muslims, it is seen that the *Rules* were not amended. The Rule was amended only by G.O.Ms.No.55 dated 08.04.2010. The explanation to Rule 22 reads thus :

*"Explanation.- The vacancies arising on and from the 29th April 2009 shall be filled up as per Schedule III and all selections for appointment shall be started afresh from serial number one in the said Schedule III with effect on and from the*



said date:"

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16. A Division Bench of this Court, in its judgment in ***N.Santosh Kumar*** (cited *supra*), considered the above Rule and held as follows in paragraph No.72 (ii) :

"72....

(i)...

(ii) *Then the Commission takes up the roster points in respect of which the recruitment had taken place. As we have pointed out earlier, the Explanation under Rule 22(c) mandated that all selections for appointment shall start afresh from serial number 1 in Schedule-III, if the vacancies sought to be filled up had arisen on and from 29.4.2009. This is due to the fact that the 200 point roster was introduced only with effect from the said date."*

17. Further, when 100 point roster is prescribed in the *Rules*, the administrative instructions in G.O.Ms.No.241 cannot override the same. This position is clear as laid down by the Constitution Bench of the Hon'ble Supreme Court of India in ***Sant Ram Sharma Vs. State of Rajasthan and Ors.***<sup>2</sup> and reiterated in the paragraph No.39 of the subsequent decision of the Constitution Bench of the Hon'ble Supreme Court of India in ***Guman Singh Vs. State of Rajasthan and Ors.***<sup>3</sup>. The said paragraph No.39 of the said

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<sup>2</sup> (1968) 1 SCR 1111

<sup>3</sup> (1971) 2 SCC 452



judgment in **Guman Singh's** case (cited *supra*) is extracted hereunder:

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*"39. Then the question is whether Government is competent to issue the said Circular and whether the Circular in any manner affects the discretion and powers of the Committee functioning under the statutory rules. The position is clear, as laid down by this Court in **Sant Ram Sharma v. State of Rajasthan**:*

*"It is true that the Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed."*

Useful reference can also be made in this regard to the judgment of this Court in **Ranjithkumar Vs. The Secretary, Tamil Nadu Public Service Commission and Anr.**<sup>4</sup>, whereby, a learned Single Judge had ruled on this position in respect of this very *Tamilnadu State and Subordinate Services Rules*.

18. We find that the first impugned order dated 09.01.2009 is without application of mind inasmuch as it does not contain any reason as to the explanation submitted by the second respondent on 25.09.2008 that only because of non-availability of Schedule Caste Women candidates, a male

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<sup>4</sup> 2013 (1) LLN 203 (Mad.) and 2013 SCC OnLine Mad 47



candidate in the same category was appointed which is consonance with Rule 21 of the *Rules*. Therefore, the same is illegal and is liable to be quashed.

19. When the second respondent school persisted and re-submitted the case of the appellant for consideration again, the second impugned order dated 25.05.2009 rejected approval for a new reason that only 200 point roster has to be followed. It can be seen that vacancy was approved and selection was made in the year 2008 and the 200 point roster came into operation only with effect from 29.04.2009 and therefore, the second impugned order is also illegal and is liable to be quashed.

20. It can be seen that the second respondent school is not at fault. On the first occasion, it had complied with the *Rules* and duly made selection and appointed the appellant. Only because of the fact that the first respondent rejected approval for the second time, it had gone in for fresh selection as per the erroneous direction of the first respondent to select a candidate from Open Category by following 200 point roster. Thus, neither the second respondent nor the third respondent can be blamed or put to prejudice on account of error committed only by the first respondent.

21. The learned Single Judge dismissed the Writ Petition firstly on the



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ground that when the appellant was removed from service on 22.10.2009, he filed the Writ Petition only on 29.03.2010. In this regard, it has to be seen that no order of cancellation of appointment or discharge from service was passed. On the direction of the first respondent, the third respondent was appointed thereafter only on 11.01.2010. Therefore, it is normal for the appellant to approach the second respondent and the first respondent praying to continue him and after running pillar to post, he had approached this Court on 29.03.2010 itself. There is no delay or laches on the part of the appellant. The second reasoning of the learned Single Judge is that he did not challenge the appointment of the third respondent. In this regard, we again see that the Writ Petition is filed with a prayer to quash the above impugned orders of the first respondent and with consequent prayers for direction to the second respondent to resend the proposal and the first respondent to approve the same. The third respondent is made a party to the Writ Petition. Thus, when in substance the Writ Petition challenges the subsequent appointment of the third respondent, merely requiring in form, then there is no prayer to set aside the appointment order of the third respondent, cannot be countenanced especially when the order of appointment is a matter between the third respondent and the second respondent, a copy of which was not served on the appellant. Thus, we cannot agree with both the technical grounds, only upon which the learned Single



Judge dismissed the writ petition.

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22. Finally, now adverting to the relief to be granted, the appellant though diligently pursued the remedies, only account of the pendency of the litigation, now the third respondent had continued in service for 13 years and it would be inequitable to order her removal from service at this point of time. At the same time, it can be seen that injustice has been done to the appellant Teacher, for which, he is entitled to remedy. In this case, the appointment relates to the year 2008 and therefore, TET qualification was not necessary. Considering all the above, it would suffice to direct the first and second respondents to forthwith appoint the appellant by creating supernumerary post with the directions in detail herein after set out.

23. In the result,

(i) The W.A.No.622 of 2022 is dismissed as not maintainable in terms of the ratio laid down by the Full Bench of this Court in its judgment in ***District Collector and Ors. Vs. N.Udayappan and Anr.***<sup>5</sup> as the Review Application was simply dismissed as no grounds for review exists;

(ii) The W.A.No. 245 of 2019 is allowed on the following terms :

(a) The W.P.No.7680 of 2010, filed by the

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<sup>5</sup> (2021) 2 Mad LJ 561



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petitioner stands allowed by (1) quashing the orders of the first respondent dated 09.01.2009 and 25.05.2009; (2) the second respondent is directed to permit the appellant to forthwith join duty as B.T. Assistant (Tamil) and re-submit the proposal of the appellant for approval; (3) the first respondent shall approve the appointment if any vacancy in the post of B.T. Assistant (Tamil) is available in the second respondent school as on date; (4) if no such vacancy is available, the first respondent shall create / permit a supernumerary vacancy temporarily for the second respondent school and the appellant's appointment shall be approved; (5) it would be open for the first respondent to re-deploy the second respondent to any other school or post, subsequently after his appointment in accordance with law or to accommodate him subsequently in the next vacancy which may arise in the same school and thereupon the supernumerary post shall cease to



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exist; (6) the appointment of the appellant shall be effective from the date of this order and will be considered effective for all purposes only with effect from the date of this order and the appellant will be entitled to salary and all other benefits from the date of this order.

(b) There shall be no orders as to costs.

(iii) There shall be no orders as to costs in the writ appeals also.

(J.N.B., J.)

(D.B.C., J.)

28.06.2023

Index : yes  
Speaking order  
Neutral Citation : yes  
grs

To

1. The District Educational Officer,  
Thirupattur, Vellore District.
2. The Secretary,  
Hindu Girls Higher Secondary School,  
Ambur, Vellore District.



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**J.NISHA BANU, J.  
AND  
D.BHARATHA CHAKRAVARTHY, J.**

grs

**Pre-Delivery Judgment in**

W.A.Nos.245 of 2019 and 622 of 2022

28.06.2023