



W.P.(MD).No.882 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.07.2023

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**THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**W.P.(MD).No.882 of 2021**

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... Petitioner

Vs.

1.The District Educational Officer,  
Thoothukudi, Thoothukudi District.

2.The Block Educational Officer-II,  
Ottapidaram, Thoothukudi District.

3.The Correspondent,  
R.C. Primary School, Kallathikinaru,  
Parivillikottai, Ottapidaram Taluk,  
Thoothukudi District.

... Respondents

**Prayer** : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the second respondent to forward the written proposal sent by the third respondent, dated 21.12.2020 to the first respondent and further direct the first respondent to approve the appointment of the petitioner as Secondary Grade Teacher in the third respondent school with effect from 04.06.2019.

For Petitioner : Mr.D.Venkatesh



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For R-1 & R-2 : Mr.N.Ramesh Arumugam  
Government Advocate  
For R-3 : No appearance

### **ORDER**

The present writ petition has been filed seeking direction to the second respondent to forward the written proposal sent by the third respondent, dated 21.12.2020 to the first respondent and further direct the first respondent to approve the appointment of the petitioner as Secondary Grade Teacher in the third respondent School with effect from 04.06.2019.

2. The petitioner was appointed as a Secondary Grade Teacher in the third respondent School by an appointment order, dated 03.06.2019. The third respondent School is a Minority Institution getting Government aid. After the petitioner's appointment as required by the relevant statute, the third respondent School sent a written proposal, dated 30.10.2019 to the first respondent through the second respondent for approving the petitioner's post of Secondary Grade Teacher with effect from 04.06.2019, that is, the date of joining the School. Thereafter, the said proposal was returned for rectification and it was re-submitted on 16.07.2020 by the third respondent to the second respondent.



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Through the communication, dated 14.09.2020, the second respondent has forwarded the original written proposal, dated 30.10.2019 along with the Service Register of the petitioner to the first respondent for approval of her post.

3. In the meanwhile, the first respondent in his communication, dated 20.11.2020 directed the second respondent not to forward any proposal for approval by citing the interim order passed in W.P.No.31575 of 2019, dated 08.11.2019 at the Principal Bench of this Court. In the said communication, the order date was mentioned as 28.11.2019. The first respondent by citing the said order and also the consequential Government letter, dated 04.12.2019 had directed the second respondent not to entertain and send the proposal for new appointments in the third respondent School until further orders from the Government.

4. The third respondent further highlighted that the G.O(Ms)No.165 was issued on 17.09.2019 and the petitioner's appointment was made on 04.06.2019. On that basis, the third respondent School requested the respondents 1 and 2 to approve the appointment of the petitioner since there is



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no surplus in the third respondent School. However, the proposal was kept in abeyance and is not considered so far. Hence, this writ petition came to be filed seeking to direct the second respondent to forward the written proposal sent by the third respondent on 21.12.2020 to the first respondent and further direct the first respondent to approve the petitioner's appointment as Secondary Grade Teacher in the third respondent School with effect from 04.06.2019.

5. The learned Counsel for the petitioner relied upon the order passed by this Court in W.P(MD)No.22110 of 2022, dated 13.07.2023, in which a similar case was dealt with. The relevant portion of which is extracted as follows:

*“4. The learned Counsel appearing for the petitioner, relying upon the order passed by this Court in W.P(MD)No.12040 of 2021, dated 30.06.2022 (L.Princeton Fernando Vs. The Secretary, Department of Higher Education), contended that the impugned order is bad in the light of the said order, wherein this Court has categorically held that the competent authorities cannot keep the proposal of approving the appointment of those Teachers, who were appointed in sanctioned vacancies well before the judgment in the case of Secretary to Government and Others Vs. Iruthaya Amali and Another reported in 2021 SCC Online Mad 1285 and the relevant portion of which is extracted as follows:*



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*"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."*

6. He also relied upon another order passed by the Hon'ble Division Bench of this Court in W.A(MD)No.1067 of 2020, dated 22.06.2023. The relevant portion of which is extracted as follows:

*"13. Insofar this process is concerned, though a set of directions have already been given by a Division Bench of this Court, they have not accepted such directions, instead, the department preferred Special Leave Petition before the Hon'ble Supreme Court, where they claimed that S.L.P. is pending and citing the reason, the enumeration of the teachers which are excess on various private schools have not at all been taken and as*



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*a sequel no deployment could be made, therefore, if at all the deployment exercise could not be made the blame cannot be made on any individual teacher or the school concerned, but it should be made only against the appellant department as they have miserably failed to do their job."*

7. In view of the same, the learned Counsel for the petitioner pressed for allowing this writ petition.

8. Per contra, the learned Government Advocate for the respondents contended that there are as many as surplus teachers in the particular Management / Corporation itself. As on date, the Corporation under which the third respondent School is functioning, there are as many as 18 surplus teachers as identified by the authorities for the year 2022-2023. In view of the same, before deployment of all the surplus teachers to the needed Schools, any kind of appointment and the proposal seeking approval of appointment cannot be considered by the authorities concerned and he pressed for dismissal of this writ petition.



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9. Heard the learned Counsel for the petitioner and the learned Government Advocate for the respondents and carefully perused the materials available on record.

10. It is pertinent to mention here that the date of appointment of the petitioner is by order, dated 03.06.2019 and she promptly joined the third respondent School on 04.06.2019, that is, the date which is far before the date of issue of G.O(Ms)No.165, dated 17.09.2019 and the judgment with directions passed by the Hon'ble Division Bench of this Court in W.A(MD)No.76 of 2019 and batch, dated 09.04.2019. The letter of the Government, dated 04.12.2019 has referred to the order passed by the Hon'ble Division Bench of this Court in the case of ***The Secretary to Government, Government of Tamil Nadu, School Education Department and Others Vs. Iruthaya Amali and Another*** in ***W.A(MD)No.76 of 2019 and batch***, which is pending before the Hon'ble Apex Court till date and the compendium of directions whatever has been passed by the Hon'ble Division Bench of this Court cannot be given a retrospective effect and hence, on the ground of those direction, the authorities cannot hold the proposals and keep the proposal seeking the approval of appointment in abeyance.



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11. In view of the same, this Court is hereby directs the second respondent to forward the proposal sent by the third respondent, dated 21.12.2020 to the first respondent and further direct the first respondent to approve the petitioner's appointment as Secondary Grade Teacher in the third respondent School with effect from 04.06.2019 if the petitioner is otherwise qualified as per the relevant rules and laws within a period of twelve (12) weeks from the date of receipt of a copy of this order.

12. With the above said observation, this writ petition stands allowed.

There shall be no order as to costs.

**19.07.2023**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes  
BTR



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**L.VICTORIA GOWRI, J.**

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