



W.A.(MD) No.1557 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.09.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

**W.A.(MD) No.1557 of 2023
and
C.M.P.(MD)No.12063 of 2023**

- 1.State of Tamil Nadu
Rep. by its Principal Secretary,
Department of School Education,
Fort St. George, Chennai-600 006.
- 2.The Commissioner of School Education,
DPI Campus, Chennai-5.
- 3.The Chief Educational Officer,
Office of the Chief Educational Officer,
Thoothukudi District.
- 4.The District Educational Officer,
Office of the District Educational Officer,
Tiruchendur, Thoothukudi District.

... Appellants/Respondents 1 to 4

-vs-

- 1.C.Esakkimuthu ... 1st Respondent/Writ Petitioner
- 2.S.Shunmugasundara Nadar Higher Secondary School,
Rep. by its Secretary,
Authoor-628 151,
Thoothukudi District. ... 2nd Respondent/5th Respondent



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PRAYER: Writ Appeal has been filed under Clause 15 of Letters Patent to set aside the order, dated 02.09.2023 made in W.P.(MD)No.4384 of 2022 on the file of this Court.

For Appellants	: Mr.D.Sadiq Raja Additional Government Pleader
For R1	: Mr.S.Rajasekar

JUDGMENT

[Judgment of the Court was made by D.BHARATHA CHAKRAVARTHY, J.]

This Writ Appeal is directed against the order of the learned Single Judge dated 02.09.2022 made in W.P.(MD)No.4384 of 2022 in and by which, the learned Single Judge allowed the writ petition filed by the first respondent.

2. In the said writ petition, the first respondent/writ petitioner had challenged the order of the appellants, dated 10.02.2022 refusing to approve his appointment as B.T. Assistant (Science) as against the sanctioned aided post in the second respondent school.



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3. The brief facts leading to the filing of the writ appeal are that the second respondent in the appeal is an Aided Non-minority School. In the year 2019, one K.S.Murugan holding the post of B.T. Assistant (Science) voluntarily retired from service. The second respondent school sought the permission of the appellants to fill up the resultant vacancy and by an order dated 29.01.2019 permission was granted. Accordingly, after due selection, the first respondent was appointed as B.T. Assistant (Science) with effect from 05.03.2019 and the proposal was immediately sent for approval thereof. The proposal was returned by an endorsement dated 10.03.2019 and was again re-presented. Thereupon the order impugned in the writ petition dated 10.02.2022 was passed thereby refusing to approve the appointment of the first respondent. The relevant portion of the impugned order reads as follows:

“மேலும் உபரிப் பணியிடங்கள் சார்பாகவும் இது சார்பான வழக்கு WA(MD)No.76 of 2019-ல் வழங்கப்பட்ட 31.03.2021 தீர்ப்புரைபடியும், அரசின் தெளிவுரைகள் பெறாத நிலையிலும் இக்கருத்துருவினைப் பரிந்துரை செய்ய இயலாது என்ற விபரம் பள்ளிச்செயலருக்குத் தெரிவிக்கப்படுகிறது.”

4. Challenging the same, the above writ petition was filed. The learned Single Judge considered the case along with the batch of writ petitions and allowed the writ petition by directing approval of appointment by considering



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the issue of redeployment of the surplus teachers and held that in view of the judgment of this Court in ***L.Princeton Fernando Vs. The State of Tamil Nadu, Department of Higher Education and Others***¹, the stand of the appellants that approval cannot be granted till redeployment of the surplus teachers in the District cannot be sustained. Aggrieved by the same, the present writ appeal is filed.

5. *Mr.D.Sadiq Raja*, the learned Additional Government Pleader taking this Court through the impugned order would submit that it can be seen from the impugned order that the appointment was refused to be approved only because of the judgment in ***Iruthaya Amali's case***². The Hon'ble Division Bench of this Court in ***Iruthaya Amali's case*** has categorically considered the questions regarding surplus teachers. It has held *inter alia* that it is the school as such will be taken as a unit and not the corporate management for the purpose of determining whether the teaching post is in surplus. Secondly, it is also categorically held that so long as there is a surplus in the district, unless and until such surplus teachers are redeployed and exhausted, no appointment can be made by the schools. Eventhough a Special Leave Petition is preferred by the Government against the Division Bench regarding various

1 W.P.(MD)No.12940 of 2021, dated 30.06.2022

2 (2021) SCC Online Mad 1285



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other questions and the same is pending and the judgment is stayed only in respect of paragraph 95(i) which is relating to the grant for additional staff employed in the aided schools and in other respects as on date the ratio of the said judgment governs the field. Therefore, he would submit that when surplus teachers in the cadre of B.T. Assistants (Science) 14 in number were available in the district as on date of the appointment, there was no question of any approval.

6. *Mr. Sadiq Raja*, would further submit that the appointment of the writ petitioner was made on 05.03.2021 and thereafter, on 10.04.2019, the Hon'ble Division Bench of this Court had in fact granted an interim order restraining the appellants/respondents from approving any appointment pending disposal of the batch of appeals and ultimately by the judgment dated 31.03.2021 held that the district surplus teachers have to be redeployed and as such the said judgment even though is on 31.03.2021 has to be applied to the instant case. Before the approval is granted to the writ petitioner, the judgment has come into force, the same would have to be applied retrospectively and would affect all the pending proceedings. Therefore, he would submit that the order of the learned Single Judge requires interference.



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7. Per contra *Mr.S.Rajasekar*, the learned counsel for the first respondent would submit that the judgment of the Hon'ble Division Bench of this Court in ***Iruthaya Amali's case*** came into force only on 31.03.2021, whereas the appointment of the writ petitioner was on 05.03.2019. The appointment was even prior to the interim order granted by the said Division Bench. As a matter of fact, earlier to the said judgment, the Government has passed G.O.Ms.No.165, dated 17.09.2019 and this Court had in a catena of judgments considered that only after passing of the said G.O., the district surplus can be taken into account and prior to the said Government Order, the district surplus cannot be shown as a reason for refusing approval.

8. The learned counsel would rely upon the judgment of this Court in ***The Director of School Education and Others Vs. Ms.N.Prathiba and another***³, wherein this Court has held that if an appointment is made prior to the coming into force G.O.Ms.No.165, then the first respondent cannot deny approval of the appointment. Further, the learned counsel would submit that the position as to district surplus, was made clear only after the final judgment in ***Iruthaya Amali's case*** dated 31.03.2021 and as far as the appointments made prior to the judgment, the appellants themselves have

³ W.A(MD)No.1381 of 2023 dated 28.08.2023



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9. The learned counsel appearing for the first respondent would further rely upon the judgment of this Court in **State of Tamil Nadu and 3 others Vs. The Correspondent, ST. John Vianney's Girls Higher Secondary School, Palliyadi, Kanayakumari District⁴** to contend that even though in the said case, the Government had pleaded that there were 311 surplus B.T Assistants in Kanniyakumari Dsitric, still the Hon'ble Division Bench of this Court considered the **Iruthaya Amali's case** and the fact that the special leave petition pending and still held that the availability of the surplus teachers in the district cannot be a ground to reject the approval of the appointment. Therefore, he would submit that this Court need not interfere with the Order of the learned Single Judge.

⁴ W.A(MD)No.125 of 2022, dated 28.03.2022



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10. We have considered the rival submissions made on either side and perused the material records of the case. The question which arises for consideration is :

“Whether in ratio in ***Irudaya Amali's case***, that schools cannot make an appointment until the district surplus is exhausted, has to be applied to the appointments made prior to the decision of the said case ?”

11. There is no quarrel over the proposition that the questions as to whether the school should be taken as a unit or the educational agency as such should be taken as the unit for determining the surplus teachers and whether if the surplus teachers are available in the district, appointments can be made, have been considered in detail by the Hon'ble Division Bench of this Court in ***Iruthaya Amali's case***. It is also not in dispute that after detailed consideration of the issue, the Hon'ble Division Bench of this Court has held that only the concerned school alone and not the education agency should be taken as a unit while determining the surplus and that until the surplus teachers available in the district are redeployed, no appointment can be made by the aided schools. The said judgment came to be delivered on 31.03.2021.



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12. It cannot also be disputed that any judgment is retrospective unless it is rendered prospective. Useful reference can be made in this regard to the Judgment of the Hon'ble Supreme Court of India in ***Assistant Commissioner of Income Tax, Rajkot -Vs- Saurashtra Kutch Stock Exchange Limited***⁵ to paragraphs 35 -37.

13. As a matter of fact, the conclusions/directions are made in ***Iruthaya Amali's case*** :

“95. In view of the aforesaid discussions, we are inclined to pass the following orders in this batch of cases :

“(a) For the purpose of fixing the students-teacher ratio, the provisions of RTE Act followed by the G.O. passed in this regard shall be taken as the basis and the student pupil ratio shall be either 1:30 or 1:35 as the case may be as per the provisions of RTE Act.

(b) For the purpose of fixing the staff strength of a school, school shall be the unit and not the Educational agency / joint management / corporate management.

(c) Once the staff strength is fixed in a particular academic year of a school, it is the duty of the Educational authorities to identify the excess staff and once the excess staff are identified, the same shall be intimated to the school concerned as per the compendium of schedule and thereafter, take steps to redeploy those excess staff to

5 (2008) 14 SCC 171



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(d) Once the excess staff are identified and after keeping the Institution intimated, if those excess staff are redeployed to the needy school within a stipulated time as per the compendium of schedule, the redeployed staff shall join duty in the redeployed school.

(e) The following compendium of schedule, for the aforesaid purpose, i.e., for fixing the teaching staff, identifying the excess teaching staff and to redeploy the identified excess teaching staff to the needy school, are framed as hereunder.

(f) COMPENDIUM OF SCHEDULE :

(i) Closing of Admission for the purpose of fixation of staff strength - 31st July of that academic year.

(ii) Fixation of staff strength of the school concerned, based on the student strength as on 31st July as per the strength of the pupil updated in the EMIS - 10th August.

(iii) The aforesaid fixation of staff strength of the school shall be intimated to the school on or before 15th August.

(iv) On receipt of information from the Department, the School concerned shall give its objection if any, based on the teacher-pupil ratio on such fixation of staff strength by 25th of August.

(v) On receipt of such objection, if any, from the school concerned, the final order of fixing the staff strength of the school, with the provisional order for



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identification and redeployment of excess staff shall be passed by the Department by 5th of September.

(vi) On receipt of such intimation of provisional order on identification and redeployment of excess staff, the school under corporate or joint management, shall act upon to give its consent to the redeployment of excess teacher concerned after keeping the teacher informed, to the Department, by 15th of September.

(vii) On receipt of such reply / intimation from the school concerned, final redeployment order shall be made and communicated to the school from where redeployment is made with a copy marked to the teacher concerned and also to the needy school to which the deployment is to be made, by 25th September.

(viii) On receipt of such orders by the teachers who are redeployed, they shall report to the school where they have been redeployed, on or before 30th September.

(ix) After making this redeployment process, still excess staff are available, the Education Department shall take further effort, and those excess teachers still available at the hands of the Education Department to be redeployed to a needy school beyond the corporate management concerned, i.e., to any school located in the same Educational District or Revenue District and even beyond which if still excess staff are available, they can be redeployed to any school beyond the Revenue District of course after getting the choice of such teacher



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concerned and that shall be completed by 10th October.

(x) Those teachers who got such redeployment within the Revenue District or beyond the Revenue District by orders to be issued on or before 10th of October, shall report duty to the School where they have been redeployed on or before 15th of October.

(xi) It is made clear that beyond 15th October of every academic year, no redeployment of teacher shall be made or given effect to.

(g) Once the teachers are redeployed from a particular school, after the joining time as provided under the compendium of schedule, the school from which the teacher has been redeployed cannot get teaching aid for the next month salary for that redeployed teacher and that salary shall be paid only through the school, where the teacher has been redeployed, for which, teaching grant shall be sent by the Educational authorities only to the needy school, where the teacher has already been redeployed.

(h) While identifying the excess staff for redeployment purpose as indicated above, regard has to be given that as far as possible junior most teacher shall be subjected to such redeployment. Also in case of high and higher secondary schools, while making such redeployment based on teacher-pupil ratio, regard has to be given to ensure that, atleast the minimum required teacher, for each subject being taught in the school, are in possession.

(i) Insofar as the teaching grant for the additional staff



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employed in the already aided school as on the academic year 1991-92, irrespective of the medium of instructions or irrespective of the students strength, as per the teacher pupil ratio as indicated above especially in the context of RTE Act and subsequent G.O issued in this regard, the staff fixation shall be made and for those additional teaching staff, who are pressed into service for additional standard or additional class started, from the academic year 2021-22, staff grant shall be sanctioned by the State Government as such sanctioning of staff grant will be the essential requirement to meet the object of the provisions of the RTE Act, otherwise, the Fundamental Right guaranteed to the children between the age of 6 and 14 studying in those schools would get affected.

(j) Irrespective of the medium of instruction, whether Tamil or English, such a staff grant for additional sections or standard shall be provided with the same condition as indicated above from the academic year 2021-22.

(k) The State Government shall ensure that, the provisions of the Tamil Nadu Tamil Learning Act, 2006 are implemented in letter and spirit, of course subject to the judicial orders / court orders, if any, passed in this regard for giving exemption to a group or class of students as provided under Section 5 of the said Act.

(l) Until the Tamil Nadu Private Schools (Regulation) Act, 2018 and the Rules to be made thereunder are given effect to, these set of directions issued in this order shall mandatorily be followed by the stakeholders, i.e., both State Government as well



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as the Educational Institutions.

(m) Once the 2018 Act and the Rules to be made in this regard comes into effect and the issues which are covered under this order as per these mandatory directions are taken care, these mandatory directions shall be ceased to be in execution.

(n) In order to give effect to such comprehensive legislation, i.e., 2018 Act, the work of framing necessary Rules under the Act shall be completed as early as possible.

(o) In view of the aforesaid, the G.O.Ms.No.165, School Education [Tho.Ka.2(1)] Department, dated 17.09.2019 is hereby declared to be inoperative.

(p) In view of the statistics given by the communication of the Director of School Education and Director of Elementary Education, dated 28.10.2020, as the import of the same in entirety has already been quoted herein above, the Education Department shall take endeavour to identify the exact excess teaching staff in various category of Schools, i.e., Government schools (Panchayat Union, Municipality and Corporation) Primary and Middle Schools, Government aided primary and middle schools, Government High and Higher secondary schools and aided High and Higher Secondary Schools separately by taking into account the recent policy decision taken by the State Government, whereby the superannuation age of the Government servants including the teachers was enhanced from 59 to 60, thereby there would be no superannuation of teachers for the next one year and accordingly, the correct statistics shall be made ready within a period of two months.



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(q) Once the statistics of excess teaching staff under various category of schools as referred to above are made by taking into account the superannuation age of teachers, batch as 60, such excess teaching staff identified in various category of schools with details of name of the school both Government as well as Private aided, shall be uploaded in the website / web portal of the School Education Department within the aforesaid period of two months.

(r) Once such information are uploaded in the web portal by the Education Department, after verifying the same, the private aided schools, both minority and non-minority can point out any wrong information if given with regard to the identification of the excess teaching staff in the concerned school and such intimation or clarification can be given by the school concerned through the management to the DEO / CEO concerned within a period of one month thereafter.

(s) On receipt of such objections, information / clarification from the school concerned with regard to the alleged wrong information provided by the State Government / Education Department in the web portal as indicated above, the same shall be verified and rectified by the Education Department, within one month thereafter.

(t) This exercise shall be completed on or before 31st July 2021, so that the identification of excess staff and follow up action as indicated in the compendium of schedule herein above can be undertaken and be followed strictly.

(u) Till such excess teaching staff are identified under all



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category of schools as indicated above, no recruitment shall be made by the State Government / Education Department for the purpose of appointment of teachers under various categories like Secondary grade teacher, Graduate teacher, Post-Graduate teacher, Language teacher, Physical education teacher etc.,

(v) Like that insofar as aided minority institutions are concerned, if it is a stand alone institution, their right of appointing a teacher in a vacancy within the sanctioned strength for the academic year 2021-22 shall not be affected because of the identified excess teachers in other schools. At the same time, even if the school is a minority institution, however being administered by a joint management or corporate management, in respect of those schools, even though vacancy arose within the sanctioned strength of such school or schools under corporate management or joint management, those vacancies shall not be filled up unless the excess staff identified in all other schools under the same corporate or joint management are exhausted fully and only after exhausting the redeployment process on all excess teachers identified in the group of schools under the same corporate management, they shall be free to make appointment afresh from open market in the vacancy if any still, within the sanctioned strength."

14. A reading of the above directions in toto, it would be clear that first, the staff strength of a particular academic year has to be fixed and it shall be the duty of the authorities to identify the excess staff by taking into account



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the school as a unit. The excess staff have to be identified after keeping the institutions intimated. A Compendium of Schedule is prescribed by the judgment as follows: to fix the staff strength by 31st July of the academic year; updating of the staff strength by 10th August of the academic year; intimation to the school by 15th August; submission of objections if any by 25th August; consideration of objections and identification of the staff for redeployment to be made by 5th September; to obtain the consent for redeployment by 15th September; to make the order of redeployment by 25th September; and that the teacher should report before the redeployed school by 30th September. The Hon'ble Division Bench further directed framing of Rules under the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 to give effect to the set of directions. In view of these directions fixing a Compendium of Schedule and directing framing of Rules, the Hon'ble Division Bench of this Court declared G.O.Ms.No.165 as inoperative. Further, the Hon'ble Division Bench of this Court directed the identification of vacancies by taking retirement age as 60 and uploading in the web portal as to the staff strength and that the said exercise was ordered to be completed by 31.07.2021 and till such exercise is completed, it was ordered that no recruitment shall be made by the managements. Thus, the said exercise impossible to be carried out now retrospectively for the year 2019.



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15. Because of the above position, even though an interim order was granted on 10.04.2019 pending the above decision not to approve the appointments, the Division Bench had not negated or stated anything about the fate of those appointments of which approvals were pending. It is to be seen that the earlier interim order given by another Coordinate Bench was also nullified and the G.O.Ms.No.165 which was issued pursuant to the earlier order was also expressly declared to be inoperative.

16. The Hon'ble Division Bench was consciously did not nullify the appointments made earlier since it establishes a new norm to prevent administrative chaos and even directs framing of rules and it is not a simple case of upturning an earlier decision or ruling, by which it can be applied retrospectively to all pending cases. The findings of the Division Bench and the directions given depend on each other and without following the compendium of schedule, information of the school, etc, in isolation, the appointment which was made even prior to the interim order by the Hon'ble Division bench cannot be construed as having been affected by the judgment in ***Iruthaya Amali's case***.



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17. More so, whether the appointment which is made pursuant to an express permission can be refused approval or not was also not an issue in Irudaya Amali's case and thus would result in a great hardship and undue prejudice by applying the ratio to the a case where the appointment itself was made after express permission. Accordingly, we hold that the appointment of the writ petitioner cannot be refused citing the directions given in **Iruthaya Amali's case**. As a matter of fact even in the impugned order, the appellants/respondents were not clear as to whether **Iruthaya Amali's case** is applicable or not and that in view of the pronouncement since the Government has not come clear with the clarification they are not approving. Further, it can be seen that there was no redeployment of any teacher at all to the second respondent school and on the contrary, the appellants gave express permission for the second respondent school to fill up the vacancy.

18. The impossibility of retrospective or retro active application of directions in a Judgment has been considered by the Hon'ble Supreme Court of India in **Goan Real Estate Construction Limited and Another -Vs- Union of India**⁶ and it is specifically held in paragraph 31 that the Judgment should be read in the context and its entirety and the observations should not be

⁶ (2010) 5 SCC 388



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applied out of context. In paragraph 39 it is held that the nature of directions should be considered to give prospective effect. In paragraph 34 it is held that whenever a new norm is established the ability to retrospectively effectuate the new rule should be considered. Thus, applying the dictum, it can be seen that the Division Bench had consciously did not nullify the appointments pending approval.

19. For all the foregoing reasons, we are unable to accept the contentions raised by the learned Additional Government Pleader. For the reasons stated supra, we uphold the ultimate conclusion arrived at by the learned Single Judge that the appellants are liable to approve the appointment of the first respondent.

20. In view thereof, the Writ Appeal shall stand dismissed. The appellants shall grant the approval as directed by the learned Single Judge within a period of one month from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [D.B.C., J.]

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