



W.P(MD).No.17955 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 11.10.2023

ORDER PRONOUNCED ON : 01.11.2023

**CORAM:
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P.(MD).No.17955 of 2023
and W.M.P(MD).No.14995 of 2023**

Correspondent
St.Joseph's Girls Higher Secondary School
Madurai 625 009
Madurai District

....Petitioner

Vs

1.The State of Tamil Nadu
Represented by its Secretary
Department of School Education
Fort.St.George, Chennai 600 009

2.The Director of School Education
College Road, Chennai 600 009

3.The Chief Educational Officer
Madurai, Madurai District

4.The District Educational Officer
(Secondary Education)
Melur 625 106, Madurai District

...Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceeding issued by the fourth respondent District Education



W.P(MD).No.17955 of 2023

Officer in A.Thi.Mu.No.4469/A3/2023 dated ...06.2023 and the consequential impugned proceeding in A.Thi.Mu.No.4921/A8/2023 signed on 28.06.2023, quash the same and further direct the third respondent Chief Educational Officer herein to approve forthwith the appointment of E.Josephine Sheela as BT Assistant Social Science in the petitioner's School namely St.Joseph's Girls Higher Secondary School, Madurai w.e.f 01.06.2018 and disburse the grant-in-aid towards her salary and allowances w.e.f the said date with all attendant benefits.

For Petitioner : M/s.A.Amala

For Respondents : Mr.D.Sadiq Raja
Additional Government Pleader

ORDER

The present writ petition has been filed by the management of an aided minority School challenging the order dated Nil.06.2023 wherein the fourth respondent had returned the proposal for approving the appointment of a B.T.Assistant (History) was returned citing G.O(Ms).No.144 School Education (D1) Department dated 04.07.2008.

2. Contentions of the writ petitioner are as follows:

(i)The petitioner management had contended that the school is a recognised Religious Aided Minority which was started in the year 1932 as a High School and upgraded as Higher Secondary School in the year 1980.

(ii)2800 students are studying in the aided sections from VI to XII standards with 52 teaching and 15 non-teaching staff. The medium of



W.P(MD).No.17955 of 2023

instruction is both Tamil and English.

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(iii) In G.O(Ms.).No.79 School Education (U1) Department dated 14.06.2002, the Government of Tamil Nadu took a policy decision that the Secondary Grade Teachers were not qualified enough to handle the advanced syllabus prescribed in the Middle School Sections namely Standards VI to X and evolved the policy of appointing Graduate Teachers in those posts. The posts of Secondary Grade Teachers were decided to be upgraded into that of Graduate Teachers with effect from 01.06.2002.

(iv) In order to protect the interest of the existing Secondary Grade Teachers, the post of Second Grade Teachers would get upgraded as Graduate Teachers only when they fell vacant and on the said vacancies, the Graduate Teachers should be appointed. Such upgraded posts were called as Middle Grade Graduate Teachers.

(v) The post of a Secondary Grade Teachers fell vacant in the School on 01.06.2018 due to retirement of one Tmt.S.Kasthuri Kalyani on 31.05.2018. The School found one Tmt.E.Josephine Sheela as an eligible teacher, on merits and ability and she was appointed as B.T.Assistant (Social Science) with effect from 01.06.2018. She joined duty on the same day and she continues to discharge her duties.

(vi) The School submitted a proposal to the third respondent through the fourth respondent on 26.08.2019 requesting to upgrade the Secondary



W.P(MD).No.17955 of 2023

Grade Post as BT Assistant (Social Science) and to approve her appointment and disburse grant-in-aid towards her salary. The fourth respondent by his proceedings dated Nil.09.2019 returned the proposal seeking certain particulars and the School resubmitted the proposal along with the particulars on 20.09.2019. There was no response from the respondents and therefore, the School sent a representation to the third respondent through the fourth respondent on 31.01.2020 seeking approval.

(vi)The fourth respondent by his proceedings dated Nil.05.2020 sought some more particulars from the School. The School resubmitted their proposal along with the particulars on 29.07.2020. Again the fourth respondent, the District Educational Officer sought some more clarification vide proceedings dated Nil.09.2020. The School submitted its response on 01.12.2020.

(vii)The School sent a reminder to the third respondent on 07.06.2023 seeking to approve the appointment of the incumbent with effect from 01.06.2018. The fourth respondent vide impugned proceedings undated ---.06.2023 sought for a permission letter with regard to the subject roster. The School being the minority institution, there is no necessity to follow subject roster and based upon the need of the School, the post of Secondary Grade Teacher can be upgraded.



W.P(MD).No.17955 of 2023

(viii) Without considering the reply submitted by the School Management, the fourth respondent by his consequential impugned order again returned the proposal on 28.06.2023 on the ground that the School has to comply the defects in the earlier impugned order and to provide particulars with regard to G.O.Ms.No.144, School Education (D1) Department, dated 04.07.2008.

(ix) The School being a minority aided institution, compelling the said institution to follow the subject roster is in violation of the Tamil Nadu Recognised Private Schools (Regulation) Act and Rules. Even In G.O.Ms.No. 125, School Education (X2) Department, dated 12.11.2003, which is governing the appointment of the Middle Grade Graduate Teachers, there is no reference about the subject wise roster to be followed. Only the Government is the competent authority to issue such a subject roster in accordance with Section 19 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973.

(x) The Director of School Education by his proceedings dated 26.10.2004 and 13.01.2005 issued the circulars directing to follow subject roster. These two circulars were challenged by the aided minority institutions and the writ petitions were allowed through a judgement reported in **2006 (5) CTC 504 (The corporate Manager, CSI Corporate Schools Vs. The State of Tamil Nadu).**



W.P(MD).No.17955 of 2023

(xi) The School being the minority institution, for upgrading Secondary Grade Teacher post to be filled up by B.T.Assistant, they need not be followed G.O.Ms.No.79 School Education (U1) Department, dated 14.06.2002.

(xii) G.O.Ms.No.144 School Education Department, dated 04.07.2008 and G.O.Ms.No.244 School Education Department, dated 22.09.2007 are in the way of administrative instructions and they are not applicable to the aided institution for want of jurisdiction of the Government to issue any such instruction.

(xiii) A perusal of G.O.Ms.No.144 School Education Department, dated 04.07.2008 indicates that the Government is contemplating amendment of the Rules. So far the rules having not been amended, G.O.Ms.No.144 dated 04.07.2008 cannot be made applicable to the aided institution. Even in G.O.Ms.No.244 School Education Department, dated 22.09.2007, it has been specifically pointed out that the Director of School Education has been directed to send the proposal for amending rules. Therefore, G.O.Ms.No.144 School Education (D1) Department, dated 04.07.2008 and G.O.Ms.No.244 , School Education Department, dated 22.09.2007 are in the way of administrative instructions without any statutory backing. Hence, the present order of return directing the School management to follow G.O.Ms.No.144 School Education (D1) Department, dated 04.07.2008 is liable to be set aside



W.P(MD).No.17955 of 2023

and the direction may be issued to approve the appointment of Mrs.E.Josephine Sheela with effect from 01.06.2018 onwards.

3.Contentions of the learned Additional Government Pleader are as follows:

(i)The post of Secondary Grade Teachers fell vacant on 31.05.2018 due to retirement of one Tmt.S.Kasthuri Kalyani. The School management had addressed a communication to the fourth respondent herein seeking prior permission to upgrade Secondary Grade post into B.T.Assistant (Social Science). Such a request was rejected by the fourth respondent by his order dated 01.08.2019 on the ground that already Science teachers are available in excess and therefore, such a proposal for appointment of an Science teacher cannot be accepted. This rejection order has not been challenged by the Management.

(ii)The Management had appointed one E.Josephine Sheela as B.T.Assistant (History) with effect from 01.06.2018. When the Management has sought to upgrade Secondary Grade Teacher post to B.T.Assistant (Social Science), the appointment order is in relation to the B.T.Assistant (History) from the same day. Therefore, it is clear that the Management aware of the legal position that a prior permission has to be obtained from the authorities before upgrading a Secondary Grade Teacher post to the B.T.Assistant whenever a vacancy of Secondary Grade Teacher post arises.



W.P(MD).No.17955 of 2023

(iii) As per order passed by the fourth respondent herein on 01.08.2019, only English Teachers are lesser in number in the said School.

Unless the subject roster is followed and an English teacher is appointed, the authorities would not be in a position to grant approval. In the present case, B.T.Assistant (History) teacher has been appointed and therefore, the proposal was returned.

(iv)G.O.Ms.No.79 School Education (U1) dated 14.06.2002 is applicable to all aided institutions. The said Government Order has not been challenged by the aided institution at any point of time. As per the said Government Order, a prior permission has to be obtained before upgrading the Secondary Grade Teacher post as B.T.Assistant. Since the said Government Order has not been challenged, the present impugned order being consequential in nature, cannot be challenged.

(vi)G.O.Ms.No.244, School Education Department, dated 22.09.2007 was passed to the effect that whenever vacancies arise, teachers should be appointed as per the subject roster.

(vii)G.O.Ms.No.144 School Education (D1) Department, dated 04.07.2008 specifically pointed out that G.O.Ms.No.244 dated 22.09.2007 is applicable to the aided School also. In fact, G.O.Ms.No.144 School Education (D1) Department, dated 04.07.2008 specifically pointed out that whenever vacancies arise, it could be converted as B.T.Assistant post after



W.P(MD).No.17955 of 2023

obtaining prior permission from the Chief Education Officer who could pass orders depending upon the necessity and subject requirement. Therefore, all the aided Schools have to obtain prior permission before upgrading the vacancy of Secondary Grade Teacher post into a B.T.Assistant. Only after obtaining permission from the authorities concerned, any appointment could be made.

(viii) Even after an upgradation is permitted by the authorities, the School has to follow subject roster in appointment of middle School Graduate Teachers. In the present case, the prior permission for upgradation was rejected on 01.08.2019 and it has been accepted by the Management. In the said rejection order itself, it has been pointed out that the Science Teachers are more in numbers and only the English Teachers are less in number. Therefore, in the order dated 01.08.2019 both prior permission regarding upgradation as well as subject roster have been pointed out by the authorities. The Management has not chosen to challenge the said order, but has proceeded to appoint one Josephine Sheela as B.T.Assistant (History) with effect from 01.06.2018 in violation of the subject roster and also without obtaining prior permission for upgradation. Therefore, the impugned order is liable to be sustained.

(ix) The judgment of the learned Single Judge reported in **2006 (5)**

CTC 504 (The corporate Manager, CSI Corporate Schools Vs. The State of



W.P(MD).No.17955 of 2023

Tamil Nadu) is based upon the fact that at the relevant point of time, only a circular was challenged. In Paragraph No.15 of the said order, the learned Single Judge had found that the State is empowered to fix the subject roster after taking note of the educational requirement of a particular School or a group of School. In the said judgment, a circular issued by the Educational authority was under challenge and it was set aside on the ground that it was contrary to the Government orders. Now G.O.Ms.No.79, School Education (U1) Department, dated 14.06.2002, G.O.Ms.No.244 School Education Department, dated 22.09.2007 and G.O.Ms.No.144, School Education (D1) Department, dated 04.07.2008 have been passed by Government governing the aided Schools. Therefore, the said judgment cannot be relied upon by the School Management. Hence, he prayed for sustaining the order passed by the respondents.

4.I have considered the submissions made on either side and perused the material records.

Discussion:

5.The petitioner Management is an aided minority School. One Tmt.S.Kasthuri Kalyani who was working as a Secondary Grade Teacher got superannuated on 31.05.2018. In her vacancy, the petitioner Management had appointed a B.T.Assistant Teacher namely one Tmt.E.Josephine Sheela with effect from 01.06.2018. The case of the School Management is that as per



W.P(MD).No.17955 of 2023

policy decision of the State Government which is reflected in G.O.Ms.No.79, School Education (U1) Department, dated 14.06.2002, as and when vacancies arise in Secondary Grade Teacher post, it would get ungraded to B.T.Assistant for taking Classes VI to VIII standards. In view of the said G.O, the School Management had appointed a B.T.Assistant teacher in the post of Secondary Grade Teacher. The Educational Authorities have returned the proposal for approval on several occasions citing two reasons that the School has not obtained prior approval for upgrading the Secondary Grade Teacher post to the B.T.Assistant post and the School has not followed the subject roster.

6.The issues that arise for consideration in the present writ petition are as follows:

(a)Whether it is mandatory on the part of the aided minority institution to follow subject roster in filling up vacancies in the sanctioned post which are not surplus. ?

(b)Whether it is mandatory on the part of an aided School to obtain prior permission from the Educational Authorities before appointing B.T.Assistant teacher in a Secondary Grade post which had fallen vacant.?

(c)Whether the Government order in G.O.Ms.No.244 School Education Department, dated 22.09.2007 and G.O.Ms.No.144 School Education (D1)Department, dated 04.07.2008 are applicable to the aided institutions.?



W.P(MD).No.17955 of 2023

Subject Roster:

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7.A learned Single Judge of this Court in a judgment reported in **2006 (5) CTC 504 (The Corporate Manager, CSI Corporate Schools Vs. The State of Tamil Nadu)** has held that even though the State is empowered to fix the subject roster for a particular School or a group of School, it cannot be done through the circular orders or administrative instructions. The learned Single Judge has further found that the said circular or administrative instruction cannot be inconsistent with statutory provision already framed or enacted. The learned Single Judge was pleased to set aside the circular and directed the authorities to approve the appointment.

8.In a judgment reported in **2007 (2) MLJ 760 (Correspondent, Britannia Higher Secondary School, Chennai Vs. State of Tamil Nadu)**, a learned Single Judge of this Court has held that the requirement to maintain subject roster in respect of appointment of Middle Grade Graduate Teacher is in violation of the provisions of the Act whether it is a High School or Higher Secondary School.

9.The Hon'ble First Bench of our High Court in **W.A.1198 of 2007 by an order dated 20.09.2007 (The State of Tamil Nadu Vs. The Correspondent, TELC Middle School, Villupuram)** has approved the judgment of the learned Single Judge reported in **2006 (5) CTC 504 (The corporate Manager, CSI Corporate Schools Vs. The State of Tamil Nadu)**



WP(MD).No.17955 of 2023

and **2007 (2) MLJ 760 (Correspondent, Britannia Higher Secondary School, Chennai Vs. State of Tamil Nadu)** and dismissed the writ appeal filed by the State and directed the authorities to approve the appointment.

10. A learned Single Judge of this Court in **WP(MD).No.2750 of 2012 by his order dated 22.08.2013 (R.Emersan Udaisingh Vs. The State of Tamil Nadu and others)** had proceeded to allow the writ petition wherein G.O.Ms.No.144 School Education (D1) Department dated 04.07.2008 was challenged.

11.The Hon'ble Division Bench of this Court in a judgment in **WA(MD).No.716 of 2014 (The State of Tamil Nadu and others Vs.The Correspondent, St.Thomas Higher Secondary School, Pudukottai District)** dated 04.04.2017 had approved the judgment of the learned Single Judge in Emerson Udaisingh's case and the judgment reported in **2006 (5) CTC 504 (The Corporate Manager Vs. The State of Tamil Nadu & others)** and dismissed the writ appeal filed by the State.

Conversion of Secondary Grade Teacher to Middle Grade Graduate Teacher:

12.The Hon'ble Division Bench of this Court in **WA(MD).No.828 of 2014 (The Director of School Education, Chennai & others Vs. S.Vanitha & others) dated 22.04.2016** had an occasion to consider the contention of the State that there cannot be automatic upgradation of a Secondary Grade



WP(MD).No.17955 of 2023

Teacher post as B.T.Assistant by the Management itself and fix the subject of their choice and it is for the Director of School Education to consider the issue and order for conversion of a vacant post of Secondary Grade Teacher into a B.T.Assistant and fix the subject. The Hon'ble Division Bench after considering the said issue raised by the State had rejected it and dismissed the writ appeal.

13. A learned Single Judge of this Court in ***WP(MD).No.1853 of 2016 (J.Remila Vs. The Government of Tamil Nadu & others)*** by an order dated 22.06.2017 had considered a similar issue and allowed the writ petition following the judgement reported in ***2012 SCC Online Madras 1112 (R.C.Susai Higher Secondary School Vs.The Government of Tamil Nadu rep.by its Secretary to Government and others)***.

14.The judgement of the learned Single Judge in WP(MD).No.1853 of 2016, dated 22.06.2017 was put to challenge by the State before the Hon'ble Division Bench. The Hon'ble Division Bench in their judgement reported in ***2018 (1) WLR 410 (The Government of Tamil Nadu & others Vs. J.Remila & others)*** dated 14.11.2017 had an occasion to consider the legal issue whether an aided minority institution is required to obtain prior approval from the educational authority for conversion of Secondary Grade Teacher post to the B.T.Assistant post before making the appointment. After considering various decisions rendered by this Court, the Hon'ble Division



W.P(MD).No.17955 of 2023

Bench was pleased to dismiss the writ appeal.

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15.The Hon'ble Division Bench of this Court in ***WA(MD).No.1497 of 2017 (The Chief Educational Officer & another Vs. S.Josephin Vijaya & another)*** by their judgment dated 14.12.2017 were pleased to follow the judgment reported in ***2018 (1) WLR 410 (The Government of Tamil Nadu & others Vs. J.Remila & others)*** dated 14.11.2017 and dismissed the writ appeal. In the said judgment, the Hon'ble Division Bench was pleased to confirm the findings of the learned Single Judge that in view of G.O.Ms.No. 79, School Education (U1) dated 14.06.2002, the post of Secondary grade Teacher stands automatically upgraded into that of Graduate Teacher with effect from 01.06.2002.

16.The Hon'ble Division Bench of our High Court in a judgement in ***WA(MD).No.1115 of 2019 (The State of Tamil Nadu & others Vs. I.Jesu Praba & another)*** dated 12.11.2019 had relied upon the Division Bench judgment of our High Court in ***WA(MD).No.828 of 2014 (The Director of School Education & others Vs. S.Vanitha & others)*** dated 22.04.2016 and the Division Bench judgement reported in ***2018 (1) WLR 410 (The Government of Tamil Nadu & others Vs. J.Remila & others)*** dated 14.11.2017 and proceeded to dismiss the appeal filed by the State holding that the upgradation of a Secondary Grade Teacher post as B.T.Assistant will be automatic and no prior permission is called for from the authorities.



W.P(MD).No.17955 of 2023

17.The Hon'ble Division Bench of our High in ***WA(MD).No.201 of 2020 (The Director of School Education & others Vs. The Correspondent, St.Joseph's Higher Secondary School, Tuticorin)*** dated 14.08.2020 after following the judgment of the Hon'ble Division Bench of this Court reported in ***2018 (1) WLR 410 (The Government of Tamil Nadu & others Vs. J.Remila & others)*** dated 14.11.2017 and the Division Bench judgment of our High in ***WA(MD).No.828 of 2013, dated 22.04.2016*** proceeded to dismiss the appeal filed by the State.

18.The judgment in ***WA(MD).No.1115 of 2019 (The State of Tamil Nadu & others Vs. I.Jesu Praba & another)*** dated 12.11.2019 was sought to be reviewed by the State in Rev.Apl.No.136 of 2022. The Hon'ble Division Bench of this Court by its order dated 06.06.2023 has proceeded to dismiss the review application. The Hon'ble Division Bench in Paragraph No.10 of the said order has directed the management of the minority institutions to fill up the vacancies in the teaching post only after getting prior permission from the department. In Paragraph No.11, the Hon'ble Division Bench has pointed out that the future vacancies in teaching post can be filled up by the management only after getting prior permission from the department. Therefore, it is clear that even with regard to a minority institution, the teaching post can be filled up by the School management only after getting prior permission from the educational authorities. However, the said order



W.P(MD).No.17955 of 2023

would be applicable only for appointments made after 06.06.2023.

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19. In the present case, the appointment orders have been issued on 01.06.2018 and therefore, the said issue of obtaining prior permission from the authorities before appointing a teacher would not arise. The judgments of the learned Single Judge of this Court and the various Division Benches will clearly indicate that as far as the aided Schools governed by the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the concerned rules of the year 1974 are concerned, it would not be mandatory on the part of the School to follow subject roster unless and until, the Act or connected rules are amended. As far as the case of upgradation of Secondary Grade Teacher post to the B.T.Assistant is concerned, the Government has taken a policy decision that the Secondary Grade Teachers who are Diploma Holder in Teacher Education would not be in a position to handle the present day syllabus of the students of VI to VIII standards. Only on the basis of the said policy decision, the Government has directed the upgradation of the said Secondary Grade Teacher post as B.T.Assistant post.

20. This Court in a catena of the judgments has held that in view of policy decision of the State, the upgradation is automatic and no prior permission from the educational authorities is required. In fact, in any case if prior permission is sought for, the authorities are duty bound to confer upgradation, in view of the policy decision of the State Government.



W.P(MD).No.17955 of 2023

Therefore, it would be redundant to seek prior permission for upgradation of Secondary Grade post to the B.T.Assistant whenever a permanent vacancy arises. Any order rejecting the request for upgradation would be clearly in violation of the policy of the State to impart better education through B.T.Assistant teacher to the students of the classes VI to VIII.

Applicability of G.O.Ms.No.244 & G.O.Ms.No.144 to aided Schools:

21. A learned Single Judge of this Court in a judgment reported in ***2012 SCC Online Mad 1112 (R.C.Susai Higher Secondary School, Rep. by its Correspondent, Kazhugumalai, Tuticorin District Vs. The Government of Tamil Nadu Represented by its Secretary to Government and others)*** in W.P.No.18044 of 2011, dated 21.03.2012 in Paragraph Nos.86 to 91 has held as follows:

“86 In this background, it may be noticed that G.O.Ms.No.244 dated 22.09.2007 has no application to the Recognised Private School, as the Government of Tamil Nadu cannot issue the administrative instruction in exercise of powers under Sec.56 of the Act, nor can frame rules under Article 309 of the Constitution of India, as the power to make rules under Tamil Nadu Recognised Private School (Regulation) Act 1973, can only be by following procedure laid down under Sec.56 of the Act. The rules so framed are required to be published in the Government Gazette so as to be enforceable in law.



W.P(MD).No.17955 of 2023

87 *The G.O.Ms.No.244 therefore cannot have any application to the petitioner school.*

88 *G.O.Ms.No.125 dated 12.11.2003 has been issued in exercise of power conferred under Sec.56 of the Act, stand notified in the Tamil Nadu Government Gazette dated 3.12.2003. Therefore, it has force of law which has categorized teachers in 3 categories as referred to above.*

89 *This amendment is in force since 3.12.2003 and the schools are therefore, entitled to appoint the teachers as per the amended rules, which does not stipulates the roster.*

90 *The G.O.Ms.No.144 dated 4.7.2008 has been issued by the Government by way of administrative instructions. It is not understood how the Government could issue this order by way of clarification of G.O.Ms.No.244 for applying it to Government aided school when G.O.Ms.No.244 itself was not applicable to the Government aided schools for want of jurisdiction of the Government to issue any such instructions.*

91 *G.O.Ms.No.144 cannot be a basis to deny approval to the petitioner for the simple reason that reading of order itself shows that proposal to amend the Tamil Nadu Recognised Private Schools (Regulation) Act, 1974 is yet to be issued. Unless and until such an amendment is carried out and the rules framed are notified in the Gazette, till then the Government order cannot be applied to the recognised private schools.”*

22. The order of the learned Single Judge in the above case clearly lays

down the dictum that G.O.Ms.No.244 School Education Department, dated



W.P(MD).No.17955 of 2023

22.09.2007 is not applicable to a recognised Private School. The learned Single Judge had further held that G.O.Ms.No.144, School Education Department, dated 04.07.2008 cannot be a basis to deny approval unless the Tamil Nadu Recognised Private Schools (Regulation) Act, 1974 is amended and notified in gazette. The said writ petition was filed to quash G.O.Ms.No. 144 School Education (D1) Department dated 04.07.2008. The learned Single Judge was pleased to allow the writ petition.

23. The said judgement of the learned Single Judge has been approved by the Hon'ble Division Bench in a judgement reported in **2018 (1) WLR 410 (The Government of Tamil Nadu & others Vs. J.Remila & others)** dated 14.11.2017 and another Division Bench judgment in **WA(MD).No.201 of 2020 (The Director of School Education & others Vs. The Correspondent, St.Joseph's Higher Secondary School, Tuticorin)** dated 14.08.2020. Therefore, this Court is of the considered opinion that those two Government orders are not enforceable as against the aided Schools whether minority or non-minority until the Act and statutory rules are amended.

Manifold Litigations:

24.The Hon'ble First Bench of this Court in a judgement in **WA(MD).No.121 of 2015 (The State of Tamil Nadu & others Vs. D.Babusamy Kamalakaran & another)** dated 09.06.2016 in Paragraph No.4 has held as follows:



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“4. We would have found some merit in the contention of the appellants in normal circumstances. However, in the present case, not only the representation was made by the first respondent/Teacher from the very inception, but the legal position was settled as enunciated in the decision in M.Sivakumar v.The Government of Tamil Nadu and 2 others reported in 2005 Writ L.R. 515. It is trite to say that once legal principle is enunciated and it is not assailed further, the Government Departments are bound to implement it uniformly and not compel the persons to approach the Court unnecessarily as to get certification from the Court in every case. The appellants acted in breach of this principle and unnecessarily continued to deny the benefit to the first respondent/Teacher, despite the legal principle being accepted by them.

25.Though the legal position with regard to the applicability of the subject roster and conversion of Secondary Grade Post to B.T.Post have been settled long back in various decisions of the Hon'ble Division Bench, the educational authorities continue to reject the proposal of the School managements on the same ground and the State is also in the habit of vehemently defending the said orders, wasting the precious judicial time. If at all the State wants to introduce subject roster, the State should have made earnest efforts to bring in amendment in the Act and the connected rules. The authorities of the State are continuously attempting to defend this kind of orders without any statutory backing.



WP(MD).No.17955 of 2023

26.The order of the learned Single Judge in the judgments reported in **2006 (5) CTC 504** (*The corporate Manager, CSI Corporate Schools Vs. The State of Tamil Nadu*), **2007 (2) MLJ 760** (*Correspondent, Britannia Higher Secondary School, Chennai Vs. State of Tamil Nadu*), **2012 SCC Online Mad 1112** (*R.C.Susai Higher Secondary School, Rep. by its Correspondent, Kazhugumalai, Tuticorin District Vs. The Government of Tamil Nadu Represented by its Secretary to Government and others*) and the judgment in **WP(MD).No.2750 of 2012** (*R.Emersan Udaisingh Vs. The State of Tamil Nadu and others*), dated 22.08.2013 have been accepted by the State and no appeals have been filed. It is also brought to the notice of the Court that in all these concerned cases, orders have been issued to the teachers concerned in compliance with the orders of the Court. The judgments of the various Division Benches has also not been challenged by the State before the Hon'ble Supreme Court and they have been complied with. In such circumstances, the State is duty bound to direct its authorities not to disapprove the appointment of the teachers citing the subject roster or non-obtaining of prior approval for ugradation.

Conclusion:

27.In view of the above said facts, the impugned order of return passed by the fourth respondent dated 28.06.2023 citing the non-compliance of G.O.Ms.No.144, School Education (D1) Department, dated 04.07.2008 is



W.P(MD).No.17955 of 2023

hereby set aside and a direction is issued to the respondents to approve the appointment of the writ petitioner within a period of eight weeks with effect from 01.06.2018. The Writ Petition stands allowed with the said observations. No costs. Consequently, connected miscellaneous petition is closed.

01.11.2023

Internet : Yes/No
Index : Yes/No
NCC : Yes/No
msa



W.P(MD).No.17955 of 2023

To

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- 1.The Secretary
State of Tamil Nadu
Department of School Education
Fort.St.George, Chennai 600 009
- 2.The Director of School Education
College Road, Chennai 600 009
- 3.The Chief Educational Officer
Madurai, Madurai District
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W.P(MD).No.17955 of 2023

R.VIJAYAKUMAR, J.

msa

Pre-delivery order made in

W.P.(MD).No.17955 of 2023
and W.M.P(MD).No.14995 of 2023

01.11.2023