



W.P.(MD).No.12943 of 2016

**THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 22.02.2023**

**CORAM**

**THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

**W.P.(MD).No.12943 of 2016**

**and**

**W.M.P.(MD).No.9748 of 2016**

S.Rexlin Nesa Pushpa

... 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 – 600 006.
- 3.The Chief Educational Officer,  
Tirunelveli,  
Tirunelveli District.
- 4.The District Educational Officer,  
Cherenmadevi @ Tirunelveli,  
Tirunelveli District.
- 5.The Correspondent,  
St.Anne's Higher Secondary School,  
Koodankulam,  
Tirunelveli District – 627 106.

... Respondents



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**Prayer** : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the fourth respondent herein Moo. Mu.No. 4424/A3/2014 dated 06.06.2014 Quash the same, and further direct the fourth respondent herein to approve the petitioner's appointment as BT Assistant (Science) in the fifth respondent school from the original date of appointment ie., 01.06.2012 with salary and other monetary benefits.

For Petitioner : Mr.A.Ajith Geethan

For R-1 to R-4 : Mr.D.Sadiq Raja,  
Additional Government Pleader.

### **ORDER**

This Writ Petition is filed challenging the impugned order dated 06.06.2014 with a consequential direction to approve the petitioner's appointment as B.T.Assistant (Science) in the fifth respondent School from the original date of appointment ie., 01.06.2012 with salary and other monetary benefits.



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**WEB COPY** 2. The petitioner is qualified to be appointed as B.T. Assistant (Science).

The fifth respondent School is a recognized aided Minority Institution running School for the Standard VI to VIII. One Secondary Grade Teacher post fell vacant in the said School due to the promotion of previous incumbent namely, S.R.P.Devadoss who was serving as B.T. Assistant (History) on 01.06.2012. As per G.O.Ms.No.79, Secondary Education-U1 dated 14.06.2002, whenever a Secondary Grade Teacher post in the Standard VI to VIII falls vacant, it will be automatically upgraded as B.T. Assistant post. Moreover, the School filled up the post by appointing the petitioner as B.T. Assistant Science with effect from 01.06.2012. The fifth respondent School submitted a proposal on 07.11.2013 to the third and fourth respondents requesting to approve the petitioner's appointment as B.T. Assistant Science with effect from 01.06.2012. The said proposal was not acted upon, since the appointment has been made without following the subject roster as per G.O.Ms.No.100 School Education dated 27.06.2003. Later, the fourth respondent vide letter dated 06.06.2014 granted approval to the petitioner's appointment with effect from 24.10.2013 alone instead of approving it from the date of the petitioner's original appointment that is on 01.06.2012. Based on several judgments including the judgment



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rendered in the case of Corporate Manager, CSO Corporate School Vs State of Tamil Nadu reported in 2006 (5) CTC 504, it has been categorically held that subject roster system cannot be insisted to Minority Educational Institutions, the petitioner is claiming to approve from the date of appointment. The contention of the petitioner is that since the petitioner was appointed on 01.06.2012 itself, the petitioner is entitled to be approved from the date of his original appointment. However, the fourth respondent has passed the impugned order dated 06.06.2014 granting approval to the petitioner's appointment with effect from 24.10.2013 instead of 01.06.2012. Aggrieved over the same, the petitioner has filed this Writ Petition.

3. The respondents have filed counter stating that the Secondary Grade Teacher post fell vacant only on account of granting promotion to the incumbent S.R.P.Devadoss as B.T. Assistant (History) on 01.06.2012. Even though the said Devadoss was promoted on 01.06.2012, the said promotion was approved by the Department only on 24.10.2013. Only after the approval of the promotion, the said Secondary Grade Teacher post can be filled up. The Secondary Grade Teacher post ought to have been upgraded and the upgradation is not automatic as per G.O.Ms.No.79 Secondary Education (U-1)



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Department dated 14.06.2002. The School has not submitted any proposal for upgradation. Moreover, the School is seeking B.T. Assistant History post for the said Devadoss. The School was not sanctioned any B.T. Assistant History post. Therefore, there should be proceedings for conversion of such post as per G.O.Ms.No.100, School Education Department dated 27.06.2003. After considering all these factors, the respondents have granted approval to the said Devadoss on 24.10.2013. After the approval of the said Devadoss, the Secondary Grade Post falls vacant on 24.10.2013. Therefore, the petitioner's appointment was approved in the vacancy that arose after the promotion on 24.10.2013. If the petitioner's appointment is approved prior to 24.10.2013, there will not be any post of B.T. Assistant post at all. In such circumstances, without any post the petitioner would have been appointed. Therefore, the respondents claim that the petitioner is entitled to be approved from 24.10.2013 only and prayed to dismiss this Writ Petition.

4. The petitioner has filed the reply stating that the said Devadoss has also filed W.P.(MD)No.13583 of 2016 and the same was allowed. Aggrieved over, the respondents have filed Writ Appeal in W.A.Sr.No.58149 of 2021 and the Writ Appeal was dismissed in condone delay stage itself vide order dated



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09.11.2022. Subsequently, the respondents have preferred Review application in 56 of 2021 and the same was dismissed on 04.08.2022. The Hon'ble Division Bench has also held the appeal on merits holding that if the writ petition order was passed in the batch of Writ Petition, for other writ petitioners the respondents already filed Writ Appeals and the same were dismissed. After dismissal of appeals, the respondents have implemented the order of this Court. Therefore, the writ petitioner prays to allow this Writ Petition.

5. Heard Mr.A.Ajith Geethan, learned counsel for the petitioner and Mr.D.Sadiq Raja, learned Additional Government Pleader appearing for the respondents 1 to 4 and perused the records.

6. It is seen from the records that the petitioner was appointed on 01.06.2012. The School has submitted an application on 20.06.2012 itself. However, the respondents have not entertained the proposals, since already the proposal for the promotion was not approved. Since the petitioner was appointed in the resulted vacancy, the petitioner's proposal was not entertained by the respondents and the School was directed to submit the proposal, subsequent to the approval of the promotion of Devadoss. Thereafter, the fifth



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respondent School has submitted a proposal on 07.11.2013. The learned counsel appearing for the petitioner submitted that the said second proposal cannot be taken into account, since earlier the School has submitted proposal for approval in the year 2012 itself and the said application ought to be taken into account. The learned counsel further submitted that the respondents ought to approve the petitioner's appointment from the date of her appointment and not from the date of proposal.

7. After hearing the arguments, this Court is inclined to fix the date of proposal as approval only because when the School is submitting a proposal, that alone can be taken into account. When the School is approving the appointment from the date of proposal that alone should be taken into account. Therefore, the respondents are directed to approve the appointment of the petitioner from the date of first proposal that is on 20.06.2012. The said exercise shall be completed on or before 01.03.2023.

8. With the above direction, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.



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9. Post the case on 01.03.2023 for reporting compliance.

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**22.02.2023  
(1/2)**

NCC : Yes/No  
Index : Yes / No  
Internet : Yes/ No  
Nsr

**Note: Issue Order Copy on 23.02.2023.**

To

- 1.The Secretary,  
The State of Tamil Nadu,  
Department of School Education,  
Fort St.George,  
Chennai – 600 009.
- 2.The Director of School Education,  
College Road,  
Chennai – 600 006.
- 3.The Chief Educational Officer,  
Tirunelveli,  
Tirunelveli District.
- 4.The District Educational Officer,  
Cherenmadevi @ Tirunelveli,  
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- 5.The Correspondent,  
St.Anne's Higher Secondary School,  
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Tirunelveli District – 627 106.



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**S.SRIMATHY, J.**

Nsr

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(1/2)