



W.P.(MD) No.16143 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 31.08.2023

ORDERS PRONOUNCED ON : 20.10.2023

CORAM

THE HON'BLE MR.JUSTICE BATTU DEVANAND

W.P.(MD) No.16143 of 2016

and

W.M.P(MD) Nos.11807 and 11808 of 2016

S.Rejani

... Petitioner

Vs.

- 1.The State of Tamil Nadu
Rep., 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,
Kanyakumari District at
Nagercoil.
- 4.The District Educational Officer,
Kuzhithurai – 629 165
Kanyakumari District.



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5.The Correspondent,
T.C.K.Higher Secondary School,
Padandalumoodu P.O.,
Kanyakumari District – 621 194.

6.The Headmaster,
T.C.K.Higher Secondary School,
Padandalumoodu P.O.,
Kanyakumari District – 621 194.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus, calling for the records to the impugned proceedings issued by the 4th respondent DEO in Na.Ka.No. 2505/A2/2016 dated 24.03.2016, quash the same in so far as approval is granted to the appointment of the petitioner only with effect from 25.05.2013 (instead of 04.12.2007) and further direct the 4th respondent DEO, to approve forthwith the appointment of the petitioner as Post Graduate Assistant (Economics) in the 5th respondent School with effect from 04.12.2007 and to disburse the grant-in-aid towards her salary and other attendant benefits with effect from the said date.

For Petitioner : Mr.K.Ragadeesh Kumar
for Mr.T.Cibi Chakraborty

For R1 to R4 : Mr.V.Nirmal Kumar
Government Advocate



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Respondents 5 & R6: Unserved

ORDER

This Writ Petition has been filed for issuance of Writ of Certiorarified Mandamus to quash the impugned proceedings issued by the 4th respondent in Na.Ka.No.2505/A2/2016 dated 24.03.2016 and for a consequential direction to the 4th respondent to approve forthwith the appointment of the petitioner as Post Graduate Assistant (Economics) in the 5th respondent School with effect from 04.12.2007 and to disburse the grant-in-aid towards her salary and other attendant benefits with effect from the said date.

2. Learned counsel for the petitioner submits that the petitioner possessed B.A., M.A., and B.Ed. Degrees and she was serving as Post Graduate Assistant in Economics in the 5th respondent school namely, T.C.K.Higher Secondary School, Padandalumoodu, Kanyakumari District. The 5th respondent school was established in the year 1950 exclusively for



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the welfare of the Malayalam speaking Nair Community people and the school had been declared as Linguistic Minority Educational Institution by the decrectal order of the City Civil Court, Madras in O.S.No.158 of 1982. Since then it is functioning as Linguistic Minority Educational Institution for the welfare of the Malayalam speaking people.

3. Learned counsel for the petitioner submits that the 5th respondent school is offering education from standards VI to XII. The medium of instruction is Malayalam, English and Tamil. Among the total strength of 310, there are 157 students having their mother tongue as Malayalam, particularly, in the Economics group, among the total of 72 students, 53 are Malayalam speaking students.

4. Learned counsel for the petitioner submits that one post of PG Assistant in Economics in the 5th respondent school fell vacant due to the voluntary retirement of the then incumbent A.C.R. Selvin on 16.11.2007. The petitioner was appointed in that vacancy by the 5th respondent school as Post Graduate Assistant (Economics) with effect from 04.12.2007 and



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immediately after appointment, the 5th respondent school submitted a proposal to the 4th respondent for grant of approval of the appointment of the petitioner and disbursement of grant-in-aid towards her salary.

5. Learned counsel for the petitioner submits that after the demise of the Correspondent and the Manager of the school, some dispute arose with regard to the right of Management and Administration of the 5th respondent school, which led to Direct Payment to the staffs working thereunder by the 4th respondent *vide* his proceedings in Na.Ka.No. 7896/Aa2/08, dated 05.09.2008.

6. As the school was under Direct Payment, no steps were taken either by the Management or by the Headmaster of the School to get the appointment of the petitioner approved, even though the petitioner continuously worked in the said post. Hence, the petitioner filed a writ petition in W.P.(MD).No.5369 of 2015, seeking a direction against the 5th respondent to forward due proposal for approval of the appointment of the petitioner as Post Graduate Assistant in Economics in the 5th respondent



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school, in view of the appointment order dated 04.12.2007 and for a further direction to the 3rd and 4th respondents to approve her appointment with all consequential benefits.

7. This Court, by order dated 01.10.2015, directed the 5th respondent to forward the proposal for approval of the appointment of the petitioner within a period of three weeks and further directed the 3rd and 4th respondents to do the needful to consider the same on merits within a period of eight weeks thereafter.

8. Learned counsel for the petitioner submits that in compliance of the direction of this Court, the 6th respondent Headmaster submitted a proposal to the 4th respondent *vide* Letter No.296/2015, dated 26.11.2015, attaching all the relevant documents and explaining the reason for the delay in sending the proposal and also ensuring that there are sufficient number of Malayalam students in Economics Section and requested to approve the appointment of the petitioner as Post Graduate Assistant (Economics) with effect from 04.12.2007 and disburse grant-in-aid towards the salary of the



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petitioner. Thereafter, the 3rd respondent *vide* proceedings in Na.Ka.No. 2737/A2/2015, dated 27.11.2015 instructed the 4th respondent to check the availability of the post in the staff fixation and to get opinion from the Government Pleader for appropriate action.

9. Learned counsel for the petitioner submits that the 3rd respondent *vide* impugned proceedings in Na. Ka.No.2505/A2/2016, dated 24.03.2016 approved the appointment of the petitioner only with effect from 25.05.2013 instead of 04.12.2007, ignoring more than 5 years and 6 months of the petitioner's service for the reason that the petitioner has cleared her Second Class Language Test in Tamil only on 24.05.2013 and the 3rd respondent released the grant-in-aid with arrears only with effect from 25.05.2013.

10. Learned counsel for the petitioner submits that there is no such requirement of pass in Language Test prescribed under the Tamil Nadu Recognised Private Schools (Regulation) Act and Rules, which governs and prescribes Qualifications to the Staffs Appointed in Private Schools.



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Learned counsel for the petitioner submits that Annexure-V of the Tamil Nadu Recognised Private Schools (Regulation) Rules prescribes Qualifications for the Appointments as Teachers in private schools. As regards the aspect of Language Test is concerned, Rule 12A of the Tamil Nadu State and Subordinate Services Rules, which prescribes passing of Tamil Language Test as mandatory for all Government Servants, cannot be made applicable to the teaching staffs in Private Schools, since it is governed by its own Act and Rules. In as much as the Tamil Nadu Recognised Private Schools (Regulation) Act and Rules form a composite and wholesome Code governing the Private Schools, the impugned order run repugnant to the scheme framed under the Code, which is not permissible under the Law.

11. Learned counsel for the petitioner submits that from the date of appointment, the petitioner has been discharging her duty as PG Assistant diligently to the utmost satisfaction of the students studying thereunder. In no point of time, the respondents instructed the petitioner to complete the Language Test obviously for the reason the petitioner possessed full



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qualifications for holding the post as prescribed under Annexure - V of the Tamil Nadu Recognised Private Schools (Regulation) Rules. The petitioner was also awarded with certificate of appreciation from the 3rd respondent for getting cent percent result in the +2 examination during the academic years 2013-2014 and 2014-2015. While this being so, the act of the 4th respondent denying approval of appointment to the petitioner from the initial date of appointment viz., 04.12.2007 and granting approval only w.e.f. 25.05.2013 i.e., from the next day of passing Language Test and ignoring more than 5 years and 6 months of the valuable service is highly arbitrary, illegal, unconstitutional and without jurisdiction.

12. Learned counsel for the petitioner submits that the impugned order was passed in complete violation of principles of natural justice, as neither any notice nor any opportunity of hearing was provided to the petitioner before passing the impugned order. The 4th respondent is bound to approve the appointment from the initial date of appointment viz., 04.12.2007 and sought to allow the writ petition.



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13. Learned counsel for the petitioner has placed reliance on the following judgements of this Court:

i) ***S.Mohamood Basha Vs. The Director of Collegiate Education, College Road, Madras 600 006 and 2 others⁽ⁱ⁾***;

ii) ***Fr.Geevarghese Mathew Vs. The State of Tamil Nadu and others [W.P.(MD) No.11689 of 2017, dated 29.07.2021]***; and

iii) ***The Director of School Education, College Road, Chennai 600006 Vs. Geldon Wifres Viola and another⁽ⁱⁱ⁾***.

14. A counter affidavit has been filed by the 4th respondent on behalf of Respondents No.1 to 3.

15. Learned Government Advocate appearing for Respondents No.1 to 4, relying on the averments in the counter affidavit, submits that according to G.O.No.930, dated 09.06.1975 and G.O.No.64, dated 11.01.1977, a Government Teacher, who had his education in his mother

(i) 2002 (3) CTC 336

(ii) 2009 (2) TLNJ 101



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tongue except Tamil, should have passed the Tamil Second Class Language Test conducted by the respondents within two years from the date of appointment. But, the petitioner has not passed the said test. Further, when the petitioner submitted a written petition on 15.03.2016, it is mentioned that it was enough to approve her appointment from 25.05.2013 the date on which she had passed the Second Class Tamil Language Test.

16. Having heard the submissions of the respective counsels and upon perusal of the material available on record, there is no dispute with regard to the admitted facts in this case.

17. The only issue to be considered in this Writ Petition is whether the petitioner is entitled for approval of her appointment with effect from 04.12.2007 or from 25.05.2013 on which date she passed language test. For better appreciation of the case, the relevant rules of the Tamil Nadu Recognised Private Schools (Regulation) Rules and Tamil Nadu State and Subordinate Services Rules are extracted hereinunder:



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“Annexure-V of the Tamil Nadu Recognised Private Schools (Regulation) Rules:

Name of the Post	Qualifications
(1)	(2)
1. Headmaster (High Schools)	(1) B.A or B.Sc., or its equivalent; and B.Ed. or B.T. or L.T.; and Trained Teachers Certificate Collegiate Grade. (2) Should have worked as Teacher in recognised schools for a period of not less than five years after obtaining B.T. or its equivalent degree.
2. B.T. Assistant	B.A. or B.Sc. or its equivalent; and, B.T. or B.Ed, or L.T.; and Trained Teachers Certificate to Collegiate Grade.
3. Secondary Grade Teacher	(1) S.S.L.C. (2) T.S.L.C. of Secondary Grade or its equivalent.
4. Elementary Grade Teacher	E.S.L.C. or its equivalent and Trained Teachers Certificate of Elementary Grade or its equivalent. Teachers who have passed the Nursery, Montessori and Kinder-garden School Leaving Certificate Examination of Secondary Grade shall be employed to handle Standards I and II only.

Rule 12-A of the Tamil Nadu State and Subordinate Services Rules:

“Linguistic qualification -(a) No person shall be eligible for appointment to any service by direct recruitment unless he has an adequate knowledge of the official language of the State, namely, Tamil: Provided that a person, being otherwise qualified for appointment to the



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post to which recruitment is to be made, may apply for recruitment to the post, despite the fact that, at the time of such application, he does not possess an adequate knowledge of Tamil.

Explanation:—For the purpose of this rule, a person shall be deemed to have an adequate knowledge of Tamil, if—

(i) In the case of a post for which the educational qualification prescribed is the minimum general educational qualification and above, he has passed the S.S.L.C. Public Examination or its equivalent examination with Tamil as one of the languages; or studied the High School Course in Tamil Medium and passed the S.S.L.C. Public Examination or its equivalent Examination in Tamil Medium; or passed the Second Class Language Test in Tamil Conducted by the Tamil Nadu Public Service Commission.

(ii) in the case of a post for which the educational qualification prescribed is VIII Standard and above but below S.S.L.C. he has studied in Tamil Medium in those standards or passed the Language Test in Tamil referred to in rule 12-B(i); and

(iii) in the case of a post for which the educational qualification prescribed is below VIII



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standard, he has studied in Tamil Medium in those standards or passed the oral test in Tamil referred to in rule 12-(B) (ii).

(b) Every such candidate as is referred to in the proviso to sub-rule (a), shall, if selected and appointed on or after 9th February, 1996, pass the Second Class Language Test in Tamil conducted by the Tamil Nadu Public Service Commission, or pass the language Test in Tamil referred to in rule 12-B (i) conducted by the appointing authority or pass the oral 12-B (ii) conducted by the appointing authority, as the case may be within a period of two years from the date of his appointment. If he fails to pass the said Language Test within the said period of two years, he shall be discharged from service.

(c) The syllabus for the Second Class Language Test in Tamil referred to in this rule shall be specified in Schedule I-A to these rules.”

18. On careful perusal of Rule 12-A of the Tamil Nadu State and Subordinate Services Rules, it is clear that the same does not have any application to the Teachers appointed in private schools receiving grant from the Government of Tamil Nadu.



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19. As per the requirement of Rule 12A of the Tamil Nadu State and Subordinate Services Rules, the petitioner should have passed the Tamil Language Test conducted by the Tamil Nadu Public Service Commission or the Teachers Recruitment Board within two years from the date of appointment. As the 5th respondent-School is governed by the Tamil Nadu Recognised Private Schools (Regulation) Act and Rules, framed thereunder and the grant-in-aid is made under the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1974, the requirement of Rule 12A of the Tamil Nadu State and Subordinate Services Rules does not have any application to the petitioner. In fact, this issue is already considered by this Court on several occasions holding that Rule 12A of the Tamil Nadu State and Subordinate Services Rules cannot be regarded a statutory rule so far as the employees of the aided institutions are concerned.

20. While considering an identical issue, this Court in ***S.Mohamood Basha*** (cited supra), held as extracted hereinunder:

“6. The petitioner questions the validity of that order refusing to approve his appointment to the post



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which he has been holding. Learned Senior Counsel for the petitioner invited my attention to the decision of this Court in the case of The Saliar Mahajana Higher Secondary School v. The Joint Director of Schools, 1995 WLR 277, which judgment was in respect of a school governed by the Tamil Nadu Recognised Private School (Regulation”) Act, 1973.

7. This Court in Paragraph 8 of the judgment pointed out that so far as the aided schools are concerned, the Rules cannot be treated as statutory rules framed under Article 309 Constitution as, the very Article is inapplicable to Private Schools.”

21. At this juncture, it is appropriate to extract Paragraph Nos.4 and 5 of the judgment in ***Geldon Wifres Viola*** (cited supra) as hereinunder:

“4. The question is whether the conditions of service could be made applicable to the second respondent School which is a minority institution: Even though the school in question is a minority institution, it cannot appoint a person to the post of teacher who is not possessing the required qualifications under the rules. Inasmuch as the teacher in question has obtained her



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Post Graduate Degree in History, the School is competent to appoint her as Junior Grade Post Graduate Assistant (History) by placing reliance on the rules made under Annexure V-A.

5. *Mr.S.Rajasekar, learned Additional Government Pleader would however submit that inasmuch as G.O.Ms.No.720, Education Department, dated 28.04.1981 and G.O.Ms.No.361 Education Department, dated 31.12.1999 prescribe a minimum qualification for the said post viz., Bachelors' Degree as well as Post Graduate Degree in the subject, the teach is not eligible, as she does not possess a Bachelor's Degree in History. In our opinion, the said submission of course is made on the basis of the impugned order in the writ petition which is totally a misconception. A careful reading of those Government Orders would indicate that the qualifications prescribed thereunder are primarily intended for the appointment of teachers in the Government Schools. Nevertheless Government Order contemplates that the said qualifications are also applicable in respect of aided schools as well pending amendment to the relevant rules. It is well settled in law*



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that the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and rules made thereunder are alone made applicable to the second respondent-School and the qualifications are prescribed under the rules framed in exercise of the powers conferred under Section 56 of the Act. Any prescription of the qualification by way of the Government Order without amendment to the rules cannot be given effect to bind the private schools and the appointments, conditions of service, qualification are all governed by the provisions of the Act and the rules made thereunder. The Government Order G.O.Ms.361 Education Department dated 31.12.1999 which is questioned though has been issued in exercise of the power under Article 309 of the Constitution of India, in our opinion, that would be made applicable only to the Government Servants viz., the teachers who are employed in the Government Schools and not to the teachers in private schools, as those teachers are governed only by the provisions of the Act and the rules made thereunder. In the given case, as the rules contemplate only a Master's Degree in the subject for appointment of a Junior Grade Post Graduate Assistant and does not mandate a



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Bachelor's Degree as well in the same subject. A teacher who has secured a Master's Degree in the subject would be entitled and is eligible for appointment to the post. The rejection of the request for approval to the said post is therefore erroneous, as it was done by following the Government Order G.O.Ms.361 Education Department, dated 31.12.2009."

22. It is also appropriate to extract Paragraph No.5 of the order in

Fr.Geevarghese Mathew (cited *supra*) as hereinunder:

"5. There is substantial force in the aforesaid submission made on behalf of the Petitioner. At the outset, it must be pointed out here that the circumstance that the State Government grants aid for payment of salary to the Petitioner employed in the school of the Fifth Respondent would not ipso facto mean that he is holding a post under the State Government to whose employees the Tamil Nadu State and Subordinate Service Rules containing Rule 12-A applies. It is common ground that the school of the Fifth Respondent is governed by the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Rules framed thereunder and the grant-in-aid is made under the Tamil Nadu Minority



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Schools (Recognition and Payment of Grant) Rules, 1977. The First to Fourth Respondents have not shown that the requirement to pass the Tamil Language Test conducted by the Tamil Nadu Public Service Commission or the Teachers Recruitment Board is a qualification prescribed in the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, or the Rules framed thereunder or the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977, and it is also not their case that Rule 12-A would apply by way of any legislation by incorporation or reference for receiving grant-in-aid for the school of the Fifth Respondent. In this context, it would be useful to refer to the decision of the Hon'ble Supreme Court of India in A.B.Krishna -vs- State of Karnataka [(1998) 3 SCC 495] where the legal position in this regard has been explicated with regard to a post under the fire services established by the State Government under the Fire Force Act, 1964, which reads as follows:-

“6. It is primarily the legislature, namely, Parliament or the State Legislative Assembly, in whom power to make law regulating the recruitment and conditions of service of persons appointed to public services and posts, in connection with the affairs of the Union or the State, is vested. The



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legislative field indicated in this article is the same as is indicated in Entry 71 of List I of the Seventh Schedule or Entry 41 of List II of that Schedule. The proviso, however, gives power to the President or the Governor to make Service Rules but this is only a transitional provision as the power under the proviso can be exercised only so long as the legislature does not make an Act whereby recruitment to public posts as also other conditions of service relating to that post are laid down.

7. The rule-making function under the proviso to Article 309 is a legislative function. Since Article 309 has to operate subject to other provisions of the Constitution, it is obvious that whether it is an Act made by Parliament or the State Legislature which lays down the conditions of service or it is a rule made by the President or the Governor under the proviso to that article, it has to be in conformity with the other provisions of the Constitution specially Articles 14, 16, 310 and 311.

8. The Fire Services under the State Government were created and established under the Fire Force Act, 1964 made by the State Legislature. It was in exercise of the power conferred under Section



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39 of the Act that the State Government made Service Rules regulating the conditions of the Fire Services. Since the Fire Services had been specially established under an Act of the legislature and the Government, in pursuance of the power conferred upon it under that Act, has already made Service Rules, any amendment in the Karnataka Civil Services (General Recruitment) Rules, 1977 would not affect the special provisions validly made for the Fire Services. As a matter of fact, under the scheme of Article 309 of the Constitution, once a legislature intervenes to enact a law regulating the conditions of service, the power of the Executive, including the President or the Governor, as the case may be, is totally displaced on the principle of “doctrine of occupied field”. If, however, any matter is not touched by that enactment, it will be competent for the Executive to either issue executive instructions or to make a rule under Article 309 in respect of that matter.

9. It is no doubt true that the rule-making authority under Article 309 of the Constitution and Section 39 of the Act is the same, namely, the Government (to be precise, the Governor, under Article 309 and the Government under Section 39),



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but the two jurisdictions are different. As has been seen above, power under Article 309 cannot be exercised by the Governor, if the legislature has already made a law and the field is occupied. In that situation, rules can be made under the law so made by the legislature and not under Article 309. It has also to be noticed that rules made in exercise of the rule-making power given under an Act constitute delegated or subordinate legislation, but the rules under Article 309 cannot be treated to fall in that category and, therefore, on the principle of “occupied field”, the rules under Article 309 cannot supersede the rules made by the legislature.”

The said view is also fortified by the ruling of this Court in S.Mohamood Basha -vs- Director of Collegiate Education, College Road, Madras [(2002) 3 CTC 336] while dealing with grant-in-aid to a lecturer appointed in a private college governed by the Tamil Nadu Private Colleges (Regulation) Act, 1976. In the light of this legal position, it is not possible to sustain the impugned order, which has to be necessarily set aside.”



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23. A Division Bench of this Court, by its judgment dated 29.11.2021 in W.A.(MD) No.2131 of 2021, has confirmed the order of a learned Single Judge in W.P.(MD) No.11689 of 2017, dated 29.07.2021.

24. For the aforesaid reasons and in the light of the orders passed by this Court in identical circumstances, in the considered opinion of this Court, the services of the petitioner with effect from 04.12.2007 has to be considered while granting approval of appointment of the petitioner and as such, the order passed by the 4th respondent in granting approval of appointment of the petitioner with effect from 25.05.2013 is declared as illegal, unjust, arbitrary and contrary to the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act and Rules.

25. Accordingly, this Writ Petition is allowed with the following directions:

- i. The impugned order in Na.Ka.No.2505/A2/2016, dated 24.03.2016 is hereby set aside; and



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ii. The Respondent No.4 is directed to grant approval of appointment of the petitioner with effect from 04.12.2007 as Teacher in the 5th respondent-School and grant all eligible amounts of arrears of salary to the petitioner within one month from today, apart from monthly salary, her future amounts on the said date.

26. There shall be no order as to costs.

27. Consequently, connected miscellaneous petitions are closed.

20.10.2023

Note: Issue order copy by 27.10.2023.

NCC : Yes/No

Index : Yes/No

Internet : Yes

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BATTU DEVANAND, J.

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To

- 1.The Secretary to Government,
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,
Kanyakumari District at
Nagercoil.
- 4.The District Educational Officer,
Kuzhithurai – 629 165
Kanyakumari District.

Pre-delivery Order made in
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20.10.2023