



WA(MD).No.1011 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 27.11.2024

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**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

**W.A.(MD)No.1011 of 2019
and
C.M.P.(MD)No.9288 of 2019**

1.The District of School Education,
College Road, Chennai – 600 006.

2.The Chief Educational Officer,
Kanyakumari District,
Nagercoil,
Kanyakumari District.

3.The District Educational Officer,
Thuckalay – 629 175,
Kanyakumari District.

.... Appellants / Respondents

vs.

The Correspondent,
St.Mary's Higher Secondary School,
Colachel – 629 167,
Kanyakumari District.

....Respondent / Petitioner

PRAYER : Writ Appeal is filed under Clause 15 of the Letters Patent, to set aside the order made in W.P.(MD)No.15428 of 2018 dated 17.07.2018 on the file of this Court and allow this writ appeal.



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WA(MD).No.1011 of 2019

For Appellants : Mr.V.OM.Prakash,
Government Advocate.

For Respondent : Mr.Ragaeesh Kumar

JUDGMENT

(Judgment of this Court was delivered by G.R.Swaminathan, J.)

Heard both sides.

2.The first respondent herein / writ petitioner is a Higher Secondary School coming under the corporate management of Roman Catholic Diocese, Kottur. It was started as Middle School and that upgraded as High School and then as Higher Secondary School. The total strength of the students in the aided school during the relevant time was 913. Following the retirement of the incumbent in the sanctioned post of B.T.Assistant (Science) on 01.06.2013, the school appointed one S.P.Princian Usha as B.T.Assistant (Science) with effect from 10.06.2013. A proposal was submitted to the department for approval of appointing and for disbursement of grant-in-aid towards her salary. The proposal was returned by the jurisdictional District Educational Officer. One of the grounds on which the proposal was returned was that the



WA(MD).No.1011 of 2019

appointee did not pass the Teacher Eligibility Test. The school management resubmitted the proposal by pointing out that the minority institutions have been exempted from requirement to appoint teachers who have passed Teacher Eligibility Test. Even after lapse of several years, the proposal was not approved. The school management filed W.P.(MD)No.15428 of 2018. The writ petition was disposed of on 17.07.2018 in the following terms:-

"7.Considering the said submissions made by both sides and taking into account the factual circumstances of the case, this Court is inclined to pass the following order:

"The second and third respondents shall consider the request of the petitioner's school for approval of the appointment of one S.P.Princian Usha as B.T.Assistant (Science) in the petitioner's school w.e.f. the date of appointment, ie., 16.06.2013 by considering the representation of the petitioner's school, dated 03.10.2017 along with resubmitted proposal, dated 21.02.2014 and pass necessary orders therein with regard to the grant of approval of such appointment without insisting TET qualification. The needful shall be done within a period of six weeks from the date of receipt of a copy of this order."

Aggrieved by the said order, the present writ appeal has been filed.



WA(MD).No.1011 of 2019

3.The learned Additional Government Pleader appearing for the appellants reiterated all the grounds set out in the memorandum of grounds of writ appeal and called upon this Court to set aside the impugned order and allow the writ appeal by dismissing the writ petition.

4.Per contra, the learned counsel for the writ petitioner submitted that the impugned order is well reasoned and that it does not call for interference.

5.We carefully considered the rival contentions and went through the materials on record. There is no dispute that the writ petitioner is a minority institution school entitled to protection under Article 30 of the Constitution of India. It is again not in dispute that the post in which the appointment was made was a sanctioned post. The staff fixation during the relevant has been enclosed in the typed set of papers and it is seen therefrom that there were already three B.T.Assistant (Science) surplus teachers in the said school. It is further pointed out that the corporate management during the relevant time had 16 surplus teachers. This ground has been specifically pleaded in the memorandum of grounds of



WA(MD).No.1011 of 2019

writ appeal. This contention has not been rebutted by the learned counsel for the writ petitioner.

6.The Hon'ble Division Bench in the decision reported in **(2021) SCC Online Mad 1285 (The Secretary to Government, Government of Tamil Nadu, School Education Department, Chennai and ors v. Iruthaya Amali and anr)** had held that so long as there is surplus in the district, unless and until such surplus teachers are redeployed and exhausted, no appointment can be made by the schools. The learned counsel for the writ petitioner submitted that this decision ought not to be retrospectively applied to the present case. He relied on the following orders :

1. WA(MD)No.2119 of 2021 (The Commissioner of School Education v. Aided Muslim Committee Primary School rep.by its Correspondent, S.Sheik Shajakhan Sithik)
2. WA(MD)No.1098 of 2022 (The Secretary to Government v. R.Jeya Suhi)
3. WA(MD)No.1557 of 2023 (State of Tamil Nadu v. C.Esakkimuthu)



WA(MD).No.1011 of 2019

WEB COPY

4. WA(MD)No.1445 of 2024 (The Director of School Education v. The Correspondent, St.Mary's Tope Middle School, Tiruchirappalli).

7. The issue does not turn on whether the application of *Iruthaya Amali* is prospective or retrospective. The order given in the case of *Esakkimuthu* on which the writ petitioner's counsel placed heavy reliance pertains to district surplus. The case on hand raises the question whether in the other schools run by the corporate management and if there are surplus teachers, whether an appointment can be made in the event of a vacancy created by the retirement of an incumbent. In this case, in the very same school, there are three surplus teachers in B.T Assistant (Science) post itself. As early as on 04.08.2017 in ***WA(MD)No.136 of 2017 (The Joint Director of Elementary Education v. Getzy Roopala)***, the Division Bench to which one of us was a party had held that when surplus teachers are working in the same management, they have to be redeployed and the management cannot make further appointment. To the same effect is the order made in ***WA(MD)No.861 of 2021 (The Director of Elementary Education v. A.Celestin Mahimairaj)*** dated



WA(MD).No.1011 of 2019

30.04.2021. When the vacancy arose in the instant case on 31.05.2013, the school management could not have appointed Ms.S.P.Princian Usha on 10.06.2013 since there were surplus teachers not only in the same school but also in the other schools run by the same corporate management. This aspect of the matter distinguishes the case on hand from the factual matrix obtaining in the precedents relied on by the learned counsel for the writ petitioner. The order impugned in this writ appeal is set aside. The writ appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S., J.) & (R.P., J.)
27.11.2024

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
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To:-

1.The District of School Education,
College Road,
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Kanyakumari District,
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7/9



WA(MD).No.1011 of 2019

WEB COPY

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WA(MD).No.1011 of 2019

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W.A.(MD)No.1011 of 2019

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