



W.A(MD)No.1716 of 2024

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 26.09.2024**

**CORAM:**

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN  
and  
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**W.A(MD)No.1716 of 2024  
and  
C.M.P.(MD)No.13201 of 2024**

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

2.The District Educational Officer,  
Thuckalay, Kanyakumari District.  
Presently,  
The District Educational Officer,  
Marthandam,  
Kanyakumari District.

... Appellants / Respondents 1 to 2

-VS-

The Correspondent,  
Amala convent Girls Higher  
Secondary School,  
Thuckalay-629 175,  
Kanyakumari District.

... Respondent/Writ Petitioner

**PRAYER:** Appeal filed under Clause 15 of Letters Patent, to set aside the  
order dated 29.06.2022 made in W.P.(MD)No.14577 of 2020.

For Appellants : Mr.S.P.Maharajan,  
Special Government Pleader

For Respondent : Mr.A.Ajith Geethan



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## **JUDGMENT**

**[Judgment of the Court was made by R.SUBRAMANIAN, J.]**

This is another appeal which is an abuse of process of Court. Despite the fact that the issue involved is covered by division bench judgments of this Court, the department is persistently filing appeals.

2. The order in the writ petition which is the subject matter of the appeal arose under the following circumstances:

The petitioner which is an aided minority institution is under a corporate management. A vacancy arose in one of the schools due to the retirement of one M.G.Mary Isabell who was a secondary grade teacher and the post was upgraded automatically as B.T.Assistant in terms of G.O.Ms.No.79, School Education Department, dated 14.06.2022. In the upgraded vacancy, the corporate management transferred one Sr.Roselet Mary as a B.T.Assistant in English, by its order dated 01.06.2017 and she joined the school on 08.06.2017. When approval was sought for the said appointment that came to be rejected on the ground that there was a surplus teacher in the school from the years 2017-2018 to 2019-2020. This order was passed on 02.07.2020, despite the fact that this Court had as early as on 21.03.2012 by its pronouncement made in ***S.Rasheetha Banu vs. State of Tamil Nadu, Represented by its Secretary to Government, Chennai and others*** held that the question of surplus will



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have to be taken on the date of appointment and not thereafter. It was also held that if the appointment is to a sanctioned post the fact that it becomes a surplus in view of subsequent reduction in student strength cannot be a ground for rejecting approval. In fact that the judgment in **S.Rasheetha Banu vs. State of Tamil Nadu, Represented by its Secretary to Government, Chennai and others** followed the pronouncement of Division Bench of this Court in W.A.(MD)No.703 of 2019. It is not in dispute that the judgment in **S.Rasheetha Banu** was not appealed against and it has become final. The appointment of Sr.Roselet Mary was on 08.06.2017. Therefore, it is within the period 2016-2017 for the purposes of staff fixation. The fact that at the staff fixation done during the month of August 2017 (2017-18), the student strength came down rendering one post as surplus cannot be a ground for rejecting approval. Therefore the only ground for rejection of approval made out in the order impugned in the writ petition does not survive.

3. Mr.S.P.Maharajan, learned Special Government Pleader would however contend that the modus adopted by corporate management in transferring a teacher and creating vacancy in another school is deplorable. There are several deplorable practices adopted both by the private managements as well as the Education Department and this Court has no power to control or curb the same. It is for the State Government to step in legislatively in order to curb such deplorable practices. We have to



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go by a law declared by this Court.

4. Hence, we see no merit in the appeal. The appeal fails and it is dismissed with cost of Rs.10,000/- (Rupees Ten Thousand only) payable by the appellants / respondents to Cancare Foundation, 3A, Ramaniyam Saras, 39/17, 4<sup>th</sup> Main Road, Gandhi Nagar, Chennai, Tamil Nadu 600 020, (Mobile No. **9841617464**).

5. It is also made clear that the appellants / respondents shall approve the appointment of the teacher with effect from the date of initial appointment within a period of four (4) weeks from the date of receipt of a copy of this order and the salary due to her shall be paid with interest at the rate of 6 percent per annum from the date on which it became due till date of payment. The arrears of salary along with interest shall be paid within a period of six (6) weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

**[R.S.M., J.]**

**[L.V.G., J.]**

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NCC :Yes/No  
Index :Yes/No  
Internet : Yes  
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**and**  
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Sml

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