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WP No. 966 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-12-2025

CORAM

THE HONOURABLE MR JUSTICE M.DHANDAPANI

W.P.Nos. 966, 971 and 973 of 2024

and

W.M.P. Nos. 1014, 1019 and 1023 of 2024

W.P.No.966 of 2024

1. J.Pauline
St. Antonys Government Aided High
School Adichapuram Thiruvarur
District 614 717

Petitioner(s)

Vs

1. The Government Of Tamilnadu
Rep. By Its Principal Secretary
Department Of School Education, Fort St.
George Madras 600 009

2.The Director of School Education
DPI Campus, College Road Chennai 600 006

3.The Chief Educational Officer
The Office of the Chief Educational Officer
First Floor, Collectorate Annexe Building
Thiruvarur Thiruvarur District 610 004

4.The District Educational Officer
The Office of The District Educational Officer
First Floor, Collectorate Annexe Building
Thiruvarur Thiruvarur District 610 004

5.The Correspondent
St. Antony's Government Aided High School
Adichapuram Thiruvarur District 614 717

Respondent(s)



W.P. No. 971 of 2024

1. A. Josephin Priya
St. Joseph Girls Higher Secondary
School, Mannargudi Thiruvaur District
614 001

Petitioner(s)

Vs

1. The Government Of Tamilnadu
Rep. By Its Principal Secretary Department Of
School Education,
Fort St. George Madras 600 009
- 2.The Director of School Education
Dpi Campus, College Road Chennai 600 006
- 3.The Chief Educational Officer
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Floor, Collectorate Annexe Building Thiruvarur
Thiruvarur District 610 004
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- 5.The Correspondent
St. Joseph Girls Higher Secondary School
Mannargudi Thiruvarur District 614 001

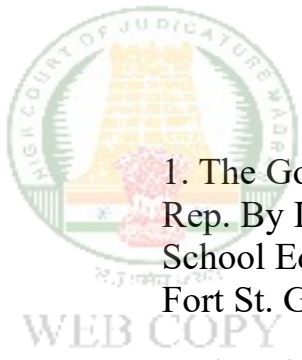
Respondent(s)

W.P. No. 973 of 2024

1. E.Arul Abinesha
St. Joseph Girls Higher Secondary
School, Mannargudi Thiruvauru
District 614 001

Petitioner(s)

Vs



1. The Government Of Tamilnadu
Rep. By Its Principal Secretary Department Of
School Education,
Fort St. George Madras 600 009

2. The Director of School Education
Dpi Campus, College Road Chennai 600 006

3. The Chief Educational Officer
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Thiruvarur Thiruvarur District 610 004

5. The Correspondent
St. Joseph Girls Higher Secondary School
Mannargudi Thiruvarur District 614 001

Respondent(s)

WP No. 966 of 2024

PRAYER

The Writ Petition is filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order dated 31.03.2022 in Na.Ka.No 7090 / A4 / 2021 on the file of the 3rd Respondent and the consequential proceedings dated 28.03.2023 in O.Mu.No 2174 AA3 / 2023 on the file of the 4th Respondent and quash the same directing the Respondents 1 to 4 to accord approval to the appointment of the petitioner Sr. J. Pauline, working as B.T Assist (Science) in the 5th respondent St. Antony's Government Aided High School Adichapuram Thiruvarur District 614 717 w.e.f 12.02.2019 with all monetary and service benefits.

**W.P. No. 971 of 2024****PRAYER**

The Writ Petition is filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order dated 24.12.2019 O.Mu.No 2699 AA3 / 2019 on the file of the 4th respondent and quash the same directing the respondents 1 to 4 to accord approval to the appointment of the petitioner Sr. A. Josephin Priya, Working as B.T. Assist (Science) in the 5th respondent St. Joseph Girls Higher secondary shcool, Mannargudi Thiruvarur District 614 001 w.e.f 06.06.2018, with all monetary and service benefits.

W.P. No. 973 of 2024**PRAYER**

The Writ Petition is filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order dated 24.12.2019 O.Mu.No 2701 AA3 / 2019 on the file of the 4th Respondent and quash the same directing the respondents 1 to 4 to accord approval to the appointment of the petitioner Mrs. E. Arul Abinesha Working as B.T. Assist (Maths) in the 5th respondent St. Joseph Girls Higher secondary shcool, Mannargudi Thiruvarur District 614 001 w.e.f 01.06.2018, with all monetary and service benefits.

For Petitioner(s): Father Xavier Arulraj
in all W.Ps. Senior Counsel
 for M/s.Father Xavier Associates

For Respondent(s): Mr. S. Prabhakaran
in all W.Ps. Government Advocate
 for R1 to R4

Mr.A. Francisca for R5

**COMMON ORDER**

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W.P.No.966 of 2024 has been filed for the issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order dated 31.03.2022 in Na.Ka.No 7090 / A4 / 2021 on the file of the 3rd respondent and the consequential proceedings dated 28.03.2023 in O.Mu.No 2174 AA3 / 2023 on the file of the 4th respondent and quash the same directing the respondents 1 to 4 to accord approval to the appointment of the petitioner J.Pauline, working as B.T Assistant (Science) in the 5th respondent St. Antony's Government Aided High School Adichapuram Thiruvarur District 614 717 w.e.f 12.02.2019 with all monetary and service benefits.

2. W.P.No.971 of 2024 has been filed for the issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order dated 24.12.2019 in O.Mu.No 2699 AA3 / 2019 on the file of the 4th respondent and quash the same directing the respondents 1 to 4 to accord approval to the appointment of the petitioner Sr. A. Josephin Priya, Working as B.T. Assist (Science) in the 5th respondent St. Joseph Girls Higher Secondary School, Mannargudi, Thiruvarur District 614 001, w.e.f 06.06.2018, with all monetary and service benefits.



3. W.P.No.973 of 2024 has been filed for the issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order dated 24.12.2019 in O.Mu.No 2701 AA3 / 2019 on the file of the 4th Respondent and quash the same directing the respondents 1 to 4 to accord approval to the appointment of the petitioner E. Arul Abinesha Working as B.T. Assistant (Maths) in the 5th respondent St. Joseph Girls Higher secondary School, Mannargudi, Thiruvarur District 614 001 w.e.f 01.06.2018, with all monetary and service benefits.

4. The case of the petitioner in W.P.No.966 of 2024 is that the 5th respondent School is established and administered by the Congregation of the Regular Tertiary Franciscan Sisters of Our Lady of Bon Secours. For the purpose of legal perpetuity, the said Congregation is registered as a society. In the year 2001, a Secondary Grade Assistant Post was upgraded as B.T. Assistant vide proceedings dated 05.02.2019 due to voluntary retirement of one Tamilarasi. In the said upgraded post, the petitioner was appointed as B.T. Assistant (Science), by order dated 11.02.2019 in the 5th respondent School w.e.f.12.02.2019. Immediately thereafter, the proposal of the appointment of the petitioner as B.T. Assistant (Science) w.e.f. 12.02.2019 was submitted by the 5th to the 4th respondent for approval. However, the 4th respondent vide impugned order dated 06.11.2019, returned the proposal without approval



stating that till all the surplus posts are deployed, approval cannot be granted.

Thereafter, the 5th respondent Management submitted the details and requested for approval of the appointment of the petitioner. Again, the 4th respondent vide impugned order dated 28.03.2023 rejected the approval referring to the proceedings of the 3rd respondent 31.03.2022 as if the 5th respondent Corporate Management has surplus teacher. Without deployment, appointing the petitioner in the surplus post is not sustainable one. Challenging the same, the Writ Petition in W.P.No.966 of 2024 has been filed.

5. The case of the petitioner in W.P.No.971 of 2024 is that the 5th respondent School is established and administered by the Congregation of the Regular Tertiary Franciscan Sisters of Our Lady of Bon Secours. For the purpose of legal perpetuity, the said Congregation is registered as a society. The petitioner was appointed in the said upgraded B.T. Assistant (Science) by order dated 04.06.2018 in the 5th respondent School w.e.f. 06.06.2018 in the vacancy arising out of transfer of one Sr.T.Anusiya on 05.06.2018. Thereafter, the proposal of the appointment of the petitioner was submitted to the 4th respondent for approval on 20.03.2019. But, the 4th respondent returned the proposal without approval referring to order in W.A.(MD) No.76 of 2019. Thereafter, the 5th respondent submitted a detailed explanation on 24.08.2022 and requested approval to the appointment of the petitioner. Again, the 4th respondent vide impugned order dated 24.12.2019 rejected the approval as if the 5th respondent



Corporate Management has surplus teacher. Without deployment, appointing the petitioner in the surplus post is not sustainable one. Challenging the same, the Writ Petition in W.P.No.971 of 2024 has been filed.

6. The case of the petitioner in W.P.No.973 of 2024 is that the 5th respondent School is established and administered by the Congregation of the Regular Tertiary Franciscan Sisters of Our Lady of Bon Secours. For the purpose of legal perpetuity, the said Congregation is registered as a society. The petitioner was appointed in the said upgraded B.T. Assistant (Maths) by order dated 01.06.2018 in the 5th respondent School w.e.f. 01.06.2018 in the vacancy arising out of resignation of one Sr.P.Christy Anitha, on 26.07.2017. Thereafter, the proposal of the appointment of the petitioner was submitted to the 4th respondent for approval on 20.03.2019. But, the 4th respondent returned the proposal without approval referring to order in W.A.(MD) No.76 of 2019. Thereafter, the 5th respondent submitted a detailed explanation on 24.08.2022 and requested approval to the appointment of the petitioner. Again, the 4th respondent vide impugned order dated 24.12.2019 rejected the approval as if the 5th respondent Corporate Management has surplus teacher. Without deployment, appointing the petitioner in the surplus post is not sustainable one. Challenging the same, the Writ Petition in W.P.No.973 of 2024 has been filed.



7. The learned Senior Counsel appearing for the petitioner would submit that admittedly, there is no surplus Teacher available in the 5th respondent School. Only when the vacancy posts arise in the post of B.T. Assistant (Science) and B.T. Assistant (Maths), respectively, the petitioners were appointed in the 5th respondent, thereby, the 5th respondent forwarded the proposal for approval of the appointment of the petitioners, to the 3rd and 4th respondents. However, the 3rd and 4th respondents repeatedly rejected the approval of the appointment, which is not sustainable one.

8. He would further submit that the issues, which arises in the present Writ Petition is no more *res integra* and the same was decided by the Division Bench of this Court in the case of ***Secretary to Government and Others Vs. Iruthaya Amali and Another*** reported in ***2021 SCC OnLine Mad 1285*** wherein, the Division Bench of this Court, in Clause (v) of paragraph No.148, clearly held that “*insofar as aided minority institutions are concerned, if it is a stand alone institution, their right of appointing a teacher in a vacancy within the sanctioned strength for the academic year 2021-22 shall not be affected because of the identified excess teachers in other schools. At the same time, even if the school is a minority institution, however being administered by a joint management or corporate management, in respect of those schools, even though vacancy arose within the sanctioned strength of such school or schools*



under corporate management or joint management, those vacancies shall not be filled up unless the excess staff identified in all other schools under the same corporate or joint management are exhausted fully and only after exhausting the redeployment process on all excess teachers identified in the group of schools under the same corporate management, they shall be free to make appointment afresh from open market in the vacancy if any still, within the sanctioned strength". However, the present impugned orders are contrary to the judgment of the Division Bench. Hence, he prayed for allowing the present Writ Petitions.

9. The respondents filed their detailed counter affidavit dated 09.02.2024.

The relevant paragraphs are extracted as follows:-

5. At the outset, it is submitted that the 5th respondent has not complied with the directions issued by the 3rd respondent Lr.No.011689/A2/2022 dated 4.1.2023. Per contra the petitioner who is a newly recruited employee has challenged the earlier order of the 4th respondent L.Dis.2701 /B3/2019 dated 24.12.2019 which is an official correspondence between the respondent and the 5th respondent. Hence this writ petition is not maintainable either under law or on facts.

6. I submit that regarding the averments in para 2 of the affidavit of the petitioner, it is submitted that the petitioner has no loco standi to justify the vacancy position in the 5th respondent School or to justify her own appointment. It is submitted that the petitioner was appointed on 01.06.2018 even before the approval of the resignation which was actually approved only on 26.12.2018 vide K.Dis.9460/A4/2018. The action of the 5th respondent is absurd.



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8. I submit that regarding the averments in para 4 of the affidavit of the petitioner, it is submitted that the petitioner has questioned the letter of the 3rd respondent dated 24.12.2019. It is submitted that the 5th respondent has resubmitted the proposal vide letter dated 10.11.2020 and the same was returned to the 5th respondent calling for further informations vide L.Dis.6936/A3/2020/dated 28.4.2022 and again returned vide Lr.No.Rc. 11689/ A2/2022 Dated 4.1.2023 of the 3rd respondent. It is submitted that the 4th respondent has finally returned the proposal to the 5th respondent vide Letter No. Rc.8535/A3/2022 Dated 9.2.2023 calling for report to the effect that there is no surplus B.T.Assistant(Maths) in the Schools run by the Corporate Management. Hence challenging the earlier correspondence dated 24.12.2019 cannot be sustained. It is further submitted that orders of the Hon'ble High Court of Madurai Bench in WA(MD) No.76 of 2019 certainly relates to the approval of appointment of teachers in Corporate Management Schools. It is however submitted that the final order dated 31.3.2021 in the above case has been taken on appeal by the State Government to the Hon'ble Supreme Court in S.L.P.(Civil) No.15702 of 2021 and the same is pending.

9. I submit that regarding the averments in para 5 of the petitioner, it is submitted that the 5th respondent School is a Corporate Management School and it is a single Unit of Establishment for the purpose of seniority, promotion, transfer etc. Hence the 5th respondent School Management should ensure that the pupil teachers ratio as prescribed under Right of Children to Free and compulsory Education Act 2009 is strictly adopted. Hence the GO.(Ms)No.525 School Education Department dated 29.12.1997 has no force It is submitted that the G.O.Ms.No.231. School Education as at present, Department dated 11.8.2010 relates to deployment of surplus teachers. It is submitted that a simple letter of certification that there is no surplus teachers in the Schools run by the Corporate



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Management cannot be accepted. It is for the 5th respondent to furnish consolidate statement showing the pupil teacher details for the all the schools run by the Corporate Management or to produce the staff fixation statement as ordered by the competent authority for the all the Schools run by the Corporate Management. Hence this contention of the petitioner cannot stand to reason.

10. I submit that regarding the averments in para 6 and 7 of the affidavit of the petitioner, it is submitted that the petitioner has relied upon the G.O.165 School Education Department dated 17.9.2019 and the consequential orders of the Hon'ble High Court of Madurai Bench in W.A.No. 76 of 2019 dated 31.3.2021. It is submitted that the above orders has been taken up on appeal to the Hon'ble Supreme Court of india in SLP (Civil) No.15702 of 2021 and the same is pending. Hence the 5th respondent cannot takeadvantage of the decision of the Hon'ble High Court of Madurai Bench dated 31.3.2021. More over any Aided School including Corporate Management has no absolute powers to recruit Teachers without reference to the pupil-teacher ratio prescribed under Right of Children to Free and compulsoty Education Act 2009. The State Government is not supposed to sanction Educational grant without any limitation. It is pertinent to note that the Accountant General, Chennai has raised audit objection in respect of Thiruppur District that there is a loss of revenue to the tune of Rs.1.84 crores due to the non deployment of surplus teachers vide Letter No.AG(G& SSA) SS-I/Civil-4/1/20-024/14-15/056 Dated 1.10.2014. Hence this contention of the petitioner cannot stand to reason.



10. Heard the learned Senior Counsel appearing for the petitioners, the learned Government Advocate appearing for respondent Nos.1 to 4 and the learned counsel appearing for the 5th respondent and perused the materials on record.

11. The facts in these Writ Petitions are not in dispute. These petitioners were appointed on 12.02.2019, 01.06.2018 and 06.06.2018 respectively for the said post as stated above. However, the proposal was returned on the ground that the 5th respondent Corporate Management has surplus teacher. However, the surplus teacher available in the 5th respondent School revealed either in the impugned order or in the counter affidavit filed by the respondents. In fact, the official respondents forced to reveal the 5th respondent the surplus teacher available in the 5th respondent Corporate Management. However, it is the duty cast upon the Educational authority to reveal the surplus teacher available in the 5th respondent Management, instead of forcing the 5th respondent to reveal with regard to surplus teacher, is not sustainable. The official respondents have to maintain the pupil-teacher ratio and order for redeployment in the 5th respondent Corporate Management. Returning the proposal without disclosing the surplus teacher in the 5th respondent Corporate management is not sustainable one. On the sole ground, the present impugned orders are set aside.



12. Accordingly, these Writ Petitions are allowed the impugned orders dated 31.03.2022, 28.03.2023, 24.12.2019 and 24.12.2019, respectively, are set aside. Liberty is granted to the 5th respondent School to send a fresh proposal for all the petitioners within a period of two (2) weeks from the date of receipt of a copy of this order explaining that there is no surplus teacher available in the 5th respondent Corporate Management and the appointment was made only in the vacancy posts available in the 5th respondent School. After receipt of such proposal, the official respondents are directed to pass appropriate orders strictly in terms of the judgment of the Division Bench of this Court reported in the case of *Secretary to Government and Others Vs. Iruthaya Amali and another* reported in *2021 SCC OnLine Mad 1285*, which was affirmed by the Hon'ble Apex Court in *S.L.P.(C) No.15702 of 2021 dated 31.03.2021*, within a period of four (4) weeks thereafter. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

01-12-2025

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Index :Yes/No
Speaking/Non-speaking order
Internet :Yes
Neutral Citation :Yes/No



To

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1. The Principal Secretary
Department Of School Education, Fort
St. George Madras 600 009
2. The Director of School Education
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M. DHANDAPANI, J.

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and
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