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W.P.No.4311 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2025

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.No.4311 of 2024
and W.M.P.No.4629 of 2024**

Sr.S.Anitha Anthoniammal

... Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Represented by its Principal Secretary,
Department of School Education,
Fort St.George,
Chennai-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,
Ariyalur Taluk,
Ariyalur District-621 704.
- 4.The District Educational Officer (Secondary),
Office of the District Educational Officer,
Ariyalur Taluk,
Ariyalur District-621 704.



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5.The Correspondent,
Fatima Girls' Higher Secondary School,
T.Palur Road, Udayarpalayam Taluk,
Jayankondam-621 802,
Ariyalur District.

....Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order dated 01.12.2020 in O.Mu.No.3335/A4/2020 on the file of the third respondent and quash the same, directing the respondents 1 to 4 to accord approval to the appointment of the petitioner, Sr.S.Anitha Anthoniammal, working as B.T.Assistant (Maths) in the fifth respondent Fatima Girls' Higher Secondary School, T.Palur Road, Udayarpalayam Taluk, Jayakondam-621 802, Ariyalur District, with effect from 04.06.2019, with all service and monetary benefits.

For Petitioner	:	Mr.Father Xavier Arulraj Senior Counsel for M/s.Father Xavier Associates
For Respondents	:	Mrs.S.Mythereye Chandru Special Government Pleader for R1 to R4



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ORDER

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Aggrieved by the order of the third respondent dated 01.12.2020, wherein, the recommendation made by the fifth respondent School for appointing the petitioner as B.T.Assistant (Maths) was rejected, the present writ petition has been filed.

2. The brief facts are that the fifth respondent Higher Secondary School is a minority institution and its expenses are funded by the Government. The petitioner was appointed as B.T.Assistant (Maths) and a proposal was sent by the fifth respondent School to the third respondent for approval of the same. However, the third respondent returned the request of the fifth respondent raising certain defects. Thereafter, the third respondent requested the fifth respondent School to fill up the vacancies for surplus post before making any new appointment. The fifth respondent School responded to the third respondent by stating that no surplus post is available as on date and therefore, the appointment of the petitioner must be approved. The third respondent, however, refused to grant approval for appointment of the petitioner on the ground that till all the surplus posts in the corporate



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management are deployed, no new appointments will be made. Challenging the said order, the present writ petition has been filed.

3. The third respondent has filed a counter affidavit. The counter affidavit is as vague as it could be.

4. Instead of meeting the averments raised in the writ petition, the third respondent has taken a ground that since the petitioner has not passed TET examination, her appointment cannot be approved, whereas, the impugned order was quoted the Government Order in G.O.Ms.No.165, School Education (Tho.Ka.2(1)) Department dated 17.09.2019. In the entire counter affidavit, there is no mention made of this Government order. Since the counter affidavit is filed supporting the action of the respondents in passing the impugned order, every effort ought to have been taken to justify that the Government order mentioned above is applicable to the case of the writ petitioner.



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5. The learned counsel appearing for the petitioner submits that the Government Order quoted in the impugned order was already held inoperative by the Hon'ble Division Bench of this Court in the case of *Secretary to Government and others vs. Iruthaya Amail and another* reported in **2021 SCC MAD 1205**. The learned counsel further submits that the respondents are taking a strange stand now in the counter affidavit about the clearance of TET Examination. He further submits that no doubt, as per the directions of the Hon'ble Supreme Court, every teacher should clear the TET Examination. Since the petitioner is working from 2019 and a proposal was even made in the year 2019, the appointment of the petitioner should be approved first and only then, the question of TET Examination would raise.

6. The learned Special Government Pleader appearing for the respondents raised the same contentions in the counter affidavit.

7. This Court heard the learned counsels appearing on both sides and perused the materials available on record.



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8. The Government Order in G.O.Ms.No.165, School Education (Tho.Ka.2(1)) Department dated 17.09.2019, was held inoperative by the Hon'ble Division Bench of this Court and the relevant paragraphs are extracted hereunder:-

“130. Validity of G.O.Ms.No.165, School Education [Tho.Ka.2(1)] Department, dated 17.09.2019.

131. As we discussed in the earlier part of this order, as a fall out of the interim order passed by a Division Bench of this Court in this batch of cases by order, dated 09.04.2019, the Government thought of issuing a Government Order, that is how G.O.Ms.No.165 has been issued, where, various conditions have been imposed with regard to the staff fixation, identification of the excess staff and redeployment of such excess staff to the needy schools.

132. In fact, a prohibition has been imposed under the said G.O. that unless and until the total teaching staff which are found to be excess, as has been identified already, are exhausted by way of redeployment to needy school, no teacher appointment shall be made in any private aided school in this State especially in corporate management schools.

133. Though arguments were advanced by almost all the learned counsel appearing for the Institution on the validity of G.O.Ms.No.165, in none of these cases, except in the following two writ petitions,



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directly the G.O.Ms.No.165 was under challenge.

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134. In W.P.(MD).No.11851 of 2020, the G.O. has been put under challenge, where the prayer reads thus:

“to issue a writ, order or direction in the nature of a writ of certiorarified mandamus calling for the records relating to the impugned Government Orders issued by the 1st respondent State Government in G.O.Ms.No.165, School Education (Tho.Ka.2(1) Department, dated 17.09.2019 and the consequential proceedings by the third respondent District Educational Officer in Na.Ka.No.2099/A4/2020, dated 00.08.2020 (signed on 19.08.2020) denying the approval of BT Assistant (Tamil), quash the same and further direct the second respondent CEO to approve the appointment of Thiru.C.Leo Gandhi as BT Assistant (Tamil) w.e.f. 01.11.2019 in the petitioner-school...”

135. In W.P.(MD)No.9918 of 2020 also, similar prayer has been sought for.

136. Therefore, it has become a dire necessity to deal with the validity of the said G.O. also in this batch of cases.

137. In this regard, we like to point out that, already the import of the interim order passed by a Division Bench of this Court in this batch of cases on 09.04.2019 has been quoted fully. Only pursuant to the said interim order, dated 09.04.2019, this G.O.Ms.No.165 was issued, however, subsequently, when the same batch of cases came up before yet another Division Bench of this Court on 20.09.2019, the import of G.O.Ms.No.165 was considered and the Division Bench, on that date, had passed an order, whereby, it expressed prima facie view



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that, the directions issued by earlier order, date 09.04.2019 was beyond the scope of the writ appeals. Therefore, the Division Bench was of the opinion that, the operation of the G.O.Ms.No.165, dated 17.09.2019 shall be suspended, accordingly, the operation was suspended until further orders.

138. After having gone through the two interim orders passed by two Co-ordinate Division Benches in this batch of cases, one is dated 09.04.2019 and another is dated 20.09.2019, in between G.O.Ms.No.165 was issued on 17.09.2019, we are of the considered view that, the said G.O.Ms.No.165 ought not to have been issued as a fall out of the interim order passed by this Court. Therefore we are in agreement with the view expressed by a Co-ordinate Bench of this Court by order, dated 20.09.2019, that the said G.O. is a fall out of the interim direction issued in the batch of writ appeals, therefore, the operation of the said G.O. shall be suspended until further orders.

139. In that view of the matter and the comprehensive decision since having been arrived at by us in this batch of cases, the said G.O.Ms.No.165, in our considered view, can very well be declared to be inoperative.”

9. On that day when the impugned order was passed, the Government order was in-force. The counter affidavit was filed only in the month of September 2024. The order of the Hon’ble Division Bench of this Court is



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dated 31.03.2021. Atleast after the order of the Division Bench, the

Government ought to have revisited its previous orders and recalled them.

The fifth respondent School has categorically stated that no excess teachers were available. On the other hand, the School itself stated in clear terms that no surplus post was available. Considering the academic interest of the students, the Government ought to have approved the appointment of the petitioner. The petitioner has stated that she is working without salary from the date of appointment.

10. As mentioned above, the counter affidavit is very vague by not mentioning about the order passed by the Hon'ble Division Bench of this Court in respect of modifying the Government order inoperative.

11. The third respondent has taken shelter under the clearance of TET examination. The clearance of TET examination by the teachers is not pertaining only to the petitioner. This is an issue covering the entire State of Tami Nadu. The Government is aware of the directions of the Hon'ble Supreme Court of India and it is the duty of the Government to ensure that every teacher clears the TET Examination.



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12. In the case on hand, the petitioner was initially appointed during May 2019 and recommendation was made by the fifth respondent School in June 2019. Therefore, this Court has no hesitation to hold that the impugned order is totally unjustifiable.

13. In the result, this Writ Petition stands allowed and the impugned order dated 01.12.2020 passed in O.Mu.No.3335/A4/2020 is quashed. The third respondent is directed to grant approval to the appointment of the petitioner as B.T.Assistant in the fifth respondent School within a period of 12 weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Connected miscellaneous petition is closed.

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NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No
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To

- 1.The Principal Secretary,
Department of School Education,
Fort St.George,
Chennai-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,
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M.DHANDAPANI, J.

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