



W.P.No. 9355 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 24.02.2025

CORAM:

THE HONOURABLE MR JUSTICE C.V. KARTHIKEYAN

W.P.No.9355 of 2024 and
W.M.P. Nos.10375 & 10376 of 2024

P. Vasanthi

... Petitioner

VS

1. The Government of Tamil Nadu
Represented by its Principal Secretary,
The 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,
Moovendar Nagar,
Villupuram District 605 602.
4. The District Educational Officer (Secondary)
The Office of the District Educational Officer,
Murungapakkam 604 001,
Tindivanam, Villupuram District.
5. The Correspondent,
St. Philomena's Girls Higher Secondary School,
Tindivanam, Marakkanam Road,
Villupuram District

...Respondents



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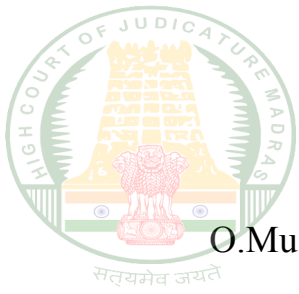
Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus or any other appropriate writ or order or direction in the nature of a Writ, calling for the records pertaining to the impugned order dated 13.02.2024 in Na.Ka.No.345/A4/2024 on the file of the 3rd respondent and the consequential proceedings dated 04.03.2024 in O.Mu.No. 4770/AA2/2024 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. P. Vasanthi, working as B.T. Assistant (Tamil) in the 5th respondent St. Philomena's Girls Higher Secondary School, Tindivanam, Marakkanam Road, Villupuram District - 604 001, with effect from 24.08.2020, with all service and menetary benefits.

For Petitioner : Dr. Fr.A. Xavier Arulraj,
Senior Counsel
for M/s. Xavier Associates

For R1 to R4 : Mr. G. Velu
Additional Government Pleader.

ORDER

This Writ Petition has been filed in the nature of a Certiorarified Mandamus seeking records relating to an order dated 13.02.2024 passed by the third respondent in Na.Ka. No.345/A4/2024 and also records relating to the consequential proceedings dated 04.03.2024 in



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O.Mu.No.4770/AA2/2024 passed by the fourth respondent and to quash them and grant approval to the appointment of the petitioner working as B.T. Assistant (Tamil) in the fifth respondent St. Philomena's Girls Higher Secondary School, Tindivanam in Villupuram District. The petitioner also claims that all service and monetary benefits should be paid on and from 24.08.2020.

2. In the affidavit filed in support of the writ petition, it had been contended that the petitioner had been initially appointed as B.T. Assistant (Tamil) in the fifth respondent school with effect from 24.08.2020 owing to a vacancy which had arisen consequent to the death of a teacher who was serving as such. It had been further stated that the petitioner also joined in service on and from 24.08.2020. The proposal of appointment of the petitioner was forwarded to the fourth respondent for approval on 27.08.2020. The proposal was returned raising certain queries which were answered and resubmitted on 03.12.2020. By proceedings dated 16.03.2021, the fourth respondent had rejected grant of approval. The fifth respondent then submitted a further representation to the fourth respondent claiming that there was no surplus teacher in the school and calling upon the fourth respondent to forward the proposals to



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the third respondent for approval. The third respondent, by proceedings, which is impugned in the writ petition, dated, 13.02.2024, had again rejected the approval of the appointment of the petitioner stating that, since absorption of surplus teachers in aided schools is not over and that the petitioner had not completed Teachers Eligibility Test (TET) which is required as per G.O. Ms. No.181 dated 15.11.2011, the approval cannot be granted. On the basis of such proceedings of the third respondent, the fourth respondent issued consequential proceedings on 04.03.2024, which is also impugned in the present writ petition.

3. A counter affidavit had been filed on behalf of the respondents wherein they had stated that there is a schedule which has to be followed for appointment of teachers and for putting up such appointments for approval and that the Government had also notified G.O. M.S. No.14/School Education Department dated 13.01.2023. The Rules relating to the Tamil Nadu Private Schools Regulation Rule 23 had also been notified and Rule 32 was with respect to staff fixation deployment of surplus staff on recruitment in aided private schools. Details relating to the same had also been given in the counter affidavit. In effect it had been stated that the petitioner was surplus to the staff strength of the fifth



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respondent school and therefore cannot claim as a matter of right for her appointment to be approved. It was also contended that the petitioner had not completed Teachers Eligibility Test and therefore, approval cannot be granted.

4. Heard arguments advanced by Dr. Fr.A. Xavier Arulraj, learned Senior Counsel appearing for the petitioner and Mr. G. Velu, learned Additional Government Pleader appearing for the respondents 1 to 3.

5. It is to be pointed out that the fifth respondent school is not a standalone school but one of the schools under the same management. It has to be construed as a school coming under a corporate management. The school is administered by the Sisters of St. Joseph of Cluny and the said congregation had been registered as a Society in the name of Managing Body of St. Philomena's Girls Higher Secondary School at Tindivanam. The Society is running a number of other Educational Institutions apart from the fifth respondent school. They are all minority institutions governed under Article 30 of the Constitution.



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6. The learned Senior counsel on behalf of the petitioner pointed out that as a minority institution, more particularly as a school governed by corporate management and the fifth respondent being one of several other schools, the ratio laid down by the Division Bench in the judgment reported in **2021 SCC Online Mad 1285** in W.A.(MD) Nos. 76 of 2019 batch, The Secretary to Government and others vs. Iruthaya Amali and another) would apply. It had been contended that the Division Bench had occasion to examine the issues raised by various categories of schools and with specific reference to minority schools and had finally held as follows:

"Like that insofar as aided minority institutions are concerned, if it is a standalone 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

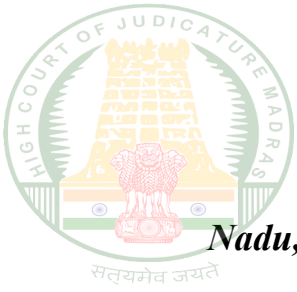


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school or schools under corporate management or joint management, those vacancies shall not be filled up unless the excess staff identified in all other schools under the same corporate or joint management or exhausted fully and only after exhausting 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."

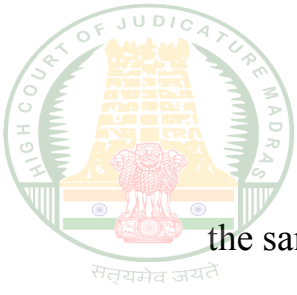
7. It is also pointed by the learned Senior Counsel that as against this judgment of the Division Bench, the respondent herein had filed a Special leave to Appeal (C) No. 15702/2021, The Secretary to Government, Government of Tamil Nadu and others vs. Iruthaya Amali and another, and the Hon'ble Supreme Court had taken up the said matter along with similarly filed Special Leave Petitions and by an order dated 16.02.2024, had directed that the matter could be closed and relegated the parties back to the Madras High Court. The learned Senior Counsel then placed reliance on the Division Bench judgment of the Madurai Bench of Madras High Court in ***W.A. (MD) No.125 of 2022, The State of Tamil***



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***Nadu, represented by its Secretary, Department of School Education,
Chennai, vs. The Correspondent, St. John Vianney's Girls Higher***

Secondary School, Kanyakumari District, wherein, again the Division Bench had affirmed the findings rendered by the earlier Division Bench. Thus it is contended by the learned Senior Counsel that the matter having been decided that the issues raised by the respondent would not apply to the minority institution particularly with respect to the schools under the same corporate management, the appointment of the petitioner could not be considered as surplus. In this connection, the attention of this Court had been drawn to the vacancy list of the fifth respondent school as on 2019-2020 wherein it had been stated that the number of sanctioned post for Tamil Teacher was seven and that there were no vacancies. Similarly, the vacancy list for 2022-2023 had also been pointed out, wherein it had again been stated that for Tamil Teachers B.T. Assistant, the total sanctioned strength was seven and there were no vacancies. It is also pointed out that the student strength of the school is 2541 and therefore there was an immediate necessity for appointment of a teacher. Therefore, it is contended that the petitioner had been appointed only in an approved sanctioned post and thereafter there had been no vacancy and therefore, the petitioner could not be considered as being surplus to



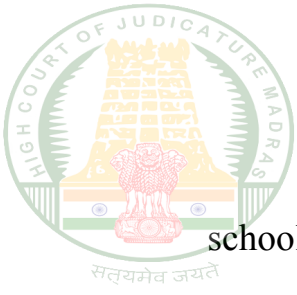
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the sanctioned strength.

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8. With respect to the necessity for having a Teachers Eligibility Test qualification, the learned Senior Counsel pointed out that matters were pending before the Hon'ble Supreme Court in this regard and stated that the Government had withdrawn the Special Leave Petitions filed before the Hon'ble Supreme Court by which, the Government had challenged the stipulations by this Court that for minority institutions, the necessity to have a Teachers Eligibility Test cannot be a ground to deny approval of appointment. It is thus contended that both the reasons stated in the impugned order would not stand the scrutiny of this Court.

9. On the side of the respondents, reliance had been placed, as stated in the counter affidavit, wherein it had been stated that the petitioner was found surplus and that the petitioner had not qualified Teachers Eligibility Test. But, however, the records show that there was no surplus and no vacancies and that the petitioner had been appointed only in the sanctioned vacancy, B.T. Assistant (Tamil) in the fifth respondent school. The fact that she did not possess Teachers Eligibility Test qualification could not be held against her since the fifth respondent



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school is a minority institution. In view of the same, both the reasons stated in the impugned order does not stand scrutiny of this Court. The impugned order passed by the third respondent which had been, by consequential proceedings, issued by the fourth respondent would necessarily have to be set aside and the appointment of the teacher would have to be recognised, approved and ratified by this Court and necessary directions in this regard will have to be passed by the respondents.

10. The impugned orders are set aside. A direction is given to the third respondent to grant approval of the appointment of the petitioner in the fifth respondent school as B.T. Assistant (Tamil) on and from 24.08.2020 in the existing vacancy which has arisen owing to the death of a teacher. This Writ Petition stands allowed. No costs. Needless to point out that monetary benefits will have to be sanctioned and paid to the petitioner herein. The entire exercise of grant of approval and disbursement of monetary benefits must be granted within a period of two months from the date of receipt of a copy of this order. There shall be no order as to cost. W.M.P. No.10375 of 2024 which was filed to dispense with the production of original copy of the impugned orders, stands allowed. Consequently connected miscellaneous petition stands closed.



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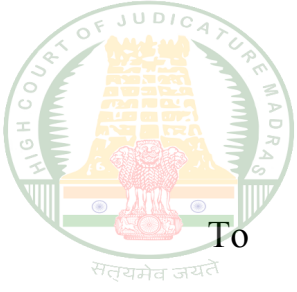
24.02.2025

Internet : Yes / No

Index: Yes / No

Speaking order / Non speaking order

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To

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C.V. KARTHIKEYAN, J.

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