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WP NO. 10906 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **08-08-2025**

CORAM

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

WP No. 10906 of 2024

AND

WMP Nos. 12013 and 12016 of 2024

The Headmistress And Correspondent
St.Annes Girls Higher Secondary School, Cuddalore-
607 001.

Petitioner(s)

..Vs..

To

1. The Government Of Tamil Nadu
Rep By Its Principal Secretary, Department Of School
Education, Fort St.George, Chennai-600 009.

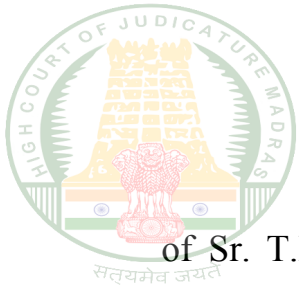
2. The Director Of School Education
College Road, Chennai-600 006.

3. The Chief Educational Officer
Chief Educational Office, Cuddalore-607 001.

4. The District Educational Officer
District Educational Office, Cuddalore-607 001.

Respondent(s)

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 4th respondent District Educational Officer in Na. Ka. No. 4599 / A2 / 2023 dated 03.04.2024 and quash the same, and further direct the respondents to approve the appointment



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of Sr. T.Paraloga Mary as Vocational Instructor in Computer Science in the petitioner-school with effect from the date of his appointment viz., 01.07.2023, and release salary and all attendant benefits with effect from the said date, and pass such orders accordingly.

For Petitioner(s):

Ms.H.Mary Sowmi Rexi
For M/s.Isaac Chambers

For Respondent(s):

Mr.S.Prabhakaran, Govt.Advocate For R1 To R4

ORDER

The Writ Petition has been filed praying to call for the records relating to the impugned proceedings issued by the 4th respondent- District Educational Officer in Na. Ka. No. 4599 / A2 / 2023 dated 03.04.2024 and quash the same, and further direct the respondents to approve the appointment of Sr. T.Paraloga Mary as Vocational Instructor in Computer Science in the petitioner-school with effect from the date of her appointment viz., 01.07.2023, and release salary and all attendant benefits with effect from the said date, and pass such orders accordingly.

2. The learned counsel for the petitioner would submit that the School was initially established as Middle School in the year 1882 and upgraded as



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High School in the year 1935. Later, the School was upgraded as Higher Secondary School in the year 1978. The School is a recognised Minority Educational Institution. They have got sanctioned post of Vocational Instructor in Computer Science. The learned counsel for the petitioner would further submit that the incumbent of the said post, namely, Mrs. K. Nimme, was retired on 30.06.2023. Hence, they have appointed one Sr. T. Paraloga Mary as Vocational Instructor, by order dated 01.07.2023 and sent a proposal for approval of the said appointment to the 4th respondent vide petitioner's letter dated 24.07.2023. However, the said proposal was returned asking the petitioner, to submit the necessary Government orders and prior approval of the Director of School Education which is in contravention of the Division Bench Judgment of the High Court of Madras at Madurai, in *W.A. No.1350 of 2017* dated 14.11.2017 reported in *2017 SCC Online Mad 26348 (The Government of Tamil Nadu, Rep. by Secretary to Government, Department of School Education Vs. J. Remila and others.)*

3.Per contra, the learned Government Advocate would vehemently contend that the post of the Vocational Instructor is not attached to the School and it is only person specific qua to the incumbents, whereas, in the case in hand, since the incumbent was retired on 30.06.2023, the question of filling vacancies by



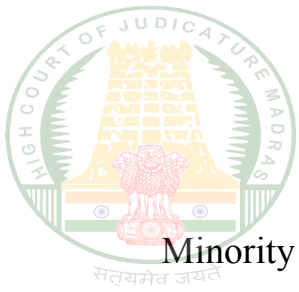
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appointment does not fall back to the Management as the same has been surrendered to the Department. Hence, prays to dismiss the Writ petition.

4.The main contention put forth by the Government Advocate is that since the incumbent who has been initially posted in the post of Vocational Instructor in Computer Science has retired on 30.06.2023, therefore, the said post must be construed to have been surrendered to the respondent. In this connection, when this Court put a pertinent question to the Government Advocate that under what Government orders or rules, such position is referred, however, the learned Government Advocate is not in a position to substantiate the same.

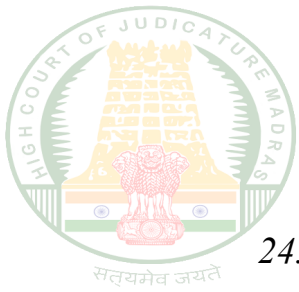
5.At this juncture, the learned petitioner's counsel would submit that the Government cannot deny the Constitutional Right provided under Article 30(1) of the Constitution of India, where certain protection is provided to the Religious Minority Educational Institution.

6. Further, the learned counsel for the petitioner invited to the attention of this Court that even in the Staff fixation report 12.10.2023, the respondent has referred that the disputed post was vacant since 01.06.2023 which impliedly denotes that there is a sanctioned post available to the petitioner-



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Minority Aided institution. The learned counsel would further submit that the petitioner has forwarded the concerned proposal to the respondents to approve the appointment of one T. Paraloga Mary in the post of Vocational Instructor vide proposal letter dated 24.7.2023. She would further submit that if such post is withdrawn in the midway of the Academic Year, then the students who have already in the classes will become prejudiced and their education will get affected. Hence, this court finds justification from the submissions of the petitioner that mere retirement is no way be construed as the post have been surrendered. Apart from that the learned counsel relied upon the Judgment of the Division Bench of this Court, reported in (2017) SCC Online Mad 26348, (*The Government of Tamil Nadu, Rep. by Secretary to Government, Department of School Education Vs. J. Remila and others.*) wherein this Court categorically held that unless there is a dispute with regard to the qualification of the appointee and their eligibility, appointment in a sanctioned post cannot be denied, asking prior approval which is nothing but contrary to the Constitutional mandate provided under Article 30(1) of the Constitution of India. For ready reference, this Court deems it appropriate to extract para 24, 25 and 26 of *the Government of Tamil Nadu, Rep. by Secretary to Government, Department of School Education* case.

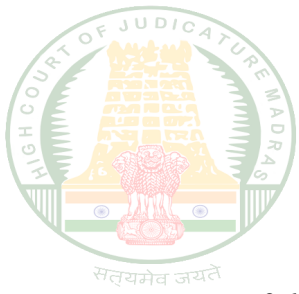


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24. *In the case on hand, admittedly, the 1st respondent has satisfied the educational requirements and the eligibility criteria stipulated by the appellants for holding the post of B.T. Assistant (Social Science) and there is also a vacancy in the said post with the Second respondent Institution. Therefore, the Appellant's interference in the appointments made by the 2nd respondent Minority Institution, is unsustainable. Therefore, according to us, the Judgment relied upon by the appellants reported in (2002) 8 SCC 481, (TMA Pai Foundation case) is not applicable to the facts of the instant case.*

25. *The next judgment relied upon by the learned Counsel for the appellant reported in (2010) 1 SCC 133 (Kolawana Gram Vikas Kendra Vs. State of Gujarat), is also not applicable to the facts of the instant case since in the said case the Government issued a Circular to verify as to whether there was a vacancy as per workload and whether the candidate possessed minimum prescribed qualification and that circular was challenged. The Hon'ble Supreme Court upheld the said Government Circular. But, the Judgment is distinguishable from the facts of the instant case as admittedly, in the case on hand, there is no dispute as regards the qualification and eligibility of the 1st respondent to hold the post of B.T. Assistant (Social Science) in the 2nd respondent Institution. Therefore, the facts of the instant case reported in (2010) 1 SCC 133 and therefore, that judgment of the Hon'ble Supreme Court is not applicable for the instant case.*



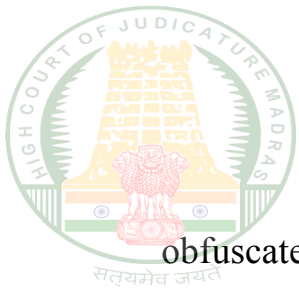
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26. *Article 30(1) of the Constitution of India gives linguistic and religious minorities a fundamental right to establish and administer Educational Institution of their choice. These rights are protected by a prohibition against their violation. The prohibition is contained in*

Article 13 of Constitution which declares that any law in breach of the fundamental rights would be void to the extent of such violation. It is well settled that Article 30(1) cannot be read in a narrow and pedantic sense and being a fundamental right, it should be given its widest amplitude. The width of Article 30(1) cannot be cut down by introducing in it considerations which are destructive to the substance of the right enshrined therein."

7. Further, the learned counsel for the petitioner has relied on another Judgment of the learned single judge of this Court in W.P. No.10521 of 2024 dated 27.06.2024, wherein the learned Single Judge has referred "*Iruthaya Amali's* case and the Judgment in Writ Appeal (MD) No.1350 of 2017. Thus, it is inferred that the return of proposal asking for prior approval is in contravention to the above said settled legal position. Even while looking at the impugned order, what they are asking is the necessary Government Order and Clarification from the Director of School Education which appears to be an



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obfuscate claim. It is pertinent to mention that when the petitioner minority institution have sent a proposal for an approval, instead of passing order in the said proposal, asking them to get clarification from the Directorate of School Education, is illogical.

8.In view of the above detailed discussion and settled legal position, this Court finds justification in the submission of the learned counsel for the petitioner. Hence, the impugned order dated 03.04.2024 is ordered to be quashed and the respondents are directed to approve the proposal of the petitioner within a period of four weeks from the date of receipt of copy of this order and release the salary and other attendant benefits within aforesaid period.

9.In the result, the Writ petition is allowed. No costs. Consequently connected miscellaneous petitions are closed.

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

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