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W.P.No.15922 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2025

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THE HONOURABLE Mr.JUSTICE C.KUMARAPPAN

W.P.No.15922 of 2025
and
W.M.P.Nos.18023 and 18029 of 2025

M.Rosy

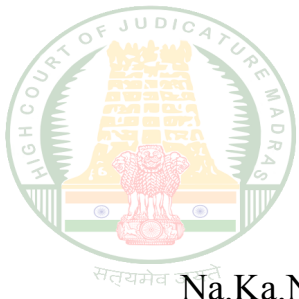
... Petitioner

Vs.

1. The Director of School Education,
DPI Campus,
College Road,
Chennai – 600 006.
2. The District Educational Officer (Anglo-Indian),
The Office of the District Educational Officer,
No.9, Kamarajar Salai,
Triplicane, Chennai – 05.
3. The Correspondent,
Holy Angels Anglo-Indian Higher Secondary School,
107, Sir Theyagaraya Road,
T.Nagar, Chennai – 600 017.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus, calling for the records
pertaining to the impugned order dated 12.03.2025 in



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Na.Ka.No.391/AA3/2025 on the file of the second respondent and quash the same, directing the first and second respondents to issue orders, approving the appointment of the petitioner, Mrs.M.Rosy, as Physical Director in the third respondent Holy Angel's Anglo-Indian Higher Secondary School, 107, Sir Theyagaraya Road, T.Nagar, Chennai – 600 017 w.e.f 18.01.2024, with all service and monetary benefits.

For Petitioner : Dr.Fr.Xavier Arul Mary,
Senior Counsel
for M/s.Father Xavier Associates

For Respondents : Mrs.S.Mythreye Chandru,
Special Government Pleader
(for R1 & R2)
Mr.FR.S. Savari Muthu (for R3)

ORDER

The instant writ petition has been filed challenging the impugned order dated 12.03.2025.

2. The learned Senior Counsel for the petitioner submitted that according to the staff fixation for the year 2024-2025, one post of Physical Director was sanctioned, and that post is eligible to be filled up and remains vacant. The third respondent school sent a proposal on 05.02.2025, to the



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second respondent, which was rejected on 12.03.2025, on the ground that a surplus post is available in the school run by the Corporate Management. Therefore, the petitioner was directed to be deputed from another school for the post she sought to fill. He further submitted that such rejection is contrary to the judgement of the Division Bench of this Court in ***Secretary to Government and Others Vs. Iruthaya Amali and another*** reported in (2021 ***SCC OnLine Mad 1285***), which was confirmed by the Supreme Court of India in ***SLP (C) No. 15702 of 2021 dated 16.02.2024***. Hence, he prayed to interfere with the impugned order.

3. Per contra, the learned Special Government Pleader appearing for the first and second respondents strongly objected to the contention of the learned Senior Counsel and invited the attention of this Court to Rule 15(4)(ii) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 (hereinafter referred to as "the Rules" for short). He contended that whenever a promotional post is to be filled up, the Management has to first consider the qualified teachers in that school for promotion, and only if no qualified teacher is available for promotion, then they may go for recruitment. In the case in hand, the direct appointment of the Physical



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Director is contrary to the Rule. Hence, contended that the impugned order is well-merited and deserves to be confirmed.

4. I have given my anxious consideration to either side submissions.

5. It is not disputed that, as per the staff fixation order for the year 2024-2025, one post of Physical Director is vacant and that post is a sanctioned post. Through their proposal dated 05.02.2025, the third respondent sought to appoint the petitioner as Physical Director. Though the learned Special Government Pleader relied upon Rule 15(4) of the Rules, the impugned order does not refer to the same. The only ground raised in the impugned order is that the third respondent school should first fill the post from the excess posts available in the schools run by the Corporate Management, and they have also referred to four schools that come under the Corporate Management.

6. But the learned Senior Counsel referred to the letter of the respondent, wherein the school referred to in the impugned order does not come under the Corporate Management. There is no serious dispute from the

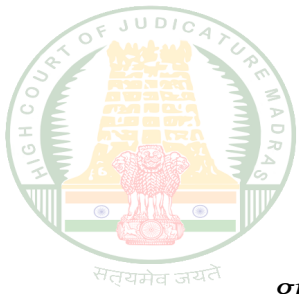


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learned Special Government Pleader regarding the wrong reference of the schools in the impugned order. Therefore, if there is any excess post available in a school that does not come under the Corporate Management of the petitioner, then there is no necessity for them to fill up the post by drawing from another Corporate Management. In this connection, the learned Senior Counsel relied upon the judgement of the Division Bench of this Court in ***Iruthaya Amali's case*** cited supra, wherein paragraph 148 provides a Compendium of Schedule, in which clause 148(v) stipulates as follows:-

“148(v). Like that insofar as aided minority institutions are concerned, if it is a stand alone institution, their right of appointment 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



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group or 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.”

The said clause has been confirmed by the Hon'ble Supreme Court of India SLP (C) No.15702 of 2021 dated 16.02.2024.

7. According to the ratio of the judgement of the Division Bench of this Court, only if an excess post is available within the Corporate Management, they should first draw from other schools and fill the sanctioned post. But in the case in hand, it is admitted that there is no excess post available within their Corporate Management, and apart from that, for the academic year 2024-2025, there is one vacancy to be filled for the Physical Director.

8. Though the impugned order does not reflect the non-application of Rule 15(4) of the Rules, the learned Special Government Pleader urged the non-compliance of Rule 15(4) of the Rules.

9. At this juncture, the learned Senior Counsel relied upon the



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judgement of the Division Bench of this Court in **(2007) 4 LW 617**, wherein the Division Bench of this Court has categorically held that the Tamil Nadu Recognised Private Schools (Regulation) Rules are not applicable to minority institutions. Further, he would also relied upon the judgement of the Division Bench of this Court in ***Eka Ratchagar Sabai Higher Sec.School Vs. K.Sumathi***, reported in **(2008) 1 MLJ 322**, which reads as follows:-

“14. As observed in TMA Pai Foundation's case (supra), essential ingredients of the management including admission of students and recruitment of staff, cannot be regulated. It is of course true that the earlier decision of the single Judge in M. Chelladorai v. Joint Director of School Education (Higher Secondary) Chennai (supra), which we have already noticed, also purported to rely upon the observations made in TMA Pai Foundation's case. However, now that the matter has been decided by the Supreme Court in (2007) 1 SCC 386 (supra) after referring to other earlier decisions, we do not think that the interpretation given earlier by different learned single Judges of this Court can hold good. The necessary conclusion, therefore, is that the discretion of the Management to appoint teacher of its own choice (of course a teacher who is otherwise qualified and eligible as per the prescribed regulations) cannot be curtailed through the process of rules, regulations or other executive instructions as such rules, regulations or executive



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instructions would violate the right of the minority institution under Article 30(1) of the Constitution.

15. Judged in light of the observations made by the Supreme Court in Secretary, Malankara Syrian Catholic College v. T. Jose (supra), the provisions which lay down qualification for appointment of teachers are obviously required to be followed; whereas the procedure contemplated in Rule 15(4) of the Rules severely constricting the scope of the discretion of the Management in appointment of teachers and confining the same to a particular source would be violative of Article 30(1). Therefore, such provisions are not required to be followed by the minority institutions. In view of the above, we cannot agree with the view expressed by the learned single Judge under the impugned judgment and such decision is liable to be over-turned."

According to the above ratio, Rule 15(4) is only directory, not mandatory, as far as minority institutions are concerned. Therefore, the submission of the learned Special Government Pleader that Rule 15(4) has been violated is liable to be rejected.

10. In view of the above detailed discussion, this Court is of the firm



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view that the impugned order is liable to be quashed. Accordingly, the impugned order dated 12.03.2025, is hereby quashed. The respondents are directed to issue approval for the petitioner's proposal dated 05.02.2025, within a period of eight weeks from the date of receipt of a copy of this order.

11. In the result, this Writ Petition is allowed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

03.07.2025

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Index : Yes/No

Speaking order /Non Speaking Order

Neutral Citation : Yes/No

To

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C.KUMARAPPAN, J.

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