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W.A.No.3057 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	22.01.2025
Pronounced On	09.05.2025

Coram:

THE HON'BLE MR.JUSTICE R.SURESH KUMAR
and
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.A.No.3057 of 2024
and
C.M.P.No.23130 of 2024

- 1.The Government of Tamilnadu,
Rep. by its Secretary to Government,
School Education Department,
Fort St.George, Chennai – 9.
- 2.The Joint Director,
(Higher Secondary Vocational),
College Road, Chennai – 6.
- 3.The Chief Educational Officer,
Tiruvannamalai District.
- 4.The District Educational Officer,
Tiruvannamalai District.

...Appellants

Versus

1.G.Aravind Raj



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2. The Correspondent,
Danish Mission Higher Secondary School,
Tiruvannamalai District.

...Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 21.03.2024 made in W.P.No.9971 of 2021 and allow the Writ Appeal.

For Appellants : Mr.U.M.Ravi Chandran,
Special Government Pleader

For Respondent – 1 : Ms.Dakshayani Reddy,
Senior Counsel
for Mr.C.Mahendran

For Respondent – 2 : No Appearance

JUDGMENT

(Judgment of the Court was delivered by **C.SARAVANAN, J.**)

This Intra Court Appeal is directed against the **Order** dated **21.03.2024** passed by the Writ Court in **W.P.No.9971 of 2021** (hereinafter referred to as the 'Impugned Order').

FACTUAL BACKGROUND OF THE CASE:-

2. The 1st Respondent/Writ Petitioner had filed the above Writ Petition praying for issuance of a writ of certiorarified mandamus to call for



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the records pertaining to the impugned **Order** in **Na.Ka.No.4178/E2/2018**

dated **29.05.2020** on the file of 4th Appellant and quash the same and consequently, direct the 1st to 4th Appellants to approve the petitioner's appointment as Vocational Instructor at the 2nd respondent school with effect from 01.09.2017 and pay him salary and other benefits.

3. By the Impugned Order, the Writ Court has allowed the above Writ Petition. Operative portion of the **Impugned Order** dated **21.03.2024** reads as under:-

“7. In the impugned order, it has been stated that the post sanctioned to the fifth respondent School is a part time post which is factually incorrect. So the fourth respondent cannot hold a file for the wrong reason that the post is a non-sanctioned post. In the impugned order it has been further stated that the post of Vocational Instructor has to be surrendered to the Government once the incumbent retires, dies or resigns. The above issue has been dealt in W.A.(MD) No.1494 of 2017 dated 01.03.2018, in which it is held as under :

“9. In the result, we dismiss the writ appeal for the reasons stated above and issue the following directions:

(i) The respondents 4 and 5 shall approve the appointment of Thiru.R.Kannan, Vocational Instructor, which appointment was made on 10.06.2013, as the post was very much available



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in terms of staff fixation order dated 29.10.2013.

(ii) In so far the Academic year 2014-2015 is concerned, the respondents 4 and 5 are directed to take note of the factual aspects which is admitted in the fixation order itself, namely, students strength and sanction one post with effect from the year 2014-2015 onwards in the category Vocational Instructor and the petitioner is entitled to be paid salary in the said post.

10. The above direction should be complied with within a period of 12 weeks from the date of receipt of copy of this order. Accordingly, the writ appeal fails and stands dismissed. No costs. Consequently, C.M.P.(MD)No.11921 of 2017 is also closed."

8. Since the above position is no more res integra and the position of law on this point has already been settled by the above judgment of the Division Bench of this Court, the fourth respondent is not expected to return the file for the very same reason which was settled by the above referred judicial pronouncement. Since the proposal is returned, the same shall be resubmitted by the fifth respondent along with the copy of the order of this Court in order to enable the fourth respondent to do the needful for issuing the approval order with effect from the date of appointment of the petitioner.

9. In the result, this Writ Petition is allowed and the impugned order in Na.Ka.No.4178/E2/2018 dated 29.05.2020 on the file of the 4th respondent is quashed. The fifth respondent is directed to resubmit the proposal to the fourth respondent along with the copy of the order of this Court and on receipt of the same, the fourth respondent is directed to do the needful for issuing the approval order with effect from the



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date of appointment of the petitioner, within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.”

4. A vacancy arose to the post of '**Vocational Instructor (General Machinist)**' due to superannuation of one Mr.K.Siva Prakasam on **31.05.2017**, pursuant to which, the 1st Respondent/Writ Petitioner was appointed to the post of '**Vocational Instructor (General Machinist)**' by the 2nd Respondent Minority School on **01.09.2017**.

5. The 2nd Respondent Minority School therefore had sent a proposal bearing **Letter No.586/2017** dated **03.07.2018** to the 4th Appellant for approving the appointment of 1st Respondent/Writ Petitioner as '**Vocational Instructor (General Machinist)**' in its School.

6. However, the 4th Appellant vide **Order** dated **29.05.2020**, returned the said proposal by stating that the said proposal may be resubmitted along with documents such as Government Orders or Proceedings of Director of School Education regarding the subject matter, if any.



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7. The reasons stated in the **Order** dated **29.05.2020** impugned in

W.P.No.9971 of 2021 are as follows:-

(i) The post of Vocational Teacher was a part-time post; that no new Vocational courses Teacher can be started from the **Academic Year 2017-2018** and that no new Vocational Instructor could be appointed without the permission of the Government in view of the proceeding of the Director of School Education, Chennai in proceedings bearing reference **Rc.No.115506/W6-2012** dated **28.08.2003**.

(ii) That post of Vocational Teacher was not school specific but only to the teacher/staff appointed to the said post and if the concerned staff retires or dies or moves to another post, the post is deemed to have been surrendered/returned to the Department and that no other person can be appointed to the said post without the permission of the Government.

8. The 1st Respondent/Writ Petitioner thus filed **W.P.No.9971 of 2021** before this Court, wherein, the 1st Respondent/Writ Petitioner challenged the **Order** dated **29.05.2020** passed by the 4th Appellant. The Writ Court vide Impugned Order allowed the Writ Petition in **W.P.No.9971 of 2021** filed by the 1st Respondent/Writ Petitioner.

9. Therefore, the present Writ Appeal is filed by the Official Respondents in **W.P.No.9971 of 2021** challenging the decision of the Writ Court vide **Impugned Order** dated **21.03.2024**.



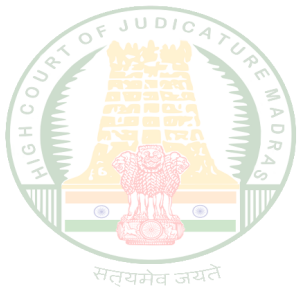
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SUBMISSIONS OF THE APPELLANTS:-

WEB COPY 10. The learned Special Government Pleader for the Appellants submitted that the Writ Court erred in allowing the Writ Petition filed by the 1st Respondent/Writ Petitioner. It is submitted that as per Staff Fixation Report 2017-2018, the double part-time teacher post lapsed as soon as the teacher who was working in the post attained the age of superannuation and that the Government had not sanctioned the new post in the 2nd Respondent School. He further submitted that several cases of similar nature are pending before the Hon'ble Supreme Court and therefore, the Impugned Order dated 21.03.2024 of the Writ Court is liable to be set aside.

11. That apart, the learned Special Government Pleader for the Appellants submitted that the Division Bench of this Court has also granted interim stay in various Writ Appeals under similar circumstances. Details of the Interim Orders are tabulated hereunder:-

Sl.No.	Writ Appeal No.	Date of the Interim Order
1	1225/2023	21.06.2023
2	1448/2023	10.07.2023
3	1317/2023	28.06.2023
4	1242/2023	22.06.2023



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Sl.No.	Writ Appeal No.	Date of the Interim Order
5	1211/2023	21.06.2023

12. The Impugned Order of the Writ Court is primarily assailed on the ground that reliance cannot be placed on the decision of the Division Bench of this Court dated 01.03.2018 passed in W.A.(MD)No.1494 of 2017. It is submitted that the said decision does not squarely apply to the facts of the present case. It is further stated that the Hon'ble Supreme Court vide Order dated 08.02.2019 in SLP (C) Diary No.2969 of 2019 has stayed the decision of the Division Bench of this Court in W.A.(MD)No.1494 of 2017.

13. The learned Special Government Pleader further submitted that the Writ Court has failed to take note of G.O.Ms.No.991, Education Department dated 16.07.1990, wherein, it has been clarified that the post of 'Vocational Instructor' cannot be filled after 16.07.1990 and if any post falls vacant, such post will automatically cease to exist and the said post shall be deemed to have been surrendered to the Government and that the



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'Vocational Instructor' post is only given to the Teacher/Staff appointed and not to the school and that the said post is a 'Non Sanctioned Post' in an institution.

14. It is submitted that during the Academic Year 2018-19, only 51 students were studying in the 'General Machinist' group at the 2nd Respondent School and therefore, on this count also, the appointment made cannot be approved. Moreover, as per the 'Staff Fixation Report' issued by the Chief Educational Officer, Tiruvannamalai vide proceedings in Na.Ka.No.8364/B6/2023 dated 17.10.2023 for the Academic Year 2023-2024, it is stated that there were no students enrolled in the 2nd Respondent School for the Vocational Course viz., General Machinist. Therefore, the learned Special Government Pleader prayed that the impugned order of the Writ Court allowing the Writ Petition was liable to be set aside.

15. In support of the above contentions, the Appellants relied on the following cases:-

- 1. The State of Tamil Nadu & Ors Vs. M.Theivanayagi., SLP (C) No.6162-6163 of 2022.**



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2. **The Government of Tamil Nadu, Rep by its Secretary to Government School Education Department Vs. P.Vivekandan, SLP (C) No.016772-016773 of 2019.**
3. **The Government of Tamil Nadu, Rep by its Secretary Vs. Secretary/Correspondent, Sethupathi Higher Secondary School, SLP (C) No. 4987 of 2019.**
4. **The Government of Tamil Nadu & Ors. Vs. St.Aloysius Higher Secondary School, 2010 SCC Online Mad 6148**
5. **Kolawana Gram Vikas Kendra Vs. State of Gujarat & Ors. (2010) 1 SCC 133**
6. **The Government of Tamil Nadu Vs. The Correspondent, St.Mary's Girls Higher Secondary School, W.A.No.2301 of 2019.**

SUBMISSIONS ON BEHALF OF THE 1ST RESPONDENT/WRIT PETITIONER:-

16. Defending the Impugned Order, learned Senior Counsel for the 1st Respondent/Writ Petitioner submitted that after considering the facts of the case, the Writ Court has passed a well-reasoned order and hence, the Impugned Order of the Writ Court does not merit any interference. Therefore, the learned Senior Counsel submitted that the present Writ Appeal is liable to be dismissed.



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17. Further, the learned Senior Counsel for the 1st Respondent/Writ

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Petitioner relied on the Staff Fixation Report for the Academic Year 2018-19 of the 2nd Respondent school. Particularly, a reference was made to Serial No.21, wherein, it has been mentioned that two posts were sanctioned for '**Vocational Teachers (Full Time)**', out of which, one post was for '**General Machinist**' and the other post for '**Office Management**'.

18. Serial No.21 of the Staff Fixation Report for the Academic Year 2018-19 is usefully extracted hereunder:-

Sl.No.	Name of the Post	No. of Posts
21	Vocational Teachers (Full Time)	General Machinist – 01 Office Management – 01

19. In support of the above contentions, the learned Senior Counsel for the 1st Respondent/Writ Petitioner relied on the following cases:-

1. **The State of Tamil Nadu, Rep by its Secretary Vs. Secretary/Correspondent, Sethupathi Higher Secondary School**, W.A.(MD). No. 1494 of 2017.
2. **The Chief Educational Officer Vs. D.Gnana Theeba Rani**, W.A.(MD) No. 675 of 2024.
3. **The Secretary to Government Vs. A.Kingsly Belbin**, W.A.(MD).No.1464 of 2023.



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DISCUSSION:-

WEB COPY 20. We have heard the learned Special Government Pleader for the Appellants and the learned Senior Counsel for the 1st Respondent/Writ Petitioner.

21. The 4th Appellant had passed the **Order** dated **29.05.2020** which was impugned in W.P.No.9971 of 2021 filed by the 1st Respondent/Writ Petitioner. The Writ Court has allowed the above Writ Petition for the reasons stated in it.

22. Although we concur with the ultimate decision of the Writ Court, we record different reasons to uphold it. We shall elucidate our views in the ensuing paragraphs.

23. Before, we proceed further, we shall refer to few case laws cited by the learned counsels on either side. In **Kolawana Gram Vikas Kendra Vs. State of Gujarat & Ors.** (2010) 1 SCC 133, the Hon'ble Supreme Court had to deal with a **Circular** dated **06.10.1998** issued by the Government of Gujarat.



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24. Under the said Circular, it was obligatory on the part of minority institutions to obtain prior approval from the State Government/Competent Authority before making any new appointment to both the Teaching and Non-Teaching posts.

25. The Hon'ble Supreme Court held that the selection process by a minority institution to select a candidate without any interference from the Government was valid. At the same time, however, the Hon'ble Supreme Court ruled that the requirement of this prior approval was necessitated because, it is for the Government, to see as to whether:-

- a) there posts were available in the minority institution as per the strength of students; and
- b) whether the candidates, who were sought to be appointed had the requisite qualifications in terms of the rules and regulations of the Education Department.

26. Thus, it was held prior approval was required only to ascertain whether the appointees had requisite qualifications in terms of the Rules and Regulations of the Education Department.



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27. On facts, the decision in the case of **Kolawana Gram Vikas**

Kendra was confined only to the appointment of 'Teachers' in the Appellant School therein. However, in the said case, the Hon'ble Supreme Court had held that the same yard stick will apply to non-teaching staff also.

Relevant portion of the said decision reads as under:-

*“7. In our considered view, we do not view this to be interference in the selection process. **It would be perfectly all right for a minority institution to select the candidates without any interference from the Government.** However, the requirement of this prior approval is necessitated because it is for the Government to see as to whether there were actually posts available in the said institution as per the strength of students and secondly; whether the candidates, who were sought to be appointed, were having the requisite qualifications in terms of the rules and regulations of the Education Department. That is precisely the stand taken by the State of Gujarat before us in its counter-affidavit.*

8. Para 3 of the said affidavit reads as under:

“Minority institutions are free to select their teaching and non-teaching staff. No Government Officer or the representative of the Board was appointed in the selection committee of the minority institution. There is no interference by the Government in the administration of the schools. However, N.O.C is required to be obtained to verify whether there is no a vacancy of a teacher of a particular subject as per the workload fixed by the Gujarat Secondary and



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Higher Secondary Education Board specially when the government is providing grant-in-aid and that he possesses minimum required qualification for the post he is appointed.”

From a reading of aforesaid Para 3, it is clear that all that the Government wants to examine is as to whether the proposed appointments were within the framework of the Rules considering the workload and the availability of the post in that institution and, secondly, whether the selected candidates had the necessary qualifications for the subjects in which the said teachers were appointed. The same applies to the non teaching staff also.

9. In view of this clear stand taken by the State Government, we cannot persuade ourselves to hold that the aforementioned Circular amounts to any unconstitutional interference in the internal working of the minority institution. In that view, we would choose to dismiss these appeals.

10. However, Mr.Ahmadi raised another point saying that if the prior approval or the no-objection certificate, as the case may be, is not awarded within seven days without any reason, then it would be hazardous for the minority institution to run itself. We do expect the competent authority to issue the no-objection certificate within the time provided in the said circular which is of seven days. Of course, if there are any objections, the authority will be justified to take some more time within the reasonable limits.”



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28. The above ruling of the Hon'ble Supreme Court in the case of **Kolawana Gram Vikas Kendra** (referred to *supra*), was also recently followed by another Division Bench of equal strength in **Mark Donald Carron Vs. State Government of Tamil Nadu & Ors. (2024) SCC Online Mad 4059**. The Division Bench dismissed the Writ Appeal preferred against the Order of the Writ Court dismissing the Writ Petition filed by the said Writ Petitioner.

29. In the light of the above decision of the Hon'ble Supreme Court, a Division Bench of this Court had allowed a batch of writ appeals preferred by the Education Department in **The Government of Tamil Nadu & Ors. Vs. St.Aloysius Higher Secondary School, 2010 SCC Online Mad 6148**. There, the Division Bench of this Court held as under:-

“12. The Power of authorities has been clearly set out in Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 and Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. Rule 6 of Tamil Nadu Minority Schools (Recognition and Payment of Grant), 1977



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contemplates that approval for appointment of teachers is mandatory before receiving any grant and therefore, minority institutions cannot say merely some teachers have been appointed in regular vacancies, release of grant is automatic even before the approval of appointment of teachers made by the competent authorities. Granting approval to the appointments of staff in minority educational institutions by the Government was upheld by the Supreme Court in [Kolawana Gram Vikas Kendra v. State of Gujarat and others] (2010) 1 SCC 133.

14. In the light of the above facts, when we analyse the impugned circulars dated 25.04.1994 and 20.05.1994, in the first circular, it was clearly stated that the Government had proposed to issue revised norms for teachers; pupil ratio and the matter is now under the active consideration of the Government. Hence, the vacancies existed due to death, retirement, voluntary retirement, resignation etc., in the aided High School and Higher Secondary Schools should not be filled up with effect from 01.06.1994 till the revised norms are issued. Further, it was stated that the Chief Educational Officer, District Educational Officer and Inspectors of Girls Schools were requested to give suitable instruction to the management and heads of the aided school (both minority and non minority) under their control not to fill up vacancies which existed due to the above reasons and keep them vacant from 01.06.1994 until further orders. This circular was issued by the Director of School Education. Subsequently, in the second Circular dated 20.05.1994 issued by the Director of Elementary Education, it was stated that all the District Educational Officers are informed that granting permission to fill up teachers post



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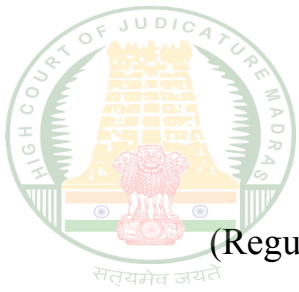


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*which fell vacant due to retirement, resignation, death or voluntary retirement in aided primary/middle school from 01.06.1994 has to be stopped temporarily. Further, it was stated that they are requested to inform this to all the Assistant Educational Officer who in turn shall inform the matter to all the management of the school and to keep an acknowledgment from them. It was further stated that the District Educational Officers are requested to send a report on the action taken by them. **Thus, by virtue of these two circulars dated 25.04.1994 and 20.05.1994, the Government has given a direction that the appointments arising out of vacancies, including on the death or retirement of a teacher, even in respect of the aided schools, should be stopped temporarily. Though these instructions came with effect from 01.06.1994, subsequently, it was stated that this ban was for a period of one year. This ban was intended for the ostensible purpose to regulate the appointments to suit the convenience in the matter of appointment of teachers by taking note of the relevant teacher;pupil ratio. Therefore, the Government thought it fit to regulate, to upgrade and to maintain high standards in respect of the teacher;pupil ratio and for this purpose the circulars were issued. Therefore, merely because the ban was in force prohibiting appointment of teachers, it cannot be said that it had infringed the rights of the respondents school.***

30. All these cases are confined to the appointment of **'Teachers'**.

They have not specifically dealt with the appointment of **'Vocational Instructors'** under the Tamil Nadu Recognised Private Schools

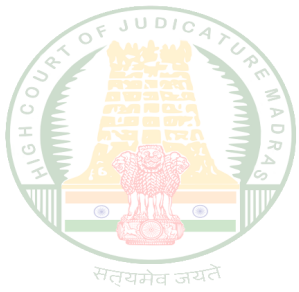


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(Regulation) Act, 1973 (hereinafter referred to as '1973 Act') and Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 (hereinafter referred to as '1974 Rules').

31. The 1973 Act and the 1974 Rules have now been replaced with the Tamil Nadu Recognised Private Schools (Regulation) Act, 2018 and the Tamil Nadu Recognised Private Schools (Regulation) Rules, 2023 vide G.O.Ms.No.13 & 14 School Education (MS) w.e.f. 13.01.2023. The new Act and the Rules made thereunder are different in many ways. They are more comprehensive.

32. Therefore, to resolve the issue regarding the correctness of the said decision of the 4th Appellant dated **29.05.2020** declining to approve the appointment of the 1st Respondent/Writ Petitioner as a '**Vocational Instructor (General Machinist)**', a reference is made only to the provisions of the '1973 Act' and the '1974 Rules' and to the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977 (hereinafter referred to as '1977 Rules') and the 2018 Act and 2023 Rules which came into force only on **13.01.2023**.



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33. The 1977 Rules are primarily meant for recognition of “Minority Schools” and for payment of Government grants to such “Minority Schools” as defined in Rule 2(d) of the 1977 Rules. The 1977 Rules does not prescribe any method of appointment of “Teachers” and other staffs in “Minority Schools” as defined in Rule 2(d) of the 1977 Rules.

34. Rule 9 of the 1974 Rules contemplates recognition of private schools including “Minority Schools” of all kinds specified in Rule 4 of the 1977 Rules. Rule 9 of the 1974 Rules is a generic rule. Rule 9 of the 1974 Rules applies to all private schools including a Minority School.

35. Therefore, the 1977 Rules has to be read along with the 1974 Rules in the case of appointment of both “**Teaching**” and “**Non-Teaching Staff**” in “**Minority Schools**”.

36. The 1973 Act provided a broad legal framework for appointment and qualification of “**Teachers**” and “**Other persons**” in



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Private Schools. Chapter V of the 1973 Act specifically deals with “**Terms and Conditions of Service of Teachers and Other Persons in Private Schools**”.

37. Section 19 is in Chapter V of the 1973 Act. Section 19 deals with **Qualifications, Conditions of Service**, etc., of “**Teachers**” and “**Other Persons**” employed in Private Schools.

38. To implement the object of Section 19 of the 1973 Act, 1974 Rules were framed. Rule 15 of the 1974 Rules mirrors and reflects the object of Section 19 of the 1973 Act. Similar expressions found in both Section 19 of the 1973 Act and Rule 15 in the 1974 Rules.

39. The expressions used in both Section 19 of the 1973 Act and Rule 15 of the 1974 Rules are ‘**Qualifications**’, ‘**Conditions of Service**’ of “**Teachers**” and “**Other Persons**”.

40. Neither the 1973 Act nor the 1974 Rules or 1977 Rules have defined the expression “**Vocational Instructor**”. There is only definition of

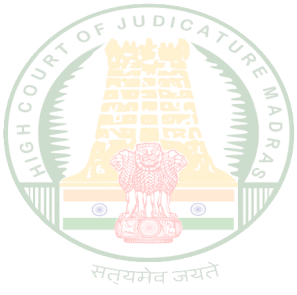


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the expression “**Teacher**” in Rule 2(c) of the 1974 Rules. The expression “**Teacher**” in Rule 2(c) of the 1974 Rules to include a “**Headmaster**”. A similar definition of the expression “**Teacher**” is there in the 1977 Rules as well.

41. The post of '**Vocational Instructor**' was introduced for the first time in the **Year 2009** vide **G.O.Ms.No.65 School Education (VE)** dated **24.02.2009** in the 1974 Rules.

42. However, fact remains that appointment of the 1st Respondent/Writ Petitioner was made to the post of “**Vocational Instructor**”, after the previous incumbent who was earlier appointed as a “**Vocational Instructor**” against a regular vacancy attained the age of superannuation, the 1st Respondent/Writ Petitioner was appointed in his place as a “Vocational Instructor”. The post of “**Vocational Instructor (General Machanist)**” is a sanctioned post.



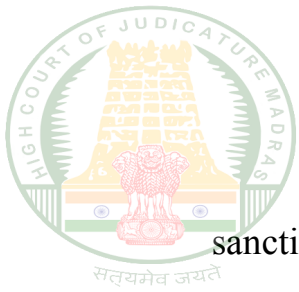
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WEB COPY 43. If the post of the “**Vocational Instructor (General Machinist)**” is to be treated on par with the post of a “**Teachers**” under the 1973 Act and the 1974 Rules, the decision of the 4th Appellant cannot be questioned. In other words, procedure prescribed for appointment under Rule 15(4) of the 1974 Rules was required to be followed, however, this is not the case here. We shall explain our position in ensuing paragraphs.

44. On the other hand, if the post of the “**Vocational Instructor (General Machinist)**” was to be treated on par with the post of “**Other Persons**” under the Rules, it has to be held that the decision of the 4th Appellant was rightly interfered by the Writ Court vide Impugned Order.

45. We shall refer to the post of “**Vocational Instructor (General Machinist)**” in due course of this narration.

46. We are concerned with a case of appointment of the 1st Respondent/Writ Petitioner as a ‘**Vocational Instructor (General Machinist)**’ in the 2nd Respondent Minority School as against the



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sanctioned strength which was made without prior approval of the 4th

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Validity of appointment of the 1st Respondent as “Vocational Instructor (General Machinist)” in the 2nd Respondent School:-

47. It has to be borne in mind that even if appointments are/were made in excess of the fixed Teacher-Pupil Ratio under the Rules, the appointment cannot be regularised even in the case of a person other than a “**Teacher**”. We are not concerned with the above situation.

48. As per Rule 15(1) of the 1974 Rules, the number of ‘**Teachers**’ and ‘**Other Persons**’ employed in a private school shall not exceed the number of posts sanctioned by the Director of School Education (DSE). Number of post had to be thus sanctioned by the Director of School Education (DSE).

49. For the sake of clarity, Rule 15(1) of the 1974 Rules is reproduced below:-

“15. Qualifications, conditions of service of teachers and other persons. –



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(1) The number of teachers and other persons employed in a private school shall not exceed the number of posts sanctioned by the Director of School Education, from time to time, with reference to the academic requirements, teacher-pupil ratio and overall financial considerations.”

50. As per Rule 15(1) of the 1974 Rules, the Director of School Education (DSE), was required to fix and sanction the post of “**Teachers**” and “**Other Persons**” in a Private School from time to time with reference to:-

- a. Academic Requirements;
- b. Teacher-Pupil Ratio; and
- c. Overall financial considerations.

51. Rule 15(2) of 1974 Rules prescribed the format for agreements to be signed with “**Teachers**” and “**Other persons**” and the procedure to be followed in the matter of their appointments to be made by the ‘School Committee’. For the sake of clarity, Rule 15(2) of 1974 is reproduced below:-

“15. Qualifications, conditions of service of teachers and other persons. –

(2) (i) The School Committee of every private school shall enter



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into an agreement with the teacher or other person in Form VII-A or VII B if the appointment is for a period exceeding three months.

[(i-a) The School Committee of every private school shall enter into an agreement with the person appointed as Junior Grade Teacher in Form VII-C.]

(ii) Three copies of the agreement shall be executed, one copy shall be furnished to the teacher or other person concerned, the other copy shall be retained by the School Committee and the third copy shall be forwarded to the District Educational Officer.”

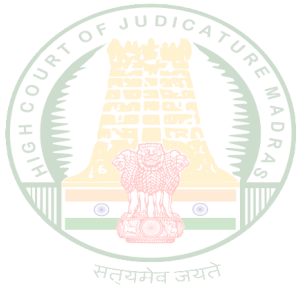
52. As against a 'regular vacancy', only a fully qualified candidate could be appointed on a regular basis under Sub-Rule (3) to Rule 15 of 1974 Rules. Similarly, in the case of a 'temporary vacancy', such vacancy can be filled up only for a specified period on 'temporary basis'. For the sake of clarity, Rule 15(3) of the 1974 Rules is reproduced below:-

“15. Qualifications, conditions of service of teachers and other persons. –

(1)

(2)

*(3) In a regular vacancy, a fully qualified candidate shall be appointed only on a regular basis. However, in a temporary vacancy, i.e., leave vacancy, deputation for training or suspension of the teacher's certificate, a teacher or other person may be appointed for a specified period. In such cases, the agreement to be executed shall be in **Form VII B.**”*



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WEB COPY 53. For filling up such a 'temporary vacancy', Schools were required to sign an agreement with such a person in Form VII B as was specified in the 1974 Rules. Rule 15(3) of the 1974 Rules illustrated the situation when 'temporary vacancy' could arise in a Private School.

54. Rule 15(4)(i) of the 1974 Rules underscores the point that promotion shall be made only on the grounds of merit and ability and seniority will be considered only when merit and ability are approximately equal. We are also not concerned with a situation contemplated under Rule 15(4)(i) of the 1974 Rules in the present case.

55. Since the 1st Respondent/Writ Petitioner was made after the previous incumbent attained the age of superannuation, the appointment of the 1st Respondent/Writ Petitioner as '**Vocational Instructor (General Machinist)**' was against a regular vacancy. This is also not in dispute.



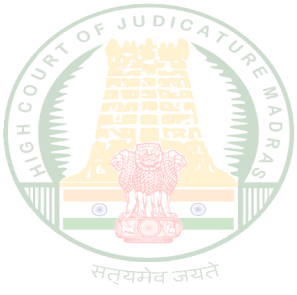
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56. There are also no indication that at the time of appointment of the 1st Respondent/Writ Petitioner by the 2nd Respondent School, there was any change in the sanctioned strength of the “**Teachers**” and “**Other Persons**” albeit in the 2nd Respondent Minority School.

57. There are also no indication that the Teacher-Pupil Ratio had also changed at the time of appointment of 1st Respondent/Writ Petitioner in the 2nd Respondent Minority School. Thus, there is no dispute that the post of “**Vocational Instructor (General Machinist)**” was a sanctioned post in the 2nd Respondent Minority School.

58. In fact, if we examine the scheme of the 1974 Rules, there are only two broad categories of ‘**persons**’ who can be appointed in Schools governed by the 1973 Act and the aforesaid Rules. One is under the category of “**Teacher**” and the other is under the category of “**Other persons**”.

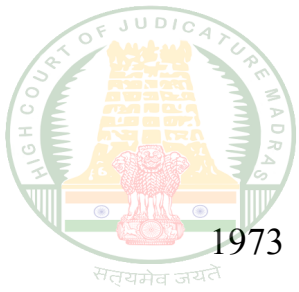


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WEB COPY 59. **'Vocational Instructors'** are engaged in schools for imparting practical training and to expose students to the relevant skills in a particular discipline. Under the 1974 Rules, the post of **'Vocational Instructor (General Machinist)'** was not on par with that of a **“Teacher”** as defined in **Rule 2(c)** of the 1974 Rules unlike the 2018 Act and 2023 Rules, although the role of a **'Vocational Instructor'** is somewhat akin to that of a **“Teacher”** in a school.

60. As far as qualifications of **“Vocational Instructors”** are concerned, the qualifications are prescribed only in **Annexure V-B** of the 1974 Rules. **Annexure V-B** of 1974 Rules applies to all schools including Minority Schools. **Table IV** to **Annexure V-B** of the 1974 Rules prescribes qualifications for **“Vocational Instructor (General Machinist)”**.

61. From a reading of qualification prescribed in **Table IV** to **Annexure V-B** of the 1974 Rules for a **“Vocational Instructor (General Machinist)”**, it is evident that they are not **“Teachers”** for the purpose of



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1973 Act or the 1974 Rules. We shall explain the above position with reference to qualifications of **“Teachers”**. **“Vocational Instructors”** and **“Non-Teaching Staff”** viz., **“Other persons”** in the ensuing paragraphs.

Requisite Qualification for ‘Teachers’, ‘Vocational Instructors’ and ‘Other Persons’ employed in Private Schools/ in Minority Schools:-

62. Rule 15(6) of the 1974 Rules prescribes qualifications for **“Teacher”** and **“Other Persons”** employed in a Private School. As per Rule 15(6) of the 1974 Rules, they shall possess the qualification specified in **Annexure V** of the aforesaid Rules.

63. Rule 15(6-A) of the 1974 Rules prescribes qualifications for certain other categories of **“Teachers”** namely **Junior Grade Teachers** in **Private Schools** and **Junior Grade Teachers** in **Higher Secondary Schools** and their qualification is prescribed in **Annexure V-A** of the 1974 Rules.



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WEB COPY 64. Annexure V-A of the 1974 Rules was inserted by **G.O.Ms.No.125, School Education (X2)** dated **12.11.2003** into 1974 Rules. Annexure V-A of the 1974 Rules has to be read along with Rule 15(6-A) of the 1974 Rules. It has two parts. **First part** to Annexure V-A of the 1974 Rules specifies qualifications for **‘Junior Grade Teachers in Private Schools’**. Second Part to Annexure V-A of the 1974 Rules prescribes qualifications for **‘Junior Grade Teachers in Higher Secondary Schools’**.

65. Thus, certain categories of **“Instructors”** have also been grouped along with **‘Junior Grade Teachers in Private Schools’** in **Part I** to Annexure V-A of the 1974 Rules. **S.No. 12** to **Part I** to Annexure V-A of the 1974 Rules prescribe qualifications to the post of **Junior Grade Instructors** in various disciplines in Private School including **Junior Pre-Vocational Teachers**.

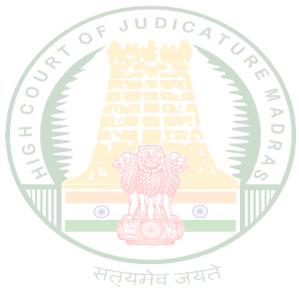


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WEB COPY 66. Summary of Part I and Part II to Annexure V-A of the 1974

Rules is captured in the following:-

Annexure V-A of the 1974 Rules	
Qualifications for appointment as:-	
Junior Grade Teachers in Private Schools	Junior Grade Teachers in Higher Secondary Schools
1.Junior Grade B.Ed. Teacher in High Schools and Higher Secondary Schools 2.Junior Grade B.Ed. Teacher in Middle Schools 3.Junior Grade Secondary Grade Teacher. 4.Junior Grade Elementary Grade Teacher (Trained in Nursery, Montessori and Kinder Garden). 5.Junior Grade Tamil Pandits. 6.Junior Grade Pandits of other languages. 7.Junior Grade Physical Director in High Schools. 8. Junior Grade Physical Education Teacher. 9.Junior Grade Instructor in Sewing. 10.Junior Grade Instructor in Music. 11.Junior Grade Drawing Master. 12.Junior Grade Pre-vocational Teachers.	1.Junior Grade Post-Graduate Assistants in Academic Subjects. 2.Junior Grade Post-Graduate Assistants in Languages (Tamil). 3.Junior Grade Post-Graduate Assistant in languages (Other than Tamil). 4.Junior Grade Physical Directors.



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67. **Annexure V** of the 1974 Rules has four parts namely, **Table I, II, III** and **IV**. **Table I** to **Annexure V** of the aforesaid Rules lists out 27 categories of “**Teachers**” in Private Schools and their qualifications.

68. Similarly, **Annexure III** appended to the 1977 Rules prescribe qualifications for “**Teachers**” in Minority Schools. **Annexure III** to the 1977 Rules is also divided into three parts. **Part I** to 1977 Rules deals with “**Qualifications for appointment as ‘Teachers’ in Minority Schools (Regular)**”.

69. Part I to 1977 Rules also has about 27 categories of “**Teachers**” and specifies their qualifications. It is similar to the qualifications in **Table I** to **Annexure V** of the aforesaid Rules.

70. Certain categories of **Instructors** simplicitors alone have been included along with the post of the ‘**Teachers**’ in these parts/tables to **Annexure V** and **III** of the 1974 and 1977 Rules respectively. “**Instructors**” in **Table I** to **Annexure V** should possess regular qualifications along with certain additional qualifications prescribed

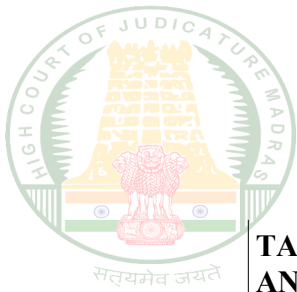


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therein. These categories of “**Instructors**” *simpliciter* are also eligible to be appointed as “**Teachers**” both under the 1974 Rules and 1977 Rules.

71. The qualifications for the ‘**Teachers**’ and certain categories of “**Instructors**” both under **Part I to Annexure III** to 1977 Rules and **Table I to Annexure V** of the 1974 Rules are similar. For the sake of comparison, they are reproduced below:-

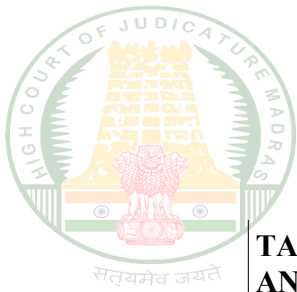
TABLE I TO ANNEXURE V OF 1974 RULES- QUALIFICATIONS FOR APPOINTMENT AS TEACHERS IN PRIVATE SCHOOLS (REGULATION)		PART I TO ANNEXURE V OF 1977 RULES- QUALIFICATIONS FOR APPOINTMENT AS TEACHERS IN PRIVATE SCHOOLS (REGULAR)	
Sl. No.	Name of the Post	Qualification *	Qualification *
1	Headmaster (High Schools)	Headmaster (High Schools)	*
1A		Headmaster (Elementary and Middle Schools)	*
2	B.T. Assistant	B.T. Assistant	*
3	Secondary Grade Teacher	Secondary Grade Teacher	*
4	Elementary Grade Teacher	Elementary Grade Teacher	*
5	Tamil Pandits	Tamil Pandits	*



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TABLE I TO ANNEXURE V OF 1974 RULES- QUALIFICATIONS FOR APPOINTMENT AS TEACHERS IN PRIVATE SCHOOLS (REGULATION)		PART I TO ANNEXURE V OF 1977 RULES- QUALIFICATIONS FOR APPOINTMENT AS TEACHERS IN PRIVATE SCHOOLS (REGULAR)	
6	Pandits of other Languages (Languages other than Tamil)	Pandits of other Languages (Languages other than Tamil)	*
7	Physical Director	Physical Director	*
8	Physical Education Teacher (a) Grade – I (b) Grade - II	Physical Education Teacher (a) Grade – I (b) Grade - II	*
9	Woodwork Instructor	Woodwork Instructor	(1) S.S.L.C. completed (2) (i)Industrial School Certificate; or (ii)Certificate course in Elementary Wood Working (Old Regulation) issued by the College of Arts and Crafts, [Chennai]; (iii) Diploma Course in wood work issued by College of Arts and Crafts (New Regulations), [Chennai] ; (3) (i)Technical Teachers' Certificate; or (ii)Crafts Instructors' Course Certificate of Teachers' College, Saidapet. (4) National Trade Certificate in the Trade of Carpentry. One year course (with) one year paid (untrained) teaching experience or one year (paid) work experience in standard



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	TABLE I TO ANNEXURE V OF 1974 RULES- QUALIFICATIONS FOR APPOINTMENT AS TEACHERS IN PRIVATE SCHOOLS (REGULATION)	PART I TO ANNEXURE V OF 1977 RULES- QUALIFICATIONS FOR APPOINTMENT AS TEACHERS IN PRIVATE SCHOOLS (REGULAR)	
			work factory or institution; and (5) National Apprentice Certificate issued by the National Council for Training in Vocational Trades.
10	Spinning and Weaving Instructor	Spinning and Weaving Instructor	(1) S.S.L.C Completed. (2) (i) Artisan Course or Instructors Course Certificate of the Government Textile Institute (Chennai); or (ii) Government Technical Examinations Certificate (Lower Grade); or (iii) Bunayee or Khadi Pravisake Course (One year) of the All India Spinners Association, Tiruppur; or (iv) Three-year Certificate Course in Handloom and Powerloom Weaving issued by the Sri Moolam Rama Varma Technical Institute, Nagercoil, awarded prior to 1961; or (v) Twelve months Craftsman Certificate in Handloom Weavers or Sri Moolam Rama Varma Technical Institute , Nagercoil; or (vi) National Trade Certificate awarded by the National Council for training in Vocational Trades, Government of India, the Director General of Resettlement and Employment, New Delhi, in Hand-weaving Trade; or (vii) Diploma in Handloom



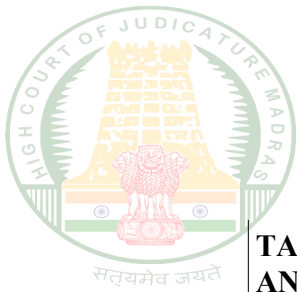
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TABLE I TO ANNEXURE V OF 1974 RULES- QUALIFICATIONS FOR APPOINTMENT AS TEACHERS IN PRIVATE SCHOOLS (REGULATION)		PART I TO ANNEXURE V OF 1977 RULES- QUALIFICATIONS FOR APPOINTMENT AS TEACHERS IN PRIVATE SCHOOLS (REGULAR)	
			Technology awarded by the Indian Institute of Handloom Technology, All India Handloom Board, Salem; and (3) (i) Technical Teachers' Certificate; or (ii) Craft Instructors Course Certificate of Teachers' College, Saidapet.
11	Instructor in Gardening and Agriculture	Instructor in Gardening and Agriculture	(1) (i) S.S.L.C. completed or its equivalent; (ii) Government Technical Examination Certificate (Lower Grade); and (iii) Technical Teachers' Certificate; or (2) (i) Completed Secondary School Leaving Certificate with thirty-five per cent in Agriculture (Theory and Practical separately) under the Diversified Course; and (ii) Technical Teachers' Certificate.
12	Instructor in Home Craft	Instructor in Home Craft	(1) S.S.L.C. Completed; (2) (i) Government Technical Examination (Higher Grade in Needle Work and Dress-making and Higher Grade in Embroidery); or (ii) Industrial School Certificate; or (iii) National Trade Certificate awarded by the National Council for



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TABLE I TO ANNEXURE V OF 1974 RULES- QUALIFICATIONS FOR APPOINTMENT AS TEACHERS IN PRIVATE SCHOOLS (REGULATION)		PART I TO ANNEXURE V OF 1977 RULES- QUALIFICATIONS FOR APPOINTMENT AS TEACHERS IN PRIVATE SCHOOLS (REGULAR)	
			Training in Vocational Trade, Government of India or the Diploma awarded by the Director General of Resettlement and Employment, New Delhi in Embroidery and Needle work; or (iv) Diploma in Costume Designing and Dressmaking issued by the State Board of Technical Education and Training, [Chennai]; and (3) Technical Teachers' Certificate.
13	Instructor in Music	Instructor in Music	*
14	Instructor in Music	Drawing Master	*
15	Metal Works Instructor, Electric Wiring Instructor, Book-Binding Instructor, Leather Work Instructor, Clay Modelling and Paper Making, Coir Instructor, Basketing and Ratan Work Instructor	Metal Works Instructor, Electric Wiring Instructor, Book-Binding Instructor, Leather Work Instructor, Clay Modelling and Paper Making, Coir Instructor, Basketing and Ratan Work Instructor	Examination of Lower Grade in the subject; or (iii) Certificate of the Government of India, Director of Resettlement and Employment (Ministry of Labour). Explanation. - <i>The Industrial School Certificate should, ordinarily, be of not less than two years duration and for the particular subject alone and not for a number of subjects. (1) S.S.L.C. completed; and</i> (2) (i) Industrial School Certificate; or (ii) Government Technical



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TABLE I TO ANNEXURE V OF 1974 RULES- QUALIFICATIONS FOR APPOINTMENT AS TEACHERS IN PRIVATE SCHOOLS (REGULATION)		PART I TO ANNEXURE V OF 1977 RULES- QUALIFICATIONS FOR APPOINTMENT AS TEACHERS IN PRIVATE SCHOOLS (REGULAR)	
16	Diversified Course Secretarial Assistant	Diversified Course Secretarial Assistant	*
17	Commercial Instructor	Commercial Instructor	(1) Government Technical Examination in Typewriting (Higher Grade); and (2) Technical Teachers' Certificate.
ENGINEERING:			
18	Senior Instructor		(1) B.E. (Mechanical) or B.E. (Electrical) or a degree equivalent thereto; or (2) (a) L.M.E. or D.M.E. or L.E.E. or D.E.E.; or (b) (i) B.Sc. (Physics Main) and Electrical or Mechanical Engineering (Subsidiary); and (ii) Workshop experience or teaching experience in a recognised institution for a period of not less than three years; or (3) B.T. or B.Ed, or L.T. with not less than two years' workshop experience or teaching experience in a recognised school.
19	Assistant Instructor	Assistant Instructor	L.M.R. or L.M.E. or L.E.E.; or L.M.E. with practical experience for a period of not less than one year in Engineering workshop or as Instructor in recognised technical



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TABLE I TO ANNEXURE V OF 1974 RULES- QUALIFICATIONS FOR APPOINTMENT AS TEACHERS IN PRIVATE SCHOOLS (REGULATION)		PART I TO ANNEXURE V OF 1977 RULES- QUALIFICATIONS FOR APPOINTMENT AS TEACHERS IN PRIVATE SCHOOLS (REGULAR)	
			school.
20	Senior Mechanic	Senior Mechanic	*
21	Junior Mechanic	Junior Mechanic	*
22	Instructor in Agriculture	Instructor in Agriculture	(i) B.Sc., Agriculture; or (ii) B.A. or B.Sc. with Agriculture as a subject in a degree courses; or (iii) B.Sc. with Agriculture as a subject in the Intermediate; or (iv) B.A. or B.Sc., (Botany or Zoology) with Higher Grade Certificate in Agriculture. Provided that persons possessing the qualification specified above are not available, any of the qualifications specified below may be deemed as sufficient; Licentiate in Agriculture (Mysore); or S.S.L.C. eligible or completed with Agriculture Higher Grade and T.T.C. in Agriculture; or S.S.L.C. eligible or completed with Agriculture under the diversified course (From 1976).
23	Instructor in Textile Technology		(i) Licentiate or Diploma in Textile Technology; and (ii) Work experience in Weaving in a recognised Textile
24	Instructor in Home Science		A degree in Home Science, I.T. or P.T. or B.Ed.

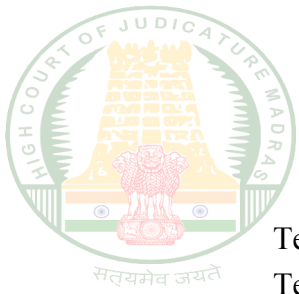


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TABLE I TO ANNEXURE V OF 1974 RULES- QUALIFICATIONS FOR APPOINTMENT AS TEACHERS IN PRIVATE SCHOOLS (REGULATION)		PART I TO ANNEXURE V OF 1977 RULES- QUALIFICATIONS FOR APPOINTMENT AS TEACHERS IN PRIVATE SCHOOLS (REGULAR)	
25	Drawing and Painting Instructor	Drawing and Painting Instructor	(i) Degree in Drawing and Painting under Part III of any University in the State or its equivalent; or (ii) Diploma in Painting or Diploma in Drawing of Annamalai University; or (iii) (a) S.S.L.C. completed; and (b) A Diploma in Drawing Second Class or Painting granted by the College of Arts and Crafts, [Chennai] or Government Diploma in Drawing.
26	Instructor in Music	Instructor in Music	(1) A degree with Music in Part III; or (2) (a) A Diploma or title holder in Music; or (b) (i) S.S.L.C. or its equivalent; and (ii) Sangeetha Sironmani or Sangeetha Bhushanan title.
27	Instructor in Dancing	Instructor in Dancing	(i) Diploma in Dancing awarded by Kalakshetra, Thiruvannamipur; or (ii) Higher Grade Certificate awarded by the Director of Government Examinations, [Chennai]; or (iii) Natya Vishrada Examination Certificate conducted by the Tamil Nadu Music College, Adyar.

- Only in 1977 Rules

[Explanation.- The “Technical Teachers' Certificate” means the Technical



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Teachers' Certificate awarded by the Education Department and includes the Teachers' Training Certificate issued by the Department of Industries and Commerce before 1963 and the Technical Teachers' Course Certificate issued by the Department of Employment and Training on and from the 1st January 1963.]

Note I*: (Qualification has intentionally left blank here as they are not relevant for the present dispute).

Note II: For the Post at Serial Nos.9 to 13, 15 to 19, 22 to 27, multiple qualifications are required as compared to the qualification prescribed for “Vocational Instructor (General Machinist)” in **Annexure V-B**.

72. A certain categories of “**Instructors**” also have been grouped along with “**Teachers**” in **Table I** to **Annexure V** of the 1974 Rules. They have however not prescribed qualification for “**Vocational Instructors**”.

73. **Table II** to **Annexure V** of the 1974 Rules stipulates 9 categories of “**Teachers**” and their qualifications for appointment in Private Special Schools. Similarly, **Part II** of **Annexure III** in 1977 Rules deals with “**Qualifications for Appointment as Teachers in the Minority Special Schools** for (1) deaf and dumb, (2) Blind, (3) Mentally retarded”. The qualifications of Teachers in **Table II** in **Annexure V** to the 1974 Rules are identical to that in **Part II** to **Annexure III** of the 1977 Rules.



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They are not relevant for our enquiry and are therefore not reproduced.

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74. Table III to Annexure V to 1974 Rules prescribes the qualifications for “**Non-Teaching Staff**” to be appointed in Private Schools. Similarly, **Part III to Annexure III to 1977 Rules** deals with “**Qualifications for the Non-Teaching Staff in Minority Schools including Training Schools**”. Similar categories of qualifications are prescribed. For comparison, **Table III to Annexure V to the 1974 Rules** is extracted below:-

III. QUALIFICATIONS FOR THE NON-TEACHING STAFF IN PRIVATE SCHOOLS INCLUDING TRAINING SCHOOLS	
Name of the Post	Qualifications
(1)	(2)
1. Clerks including Library Clerk	S.S.L.C with eligibility for college course
2. Record Clerk, Laboratory and Library Assistant	S.S.L.C. completed
3. Peons	A pass in Standard VIII
4. Watchman, Waterman, Gardener, Sweeper and Scavenger	To read and write Tamil

75. Table IV to Annexure V of the 1974 Rules prescribes qualifications for “**Teachers**” in Higher Secondary Schools viz.,



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Headmasters, PG Assistants in academic subjects and Physical Directors

in Higher Secondary Schools.

Qualification for the post of “Vocational Instructor” under 1974 Rules:-

76. A reference has to be made to **Annexure V-B** of the 1974 Rules for the qualification to the post of “**Vocational Instructor**” in a private Higher Secondary School. **Annexure V-B** to the 1974 Rules was inserted by **G.O.Ms.No. 65, School Education (VE)** dated **24.02.2009**.

77. The expression “**Vocational Instructor**” has been used in Rule 15(4)(ii)(ii), Rule 15(6-B) and Rule 15(6-C) of the 1974 Rules. **Annexure V-B** was inserted in the 1974 Rules for the purpose of implementing Rule 15(6-B) of the 1974 Rules. Rule 15(6-B) of the 1974 Rules reads as under:-

*“(6-B) No person shall be eligible for appointment to the post of **Vocational Instructor** in a Recognized Private Higher Secondary School unless he possesses the qualifications specified in Annexure V-B.”*

78. While Rule 15(4)(ii)(ii) of the 1974 Rules was inserted vide **G.O.Ms.No.1376** dated **06.07.1981**, Rule 15(6-C) of the 1974 Rules was inserted vide **G.O.Ms.No. 65, School Education (VE)** dated **24.02.2009**



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with effect from 24.02.2009 for appointment of “**Vocational Instructor (General Machinist)**”. Along with Rule 15(6-C) of the 1974 Rules,

Annexure V-B was inserted in the 1974 Rules for the purpose of implementing Rule 15(6-B) of the 1974 Rules vide **G.O.Ms.No. 65, School Education (VE)** dated **24.02.2009**.

79. In **Annexure V-B** of the 1974 Rules, there are five different categories of “**Vocational Instructors**” for different disciplines of vocational courses in Private Higher Secondary Schools. They are as follows:-

Sl. No.	Table No.	Category
1	I	Vocational Instructor is recognised Private Higher Secondary Schools
2	II	Vocational Instructor for Commerce and Business Administration
3	III	Vocational Instructor for Agriculture
4	IV	Vocational Instructor for Engineering and Technology
5	V	Vocational Instructor for Health
6	VI	Vocational Instructor for Photography and Music



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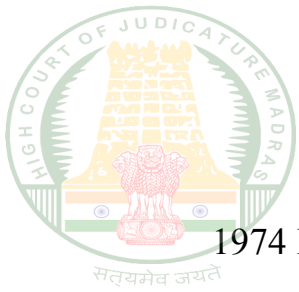
80. Annexure V-B of the 1974 prescribes qualifications for these five categories of **“Vocational Instructors”**. As far as the post of **‘Vocational Instructor’** in **‘General Machinist’** with which we are concerned in the present case. A reference has to be made to **Serial No. 5** to **Table IV** to **Annexure V-B** of the 1974 Rules under the category **‘Vocational Instructor for Engineering and Technology’**.

81. The qualification prescribed for **“Vocational Instructor (General Machinist)”** in **Annexure V-B** of the 1974 Rules is as under:-

IV. VOCATIONAL INSTRUCTOR FOR ENGINEERING AND TECHNOLOGY		
S. No.	Name of the Post	Qualification
5.	General Machinist	“A Diploma in Mechanical Engineering from a recognized Institution with one year practical experience”

82. Annexure V-C of the 1974 Rules as inserted by **G.O.Ms.No.65, School Education (VE)** dated **24.02.2009** prescribes the qualification for appointment of **“Vocational Instructors (Computer Science)”** in Higher Secondary Schools with which we are not concerned.

83. Thus, it is evident **Annexure V** and **Annexure V-A** of the



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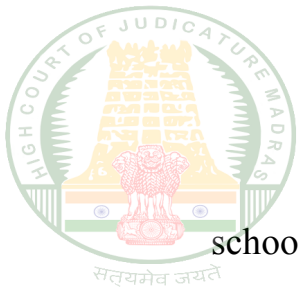
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1974 Rules prescribe qualifications only for those categories of posts which qualify as “**Teachers**” and “**Non-Teaching Staff**”. Qualifications for “**Vocational Instructor**” are neither specified in **Annexure V** and **Annexure V-A** of the 1974 Rules.

84. While amending the 1974 Rules, in 2009, the definition of “**Teacher**” in Rule 2(c) of the 1974 Rules was thus not amended to include the expression “**Vocational Instructors**” within its ambit. The 1977 Rules was also not been amended to include the post of ‘Vocational Instructors’.

85. Thus, “**Vocational Instructors**” are separately categorized under **Annexure V-B** for the purpose of Rule 15(6-B) of the 1974 Rules and **Annexure V-C** for the purpose of Rule 15(6-C) of the 1974 Rules. None of the other Annexures have treated the post of ‘**Vocational Instructor**’ on par with “Teacher” under the 1974 Rules.

86. This is also evident that the post of a '**Vocational Instructor (General Machinist)**' is a “stand alone” post in a recognized private aided



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school under the 1974 Rules.

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87. This is also the view of the decision rendered by a Division Bench of this Court in the case of **Chief Educational Officer & Anr. Vs. D.Gnana Theeba Rani & Anr.** in **W.A.(MD).No.675 of 2024** vide its judgment dated 15.04.2024, wherein, one of us, the Hon'ble Mr.Justice R.Suresh Kumar was a member. Relevant portion of the said judgment reads as under:-

“8. The post of Pre-Vocational Instructor is a stand alone post, that has been sanctioned for the second respondent School and that the single post in the subject Sewing is compulsory for the girl students. Without a single Teacher, the girl students cannot be thought in the said subject. Even when there is any vacancy in staff fixation strength, it can be done only in respect of Teachers for general subjects and that it could be adjusted between Secondary Grade Teacher, BT Assistant and PG Assistant, but, however, in so far as the special Teachers are concerned, particularly, like the post of Sewing Teacher, Physical Instructor and so on, these posts are sanctioned only due to the fact that atleast single Teacher is compulsorily required to teach the students on the special subjects. Therefore, the contention that since students strength had fallen below 250 in number and therefore, even the single post could be rendered as surplus, cannot be accepted for the simple reason that without any Teacher for the special subjects, the girl students, who are



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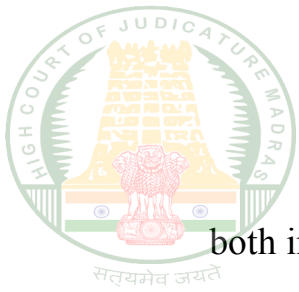
studying in the School, cannot be thought, which has been taken note of by several orders by the other Division Benches and invariably directions have been issued to the State to approve those posts, which has been filled up in the sanctioned post. ”

Method prescribed for the appointment of “Teachers”, “Vocational Instructors” and “Non-Teaching Staff” in Private Minority Schools:-

88. There are also different methods prescribed for appointment of “Teachers” and “Other Persons” under the 1974 Rules. Therefore, Rule 15(4)(ii) of the 1974 Rules is relevant for our discussion.

89. There is no clear method prescribed for appointment of a “Vocational Instructor” under the 1974 Rules. The 1977 Rules is also silent regarding the method of appointment to the post of 'Vocational Instructors' under 'General Machinist' as provided in Table IV to Annexure V-B of the 1974 Rules.

90. In fact, no procedure has been prescribed for appointment of “Other persons” also under the aforesaid Rules though certain categories of post of “Instructors” have been grouped along with the “Teachers”



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both in the 1974 Rules and 1977 Rules.

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91. As far as “**Other Persons**” referred to in Section 19 of the 1973 Act and Rule 15 of the 1974 Rules are concerned, it would include both “**Non-Teaching Staff**” and certain categories of “**Vocational Instructors**” whose qualifications are not specified in **Table I** to **Annexure V**.

92. Rule 15(4)(ii) of the 1974 Rules prescribes the method to be followed for appointment of “**Teachers**” in a Private Schools. The above Rule applies to even minority institutions which are otherwise governed by 1977 Rules. It will be therefore profitable to refer to Rule 15(4)(ii) of the 1974 Rules which is extracted hereunder:-

“Rule 15(4):

(ii) Appointments to the various categories of Teachers shall be made by the following methods: -

(i) Promotion from among the qualified Teachers in that school; or

(ii) Promotion from among the qualified Vocational Instructors in that School;

(iii) If no qualified and suitable candidate is available by method (i) and (ii) above, -

(a) Appointment of other persons employed in that



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school, provided they are fully qualified to hold the post of teachers.

(b) Appointment of teachers from any other school.

(c) Direct recruitment.”

In the case of appointment from any other school or by direct recruitment, the School Committee shall obtain the prior permission of the District Educational Officer in respect of Pre-Primary, Primary and Middle School and that of the Chief Educational Officer in respect of High Schools and Higher Secondary Schools, Teachers' Training Institutions setting out the reasons for such appointment. In respect of Corporate body running more than one school, the schools under that body shall be treated as one unit for purpose of this Rule.

(d) Appointment to the post of Headmaster of Higher Secondary School shall be made by the method specified in clause (ii) either from the category of Headmasters of High Schools or Teachers' Training Institutes or from the category of Post-Graduate Assistants in academic subjects or Post-Graduate Assistants in Languages provided they possess the prescribed qualifications.]

93. Rule 15(4)(ii) of the 1974 Rules deals with appointments of **“Teachers”** and not of **“Other Person”** referred to in Section 19 of the 1973 Act. A reading of Rule 15(4)(ii) of the 1974 Rules makes it clear that the method prescribed is only for the appointment of **“Teacher”** and **“Head Masters”** alone.

94. Under Rule 15(4)(ii) of the 1974 Rules, there are only three methods prescribed for appointment of **‘Teachers’**. Methods of



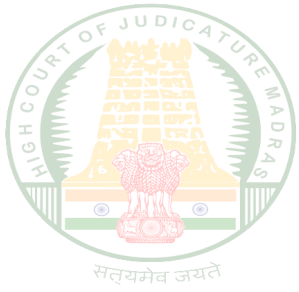
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appointment of “**Teachers**” under the 1974 Rules can be summarised as

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Rule 15(4)(ii): Appointments to the various categories of Teachers shall be made by the following methods: -		
15(4)(ii)(i)	15(4)(ii)(ii)	15(4)(ii)(iii)
<i>Promotion from among the qualified Teachers in that school.</i>	<i>Promotion from among the qualified Vocational Instructors in that School</i>	<i>If no qualified and suitable candidate is available by method (i) and (ii) by:</i> <i>(a) Appointment of other persons employed in that school, provided they are fully qualified to hold the post of teachers.</i> <i>(b) Appointment of teachers from any other school.</i> <i>(c) Direct recruitment.</i>

95. Rule 15(4)(ii)(ii) of the 1974 Rules makes it clear that the post of “**Vocational Instructors**” in a private school was also a feeder post for promotion to the post of a “**Teacher**”. Thus, a qualified “**Vocational Instructors**” in a Private School can also be appointed by way of promotion in a School under Rule 15(4)(ii)(ii) of the 1974 Rules.



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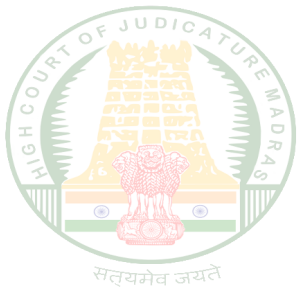
96. Rule 15(4)(ii)(iii) of the 1974 Rules applies only where promotion under Rule 15(4)(ii)(i) & (ii) of the 1974 Rules cannot be followed. Only for the purpose of appointment to the post of ‘**Teachers**’ as per Rule 15(4)(ii)(iii)(b) & (c), the “School Committee”, as defined in the Section 2(8) of the 1973 Act has to obtain a prior permission of the **District Educational Officer (DEO)** and **Chief Educational Officer (CEO)** as the case maybe.

97. For the sake of clarity, Rule 15(4)(ii)(iii)(b)&(c) and the paragraph below the said Rule are reproduced below:-

“Rule 15(4)(ii)(iii)(b)&(c):

(b)	(c)
<i>Appointment of teachers from any other school.</i>	<i>Direct recruitment.</i>

In the case of appointment from any other school or by direct recruitment, the School Committee shall obtain the prior permission of the District Educational Officer in respect of Pre-Primary, Primary and Middle School and that of the Chief Educational Officer in respect of High Schools and Higher Secondary Schools, Teachers' Training Institutions setting out the reasons for such appointment. In respect of Corporate body running more than one school, the schools under that body shall be treated as one unit for purpose of this Rule.”

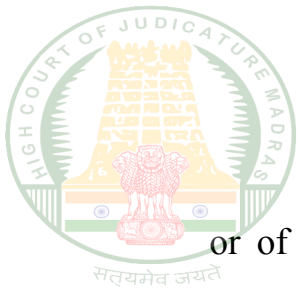


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WEB COPY 98. Thus, permission/prior approval of the District Educational Officer (DEO) or the Chief Educational Officer (CEO) are required for appointment of a “**Teacher**” in a private school only under the following specified circumstances in Rule 15(4) of the 1974 Rules:-

Method of Appointment	Class/Stage of School	Competent Authority for obtaining Requisite permission
Appointment of Teachers from any other school; or;	Pre-primary and Primary	District Educational Officer (DEO)
Appointment of Teachers by way of 'Direct Recruitment'	High Schools, Higher Secondary and Teacher Training Institutions	Chief Educational Officer (CEO)

99. In the case of appointment of “**Teachers**” by way of promotion among the qualified teachers in that school as under Rule 15(4)(ii)(i) of the 1974 Rules or by way of promotion from among the qualified “**Vocational Instructors**” as under Rule 15(4)(ii)(ii) of the 1974 Rules or by way of appointment of other persons employed in the same school as under Rule 15(4)(ii)(iii)(a) of the 1974 Rules, no permission is required. Therefore, appointment of “**Vocational Instructors**” need not preceed a prior approval of District Educational Officer (DEO) in case of a Pre-primary and Primary



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or of the Chief Educational Officer in the case of High Schools, Higher Secondary and Teacher Training Institutions.

Permission required only under specified circumstances for Appointment of 'Teachers':-

100. As long as such person who is appointed to any of the post under **“other persons”** viz., **'Vocational Instructors'** in the present case have requisite qualification and appointment is made in accordance with the sanctioned post as per the staff fixation order of the 4th Appellant, the appointment is valid under the 1974 Rules. No prior approval is required for appointment to the post of **“Non-Teaching Staff”** and **“Vocational Instructors”** viz., **“Other Persons”** as under the 1974 Rules and 1977 Rules.

101. This position further gets clarified from a reading of paragraph below the Rule 15(4)(ii) of the 1974 Rules. For the sake of clarity, the said paragraph is reproduced below once again:

“In the case of appointment from any other school or by direct recruitment, the School Committee shall obtain the prior permission of the District Educational Officer in respect of Pre-Primary,



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Primary and Middle School and that of the Chief Educational Officer in respect of High Schools and Higher Secondary Schools, Teachers' Training Institutions setting out the reasons for such appointment. In respect of Corporate body running more than one school, the schools under that body shall be treated as one unit for purpose of this Rule.”

102. Rule 15(4)(ii) of the 1974 Rules also does not deal either with “**Non Teaching Staff**” or “**Vocational Instructor**” referred to in Rule 15(6-B) of the 1974 Rules. In fact, there is no method prescribed for the appointment of “**Other Persons**” viz., “**Non-Teaching Staff**” and “**Vocational Instructor**” referred to in Rule 15(6-B) under the 1974 Rules.

103. Thus, it is evident from a reading of the Rule 15(4)(ii) of the 1974 Rules that only for appointment of ‘**Teachers**’ in a Private School, the ‘School Committee’ has to comply with the requirements of Rule 15(4)(ii) of the 1974 Rules.

104. A provision similar to Rule 15(4)(ii) to the 1974 Rules has not been prescribed for appointment of a person either as a “**Non Teaching Staff**” or as a “**Vocational Instructor**”. Only qualifications have been



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prescribed in Rule 15(6-B) of the 1974 Rules for the post of “**Vocational Instructors**”.

105. No procedure has been prescribed for the appointment of “Other Persons” including that of ‘Non-Teaching Staff’ as in **Table III** to **Annexure V** and ‘Vocational Instructor’ in **Table IV** to **Annexure V-B** of the 1974 Rules. Only in the appointment of “Teachers” under Clause (b) and (c) to Rule 15(4)(ii)(iii) of the 1974 Rules prior appointment is required.

106. Neither, Rule 15(4) nor any other Rule under 1974 Rules had prescribed any procedure for a method for appointment of “**Other Persons**” and a qualified “**Vocational Instructors**” in a private school.

107. Only for the appointment of a ‘**Teacher**’, prior approval has to be obtained under the circumstances specified in Rule 15(4)(ii)(iii)(b) & (c) of the 1974 Rules. As far as ‘**Non-Teaching Staffs**’ and ‘**Vocational Instructors**’ are concerned, no such approval is required.

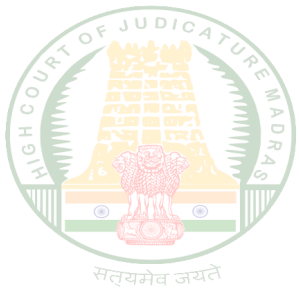


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WEB COPY 108. Therefore, under the 1974 Rules, only for appointment of “**Teachers**”, prior approval of the 4th Appellant is contemplated. As far as “**other persons**” are concerned, the appointment is left to the management of the private school.

109. Since '**Vocational Instructor**' is not a '**Teacher**' for the purpose of 1974 Rules, the method prescribed for appointment of “**Teachers**” in a Private School under Rule 15(4)(ii)(iii)(b) & (c) of the 1974 Rules is not applicable for appointment of a '**Vocational Instructor**' in a Private School.

110. Therefore, in the absense of a clear method for appointment of 'Vocational Instructor (General Machinist)', either under the 1974 Rules or 1977 Rules, the appointment of a 'Vocational Instructor' has to be left to the Management of a Private School.



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111. As long as it is a sanctioned post, the Management can make such appointments without the approval of the Chief Educational Officer in respect of High Schools and Higher Secondary Schools.

112. Thus, a post of **“Vocational Instructor”** referred to in Rule 15(6- B) of the 1974 Rules in a private school was a stand alone post. While a **“Vocational Instructor”** serving in a school was eligible to be promoted a **“Teacher”** subject to he or she or they possessing requisite qualifications in **Table I** to **Annexure V**, no method has been prescribed for the appointment of a **“Vocational Instructor”** under the 1974 Rules.

113. Unless the Teacher-Pupil ratio was revised by the 4th Appellant/Director of School Education under Rule 15(1) of the aforesaid Rules, it has to be construed that the post of **‘Vocational Instructor’** was a regular post and on account of a vacancy caused by the previous incumbent, the 2nd Respondent School was entitled to fill in the vacancy on ‘regular basis’ under Rule 15(3) of the 1974 Rules.



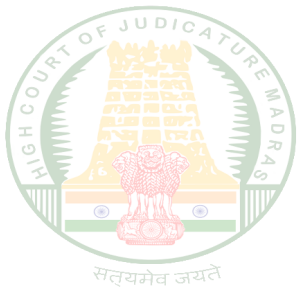
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WEB COPY 114. Only under the new regime, under TNPS(R) Act, 2018 and TNPS(R) Rules, 2023, with effect from **13.01.2023** being the date on which they came into force, the comprehensive method has been prescribed for appointment of both the ‘**Teaching**’ and ‘**Non-Teaching Staffs**’.

115. Under the new regime, the post of a “**Vocational Instructor**” has been treated on par with the post of a “**Teaching Staff**” as the said post is specified in **S.No.16** in Annexure IV-A to TNPS(R) Rules, 2023 and grouped along with the qualification for 'Teachers'.

116. This is evident from a conjoint reading of Rule 28 of the TNPS(R) Rules, 2023 with **Annexure IV-A** and the definition of “**Teacher**” in Rule 2(1)(j) of the TNPS(R) Rules, 2018. Rule 2(1)(j) of the TNPS(R) Rules, 2018 is reproduced below:-

*“2. Definitions. - (1) In these rules, unless the context otherwise requires,-
(j) “**Teacher**” means a person possessing the minimum*



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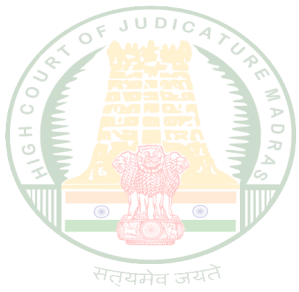
qualifications as prescribed in Annexure IV-A and employed in a private school for the purpose of imparting education to the pupils and includes the Headmaster.”

117. For the sake of clarity, Rule 28(2) of the TNPS(R) Rules, 2023 is also reproduced below:-

SUMMARY OF THE DECISION:-

118. Thus, there is a clear delineation under the 1974 Rules. The qualifications are relevant to fix the category to which a particular person can be pigeon holed i.e., whether as a “**Teachers**” or as “**Other persons**” i.e., as “**Non Teaching Staff**” in the matter of appointments under the respective Rules.

119. The post of a “**Vocational Instructor (General Machinist)**” has neither been categorized along with the post of a “**Teacher**” in **Table I**, **Table IV** to **Annexure – V** of the 1974 Rules or under Annexure V-A of the 1974 Rules nor along with the various post of “**Non-Teaching Staff**” in **Table III** of **Annexure – V** of the 1974 Rules.



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120. Since, no specific method/procedure has been prescribed for appointment of “**Non Teaching Staff**” and “**Other Persons**” under the 1974 Rules, the same has to be followed in the matter of appointment of “**Vocational Instructor**” i.e., appointment is to be left to the management.

121. Since, under 1974 Rules, prior permission/approval from the **District Education Officer (DEO)** in respect of pre-primary, primary and middle school and from **Chief Education Officer (CEO)** in respect of High School and Higher Secondary School etc, it cannot be insisted.

122. The criteria to be met is that the person should meet the required qualifications provided in **Table III** to **Annexure V** and **Annexure V-B in the 1974 Rules** to the post mentioned therein and the appointment should not exceed the Teacher Pupil Ratio, presently, ‘Staff Fixation’, sanctioned by the Director of School Education.

123. In this case, the Teacher-Pupil Ratio for the Academic Year



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2018-2019 indicates that a post available for Vocational Teacher (Full Time) in the General Machinist group is available.

124. The Appellants have also not brought any document to show that the Teacher-Pupil Ratio was revised under Rule 15(1) of the 1974 Rules during the Academic Year 2017-2018. It is also not the case of Appellants that the appointment of the 1st Respondent/Writ Petitioner in the 2nd Respondent School as ‘Vocational Instructor’ in the General Machinist group was excess and was unwarranted. Therefore, as no procedure was prescribed for appointment of ‘Vocational Instructors’ under the 1974 Rules, the Appellants are merely required to take note of the same.

125. In the present case, the previous incumbent viz., Mr.K.Siva Prakasam who was working as Vocational Instructor (General Machinist) had attained superannuation on **31.05.2017**. The appointment of the 1st Respondent/Writ Petitioner as a ‘Vocational Instructor’ was against a permanent sanctioned post of Vocational Instructor.



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126. Therefore, it has to be held that the post of ‘**Vocational Instructor**’ was a sanctioned post in the 2nd Respondent School. Therefore, the 2nd Respondent School was entitled to appoint the 1st Respondent/Writ Petitioner on account of the regular vacancy in terms of Rule 15(3) of the 1974 Rules.

127. Therefore, vacancy arising out of superannuation of the 41 previous incumbent viz., Mr.K.Siva Prakasam was correctly be filled by the 2nd Respondent School without the approval of the 4th Appellant.

128. The appointment of the 1st Respondent/Writ Petitioner as a ‘Vocational Instructor’ on **01.09.2017** in General Mechanics in the 2nd Respondent School was proper. The fact also remains that the 1st Respondent/Writ Petitioner continued to be in the service as a ‘Vocational Instructor’ in the 2nd Respondent School for over a period of seven years. Therefore, on this count also there is no justification in the stand of the Appellants.



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129. There was no method prescribed for appointment of either the “Other person” albeit “Non Teaching Staff” or the “Vocational Instructor” in the 1974 Rules. Therefore, the post of “Vocational Instructor” in the 1974 Rules was in a sense a standalone post in a school to expose students to the practical side and no prior permission is required for the appointment of 'Vocational Instructor' in a private school as it is required for the post of 'Teachers' under the 1974 Rules.

130. In the light of the facts and circumstances of the present case and also, in the light of the decision of the Hon’ble Supreme Court as well as the decisions of the Division Bench of this Court and in the light of the aforesaid decisions, the impugned order dated 21.03.2024 passed by the Writ Court in W.P.No.9971 of 2021 allowing the writ petition does not warrant any interference. Therefore, this Writ Appeal is liable to be dismissed.

131. Accordingly, this Writ Appeal stands dismissed. No costs.



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Consequently, the connected miscellaneous petition is closed.

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(R.S.K., J.)

(C.S.N., J.)

09.05.2025

Neutral Citation: Yes / No

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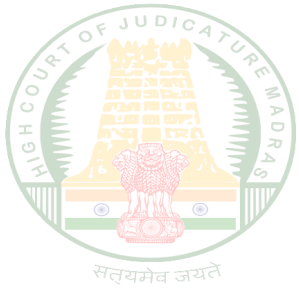


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- 1.The Secretary to Government,
School Education Department,
Fort St.George, Chennai – 9.
- 2.The Joint Director,
(Higher Secondary Vocational),
College Road, Chennai – 6.
- 3.The Chief Educational Officer,
Tiruvannamalai District.
- 4.The District Educational Officer,
Tiruvannamalai District.
- 5.The Correspondent,
Danish Mission Higher Secondary School,
Tiruvannamalai District.

R.SURESH KUMAR, J.



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and
C.SARAVANAN, J.

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