



W.P.(MD)No.2131 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 13.03.2025

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.(MD)No.2131 of 2025

and

W.M.P(MD)Nos.1523 and 1526 of 2025

The Correspondents,
St.Joseph's Convent Higher Secondary School,
Nagercoil,
Kanyakumari District – 629 001.

... Petitioner

Vs.

1.The Sate of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St.George,
Chennai – 600 009.

2.The Director of School Education,
College Road,
Chennai – 600 006.

3.The Chief Educational Officer,
Nagercoil,
Kanyakumari District.

4.The District Educational Officer,
Nagercoil,
Kanyakumari District.

... Respondents



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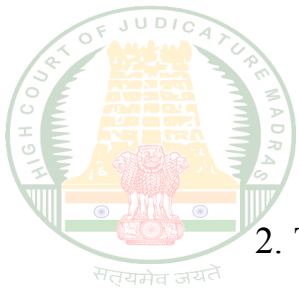
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the third respondent Chief Educational Officer in Na.Ka.No.7311/A4/2024 dated 03.09.2024 and the consequential proceedings of the fourth respondent DEO in Moo.Mu.No.761/Aa5/2018 dated 14.09.2024, quash the same and further direct the third respondent DEO to approve forthwith the appointment of J.Sahana Jesmi as BT Assistant (English) in the petitioner school w.e.f.08.06.2017 with salary, allowances and all attendant benefits including arrears of salary.

For Petitioner : Mr.K.Ragatheesh Kumar
For M/s.Issac Chambers

For Respondents : Mr.M.Siddharthan
Additional Government Pleader

ORDER

Heard Mr.K.Ragatheesh Kumar, learned counsel appearing for the petitioner, Mr.M.Siddharthan, learned Additional Government Pleader appearing for the respondents and carefully perused the materials available on records.



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2. This writ petition has been filed for a writ of Certiorarified Mandamus to quash the impugned proceedings passed by the third respondent / Chief Educational Officer dated 03.09.2024 in Na.Ka.No.7311/A4/2024 and the consequential proceedings of the fourth respondent / District Educational Officer dated 14.09.2024 in Moo.Mu.No.761/Aa5/2018 and further direct the third respondent/Chief Educational Officer to approve the appointment of J.Sahana Jesmi as BT Assistant (English) in the petitioner school w.e.f. 08.06.2017 with salary, allowances and all attendant benefits including arrears of salary.

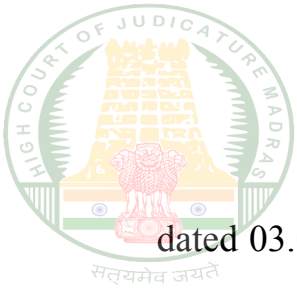
3. The petitioner School has appointed one J.Sahana Jesmi as BT Assistant (English) on 08.06.2017 due to the retirement of the then incumbent P.Nagamal on 31.05.2017. When the School submitted the proposal for approval of appointment of the said J.Sahana Jesmi, the same was returned by the fourth respondent vide order dated --.08.2017 (signed on 24.08.2017), directing the School to resubmit the proposal enclosing the staff fixation for the year 2017-2018. The School submitted detailed reply on 28.10.2017 and explained that the school was yet to receive staff fixation order for the academic year 2017-2018 and further explained that the School had no surplus teachers



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till the academic year 2016-2017. However, the same was returned directing the school to rectify the defects cited in the second reference. The School resubmitted the proposal after rectifying the defects vide letter dated 29.01.2018. However, there was no response.

4. In such circumstances, the petitioner school has filed a writ petition in W.P.(MD)No.15014 of 2018, seeking approval of appointment of J.Sahana Jesmi as BT Assistant (English) with effect from 08.06.2017. This Court vide common order dated 02.09.2022 allowed the writ petition by directing the respondents therein to approve the appointment of J.Sahana Jesmi as BT Assistant (English). Against which the respondents have preferred an appeal in Writ Appeal (MD).No.1506 of 2023 and at the time of argument, the official respondents on instructions submitted that the matter may be remitted back to the Department for passing orders afresh by following instructions under paragraph 95(u) and (v) of the orders of this Hon'ble Court dated 31.03.2021 in W.A.(MD).No.76 of 2019, etc., batch. Considering the said request, the Hon'ble Division Bench of this Court vide order dated 06.12.2023 allowed the writ appeal by remitting the matter back to the respondents for fresh consideration. However, the third respondent vide proceedings in Na.Ka.No.7311/A4/2024

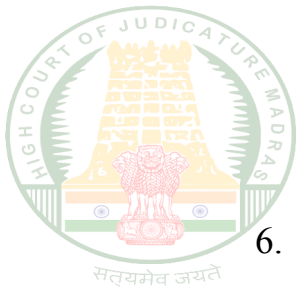


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dated 03.09.2024 declined to approve the appointment of J.Sahana Jesmi as BT

WEB ASSISTANT (English) stating that there were surplus Secondary Grade Teacher in the other schools under the very same management and the school ought to have filled the post with the surplus teachers. Therefore, the petitioner is constrained to file the present writ petition.

5. The other reason for rejecting the approval is concerned, it is about the availability of surplus teachers working in the other schools under the same management. The petitioner has appointed the said J.Sahana Jesmi as BT Assistant (English) with effect from 08.06.2017. According to the petitioner, the surplus teachers working in the other schools coming under the same management will no way impediment in approving the appointment made against the sanctioned posts. Hence, the petitioner appointed the said J.Sahana Jesmi as BT Assistant (English) on which date the BT Assistant (English) post was very much a sanctioned vacancy. Hence, the reason for rejection of the approval of appointment made by the petitioner School on the ground that the school ought to have filled the sanctioned post with the surplus teachers is also not valid.



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6. In respect of applicability of the cut off date for appointment, it is

relevant to rely on the judgment of this Court held in W.P.(MD)No.7479 of

2024 dated 17.04.2024, wherein in paragraph Nos.4, 5 & 6 it is held as follows:

"4. However, the learned counsel for the petitioner attracted the attention of this Court to the judgment passed by the Division Bench of this Court in W.A.(MD).No.2119 of 2021 dated 23.06.2023 in the case of The Commissioner of School Education, Vs Aided Muslim Committee Primary School, Rep. by its Correspondent, S.Sheik Shajakhan Sithik, wherein it is held as under:

"8.Moreover, the said G.O., was issued only on 17.09.2019, whereas the teacher was appointed well before the issuance of the said G.O., ie., 03.07.2018. Therefore, assuming if the said G.O., ultimately would be declared to be valid, that will have a prospective effect. Moreover, as on today, the said G.O., is no more available to the appellant department to say the reason that by virtue of G.O.Ms.No.165, the appointment made in respect of the teacher concerned at the 1st respondent school cannot be approved. 9. In that view of the matter, we have no hesitation to hold that the order impugned passed by the learned Single Judge is perfectly valid and therefore, it is to be sustained. In the result, this Writ Appeal fails, therefore, it is to be dismissed, accordingly, it is dismissed. As a sequel, there shall be a direction to the appellant Department to approve the appointment of the teacher concerned in the 1st respondent School and extend all service benefits from the date of such appointment to the teacher concerned within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed."



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5. *The learned counsel for the petitioner also submitted that the Government Order in G.O.Ms.No.165 dated 17.09.2019 has been kept inoperative in W.A.(MD).No.76 of 2019 batch dated 31.03.2021 in the case of The Secretary to Government Government of Tamil Nadu School Education Department, Fort St. George, Chennai – 9 vs Iruthaya Amali and the relevant portion of the order is extracted hereunder:*

“95. In view of the aforesaid discussions, we are inclined to pass the following orders in this batch of cases :

....

(o) In view of the aforesaid, the G.O.Ms.No. 165, School Education [Tho.Ka.2(1)] Department, dated 17.09.2019 is hereby declared to be inoperative.”

6. The petitioner's appointment has been made prior to the order dated 31.03.2021 passed in W.A.(MD).No.76 of 2019 batch. Hence, the petitioner School can get the advantage of getting approval of the appointment of Sunitha as B.T.Assistant Tamil. Therefore, the respondents cannot decline the approval of the appointment due to the reasons of TET eligibility or the deployment of the alleged surplus.”

7. Since the above analogy is applicable to the situation that has arisen in this case, the impugned order is liable to be set aside, the petitioner School is also entitled for the same relief.

9. In view of the above reasons, this writ petition is allowed and the impugned order is set aside. The respondents 3 and 4 are directed to pass orders to grant approval of appointment of J.Sahana Jesmi as BT Assistant (English) in



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the petitioner School with effect from 08.06.2017 within a period of eight

WEB COPY weeks from the date of receipt of a copy of this order.

No Costs.

Consequently, connected miscellaneous petitions are closed.

13.03.2025

NCC:yes/no
Index:yes/no
Internet:yes/no
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To:

- 1.The Secretary,
Department of School Education,
Fort St.George,
Chennai – 600 009.
- 2.The Director of School Education,
College Road,
Chennai – 600 006.
- 3.The Chief Educational Officer,
Nagercoil,
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BATTU DEVANAND, J.

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