

W.A.(MD)Nos.1778 of 2023 & 1934 of 2024

WEB COPY

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

| <i>Judgment Reserved On</i> | <i>Judgment Pronounced On</i> |
|-----------------------------|-------------------------------|
| <b>07.04.2025</b>           | <b>24.06.2025</b>             |

**CORAM:**

**THE HONOURABLE MRS.JUSTICE J. NISHA BANU**  
**and**  
**THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

**W.A(MD)Nos.1778 of 2023 and 1934 of 2024**  
**and**  
**C.M.P.(MD).Nos.13553 of 2023 and 14354 of 2024**

**W.A(MD)No.1778 of 2023:**

- 1.The Chief Educational Officer,  
Office of the Chief Educational Officer,  
Tiruchirapalli, Tiruchirappalli District.
  - 2.The District Educational Officer,  
Office of the District Educational Officer,  
Tiruchirapalli, Tiruchirappalli District.
- Vs-

... Appellants

- 1.N.Pramila Devi  
BT Assistant (Maths),  
Savithri Vidyasalsa Hindu Girls Higher Secondary School,  
Chathiram Bus Stand Backside,  
Tiruchirapalli District.
- 2.The Correspondent,  
Savithri Vidyasalsa Hindu Girls Higher Secondary School,  
Chathiram Bus Stand Backside,  
Tiruchirapalli District.

... Respondents



W.A.(MD)Nos.1778 of 2023 & 1934 of 2024

WEB COPY

**Prayer:** Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.10768 of 2021, dated 02.09.2022.

|                |                                                  |
|----------------|--------------------------------------------------|
| For Appellants | :Mr.J.Ashok<br>Additional Government Pleader     |
| For R1         | :Mr.H.Mohammed Imran<br>for M/s.Ajmal Associates |
| For R2         | :Mr.Raguvaran Gopalan                            |

**W.A(MD)No. 1934 of 2024:**

1.The Correspondent,  
Savithri Vidyasalsa Hindu Girl's Higher Secondary School,  
Chathiram Bus Stand Backside,  
Tiruchirapalli District.

2.Panchapakesan,  
The Correspondent,  
Savithri Vidyasalsa Hindu Girl's Higher Secondary School,  
Chathiram Bus Stand Backside,  
Tiruchirapalli District.

... Appellants

-Vs-

1.N.Pramila Devi,  
BT Assistant (Maths),  
Savithri Vidyasalsa Hindu Girl's Higher Secondary School,  
Chathiram Bus Stand Backside,  
Tiruchirapalli District.

2.The Chief Educational Officer,  
Office of Chief Educational Officer,  
Tiruchirapalli, Tiruchirappalli District.

3.The District Educational Officer (Secondary Education),  
Office of the District Educational Officer,  
Tiruchirapalli, Tiruchirappalli District.

... Respondents



W.A.(MD)Nos.1778 of 2023 & 1934 of 2024

**Prayer:** Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.651 of 2024, dated 26.04.2024.

|                |                                                  |
|----------------|--------------------------------------------------|
| For Appellants | :Mr.Raguvaran Gopalan                            |
| For R1         | :Mr.H.Mohammed Imran<br>for M/s.Ajmal Associates |
| For R2 and R3  | :Mr.J.Ashok<br>Additional Government Pleader     |

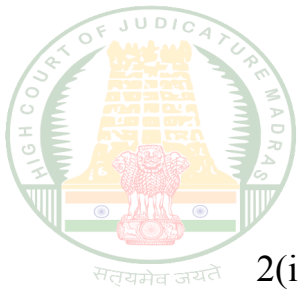
\*\*\*\*\*

### **COMMON JUDGMENT**

(Judgment of the Court was delivered by **S.SRIMATHY, J.**)

Both the writ appeals are arising from the common issue, hence both the writ appeals are taken together and a common judgment is passed.

2.(i) The W.A.(MD)No.1778 of 2023 is filed by the Education Department, the respondents in the writ petition challenging the order dated 02.09.2022 passed in W.P.(MD)No.10768 of 2021. The W.P.(MD).No.10768 of 2021 is filed for issuance of a Writ of Certiorarified Mandamus, to quash the order dated 04.05.2021 and communicated to the petitioner on 25.06.2021 passed by the 1<sup>st</sup> respondent and consequently to direct the 1<sup>st</sup> respondent to approve the appointment of the petitioner as B.T. Assistant (Maths) with effect from 19.04.2018.

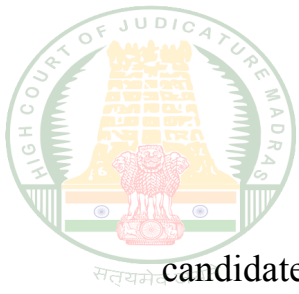


W.A.(MD)Nos.1778 of 2023 & 1934 of 2024

WEB COPY

2(ii). The W.A.(MD)No.1934 of 2024 is filed by the School, the respondent in the writ petition challenging the order dated 26.06.2024 passed in W.P.(MD).No.651 of 2024. The W.P.(MD).No.651 of 2024 was filed for issuance of a Writ of Mandamus, to direct the respondents to permit the petitioner to discharge her duty as B.T. Assistant (Maths) in the 3<sup>rd</sup> respondent school and approve the appointment of the petitioner as B.T. Assistant (Maths) with effect from 19.04.2018 within the period that may be stipulated by this Court.

3. If the facts narrated in W.P.(MD)No.651 of 2024 are taken into account the same would cover the facts stated in W.P.(MD)No.10768 of 2021. The brief facts as stated by the petitioner in W.P.(MD)No.651 of 2024 are that the 3<sup>rd</sup> respondent school is a private aided non-minority institution and it is governed by the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 and the Rules made thereunder. In the 3<sup>rd</sup> respondent school, the post of B.T Assistant (Maths) became vacant on account of the promotion of erstwhile incumbent. In order to fill up the said vacancy, the school had sought prior permission from the 1<sup>st</sup> respondent, which was granted vide order 12.01.2018 to fill up the vacancy, then the school issued paper publication, the eligible



W.A.(MD)Nos.1778 of 2023 & 1934 of 2024

WEB COPY

candidates had applied and the petitioner had also applied. The applications of the candidates were scrutinized, the short-listed candidates were invited for written examination followed by an interview and after completion of the entire process, petitioner was selected based on qualification of TET and other qualification and the selection is purely on merits. The petitioner was appointed on 19.04.2018 by the school as B.T. Assistant (Maths) in the sanctioned vacancy that too after getting prior permission from the 1<sup>st</sup> respondent. Thereafter the school submitted proposal for approval of appointment and the same is pending. Despite petitioner request, the copy of the proposal was not furnished to the writ petitioner. In response to petitioner's application under RTI Act, the writ petitioner was informed that the proposal is pending before the 1<sup>st</sup> respondent. Whenever the writ petitioner approached the respondents, it was informed that post will be approved soon. However, the proposal was kept pending without taking further action. The petitioner was appointment on 19.04.2018 and had been working up to 01.06.2020 and the management paid a meagre amount of Rs.12,000/-. During pandemic the petitioner did not go to the school, but when the school reopened on 07.09.2020, the petitioner was allowed to take classes up to 30.11.2020 through video conference and the school started functioning regularly from 01.12.2020. But petitioner was not



W.A.(MD)Nos.1778 of 2023 & 1934 of 2024

WEB COPY

allowed to function and the time table also did not provide any class to the petitioner on account of non-approval of appointment. Citing the same, the management did not permit the petitioner from 01.12.2020 onwards, however, they assured that when the appointment is approved, the petitioner will be allowed to take up the classes. Under the above circumstances the petitioner filed W.P.(MD)No.156 of 2021 seeking to direct the respondents to approve the appointment as B.T. Assistant (Maths) and the Court vide order 07.01.2021 directed to consider the representation dated 30.11.2020 and pass orders. Since the same was not complied, Cont.P.(MD)No.674 of 2021 was filed and the 1<sup>st</sup> respondent vide order dated 04.05.2021 has rejected the approval of the appointment on the ground that there are 35 surplus teacher in Maths in Trichy Revenue District from the year 2019-2020. Hence, the present W.P.(MD)No. 10768 of 2021 was filed and the same was allowed by the Court on 02.09.2022. As stated supra, the appointment was made after getting prior permission from the department in the sanctioned vacancy. The issue with regard to surplus was dealt under G.O.Ms.No.165, which was made inoperative vide order by dated 31.03.2021 in W.A.No.76 of 2019 and as such the availability of surplus teacher would not disentitle the petitioner to get the appointment approval. Further, the appointment was made as early as on 19.04.2018 in respect of the



W.A.(MD)Nos.1778 of 2023 & 1934 of 2024

WEB COPY

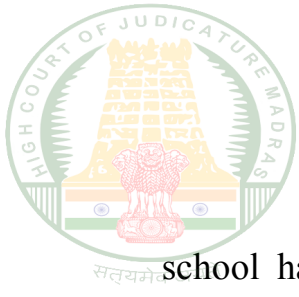
academic year 2017-2018 that too in the sanctioned vacancy. Pursuant to the order dated 02.09.2022 made in W.P.(MD)No.10768 of 2021, the petitioner submitted a representation on 16.09.2022, then the petitioner applied under RTI Act and it was informed vide reply dated 07.10.2020 that it is in progress. But when the petitioner approached the management, it was informed that it is for the department to grant approval. When petitioner approached the department, they informed that it is for the Management to send the proposal. Having no other way, petitioner preferred various representations dated 16.09.2022, 07.10.2022, 31.10.2022, 04.01.2023, 01.02.2023, 01.03.2023, 03.04.2023, 05.05.2023, 06.06.2023, 05.07.2023, 08.08.2023, 08.09.2023, 04.10.2023, 07.11.2023 and 07.12.2023 to the respondents. However, no action has been taken. In the meanwhile, the department also filed a writ appeal in W.A. (MD)No.1788 of 2023 against the order passed in W.P.(MD)No.10768 of 2021. When the writ appeal came up for hearing, it is informed by the department that petitioner did not work as per the letter issued by the management. Which fact is incorrect, since it is only on account of the inaction of the management, petitioner was not allowed to work and was prevented to discharging duties, of course, on account of non-approval of the petitioner's appointment and further it is not on account of petitioner's fault. Now the issue has been settled by the



W.A.(MD)Nos.1778 of 2023 & 1934 of 2024

Division Bench that whenever the prior permission was granted to fill up the vacancy, it can be approved. When the petitioner appointment was made after obtaining permission and petitioner also completed TET, then the appointment order stand as such as on date and it is neither cancelled nor rescinded. Hence, petitioner cannot be deprived of right to get the appointment and permit to continue in the school. Hence the W.P.(MD)No.651 of 2024 was filed praying for Mandamus to direct the respondents to approve the appointment.

4.(i) The official respondents had filed counter affidavit in W.P.(MD)No. 651 of 2024 wherein it is stated that in the school one post of B.T Assistant (Maths) became vacant due to promotion, the school sought prior permission and the same was granted 12.01.2018 under usual conditions. The school ought to have filled the vacancy from the surplus teachers available with the Chief Educational Officer. On the other hand, the school appointed the petitioner on 19.04.2018 afresh by direct recruitment without approaching the Chief Educational Officer for getting the list of surplus teachers available in the cadre of B.T. Assistants (Maths) in Trichy District. The petitioner has joined on the same date, but the petitioner was in service till 30.06.2020 without any approval from the department. As per report of the school dated 27.01.2023, the



W.A.(MD)Nos.1778 of 2023 & 1934 of 2024

school had instructed the petitioner not report to work from 01.12.2020 till date. When the proposals were received on 13.12.2019, the CEO vide order dated 04.05.2021 stated that the approval of the appointment of the petitioner will be considered only after the work of deployment of surplus teachers is completed vide his K.Dis.No.1335/A4/2020. It is pertinent to submit that the school appointed the petitioner when there were surplus teachers in the school itself. As per the staff fixation during the year 2018-19, there were two surplus teachers in the category of B.T. Assistants (Maths) based on the norms contained in G.O.Ms.No.525 School Education Department dated 29.12.1997 and the staff fixation order was received by the school. Thereafter the said post was surrendered to the government. The school had not raised any objection for the staff fixation order. Hence, there was no post to accommodate the petitioner in the sanctioned vacancies. Yet the petitioner was allowed to work in the school in the capacity of self-finance staff to cater the need the students under self-finance classes and had signed in separate attendance register meant for self-finance staff. In these circumstances, the department cannot take the responsibility to approve the erroneous appointment made by the school for the reason that the said teacher was appointed long time before. The petitioner had filed writ petitions and litigated the issue, then had filed contempt petition also,



W.A.(MD)Nos.1778 of 2023 & 1934 of 2024

thereafter the respondents had passed order dated 04.05.2021, wherein it is stated that the appointment cannot be approved since there are 35 surplus teachers in Maths Subject in Trichy Revenue District from the year 2019-2020. Again, the petitioner had filed W.P.(MD)No.10768 of 2021 by suppressing all the material facts. And the Court had allowed the writ petition vide order dated 02.09.2022, hence the department has preferred W.A.(MD)No.1788 of 2023. During the pendency of the Writ Appeal the petitioner has filed W.P.(MD)No. 651 of 2024. It is pertinent to state that several cases were filed regarding surplus teachers and approval of appointment, in such cases the government submitted that there are 12,831 surplus teachers waiting for deployment, despite the same fresh recruitments are taking place and the government is put to heavy financial burden by paying Rs.37.20 crores per month to surplus teachers alone. Hence the Court had directed to take steps for deployment and till such deployment is completed, there cannot be any recruitment to the said post, until further orders.

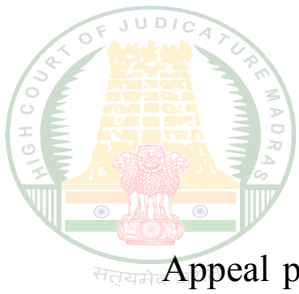
4.(ii) The Government is granting grant-in-aid, hence the government had power to fix the number of posts by taking into consideration of resources of the government and equitably distribute for the needy schools. When there



W.A.(MD)Nos.1778 of 2023 & 1934 of 2024

WEB COPY

are excess posts, the same also could be allotted to other schools, at same time without financial constrain to the government. If surplus teachers are there, then 28 number of periods cannot be allotted to teachers, the surplus teacher would be sitting idly, but would be getting salary without any work, thereby the public money is wasted. The government has power under Section 26 of Tamil Nadu Recognised Private Schools Regulation Act 1973 to deploy the surplus teachers to any private schools. Under Rule 15 of the Tamil Nadu Recognized Private Schools Regulation Rules the Government can sanction the post after taking into consideration of the overall financial consideration. Therefore, if surplus teachers are available, the school ought not to have appointed the person though direct recruitment and sought approval. in W.A.(MD).76 of 2019 batch cases the Court vide interim order dated 09.04.2019 has directed not to approve appointment until the surplus are exhausted and the needy schools shall approach the educational authorities well in advance so that a teacher may be deployed from the eligible teachers from the surplus lists, but the school has not approached. The government issued G.O.Ms.No.165 School Education SE2(1) Department dated 17.09.2019 for deployment of teachers. Further whenever there are surplus teachers in a school, the said post would lapse once it is declared as surplus post. The department has given such details in the Writ

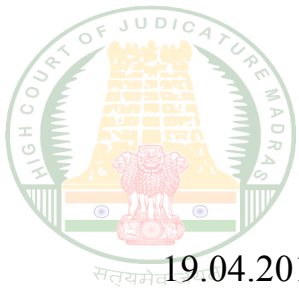


W.A.(MD)Nos.1778 of 2023 & 1934 of 2024

Appeal preferred by the department and when the writ Appeal is pending it is not open for the petitioner to file a fresh Writ Petition on the same grounds.

Hence, the official respondents prayed to dismiss the writ petition.

5. The school had filed counter affidavit in W.P.(MD)No.651 of 2024 wherein it is stated that the school was found in 1938 by Padmabhushan N.Ramaswami Ayyar who subsequently went on to establish the Seethalakshmi Ramaswami College for women on 1951. Both institutions have been run since inception with a noble purpose of providing education to girls in the background of Indian Tradition and Culture. The respondent school is an aided non-minority school with both sanctioned and private management posts. The government is granting grant-in-aid for salary for sanctioned posts and the same is remitted directly to the respective staff accounts. The school collect fees only as per the scales fixed by fee determination committee. In the normal course, the post of BT Assistant Maths Teacher became vacant on 01.06.2014, the department granted permission to fill the vacancy vide Lr.Mo.Moo.Mu.No. 2817/A6/2017 dated 12.01.2018, the school issued advertisement on 16.02.2018, the petitioner is one of the candidates appeared for selection process, the petitioner being meritorious candidate was appointed on



W.A.(MD)Nos.1778 of 2023 & 1934 of 2024

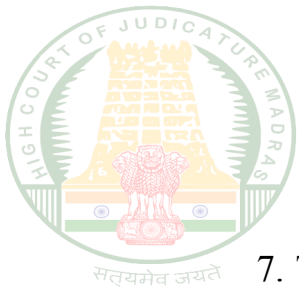
19.04.2018 with a condition that the appointment was subject to approval by the respondents. The petitioner was issued with work and she started teaching in the school from 19.04.2018. During the period commencing from 19.04.2018 till 31.07.2020, she was paid out of the corpus of the School Management Committee, which is a usual practice. Once approval is granted, the petitioner would be paid salary as per government scales with retrospective effect from the date of original appointment. Such salary is paid purely on humanitarian grounds, so that the petitioner does not face any financial hardship until the time she starts drawing government salary. Since the petitioner's appointment was not ratified, the school directed the petitioner not to report to work from 01.12.2020. The petitioner filed W.P.(MD)No.10768 of 2021 wherein it is held the calculation of surplus teachers can be done by considering the individual school and not the entire educational district. Against the said order the department had preferred writ appeal. The petitioner was initially appointed against a vacancy in a sanctioned post with prior approval, but the said appointment was subject to ratification by the department, since the same was not granted, the school had paid salary for the period from 19.04.2018 till 31.07.2020 from its funds. Thereafter the petitioner was not allowed to work from 01.12.2020, there is no malafide motive but only due to the absence of



W.A.(MD)Nos.1778 of 2023 & 1934 of 2024

ratification by the official respondents. Also, at that time, the financial situation of the school was dire due to the Covid pandemic and therefore the school was compelled to save money wherever possible. Hence, the allegations against the school are false and prayed to dismiss the writ petition.

6. After hearing the rival contention, the Writ Court in W.P.(MD)No. 10768 of 2021 had quashed the order, dated 04.05.2021 of the first respondent and directed the Educational Authorities to forthwith pass orders, approving the appointment of the petitioner to the post of B.T. Assistant (Maths), in the 3<sup>rd</sup> respondent school with effect from 19.04.2018, together with all service and monetary benefits, within a period of four weeks. Aggrieved over the same, the official respondents have preferred W.A.(MD)No.1778 of 2023 against the order passed in W.P.(MD)No.10768 of 2021. Pending writ appeal in W.A.(MD)No.1778 of 2023, the writ petitioner had filed another writ petition in W.P.(MD)No.651 of 2024 and the Writ Court had directed the school to pay the salary and arrears of salary for the period she is working without salary. Aggrieved over the same the school had preferred writ appeal in W.A.(MD)No. 1934 of 2024 against the order passed in W.P.(MD)No.651 of 2024.



W.A.(MD)Nos.1778 of 2023 & 1934 of 2024

WEB COPY

7. The primary contention of the department is that when the department had preferred W.A.(MD)No.1778 of 2023, the writ Court had erred in giving positive direction in the subsequent writ petition in W.P.(MD)No.651 of 2024. It is seen the petitioner had filed W.P.(MD)No.10768 of 2021 wherein the Court along with batch cases had directed the department to grant approval and benefits. Aggrieved over the department had preferred W.A.(MD)No.1778 of 2023 and the same was pending. Pending writ appeal the petitioner again preferred W.P.(MD)No.651 of 2024, wherein there was positive direction to grant approval. This Court is of the considered opinion that the direction of approval ought to have been subject to the outcome of the writ appeal. If such direction with condition is issued the same would be suffice to protect the rights of the department.

8. The next contention is that the school already had two surplus teachers in B.T. Assistant (Maths) in the year 2018 itself, in such circumstances the school ought not to have appointed new teacher. If the school is in need of any teacher, then the school ought to have approached the Chief Educational Officer for deploying from the list of surplus teachers from the Trichy Revenue District. On perusal of the staff fixation order for the academic year 2018-2019



W.A.(MD)Nos.1778 of 2023 & 1934 of 2024

it is seen that two B.T. Assistants (Maths) were declared as “Surplus without Teacher” in the said school itself. To be specific the order states as on 01.08.2017 for B.T. Assistant Maths the fixation is “12 teachers”, but as on 01.08.2018 for B.T. Assistant Maths the fixation is “10 teachers”, thereby two teachers of B.T. Assistant Maths is declared as “Surplus without Teacher”. In such circumstances, the school is not entitled to appoint any teacher in the “Surplus without Teacher” post at all.

9. During Covid-19 pandemic, staff fixation orders were not issued. Thereafter, for the academic year 2022-2023 again one B.T. Assistant Maths is declared as surplus thereby the strength of B.T. Assistant Maths is reduced from 10 teachers to 9 teachers, thereby one post is declared as “Surplus with Teacher”. Again, in the academic year 2023-2024 one B.T. Assistant Maths was declared as surplus thereby the strength of B.T. Assistant Maths is reduced from 9 teachers to 8 teachers, thereby one post is “Surplus without Teacher” and one post is “Surplus with Teacher”.

10. Further, it is seen that there are surplus B.T. Assistant Teachers in Trichy Revenue District and the same is as follows:



WEB COPY



W.A.(MD)Nos.1778 of 2023 & 1934 of 2024

|           |            |
|-----------|------------|
| 2018-2019 | 31         |
| 2019-2020 | 35         |
| 2020-2021 | - Covid 19 |
| 2021-2022 | - Covid 19 |
| 2022-2023 | 32         |
| 2023-2024 | 08         |
| 2024-2025 | 19         |

When the school itself is having surplus and when the Trichy Revenue District is having surplus, then the school is not entitled to appoint any new teacher. If allowed the count of surplus teachers would increase. Therefore, this Court is of the considered opinion that the appointment of the petitioner inspite of surplus B.T. Assistant (Maths) within the school itself is against G.O.Ms.No. 525, hence the petitioner is not entitled to approval of appointment.

11. The contention of the petitioner that the subsequent vacancy cannot be relied on to deny approval of appointment cannot be accepted. It is seen that one B.T. Assistant Maths became vacant on 01.06.2014 and the school has appointed the petitioner 19.04.2018. The academic year starts from 1<sup>st</sup> June of this year to 31<sup>st</sup> May next year. It is seen the petitioner was appointed at the end of the academic year 2017-2018 i.e. April 2018. During the month of March and April, only exams would be conducted. During the month of May, the



W.A.(MD)Nos.1778 of 2023 & 1934 of 2024

school would be on vacation holidays. Generally, from January the schools would take steps to prepare for the exams. Therefore, it is not necessary to appoint any new teacher from January to May.

12. Further the issue can be dealt as “fall in strength before issuance of staff fixation order” and “fall in strength after issuance of staff fixation order”. If there is “fall in strength before issuance of staff fixation order”, then the school ought to wait for the staff fixation. For example, if the vacancy arose from 1<sup>st</sup> June of 2017, then the vacancy falls in the academic year 1<sup>st</sup> June 2017 to 31<sup>st</sup> May 2018. Hence the school ought to have waited for the staff fixation order for the academic year 2017-2018, which ought to be issued before 15<sup>th</sup> August 2017. The school cannot fill the said vacancy by relying on the previous staff fixation order issued for the academic year 2016-2017.

13. The other category is “fall in strength after issuance of staff fixation order”, which means the vacancy arose from 1<sup>st</sup> September of the academic year till 31<sup>st</sup> May of the next year. In the present case the vacancy arose on 01.06.2014 and the school has appointed the petitioner 19.04.2018. In this category also the school cannot appoint new teacher, since the department is



W.A.(MD)Nos.1778 of 2023 & 1934 of 2024

entitled to pass deployment orders to the said vacancy. Infact the school ought to seek a teacher from the list of surplus teachers. In such circumstances, there is no question of vacancy belongs to which year, whether it belongs to previous year or present year or next year. At the cost of repetition, if there is any vacancy, then the school ought to seek a teacher from the list of surplus teachers alone and the school shall not appoint any new teacher. Therefore, from any angle the school ought to wait for the department to pass deployment orders and the wait ought to continue until the surplus teachers list are exhausted.

14. The issue of surplus was considered by the Court in W.A.(MD)No. 1668 of 2023 batch, wherein this Court had elaborately considered the issue and had passed the following orders:

*“DISCUSSIONS:*

*I. APPLICABILITY OF NEW RULES:*

*7. The issue of surplus was considered elaborately by a Coordinated Bench vide order dated 31.03.2021 in W.A.(MD)No.76 of 2019 batch. Thereafter, the schools submitted the proposal for approval of appointment and the same was rejected, hence several writ petitions. The writ petitions were allowed, aggrieved over the same the present batch of writ appeals are filed by the State.*



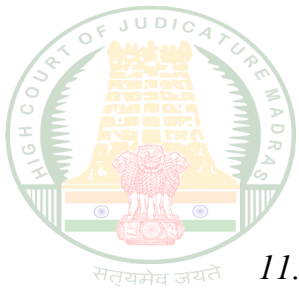
W.A.(MD)Nos.1778 of 2023 & 1934 of 2024

WEB COPY

8. In W.A.(MD)No.76 of 2019 batch the Coordinated Bench had issued various directions vide order dated 31.03.2021. One such direction is after the new rules are notified the directions issued by the Court shall be ceased to be in execution. It is seen that the New Rules were issued and notified on 13.01.2023. Hence as per the judgment, from 13.01.2023 the directions issued by the Court in W.A.(MD)No.76 of 2019 batch had ceased to be in execution.

9. But a plea had been taken that the new rules are not having retrospective effect. It is settled proposition that unless there is explicit provision for retrospective application of the rules, then the rules are applicable prospectively only i.e. from the date of notification. In the present case the rules have not stated the effective date. Hence a question arises whether the judgment can grant effective date, then the answer is negative.

10. In such circumstances, as per the judgment if the directions cease to exist, then a question would arise what would be the directions to the period prior to the judgment. Since the the judgment in W.A.(MD)No.76 of 2019 is silent about this issue, therefore, this Court is of the considered opinion that the directions issued in W.A.(MD)No.76 of 2019 are applicable until 12.01.2023. Any appointment prior to 12.01.2023, then the same ought to be dealt with as per the directions issued in W.A.(MD)No.76 of 2019 dated 13.01.2023.



W.A.(MD)Nos.1778 of 2023 & 1934 of 2024

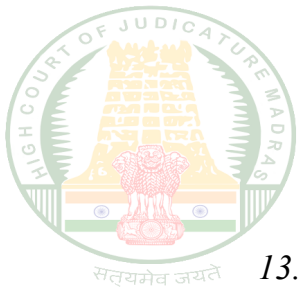
WEB COPY

11. *It is also seen that the New Act and Rules are challenged and there is an interim stay. In such circumstances, until the interim stay is in force, the directions issued in W.A.(MD)No.76 of 2019 ought to be applicable. Therefore, the said directions shall be applicable until the stay is in force for the subsequent period also.*

## II. DEPLOYMENT ORDERS:

12. *The next issue is that the deployment orders ought to be passed by the educational authorities only and not the corporate management or the schools. It is seen even in the G.O.Ms.No.525, the Directors of the Departments (School Education and Elementary Education) are the competent authorities to pass deployment orders. In Vigila's case also the Court had held that the educational authorities ought to pass the deployment orders. Even in W.A.(MD)No.76 of 2019 it has been held the educational authorities ought to pass deployment orders. Therefore, this Court confirms that the educational authorities' alone have power to pass the deployment orders. And the teachers and the schools are bound by the said deployment orders and any violations would be taken seriously.*

## III. WHETHER DEPLOYMENT ORDERS OUGHT TO BE PASSED, BEFORE GRANTING APPROVAL OF APPOINTMENT:



WEB COPY

13. *The next issue that arises is when there were surplus teachers at the time of passing the order in W.A.(MD)No.76 of 2019, whether the deployment orders ought to be passed, thereafter only based on the available vacancy the approval to the appointment can be granted as claimed by the Learned Additional Advocate General. Or whether the approval of appointment ought to be granted, thereby the newly appointed would be added on to the list of surplus teachers, then issue deployment orders to the needy school as and when vacancy arises as claimed by the schools and teachers. To put it differently when the appointment is made prior to 13.03.2021 (the date of the order passed in W.A.(MD)No.76 of 2019), whether the appointments ought to be approved before passing the deployment orders. The earlier Coordinated Bench had not considered the said issue. Therefore, in order to consider the said issue, certain factors are taken for consideration.*

14. *It is seen in G.O.Ms.No.525 dated 29.12.1997 speaks about surplus teachers and the relevant portion is extracted hereunder:*

8. ... Those who may be rendered as **surplus** due to application of these norms, shall, as far as possible be redeployed to the needy schools.

*Hence, it is evident that the issue of surplus was prevailing during 1997 and even prior to 1997. It is pertinent to mention that apart from government schools and aided schools, several schools like Matriculation, CBSE, International etc. were established. This had led to decrease in students' strength in the government schools and aided schools, which is one of the factors for decline in the students' strength.*



WEB COPY

15. As early as 2010 the Director of Elementary Education had issued a proceeding dated 27.12.2010 in Na. Ka. No. 28541 / H3 / 2010 wherein it is stated that the surplus teachers in the school management ought to be deployed and ensure that there are no surplus teachers. And also stated that before making appointment, the surplus teachers should be deployed to the vacancy, so that vacancy would not be available to appoint a new teacher. Had this circular been followed the issue of surplus would not have arisen.

16. That apart, the issue was considered in several cases by following G.O.Ms.No.525. The said G.O. states that those who may be rendered surplus due to application of these norms shall as far as possible be redeployed to the needy schools and the redeployment shall be done by the Directors of the Department. In case where redeployment is difficult then the teacher may be allowed to continue until the said teacher's retirement or otherwise, thereafter the said post will not be available to the school. The truncated portion of the G.O. was taken advantage by the teachers and schools and pleaded that "there is surplus, hence approve and deploy to needy school". Based on the said plea the Courts had directed to approve the appointment and thereafter deploy the new appointee to the needy school. But the other portion of the G.O. has granted power to pass deployment orders, but the department could not pass any deployment orders since the schools without prior permission appointed new teachers and after retirement of the said surplus teacher the school without informing the education department or without obtaining prior permission had appointed new teacher, thereby the said

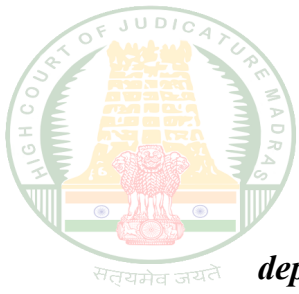


WEB COPY

*G.O. was left in lurch. With no other option the department started passing orders as per Court's direction, which had led to a situation that the count of surplus teachers started increasing. Further in almost all cases deployment became difficult, hence the teachers were permitted to continue until their retirement. Of course without available of periods to work, but getting salary without work.*

*17. While hearing a case in W.A.(MD) No.70 of 2012 the Hon'ble Division Bench vide order dated 13.03.2012 had directed the Director to pass deployment orders if there is surplus teachers. But the deployment orders could not be passed for the reasons as stated supra. If passed the same could not be implemented due to resistance from the schools. While hearing a subsequent appeal in W.A.(MD)No.639 of 2015 the Hon'ble Bench vide order dated 17.06.2015 had referred to the W.A.(MD)No.70 of 2012 and observed that,*

*"7. When a specific question was posed to the learned Special Government Pleader, as to whether appointment of Mr.S.Austin Jeba Solomon, a teacher in TDTA Primary and Middle Schools, Devarkulam Pastorate, Tirunelveli District /1<sup>st</sup> respondent in W.A(MD)No.70 of 2012 was approved or not, notwithstanding the observations made by the Hon'ble Division Bench in the above appeal, filed by the State, the answer was in the affirmative and therefore, it is evident that even after the said observations, the department had chosen to approve the appointment of the said teacher. For another question posed to the learned Special Government Pleader, as to whether the department had taken steps to redeploy the excess teachers, as observed, the answer was in the negative. **Thus in the absence of any steps being taken by the***



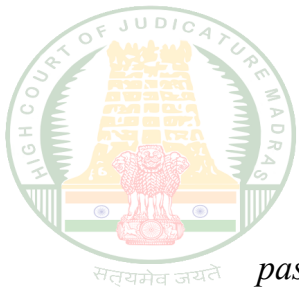
W.A.(MD)Nos.1778 of 2023 & 1934 of 2024

WEB COPY

*department and when appointments of the writ petitioners, are against sanctioned posts, in the respective schools and considering the fact that the department itself, had chosen to approve the appointment of one Mr.S.Austin Jeba Solomon, on its own, party respondent in W.A.No.70 of 2012, wherein, the abovesaid observations were made, this Court is of the view that the writ petitioners are entitled for approval of their appointments, as Secondary Grade Teachers.”*

*The Court held since the department failed to take steps to deploy the teachers to needy school, hence the said reasons cannot be cited for denying approval.*

*18. The aforesaid order further deteriorated the situation and the department had no other option than to approve the appointments and continued to grant approval. But the above observation of the Court that the department had not taken steps to pass deployment orders may not be right. Since the department did pass deployment orders, but the same was resisted by the schools and teachers. There were several inter connected litigations filed by schools and teachers. The school where the teachers were deployed refused to accept the newly deployed teachers. The minority institutions stated that the deployment orders are affecting their minority rights to choose the teachers of their choice and appoint new teachers. In effect the deployment orders were passed, but remained unimplemented orders under the clutches of several litigations. Therefore, the department alone cannot be blamed for not*

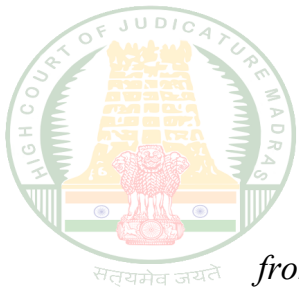


W.A.(MD)Nos.1778 of 2023 & 1934 of 2024

WEB COPY

*passing and implementing the deployment orders, it is because of the schools and the teachers, the deployment orders could not be implemented. Unless strict orders are passed for implementing the deployment order, then the same cannot be implemented, the surplus teachers cannot be reduced. In fact the surplus teachers list exploded with more than 12,500 (approximately) surplus teachers. In writ appeal the government had taken a ground that during 2012 to 2016 the government incurred 17.67 crores by paying the surplus teachers' salary. Further the government is incurring Rs.5,63,10,789/- for surplus teachers in School Education Department and Rs.31,54,48,720/- for surplus teachers in Elementary Education Department for subsequent years. In short the government is incurring approximately Rs.37.20 crores per month for paying salary to the surplus teachers alone.*

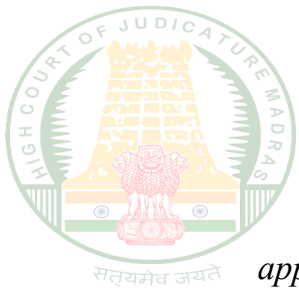
*19. The another dimension of this issue is the plea of prior permission. The schools have taken a stand that prior permission is not necessary for making any new appointment in the sanctioned vacancy and especially the minority institutions have right to appoint and hence the minority institutions need not seek any prior approval. It is seen based on the above plea that prior permission is not necessary, there were indiscriminate appointments by the institutions at their own whims and fancies. The vacancy which could have been filled up from the list of surplus teachers, was filled up with new teachers by the school. Infact there were allegations that by receiving huge amount the vacancies are being filled by the institutions with new teachers. Hence, there were stiff resistance for deployment orders passed by the educational authorities*



WEB COPY

*from the schools. Also, there were resistance to the deployment orders from the teachers citing their personal reasons.*

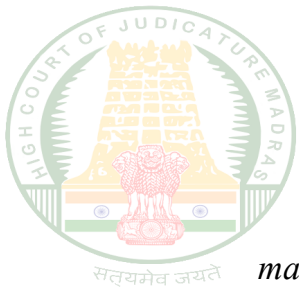
*20. In such circumstances now the plea raised supra “when the appointment is made prior to 13.03.2021 (the date of the order passed in W.A.(MD)No.76 of 2019), whether the appointments ought to be approved before the passing deployment orders”. The answer would be the schools are not entitled to approval, unless the deployment orders are implemented. Especially the corporate management ought to implement the deployment orders, thereafter only the new appointments can be approved based on the vacancy and needy schools. There are reasons for holding “deployment first, then only approval”. If the claim of the schools and teachers are accepted that approval first, then the count of the surplus teachers would increase. When already there are surplus teachers, by granting approval for the newly appointed teacher, the count of surplus teachers would increase. Further there will not be available period for the teachers to take classes, then the said surplus teacher would be sitting idle and get salary without work, which is against the principle of “no work no pay”. Infact it is “no work with full pay”, which is totally against service jurisprudence. Since the government is granting grant-in-aid, the government cannot be punished for providing grant-in-aid. Furthermore, by appointing new teachers in the vacancy, literally the school is not allowing the department to exercise their power to pass deployment orders. Once the new teacher is appointed, then there will not be any vacancy to deploy the surplus teacher. Infact the plea “approval and deploy to needy school” itself is misleading phrase. In short, on one hand by granting*



WEB COPY

*approval there will be increase in the count of surplus teachers and on the other hand there will not be vacancy to pass deployment orders. The surplus teachers are taken note in G.O.Ms.No.525 dated 29.12.1997, now more than 28 years are over, still the issue is persisting. Unless the issue is handled strictly the issue cannot be resolved. If there is cooperation from the schools (both minority and non-minority) and the teachers, the issue can be solved within few years. Otherwise, when even after 28 years the same could not be resolved, then in future even after another two or three decades the issue cannot be resolved. In other words, the direction that “deployment first, then only approval” ought to be strictly implemented, if not the issue can never ever be solved even after several decades.*

*21. Now the crucial question is from which date onwards the approval of appointment cannot be considered. It is seen that the Director had issued Circular on 27.12.2010 and the department could not implement the circular. The order in W.A.(MD)No.639 of 2015 was passed on 17.06.2015 blaming the educational authorities had not taken steps to pass deployment orders. But the fact remains the department had passed deployment orders but the same was resisted by the schools and teachers and the department could not implement the deployment orders. Then the government issued G.O.(Ms)No.261, School Education dated 20.12.2018 wherein it is directed if there is surplus in other schools of the corporate management, then approval of appointment cannot be granted. Therefore, it would be appropriate if it is taken from academic year 2015-2016 based on the judgment 17.06.2015 passed in W.A.(MD)No.639 of 2015. If any appointment is made by the corporate*



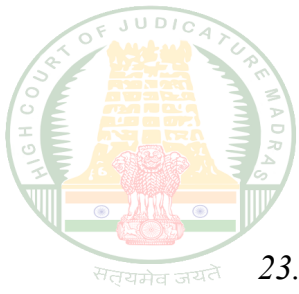
W.A.(MD)Nos.1778 of 2023 & 1934 of 2024

WEB COPY

*management schools without deploying the surplus teaches in their own management from academic year 2015-2016, then the said management is not entitled to any approval of appointment of any new teachers from the academic year 2015-2016. Any such appointment made would be in queue of waiting list of approval and such teacher would be entitled for approval once the entire surplus in the corporate management becomes nil and also the surplus teachers in the State of Tamil Nadu becomes nil.*

*22. As far as “stand alone school” the Court in W.A.(MD)No.76 of 2019 has held that “(v) Like that insofar as aided minority institutions are concerned, if it is a stand-alone institution, their right of appointing a teacher in a vacancy within the sanctioned strength for the academic year 2021-22 shall not be affected because of the identified excess teachers in other schools”. The Court had held until 2021-2022 the stand-alone school cannot be affected. Therefore, it is made clear that the “stand-alone school” are entitled to approval until the academic year 2021-2022. From the academic year 2022-2023 onwards the stand alone schools also cannot appoint any new teachers and the school shall seek any teacher from the list of surplus teachers through deployment orders. And the stand-alone school ought to accept the deployment orders and accommodate the deployed surplus teacher, otherwise the schools are not entitled to grant-in-aid as held in W.A.(MD)No.76 of 2019.*

*IV.SURPLUS TEACHERS LIST IN EMIS:*



WEB COPY

23. *It is pertinent to state that the surplus details ought to be uploaded in the web portal as per the direction in Clause (q) in W.A.(MD)No.76 of 2019. It is seen that the department had uploaded in EMIS, a special web portal for the education department. All the schools have exclusive pin number and password to access the same. The complete details are available in EMIS and the same can be accessed by the schools. Therefore, as and when there is any need for teacher by any schools, then the said school shall access the said list of surplus teachers and seek for deployment of such teacher of their choice from the list alone. On such request the educational authorities shall pass deployment orders at the earliest. If the school is not stating any choice the authorities shall choose any one of them and pass deployment orders.*

*V. WHETHER THE NEWLY APPOINTED TEACHER IS ENTITLED TO APPROVAL IRRESPECTIVE OF SUBSEQUENT FALL IN STRENGTH:*

24. *The issue raised is recurring issue. The academic year starts from 1<sup>st</sup> June of every year to 31<sup>st</sup> May of next year. The department would issue staff fixation order at the end of the academic year, for example for the academic year 1<sup>st</sup> June 2017- 31<sup>st</sup> May 2018 the staff fixation order would be issued from January to March 2018 only. Infact this late issuing of staff fixation order has contributed further problem to the issue. However, this issue has already been dealt with in W.A.(MD)No. 76 of 2019 wherein it is held that the admission of students ought to be over by June or at least by July, then staff fixation order ought to be*



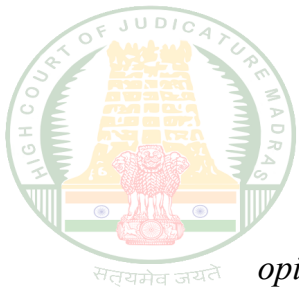
W.A.(MD)Nos.1778 of 2023 & 1934 of 2024

WEB COPY

*issued by 15<sup>th</sup> August. If the same is issued by 15<sup>th</sup> August, then the school would know its position regarding vacancy. Therefore, this Court is strictly directing the official respondents to issue the staff fixation orders before 15<sup>th</sup> August.*

*25. The next question that arises is if the department failed to issue the staff fixation orders before 15<sup>th</sup> August, whether the school would get any right to appoint new teacher in the interregnum period, then also the answer is negative, the school is not entitled to appoint new teacher. The substantial problem of surplus issue is due to this kind of appointment. The issue can be dealt as “fall in strength before issuance of staff fixation order” and “fall in strength after issuance of staff fixation order”.*

*26. The facts stated in W.A.(MD)No.1668 of 2023 falls under the category of “fall in strength before issuance of staff fixation order”. In the said case the vacancy arose on 01.07.2018 due to retirement of the incumbent. The vacancy falls in the academic year 1<sup>st</sup> June 2018 to 31<sup>st</sup> May 2019. Then the school ought to have waited for the staff fixation order for the academic year 2018-2019, which ought to be issued before 15<sup>th</sup> August 2018. The school cannot fill the said vacancy by relying on the previous staff fixation order issued for the academic year 2017-2018. Therefore, the plea of the teacher that there is subsequent fall in the strength is incorrect and not true. There was fall in the strength during the same academic year that too before issuance of staff fixation order. In such circumstances, this Court is of the considered*



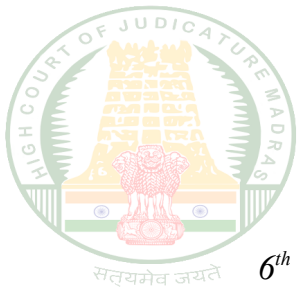
W.A.(MD)Nos.1778 of 2023 & 1934 of 2024

WEB COPY

*opinion that the Writ Court had erred in rendering a finding that there is fall in the strength in subsequent academic year.*

*27. The other category is “fall in strength after issuance of staff fixation order”, which means the vacancy arose from 1<sup>st</sup> September of the academic year till 31<sup>st</sup> May of the next year. In this category also the school cannot appoint new teacher, since the department is entitled to pass deployment orders to the said vacancy. Infact the school ought to seek a teacher from the list of surplus teachers. In such circumstances, there is no question of vacancy belongs to which year, whether it belongs to previous year or present year or next year. At the cost of repetition, if there is any vacancy, then the school ought to seek a teacher from the list of surplus teachers alone and the school shall not appoint any new teacher. Therefore, from any angle the school ought to wait until the surplus teachers list are exhausted.*

*28. It is seen in some cases the school had taken the English Medium sections and claiming the total strength. The claim of the schools is incorrect. As per G.O.Ms.No.148 School Education Department dated 20.07.2018 the schools were permitted to carve out one English Medium from the Tamil Medium section and utilize the service of the teachers working in Tamil Medium. And while doing so the government cannot be made to incur further financial liability. In such circumstances, the schools cannot include the English Medium strength. The said staff fixation ought to be carefully considered while fixing the staff strength. In W.P.(MD)No.12177 of 2022 the Tamil Medium strength in standards 11<sup>th</sup> and 12 is only 77. In standards 6 to 10 is only 241 students i.e.*



W.A.(MD)Nos.1778 of 2023 & 1934 of 2024

WEB COPY

6<sup>th</sup> standard – 27 students

7<sup>th</sup> standard – 29 students

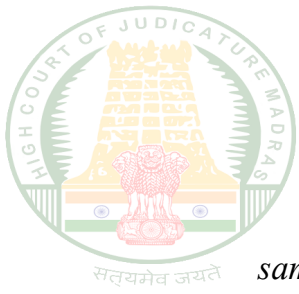
8<sup>th</sup> standard – 30 students

9<sup>th</sup> standard – 71 students

10<sup>th</sup> standard – 84 students

*Totally – 241 students only and the grand total is 318 (77+241) only. In such circumstances, the school is entitled to only one Physical Education Teacher.*

*29. The schools and the individuals repeatedly raise a plea of “sanctioned post” which means that the post is sanctioned prior to 1991-1992 and hence the school is entitled to. And the Courts also entertain the said plea and has held if originally the post is sanctioned, the same cannot be taken away. But such a plea is incorrect, since the sanctioned post varies based on the students’ strength for each academic year. The schools and individuals frequently claims without understanding that there cannot be a “permanent sanctioned post”. Infact the staff fixation order is issued every academic year based on the students’ strength admitted during that academic year. Therefore “sanctioned post” will come into play only after issuance of staff fixation order for every academic year. If the students’ strength is reduced then the school shall not be entitled to the said post. If any person is working in the said post without students’ strength, then the post would be declared as “surplus along with person” and the person ought to be transferred or post on deputation or deployed to needy school. Likewise, if no person working in the said surplus post, then the*

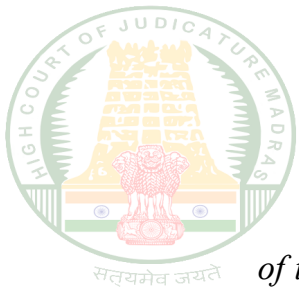


WEB COPY

same would be declared as “surplus without person” and the said post would be reverted to “Director’s Common Pool”. If in the next academic year, the school had increased the students strength and as per the strength if the school is entitled to the said post which was reverted to the “Director’s Common Pool”, then the school would be permitted to submit a request to revert the said post and the same ought to be considered in favour of the school. From the aforesaid procedure it is evident that there cannot be any “permanent sanctioned post”. Consequently, any claim that the appointment is made is “sanctioned post”, cannot straight away be accepted. The said claim ought to be scrutinised based on the staff fixation order for the disputed academic year. Therefore, the claim of schools and individuals that the post is sanctioned post is a misnomer and the Courts cannot entertain such plea while granting any relief.

30. While considering the other cases in the present batch of writ appeals, the facts of each case shall be taken and thereafter the appellants shall consider and pass orders as per the observations made supra.

31. Whenever a crisis arises then all the interested parties should come together to resolve the crisis. The surplus teacher issue is a crisis and the above directions are issued to all the parties in order to resolve the surplus teacher crisis. If the same is strictly followed then the issue of surplus can be tackled within few years. Thereafter the school would be at liberty to exercise their rights for new appointments. This Courts hopes that the issue would be solved in near future with the cooperation



W.A.(MD)Nos.1778 of 2023 & 1934 of 2024

WEB COPY

*of the schools and teachers along with the education department and its officials.*

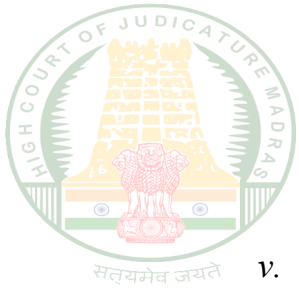
*32. Based on the above discussion the following orders are issued:*

*i. The directions issued in W.A.(MD)No.76 of 2021 is applicable to any appointments issued prior to 31.03.2021 (the date of order passed in W.A.(MD)No.76 of 2021).*

*ii. The new Act and Rules are applicable to the appointments made after 31.03.2021. However, since the new Act and Rules are stayed, until the stay is vacated the directions issued in W.A.(MD)No.76 of 2021 is applicable.*

*iii. Until the list of surplus teachers existed prior to 31.03.2021 are exhausted, any appointment made from the academic year 2015-2016 are **not entitled** to approval of appointment. However, the appointed teachers from the academic year 2015-2016 shall be kept in waiting list. As and when the list of surplus teachers is exhausted, then the teachers in waiting list are entitled to consider for approval of appointment.*

*iv. The “stand-alone school” are entitled to approval of appointment until the academic year 2021-2022. From the academic year 2022-2023 onwards the stand-alone schools also cannot appoint any new teachers and the school shall seek any teacher from the list of surplus teachers through deployment orders.*



W.A.(MD)Nos.1778 of 2023 & 1934 of 2024

WEB COPY

v. *Until the list of surplus teachers is exhausted, the schools are not entitled to the plea “there is no necessity to obtained prior permission”.*

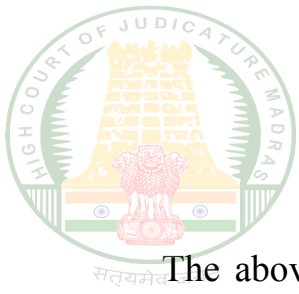
vi. *The plea of sanctioned post is a misnomer, since the sanctioned vacancy varies every academic year based on the staff fixation order of that academic year. Therefore, the plea of sanctioned post cannot be entertained at all.*

vii. *There is no question of fall in the students’ strength in previous year, present year or next year and such claim is misnomer. Whenever any vacancy arises, then the educational authorities shall pass deployment orders. All the schools, whether minorities or non-minorities, shall seek any teacher from the list of surplus teachers maintained and published in EMIS.*

viii. *While fixing staff strength the G.O.Ms.No.148 shall be taken into account and the students’ strength of Tamil Medium shall be considered to fix the staff strength.*

ix. *As far as other cases in the present batch cases are concerned, the appellants shall take the facts of each case and thereafter consider and pass orders as per the observations and directions stated supra.*

33. *With the above observations and directions, the writ appeals are allowed. No costs. Consequently, all the miscellaneous petitions are closed.”*



W.A.(MD)Nos.1778 of 2023 & 1934 of 2024

The above judgment is applicable to the present case also and the directions issued in the above case shall be followed in the present case also.

15. Further in the present case there was surplus in the school itself, hence the petitioner's appointment is erroneous and hence the petitioner is not entitled to approval of appointment. The fact that the school itself is having surplus was not taken into consideration, hence the order passed by the writ court is liable to be set aside. When batch matters are disposed through common order there is a risk of not taking the facts of the particular case and this case is one such classic case. Therefore, Courts ought to be careful while passing common orders.

16. If the petitioner's is granted approval and if the similarly placed persons like the petitioners are granted approval, then the surplus teachers count would keep on increasing and the same cannot be reduced or controlled. Therefore, the petitioner cannot seek any equity.

17. As far as the salary payable for the period from the date of appointment until the date the school had permitted the petitioner to work, the



W.A.(MD)Nos.1778 of 2023 & 1934 of 2024

petitioner is entitled to salary as self-finance employee. If the salary is not paid the same shall be paid as self-finance employee.

18. With the above said observations, the writ appeals are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

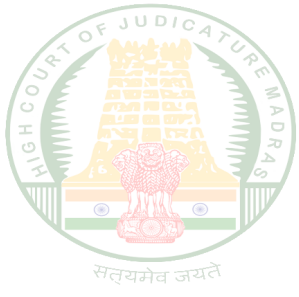
**[J.N.B., J.] [S.S.Y., J.]**  
**24.06.2025**

Index : Yes / No

Tmg

To

- 1.The Chief Educational Officer,  
Office of Chief Educational Officer,  
Tiruchirapalli, Tiruchirappalli District.
- 2.The District Educational Officer (Secondary Education),  
Office of the District Educational Officer,  
Tiruchirapalli, Tiruchirappalli District.



WEB COPY



W.A.(MD)Nos.1778 of 2023 & 1934 of 2024

**J.NISHA BANU, J.**

and

**S.SRIMATHY, J.**

Tmg

**W.A.(MD)Nos.1778 of 2023 & 1934 of 2024**

24.06.2025