



W.A(MD) No.722 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 12.08.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

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and
C.M.P.(MD)No.4236 of 2020

- 1.The District Elementary Educational Officer,
Ramanathapuram,
Ramanathapuram District.
- 2.The Additional Assistant Elementary Educational Office,
Kadaladi, Ramanathapuram District. ... Appellants / Respondents

Vs.

- 1.M.Selvi ... 1st Respondent / Writ Petitioner
- 2.The Correspondent,
R.C.Primay School, Narippaiyur,
Kadaladi Taluk,
Ramanthapuram District. ... 2nd Respondent / 3rd Respondent



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PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 16.09.2019 in W.P.(MD)No.5129 of 2018.

For Appellant : Mr.C.Venkatesh Kumar
Special Government Pleader

For Respondents : Mr.VR.Shanmuganathan
for R1
: No appearance
for R2

JUDGMENT

(Judgment of the Court was made by **G.R.SWAMINATHAN, J.**)

The department is on appeal challenging the order dated 16.09.2019 passed by the learned single Judge allowing W.P.(MD)No. 5129 of 2018 filed by the first respondent.

2. Even before commencement of the argument, the learned counsel appearing for the writ petitioner on instructions from her submitted that the writ petitioner would be satisfied with effect from today ie., 12.08.2025, monetary benefits are paid. The learned counsel



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for the writ petitioner submitted that if the writ petitioner's appointment is approved with effect from 12.01.2017, the writ petitioner will give up her claim for payment of salary arrears and other attendant monetary benefits. The said undertaking and submission by the writ petitioner's counsel is placed on record.

3. The writ petitioner was appointed as secondary grade teacher in one of the schools run by the corporate management of Roman Catholic Diocese, Sivagangai. The proposal was submitted for approving the appointment. The appointment was negatived. The proposal was not processed. Hence, the first respondent herein filed W.P.(MD)No.15583 of 2017. The writ petition was disposed of on 21.08.2017 in the following terms:-

“5. A perusal of the proposal shows that the post fall vacant on account of transfer of another Teacher. Therefore, this Court finds no impediment to direct the respondents 1 & 2 to consider the said proposal, which is pending for a long time.

6. In view of the said submission, the respondents 1 & 2 are directed to consider the proposal of the third respondent School within a period of four weeks from the date of receipt of a copy of this order.”

Pursuant to the said direction, the DEO, Ramanathapuram passed the



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order dated 06.03.2018 rejecting the proposal on the ground that there are surplus teachers working in the other schools run by the very same corporate management. Assailing the said order, W.P.(MD)No.5129 of 2018 was filed. The learned single Judge allowed the writ petition in the following terms:-

“8.It is an admitted fact that one sanctioned post of Secondary Grade Teacher fell vacant in the third respondent school on account of transfer of one M.Kuzhanthai Theras to another school run by the third respondent management. According to the petitioner, though prior permission is not required, the third respondent sought prior permission to fill up the said vacancy. The first respondent also granted permission. Subsequently, by following the process, the petitioner was appointed as Secondary Grade Teacher with effect from 12.01.2017 in the third respondent school. The contention made by the petitioner in the affidavit filed in support of the Writ Petition, is not denied by the respondents 1 and 2. Having granted permission, it is not open to the respondents 1 and 2 to contend that the third respondent management must deploy any one of the surplus teachers from other school instead of appointing a fresh candidate. However, in the earlier Writ Petition in W.P.(MD)No. 15583 of 2017, the respondents 1 and 2 have not taken such a stand. From paragraph No.5 of the order of this Court, dated 21.08.2017, made



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in W.P.(MD)No.15583 of 2017, it is seen that this Court has taken note of the fact that the post fell vacant on account of the transfer of another teacher and there is no impediment to direct the respondents 1 and 2 to consider the proposal of the third respondent, which is pending for long time and directed the respondents 1 and 2 to consider proposal submitted by the third respondent for approval of the appointment of the petitioner. The Division Bench, after considering various judgments of this Court and also the judgment of the Hon'ble Apex Court in the judgment reported in 2002 (8) SCC 481 (T.M.A. Pai Foundation Vs. State of Karnataka) and the judgment reported in 2007 (1) SCC 386 (T.Jose (Malankara Syrian Catholic College Vs. T.Jose), confirmed the order passed in the Writ Petition and held that the management like the third respondent can recruit fresh teachers, when there are surplus teachers in the school under the same management. However, the first respondent has not considered the paragraph No.5 of the said order, but extracted only Paragraph No.6 of the said order and rejected the proposal submitted by the third respondent. It is not denied that the petitioner is fully qualified to be appointed as Secondary Grade Teacher.

9.Considering the above materials and the order of this Court dated 21.08.2017 made in W.P.(MD)No.15583 of 2017, the impugned order of the first respondent, dated 06.03.2018, is quashed and this Writ Petition stands allowed, directing the respondents 1 and 2 to approve the



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appointment of the petitioner as Secondary Grade Teacher in the third respondent school from the date of his appointment i.e., 12.01.2017 and pay the salary from 12.01.2017.”

Challenging the said order, this writ appeal has been filed.

4. Paragraph No.8 of the counter affidavit filed in the writ petition reads as follows:-

“8. I submit that it is pertinent to note that the R.C.Diocese, a registered society administering more than 120 schools apart from the third respondent's school are having number of surplus post in most of those School. Out of 19 schools in Ramnad District, there are 56 surplus posts available in Ramnad District. If the real intention of the 3rd respondent is to fill up the vacant place in lieu of transfer effected to M.Kuzhanthai Theras the diocese could have transferred any one of the surplus teacher among the above said 56 persons. Without doing so, making a fresh appointment and sending approval that regard, that to when there is availability of surplus post to a huge extent in the other schools is not proper. If the approval is given to the fresh candidate, the government has to pay for the fresh appointee as well as for the post which is already remaining surplus. For an example, as per the salary fixed by 7th Pay Commission, the monthly salary fixed for the person newly appointed is Rs.22,825/-. If this is taken into consideration the monthly pay for the 56 secondary grade teachers working surplus in the schools run by the society RC Diocese will comes to Rs.12,78,200/-. In this regard the government is paying a sum of Rs.1,53,38,400/- for every year for the said surplus teachers. If any fresh appointment is made, definitely that will be an



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additional monetary burden to the government. In the above process the government is constrained to face huge monetary losses. This aspect was rightly considered by the 1st respondent and the proposal sent for approving the appointment made in favour of the petitioner was rightly rejected. The order of the 1st respondent is perfectly correct and well reasoned. Apart from the conduct of the petitioner by transferring M.Kuzhanthai Theras from his school to other institution of the same society and thereafter appointing M.Selvi and sending requisition for approval on that regard would clearly establish the fact that the petitioner is more concern with getting new appointment without considering the surplus post available with their other school administered by the society.”

5. Our attention is drawn to the order dated 27.11.2024 made in W.A.(MD)No.1011 of 2019. Paragraph Nos.6 & 7of the said order reads as follows:-

“6.The Hon'ble Division Bench in the decision reported in (2021) SCC Online Mad 1285 (The Secretary to Government, Government of Tamil Nadu, School Education Department, Chennai and ors v. Iruthaya Amali and anr) had held that so long as there is surplus in the district, unless and until such surplus teachers are redeployed and exhausted, no appointment can be made by the schools. The learned counsel for the writ petitioner submitted that this decision ought not to be retrospectively applied to the present case. He relied on the following orders :

1. WA(MD)No.2119 of 2021 (The Commissioner of School Education v. Aided Muslim Committee Primary School rep.by its



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Correspondent, S.Sheik Shajakhan Sithik)

2. WA(MD)No.1098 of 2022 (The Secretary to Government v. R.Jeya Suhi)

3. WA(MD)No.1557 of 2023 (State of Tamil Nadu v. C.Esakkimuthu)

4. WA(MD)No.1445 of 2024 (The Director of School Education v. The Correspondent, St.Mary's Tope Middle School, Tiruchirappalli).

7. The issue does not turn on whether the application of Iruthaya Amali is prospective or retrospective. The order given in the case of Esakkimuthu on which the writ petitioner's counsel placed heavy reliance pertains to district surplus. The case on hand raises the question whether in the other schools run by the corporate management and if there are surplus teachers, whether an appointment can be made in the event of a vacancy created by the retirement of an incumbent. In this case, in the very same school, there are three surplus teachers in B.T Assistant (Science) post itself. As early as on 04.08.2017 in WA(MD)No.136 of 2017 (The Joint Director of Elementary Education v. Getzy Roopala), the Division Bench to which one of us was a party had held that when surplus teachers are working in the same management, they have to be redeployed and the management cannot make further appointment. To the same effect is the order made in WA(MD)No.861 of 2021 (The Director of Elementary Education v. A.Celestin Mahimairaj) dated 30.04.2021. When the vacancy arose in the instant case on 31.05.2013, the school management could not have appointed Ms.S.P.Princian Usha on 10.06.2013 since there were surplus teachers not only in the same school but also in the other schools run by the same corporate



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management. This aspect of the matter distinguishes the case on hand from the factual matrix obtaining in the precedents relied on by the learned counsel for the writ petitioner. The order impugned in this writ appeal is set aside. The writ appeal is allowed.”

6. The issue is therefore no longer *res integra*. When in the schools run by the corporate management, there are surplus teachers, unless the surplus is exhausted, the management cannot proceed to make any further appointment. Therefore, the stand of the appellants has to be necessarily accepted. But then, there is one distinguishing feature in this case. It appears that the management before appointing the writ petitioner had sought prior permission from the department. A specific ground has been taken in this regard in the affidavit filed in support of the writ petition. This assertion has not been denied in the counter affidavit. It is of-course a moot issue as to whether the permission wrongly issued by an official can bind the department. We do not want to go into the said larger issue.



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7. In view of the categorical relinquishment made by the writ petitioner as regards the payment of salary arrears, we modify the order passed by the learned single Judge and direct the department to approve the writ petitioner's appointment with effect from 12.01.2017. The question of paying salary arrears and other monetary benefits from the said date till today will not arise. The writ appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S., J.) (K.R.S., J.)
12.08.2025

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