

W.A.(MD)Nos.923 and 924 of 2025

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.04.2025

CORAM:

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

**W.A(MD)Nos.923 and 924 of 2025
and
C.M.P.(MD)Nos.5974 and 5977 of 2025**

1.The Joint Director (Vocational),
Directorate School Education,
D.P.I. Compound, College Road,
Chennai 6.

2.The Chief Educational Officer,
Madurai District, Tallakulam,
Madurai.

3.The District Educational Officer,
Melur Educational District,
Melur, Madurai.

... Appellants in both cases

Vs.

1.J.K.Suriyanath

2.The Correspondent,
Sourashtra Higher Secondary School,
110, Kamarajar Salai,
Madurai 9.

... Respondents in both cases

Prayer in W.A(MD)No.923 of 2025: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.2006 of 2022, dated 19.06.2024.



W.A.(MD)Nos.923 and 924 of 2025

Prayer in W.A(MD)No.924 of 2025: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.5192 of 2023, dated 19.06.2024.

In both cases:

For Appellants	:Mr.J.Ashok Additional Government Pleader
For R1	:M/s.S.Modharshini *****

COMMON JUDGMENT

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

Both the writ appeals arises from the common order passed in two writ petitions filed by the same writ petitioner, hence both the writ appeals are taken together and common order is passed.

2.(i) The W.A(MD)No.923 of 2025 is filed by the respondents in the writ petition against the order dated 19.06.2024 passed in W.P.(MD)No.2006 of 2022. The W.P.(MD)No.2006 of 2022 was filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned proceedings in Na.Ka.No.25543/V1/E32022, dated 21.10.2021, passed by the 1st respondent and consequently, to direct the 1st respondent to regularize the petitioner's service from the date of his initial



W.A.(MD)Nos.923 and 924 of 2025

WEB COPY

appointment i.e., on 24.10.2002 and to grant selection grade scale of pay to the petitioner from the date of completion of 10 years of service.

2(ii) The W.A(MD)No.924 of 2025 is filed by the respondents in the writ petition against the order dated 19.06.2024 passed in W.P.(MD)No.5192 of 2023. The W.P.(MD)No.5192 of 2023 was filed for issuance of a Writ of Certiorari, to quash the impugned proceedings in Na.Ka.No.8172/A1/2022 dated 17.02.2023 passed by the 3rd respondent.

3. The brief facts are that the writ petitioner was appointed as a vocational instructor on 16.10.1996 under consolidated pay. When the regular vocational instructor vacancy arose due to death of one K.S.Balakumar on 16.10.2002, the petitioner was appointed by the school on 23.10.2002 and he joined in service on 24.10.2002. When the proposal for approval was submitted, the same was rejected by the 1st appellant vide order dated 21.10.2021 which is challenged in W.P. (MD)No.2006 of 2022. The reason stated is that the school had appointed without getting proper permission and in violation of G.O.Ms.No.991, dated 16.07.1990. Further, the 3rd respondent vide proceedings, dated 17.02.2023 had stopped the grant-in-aid paid for the salary of the writ petitioner. Challenging the same W.P.



W.A.(MD)Nos.923 and 924 of 2025

सत्यम् (MD)No.5192 of 2023 is filed.
WEB COPY

4. The contention of the official respondents in the writ petition is that even though the post was a sanctioned the same was sanctioned for the incumbent, by virtue of the Government Order issued in G.O.Ms.No.991, dated 16.07.1990, the post is deemed to have been surrendered and to make any further appointment in respect of the said post, prior permission is necessary. Further under G.O.Ms.No.9 School Education (VE) Department dated 06.01.2009 the school ought to submit details for the need the vocational post. Furthermore, the government issued G.O.Ms.No.128 School Education Department dated 12.06.2007 wherein a High Level Committee was constituted to review the present status of the Vocational Education Courses offered in Higer Secondary Schools in the state and to revamp the Vocational Education in accordance with the present day requirement, hence it was specifically instructed not to appoint any teacher at that stage till the revised system of Vocational Education was fully finalized. Therefore, the school ought to have discontinued the courses which was permitted to continue till the existing incumbent retires or the post becomes vacant for other reasons. As a policy decision the vocational stream was discontinued and hence the G.O.Ms.No.9 dated 06.01.2009 is applicable to the existing post also and should have been



W.A.(MD)Nos.923 and 924 of 2025

WEB COPY

allowed to lapse. Since the school appointed beyond the directions of the said G.O.s, the petitioner is not entitled to approval of appointment and hence the respondents prayed to dismiss the writ petition.

5. After hearing the rival submissions, the Writ Court quashed the impugned orders therein and allowed the writ petition and directed the 1st appellant to grant order of approval to the post of vocational instructor and to regularize the writ petitioner's service from the date of his initial appointment i.e. on 24.10.2002, with all attendant monetary benefits within a period of four weeks, however the same is subject to the outcome of the pending SLP, if any, in this regard. Aggrieved over the same, the present writ appeals are preferred by the respondents 1 to 3 in the writ petition / Government.

6. Heard Mr.J.Ashok, Learned Additional Government Pleader appearing for the appellants and M/s.S.Modharshini, Learned Counsel appearing for the 1st respondent and perused the records.

7. The primary contention of the writ petitioner is that he was not appointed in any new post but in the already sanctioned post and which became vacant,



WEB COPY

hence prior permission before the appointment does not arise. Further the school is a linguistic minority aided school, hence minority school not necessary to get prior permission for any appointments. The contention of the petitioner is totally against the facts of the case. It is seen from the records that the petitioner was appointed in the death vacancy of the said K.S.Balakumar. But the said K.S.Balakumar was appointed as part time vocational instructor on 12.10.1981, when he sought regularisation the same was denied, hence he and some other had approached Court by filing W.P.No.11389 to W.P.No.11393 for regularisation. Based on the Courts order the said K.S.Balakumar was regularised by virtue of G.O.Ms.No.6 Education dated 04.01.2000 and G.O.Ms.No.7 Education dated 04.01.2000. When the question arose for regularisation of the said **post**, the government granted regularisation to the **teacher** for his job protection by taking into account his long service. Hence the school is not having the sanctioned post as claimed by the school. Further when it is not a regular sanctioned post but a special concession to the teacher, hence in order to fill the vacancy, prior permission is necessary. When there is no sanctioned post to the school as stated supra, then the question of minority or linguistic minority would not be a factor at all. Therefore, this Court is of the considered opinion that the contention of sanctioned post is erroneous and prior permission is necessary in cases where the



W.A.(MD)Nos.923 and 924 of 2025

WEB COPY

post was granted to the teacher for job protection and the post was not granted to the school. And the finding of Writ Court that the post is sanctioned post is erroneous.

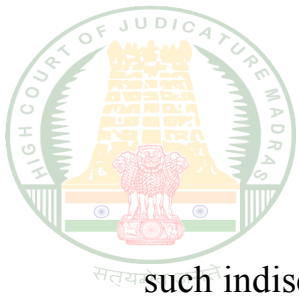
8. The next contention that the G.O.Ms.No.991, dated 16.07.1990, would only state that prior permission should be obtained to make any fresh appointment and it does not say that the posts already sanctioned would be presumed to have been surrendered. Hence, it is not proper on the part of the official respondents to state that the then existed vocational instructor post has to be surrendered, though it was a sanctioned post. This Court perused the said G.O. Under clause 1 sub clause (i) and (ii) it states in government school the power to appoint or terminate part time vocational instructions shall be vested with CEO and not with Headmasters. Likewise, in the aided managements the Correspondents/ Secretary of School Committee will make the appointment in consultation with the Headmasters and obtain the prior approval of the CEO, if any staff grant is to be allowed in respect of such part time instructors. Under clause 3 the proceedings of Director dated 09.11.1989 was referred and further directed under sub clause (i) wherein it is strictly directed the Heads of the Higher Secondary Schools shall not make any fresh appointment of part time vocational instructors without obtaining



W.A.(MD)Nos.923 and 924 of 2025

WEB COPY

the prior permission of the Director of the School Education. And under sub clause (ii) it was directed not to convert any single part time teacher into double part time teacher and vice versa without obtaining specific order of the Director in this regard. When the G.O. clearly states to obtain prior permission for appointing, terminate, converting from single part time to double part time and vice versa, it would mean any fresh appointment of vocational teacher. This Court has already held there is no sanctioned post as far as vocational instructors are concerned. In such circumstances, any fresh appointment means any new person appointed in any post of vocational instructors. It cannot be stated it applies to new appointment only. If such an argument is accepted it would mean creating new post itself. But creating new post is prohibited under section 14-A of the Tamil Nadu Private Schools Regulation Act. Therefore, any G.O. covering the same issue is not necessary. Therefore, the interpretation given by the writ petitioner is incorrect. It is pertinent to state that the vocational courses in Higher Secondary Schools were introduced during 1978-1979 and the power to appoint was granted to the headmasters of the schools and Parent-Teachers Associations. Based on such power indiscriminate appointments were made. Some of the appointments were made without proper qualifications, some appointments were made as part time, some double part time, some regular full time. In order to curb



WEB COPY

such indiscriminate appointments, several G.O.s were issued and one such G.O. is G.O.Ms.No.991 dated 16.07.1990. From the above discussion it is evident that the interpretation given by the petitioner is incorrect.

9. The next contention of the petitioner is that subsequent to G.O.Ms.No. 991 dated 16.07.1990, another government order was issued in G.O.Ms.No.1177, Education (HS3) Department, dated 01.12.1992, in modification of the earlier G.O.Ms.No.991, dated 16.07.1990. In the subsequent G.O.Ms.No.1177 the ban imposed through the earlier Government order in G.O.Ms.No.991 was lifted. This argument of the petitioner is against his own argument regarding G.O.Ms.No.991. Earlier the petitioner stated there is no ban for fresh appointment in G.O.Ms.No. 991, but now the petitioner states the ban in earlier G.O.Ms.No.991 was lifted in G.O.Ms.No.1177, which is inconsistent stand.

10. Further the petitioner also admits that the subsequent G.O.Ms.No.1177 allows appointment but based on certain conditions. Some of the conditions stipulated in the said G.O. are that there should not be any extra financial commitment to the government and the total number of sanctioned post of part-time vocational instructors should not exceed the permission already granted. It is

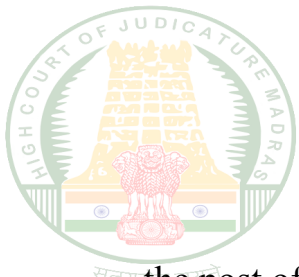


WEB COPY

also stated that the permission granted will not cover conversion of a single part time instructors, after 23.10.1989, the date on which the earlier ban was imposed.

Hence the contention of the petitioner is that since the petitioner's appointment was made on 24.10.2022 much later and subsequent to G.O.Ms.No.1177, dated 01.12.1992 the question of getting prior permission for appointment as against the sanctioned vacancy will not arise. The said contention cannot be accepted since the said condition still prevails when the petitioner was appointed. The said condition was not lifted through any G.O. Further the subsequent G.O.s namely G.O.Ms.No.128 dated 12.06.2007 and G.O.Ms.No.9 dated 06.01.2009 ought to be taken into account. Therefore, the contention of the writ petitioner is rejected.

11. The further contention of the petitioner is that the said G.O.Ms.No.1177 speaks about the part time vocational instructors and not posts having regular time scale of pay, hence the position of the writ petitioner is still better because the post which fell vacant was a regular post and not a part time post. This submission was accepted by the Writ Court and the Court held it is a full time post. But the records states it is only part time post and hence the finding of the Writ Court has factual error. In the order dated 17.09.2014 while considering the petitioner's requested for regularisation, it has been clearly stated that the petitioner is holding



the post of part time only.

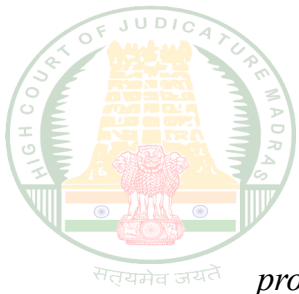
WEB COPY

12. The next contention of the petitioner is that the impugned order states that once vocational instructors retire, the posts occupied by them should be presumed to have got surrendered, but the G.O.Ms.No.991, dated 16.07.1990, itself does not contemplate of presumed surrendering of the post. The entire power whether the post is necessary, whether there are adequate students in the said vocational course, whether the same ought to be continued are with the CEO under G.O.Ms.No.991. Therefore, without such analysis by the CEO, the appointment of the petitioner is interfering in the power of the CEO. Hence the appointment of the petitioner is against the G.O.

13. The Learned Counsel appearing for the writ petitioner relied on the judgment passed by the Division Bench of Madras High Court in W.A.No.858 of 2013, dated 11.01.2019, in the case of the ***Government of Tamil Nadu and 3 Others Vs. R.Jebaraj and Another***, wherein it is held as under:

“2. As rightly submitted by the learned counsel appearing for the first respondent even assuming G.O.Ms.No.991, Education Department dated 16.07.1990 is applicable, it stands modified by subsequent G.O.Ms.No. 1177, Educational (HS3) Department, dated 01.12.1992, which is extracted hereunder:-

“3. Government after careful consideration accept the



WEB COPY

proposal of the Director of School Education. Accordingly the ban effected in the Government letter first read above be lifted with effect from the date of issue of this order. The Government also direct the Chief Educational Officer to permitted to fill up all the sanctioned vacant of part-time vocational instructions in the Higher Secondary Schools subject to the following conditions:

i. There should not be any extra financial commitment to Government in this regard.

ii. The total number of sanctioned posts of part-time vocational instructors should not be exceeded.

iii. The permission now granted does not cover conversion of single part time instructors, after 23.10.89 the date on which the ban was imposed.

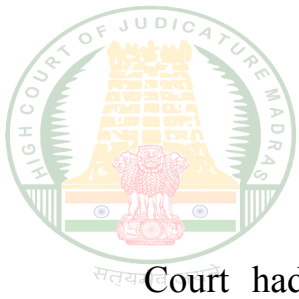
iv. The filling up of posts should not be in contravention of any other orders/instruction of Government in force now on the subject.

4. This order does not require- the concurrence of the Finance Department."

3. In such view of the matter, we do not find any error in the order passed by learned Single Judge warranting interference. We may also note that the order passed by the learned Single Judge has already been given effect to, of course subject to the final order passed in the writ appeal.

Accordingly, this appeal stands dismissed. No costs. Consequently, connected M.P. No. 1 of 2013 is closed."

14. But the Learned Additional Government Pleader submitted that the aforesaid judgment cannot be relied on since subsequently the Hon'ble Supreme



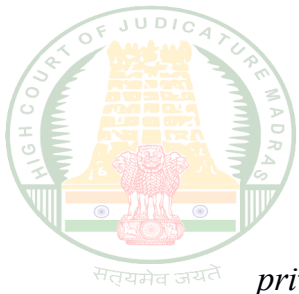
W.A.(MD)Nos.923 and 924 of 2025

WEB COPY

Court had passed an order allowing the question of law in favour of the government. Even in the impugned order passed by the Writ Court it has been held that the Writ Court order is subject to the orders of the SLP. The Writ Court had referred to the order passed in W.A.(MD)No.1494 of 2017 in the case of Sethupati Higher Secondary School. The Hon'ble Supreme Court in Civil Appeal No.12310 of 2024, dated 12.11.2024, in the case the ***State of Tamil Nadu and Others Vs. Secretary / Correspondent Setupati Higher Secondary School*** has held as under:

“4. We are of the view that the judgment cannot be sustained in the eye of law, as admittedly, the institutions are receiving aid. Thus, they are bound by the Government orders which require prior approval. The permission for the earlier incumbent vocational instructor was granted as a one off case by taking a sympathetic view so as to facilitate the earlier incumbents to complete their tenure, notwithstanding, the fact that the said posts have not been sanctioned. Unfortunately, the present incumbents also have been appointed by a backdoor entry and they are at the verge of completion of tenure. Thus, considering the factual scenario, though we are inclined to set aside the impugned judgment, on the principle of law, we are not inclined to disturb the appointments made.

5. Accordingly, as a principle of law, the judgment rendered by the High Court cannot be relied upon in future as a precedent. On the facts and circumstances of the case, the appointments made in favour of the



WEB COPY

private respondent shall continue and, therefore, they are entitled to continue with aid. It is made clear that the arrears will have to be paid within a period of twelve weeks from today. We further make it clear that if the same orders are continued by all the institutions, then the Court shall take into consideration the consequence to be met by those institutions as against making the government to pay, as it is at their instance, the entire scenario has emerged.”

15. The Hon'ble Supreme Court has allowed the question of law in favour of the appellants. Therefore, this Court is also inclined to allow the writ appeal. However, it is seen that the writ petitioner was working in the said post from 23.10.2002 onwards. As held in Sethupati's case, this Court also is not inclined to disturb the writ petitioner. At the same breath, this Court is strictly directing the school not to appoint any person in the place of the writ petitioner once it becomes vacant, without obtaining prior approval from the appellants. Therefore, this Court is passing the following orders:

- i. The appellants shall grant approval of petitioner's appointment from 23.10.2002, grant regularisation and disperse the grant-in-aid for the salary within eight weeks from the date of receipt of the order.
- ii. The school is strictly restrained from appointing any person in the place of the writ petitioner once it becomes vacant, without obtaining prior approval from the appellants.



W.A.(MD)Nos.923 and 924 of 2025

WEB COPY

iii. If any application for filling up the vacancy is submitted by the school, the same shall be considered by the appellants as per law prevailing in the said issue.

16. For the aforesaid reasons, the order passed in writ petition is modified as above. The writ appeals are partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

[J.N.B., J.] [S.S.Y., J.]
04.04.2025

Index : Yes / No

Tmg

To

- 1.The Joint Director (Vocational),
Directorate School Education,
D.P.I.Compound, College Road,
Chennai 6.
- 2.The Chief Educational Officer,
Madurai District, Tallakulam,
Madurai.
- 3.The District Educational Officer,
Melur Educational District,
Melur, Madurai.



WEB COPY



W.A.(MD)Nos.923 and 924 of 2025

J.NISHA BANU, J.

and

S.SRIMATHY, J.

Tmg

W.A(MD)Nos.923 and 924 of 2025

04.04.2025