

W.P(MD)No.10216 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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Reserved on : 09.04.2025

Pronounced on : 28.04.2025

CORAM:

THE HONOURABLE MR. JUSTICE BATTU DEVANAND

W.P.(MD)No.10216 of 2025
and
WMP. (MD) Nos.7610 & 7611 of 2025

The Correspondent
St.Joesph's Convent
Higher Secondary School

...Petitioner

Vs.

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

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



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

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

....Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, in the nature of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 3rd respondent Chief Educational Officer in Na.Ka.No. 4852/A4/2018 dated 09.2024 (signed as 10.09.2024) and the consequential proceedings of the 4th respondent DEO in Moo.Mu.No. 3987/Aa5/2018 dated 14.09.2024 quash the same and further direct the 3rd respondent DEO to approve forthwith the appointment of S.Mary Daeitus Britta as BT Assistant (Science) in the petitioner school w.e.f 01.03.2017 with salary, allowances and all attendant benefit including arrears of salary, and pass such further or other suitable orders as this Court.

For Petitioner : Mr.K.Ragatheesh Kumar

For Respondents : Mr.M.Siddarthan
Additional Government Advocate



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ORDER

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This writ petition is filed to quash the impugned proceedings of the third respondent dated 09.2024 (signed as 10.09.2024) and the fourth respondent dated 14.09.2024 and for consequential direction to the third respondent to approve the appointment of S.Mary Daeitus Britta as BT Assistant (Science) in the petitioner school with effect from 01.03.2017 with salary, allowances and all attendant benefit including arrears of salary.

2. Heard the learned counsel for the petitioner and Mr.Siddharthan, learned Additional Government Pleader appearing for the respondents and carefully perused the materials available on record.

3. The petitioner school is a recognized aided minority educational institution. Admittedly, the school forms part of the corporate management. The school appointed one S.Mary Daeitus Britta as BT Assistant (Science) on 01.03.2017. She joined duty on the same day and is continuously serving in the said post. Seeking approval of the said appointment, the school submitted a proposal to the fourth

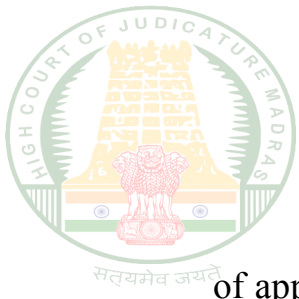


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respondent and to disburse the grant-in-aid towards her salary. The said proposal was rejected. The school again re-submitted the said proposal. After prolonged correspondence and legal proceedings, the proposal sent by the school has been rejected by the impugned order stating that there were surplus teachers in the other schools under the very same management and the school ought to have filled the posts of the surplus teachers. Therefore, the petitioner is constrained to file this writ petition.

4. The only reason assigned in the rejection order is that since there were surplus teachers in the corporate management, the approval was rejected. The issue is squarely covered by the judgment of this Court in **Secretary to Government of Tamil Nadu, School Education Department, Fort St. George, Chennai-9 vs. Iruthaya Amali** and subsequent judgment in the **Commissioner of School Education vs. Aided Muslim Committee Primary School, Rep. by its Correspondent, S.Sheik Shajakhan Sithik**. It is also worthwhile to point out that the G.O. 165 which prohibited the approval of appointments where there is a surplus was held inoperative by this Court. However, in **Iruthayamali's** case, the Division Bench held that approval



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of appointment need not be granted when there is surplus teachers in the corporate management or in the school, if it is a stand alone institution only on and from 31.03.2021, that is, the date of the judgment in the said case.

5. Following the above preposition of law, a Division Bench of this Court by its judgment dated 29.10.2024 in WA(MD)No.2134 of 2024 held that all appointments made prior to that date i.e 31.03.2021 to a sanctioned post have to be approved.

6. A co-ordinate Division Bench of this Court in its judgment dated 04.11.2024 in **WA(MD)No.2208 of 2024**, while dealing with the similar issue, held as extracted herein under:

“4. The issue as to whether the educational authorities are empowered to reject the approval of appointment of a teacher in a minority school on the ground that there are surplus teachers in the other schools in the corporate management, has already been dealt with by this Court in several decisions including the decision in Iruthaya Amali's case. One such decision was by a co-ordinate Bench



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of this Court in the case of the Chief Educational Officer, Tirunelveli District and another Vs. A.X.Mino and another passed in W.A.(MD).No.1855 of 2024 dated 16.10.2024. By placing reliance upon the decision in Iruthaya Amali's case, the learned Single Judge had held that the educational authorities cannot reject the application seeking for approval of appointments on this ground. In this background, we do not find any reason to interfere with the order of the learned Single Judge and the same stands confirmed".

7. By order dated 10.02.2025 in WP(MD)No.31324 of 2024, while allowing the said writ petition, this Court held that the reason for rejection of the approval of the appointment made by the petitioner school on the ground that the school ought to have filled the sanctioned post with the surplus teachers is not valid. The relevant portion of the said order is extracted herein under:

"6. In respect of applicability of the cut off date for appointment, it is relevant to rely on the judgment of this Court held in W.P.(MD)No. 7479 of 2024 dated 17.04.2024, wherein in paragraph Nos.4, 5 & 6 it is held as follows:

"4. However, the learned counsel for the petitioner attracted the attention of this Court to the judgment passed by the Division Bench of this Court in



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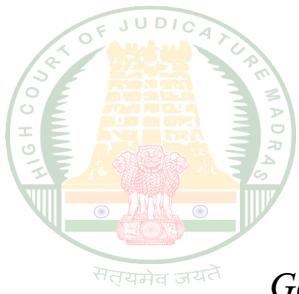
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W.A.(MD).No.2119 of 2021 dated 23.06.2023 in the case of The Commissioner of School Education, Vs Aided Muslim Committee Primary School, Rep. by its Correspondent, S.Sheik Shajakhan Sithik, wherein it is held as under:

“8.Moreover, the said G.O., was issued only on 17.09.2019, whereas the teacher was appointed well before the issuance of the said G.O., ie., 03.07.2018. Therefore, assuming if the said G.O., ultimately would be declared to be valid, that will have a prospective effect. Moreover, as on today, the said G.O., is no more available to the appellant department to say the reason that by virtue of G.O.Ms.No.165, the appointment made in respect of the teacher concerned at the 1st respondent school cannot be approved.

9. In that view of the matter, we have no hesitation to hold that the order impugned passed by the learned Single Judge is perfectly valid and therefore, it is to be sustained. In the result, this Writ Appeal fails, therefore, it is to be dismissed, accordingly, it is dismissed. As a sequel, there shall be a direction to the appellant Department to approve the appointment of the teacher concerned in the 1st respondent School and extend all service benefits from the date of such appointment to the teacher concerned within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed".

7. The learned counsel for the petitioner also submitted that the Government Order in G.O.Ms.No.165 dated 17.09.2019 has been kept inoperative in W.A.(MD).No.76 of 2019 batch dated 31.03.2021 in the case of The Secretary to



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*Government of Tamil Nadu School Education
Department, Fort St. George, Chennai – 9 vs Iruthaya Amali
and the relevant portion of the order is extracted hereunder:*

“95. In view of the aforesaid discussions, we are inclined to pass the following orders in this batch of cases : (o) In view of the aforesaid, the G.O.Ms.No. 165, School Education [Tho.Ka. 2(1)] Department, dated 17.09.2019 is hereby declared to be inoperative.”

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

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

8. By following the settled proposition of law as stated supra, this writ petition is allowed with the following directions:



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i) The impugned proceedings issued by the third respondent in Na.Ka.No. 4852/A4/2018 dated ..09.2024 (signed as 10.09.2024) and the consequential proceedings of the fourth respondent in Moo.Mu.No. 3987/Aa5/2018 dated 14.09.2024 are set aside.

ii) The respondents 3 and 4 are directed to pass orders granting approval of appointment of S.Mary Daeitus Britta as B.T.Assistant (Science) in the petitioner school with effect from 01.03.2017 with salary, allowances and all attendant benefit including arrears of salary;

iii) The said exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.

There shall be no order as to costs.

Consequently,connected miscellaneous petitions are closed.

28.04.2025

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
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To,
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1. The State of Tamil Nadu,
Rep. by its Secretary,
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BATTU DEVANAND, J.

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