



W.A.(MD)No.900 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 13.08.2025

CORAM

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

**W.A.(MD)No.900 of 2020
and
C.M.P.(MD)No.4925 of 2020**

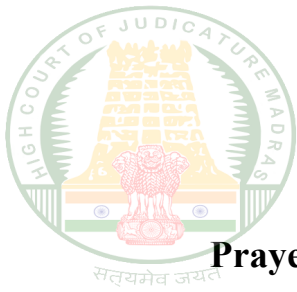
- 1.The State of Tamil Nadu,
Rep.by its Secretary to Government,
School Education Department,
Fort St.George, Chennai – 9.
- 2.The Director of Elementary Education,
College Road, Chennai.
- 3.The District Elementary Educational
Officer,
Theni District, Theni.
- 4.The Assistant Elementary Educational
Officer,
Periyakulam, Theni District.

... Appellants

Vs.

- 1.Hemmedia Middle School,
Rep.by its Correspondent,
Mr.P.Peer Mohammed,
Periyakulam – 625 601,
Theni District.

... Respondent



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Prayer : Writ Appeal filed under Clause XV of Letters Patent, to set aside the order dated 07.02.2020 passed in WP(MD)No.18574 of 2014.

For Appellants : Mr.C.Venkateshkumar,
Special Government Pleader

For Respondents : No appearance

JUDGMENT
(By G.R.SWAMINATHAN, J.)

The State is on appeal challenging the order 07.02.2020 made in WP(MD)No.18574 of 2014 filed by the respondent herein. The respondent-school has been served and their name is also printed in the cause list but they have not chosen to enter appearance.

2.The respondent school is a religious minority institution. One Saraswathi was appointed as a part time Sewing Teacher in the year 1997. She retired from service on 31.05.2006. In her place, one Muthulakshmi was appointed. The management submitted a proposal to approve her appointment. However, the appointing authority vide proceedings dated 20.03.2007 refused to accord approval. Aggrieved by the same, the school filed WP(MD)No.3626 of 2007. The writ petition was disposed of vide order dated 12.03.2013 in the following terms :



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“7.In view of the above facts, without setting aside the impugned order, a direction is issued to the petitioner management to submit detailed representation to the first respondent and in the said representation, the petitioner shall request the first respondent to extend the benefit of G.O.Ms.No.39, School Education Department, dated 21.03.2003 so as to enable them to retain the post of Sewing Teacher even after 31.05.2006 when the earlier incumbent Saraswathi retired. Such representation shall be given by the petitioner management to the first respondent within a period of three weeks from the date of receipt of a copy of this order. On receipt of the same, the first respondent shall consider the said representation in the light of the G.O.Ms. No. 39, School Education Department, dated 21.03.2003 and take a decision in the matter for the purpose of considering as to whether the post of Sewing Teacher could be sanctioned to the petitioner school with effect from 14.02.2007 on which date the incumbent K.Muthulakshmi was appointed in the said post. The above said exercise shall be completed weeks thereafter.”

Pursuant to the said direction, the matter was reconsidered. But once again, the District Educational Officer, Theni vide proceedings dated 03.10.2013 rejected the request. Assailing the same, WP(MD)No.20885 of 2013 was filed. The said writ petition was disposed of vide order dated 09.07.2014 by setting aside the proceedings dated 03.10.2013 and



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the matter was remitted to the file of the DEO for fresh consideration.

Once again, the DEO refused to accord approval vide proceedings dated 29.09.2014. Challenging the same, the present writ petition has been filed. The learned Single Judge allowed the writ petition vide order dated 07.02.2020 in the following terms :

“7.Though this Court has specifically held in the above writ petition filed by the petitioner that the petitioner school entitled to seek for protection as per G.O.Ms.No.39, dated 21.03.2003, as the Government has subsequently taken a decision in 2003 to permit the managements to fill up the posts of Sewing and Music Teachers, it is seen that the 3rd respondent, by order dated 03.10.2003, denied to approve the appointment of the said teacher based on the condition mentioned in the earlier approval for appointment dated 23.04.1997 and the students strength of the year 2013 and further stating that G.O.Ms.No.39 is not applicable. The petitioner has subsequently challenged the said order in W.P.(MD).No. 20885 of 2013. This Court, by order dated 09.07.2014, has set aside the impugned order and directed the third respondent to consider the application for approval afresh without reference to the subsequent events relating to the reduction in the total number of students strength. Again, the third respondent, by the impugned order dated



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29.09.2014, denied to approve the appointment of the petitioner based on the condition mentioned in the earlier approval for appointment dated 23.04.1997 and stating that G.O.Ms.No.39 is not applicable.

8. Admittedly, the respondents have not filed appeal against the order passed in W.P.(MD).No.3626 of 2007, dated 12.03.2013. In the said writ petition, this Court has held that the rejection of the present approval for appointment based on the condition imposed in the earlier approval is valid. This Court has further held that G.O.Ms.No.39 is clearly applicable to the case of the petitioner and in the light of the same, the approval for appointment of the teacher Mrs.K.Muthulakshmi as Sewing Teacher can be considered. In pursuance of the above order, the third respondent has rejected the approval of appointment of Mrs.K.Muthulakshmi on the ground that the petitioner School is not having required student strength. Again, the Management has filed an another Writ petition in W.P(MD).No.20885 of 2013 and in that writ petition, this Court directed the respondents to consider the matter afresh without looking into the present students strength. Once again, the third respondent rejected the claim of the petitioner School stating that based on the earlier conditional approval, the approval for appointment of Mrs.K.Muthulakshmi cannot be considered.



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9. Though this Court in W.P.No.3626 of 2007, by an order dated 12.03.2013, has specifically held that G.O.Ms.No.39 is squarely applicable to the case of the petitioner and based on the same, the approval for appointment of Sewing Teacher can be made, the respondents again and again rejected the case of the petitioner stating that based on the earlier conditional approval, the case of the petitioner cannot be considered. Therefore, this Court is not inclined to remit the matter back again to the file of the respondents for fresh consideration in the light of G.O.Ms.No.39. According to the third respondent, G.O.Ms.No.39 is not applicable to the case of the petitioner as it is applicable only to fill up sanctioned post of Craft Teacher (Sewing). This Court is not inclined to accept the same, as in the fifth column of the G.O.No.39, it has been clearly stated that the aided school can appoint Craft Teacher (Sewing) and Craft Teacher (Music) and it has not been stated as if it can be applicable only to the sanctioned post of Craft Teachers (Sewing) and (Music). Therefore, the impugned order of rejection cannot be sustained.

10. In similar circumstances, this Court in W.P. (MD).No.5841 of 2011 (Rahim Brothers Middle School, Vadagarai, Periyakulam, Theni District Vs. the District Elementary Educational Officer, Theni District and



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another) by order dated 01.03.2017 has held that in paragraph No.4 as follows:

“4.On a perusal of G.O.Ms.No.39, School Education Department, dated 21.03.2003, it is seen that after 12.07.2002 the appointment of Craft Teacher (Sewing) and Craft Teacher (Music) has been permitted. Admittedly, the petitioner school had appointed K.Saranya on 03.01.2011 as a Craft Teacher (Sewing). In view of the subsequent clarification of the Government vide G.O.Ms.No.39, dated 21.03.2003, the impugned order rejecting the petitioner's request for approval of the appointment cannot be sustained.”

11. In view of the above, the impugned order passed by the third respondent in Na.Ka.No.1712/A2/2013, dated 29.09.2014 is set aside and the respondents are directed to approve the appointment of Mrs.K.Muthulakshmi as Sewing Teacher with effect from 14.02.2007 and to grant all service and monetary benefits, within a period of twelve weeks from the date of receipt of a copy of this order.”

3.The only question that calls for consideration is whether the order of the learned Single Judge deserves to be interfered with. No doubt, the department did not file any appeal challenging the order dated 12.03.2013 made in WP(MD)No.3626 of 2007. But even in the writ petition, the learned Single Judge did not set aside the order impugned



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therein. It was specifically observed by the learned Judge that the reasons assigned by the DEO, Theni in the impugned order are perfectly justified. All that the learned Judge directed was that the department should consider the representation of the school management in the light of the G.O Ms.No.39, School Education Department dated 21.03.2003. We went through the copy of the said G.O. It only enables the school managements to fill up the vacancies in the post of Sewing Teachers and Music Teachers with effect from 12.07.2002. In the case on hand, no such vacancy was available. When Saraswathi's appointment was approved, a condition was stipulated that on her retirement, the post itself will be converted as Secondary Grade Teacher and the post of Sewing Teacher will be resumed by the panchayat union. Thus, when Muthulakshmi was appointed as Sewing Teacher, there was no sanctioned post available. That is why, the authority has been reiterating their stand notwithstanding the various remand orders made by this Court. Since there was no sanctioned post available, the question of applying the aforesaid G.O will not arise at all. This aspect of the matter was not taken note of by the learned Single Judge.



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4.In this view of the matter, the order impugned in this writ appeal

is set aside. This writ appeal is allowed. No costs. Connected miscellaneous petition is closed.

(G.R.S. J.,) & (K.R.S. J.,)
13.08.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
SKM

To

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Rep.by its Secretary to Government,
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- 2.The Director of Elementary Education,
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