

W.P.(MD)No.12961 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.04.2025

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.(MD)No.12961 of 2025

and

W.M.P.(MD).No.9342 of 2025

A.S.Antony Samy

... Petitioner

Vs.

1. The Chief Educational Officer,
O/o. The Chief Educational Officer,
Tirunelveli District.

2. The District Educational Officer (Secondary)
O/o.The District Educational Officer,
Tirunelveli District.

3. The St. Xavier's Higher Secondary School,
Rep. by the Correspondent and Headmaster,
Palayamkottai, Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Ne.Mu.No.2576/A2/2009 dated 20.07.2009 on the file of the 2nd respondent in so far as granting approval from 18.06.2007 instead of 04.07.2008 and quash the same as illegal and consequently directing the second



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respondent to revise the approval of appointment of the petitioner as BT Assistant (Science) with effect from the date of appointment 18.06.2007 instead of from the date of permission granted for conversion on 04.07.2008 and disburse all the service and monetary benefits based on the reminder proposal of the third respondent school dated 26.05.2024 in Letter No.296/A7/2018.

For Petitioner : Mr.I.Pinaygash

For Respondent Nos.1 &2 : Mr.T.Amjad Khan
Government Advocate

ORDER

The instant writ petition has been filed by the B.T. Assistant (Science) appointed in the third respondent School, challenging the order passed by the second respondent on 20.07.2009, wherein, the approval was granted only from 04.07.2008 instead of 18.06.2007.

2. According to the learned counsel appearing for the writ petitioner, the petitioner was appointed as B.T. Assistant (Science) in the third respondent School on 18.06.2007. A proposal to grant approval of the appointment of the petitioner was forwarded by the school management to the second respondent. However, the second respondent, instead of granting approval from the date of



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appointment, (i.e) 18.06.2007, vide impugned order dated 20.07.2009 granted

the approval only from 04.07.2008 with certain conditions.

3. According to the learned counsel for the petitioner, the third respondent School is an Aided Minority Institution administered by a Corporate Management. Prior to the decision of the Hon'ble Division Bench of this Court in W.A.(MD).No.76 of 2019, dated 31.03.2021, staff fixation orders were issued based on the student strength of each School and surplus Teachers were identified only based on the student strength of each School. The concept of Corporate surplus was introduced only in the orders of the Hon'ble Division Bench in W.A.(MD).No.76 of 2019 dated 31.03.2021. When the appointment of the petitioner has been made prior to the orders of the Hon'ble Division Bench dated 31.03.2021, the authorities are excepted to consider the fact that whether the appointment is within the staff fixation order for the third respondent School or not.

4. The learned Counsel for the petitioner further submits that this Court passed similar orders in W.P.(MD).No.9018 of 2024 dated 12.04.2024 and W.P. (MD).No.29643 of 2023 dated 26.06.2024, held that the issue has already been

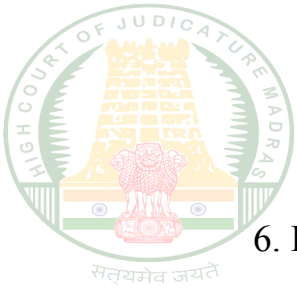


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settled by the earlier Division Bench order of this court held in W.A.(MD).Nos.

WEB 828 of 2014 etc. batch cases, in which the very same issue was taken up for consideration. On perusal of the said order, it is seen that the point in issue as to whether the approval has to be taken effect i.e., from the date of appointment or from the date of permission is granted for conversion has been dealt. The issue is no longer *res integra*. Approval has to be granted only from the date of appointment and not from a later date, namely from the date on which permission for post conversion was granted.

5. The learned Counsel for the petitioner further submits that the issue is no longer *res integra* and approval has to be granted only from the date of appointment and not from the date on which permission for post conversion was granted. However, in the present case, the petitioner has been transferred from his earlier school, where he was holding the post of BT Assistant. He further submits that the transfer is also appointment as regards the transferee school. Hence, he prayed to allow this writ petition.

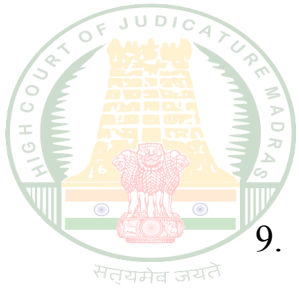


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6. Per contra, the learned Government Advocate appearing for the official respondents herein had contended that the approval could be given only after the post was upgraded and hence, the impugned order is sustainable.

7. I have carefully considered the submissions made on either side and perused the materials placed on record.

8. As rightly pointed by the learned counsel for the petitioner, the post of Secondary Grade Teacher, which was subsequently upgraded as B.T. Assistant (Science). In that vacant place only, the petitioner was appointed as B.T. Assistant (Science) on 18.06.2007. However, the approval has been granted to the petitioner only with effect from the date of upgradation of the post and not from the date of his appointment. Since, the post was very much available even when the petitioner was appointed, it will be fair on the part of the respondents 1 and 2 to grant approval to the petitioner for the date of appointment and not from the date when upgradation was effected. On perusal of the judgements of this Court, it made clear that, the above position and even in the judgements referred above, the relief sought for by the petitioner therein was granted. In view of the same, this petitioner is also granted with the same relief on the same line of appreciation.



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9. As far as the present case is concerned, one B.T.Assistant post has been sanctioned under the staff fixation order for the academic year 2007-2008 for the third respondent School. It is not in dispute that the petitioner has been appointed to the said post. In such circumstances, there are no surplus B.T. Assistant Teachers as per the staff fixation year for the third respondent school.

10. In view of the above, the order impugned in the writ petition is set aside insofar as it denies approval from 18.06.2007 onwards is concerned and this writ petition is allowed. The second respondent is directed to revise the approval order granting approval to the appointment of the writ petitioner with effect from 18.06.2007 onwards. The said exercise shall be completed within a period of 4 weeks from the date of receipt of a copy of this order.

No costs.

Consequently, the connected miscellaneous petition is closed.

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NCC:yes/no
Index:yes/no
Internet:yes/no
gvn



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WEB **To:** PY

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O/o. The Chief Educational Officer,
Tirunelveli District.
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BATTU DEVANAND, J.

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