

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 12.08.2025

CORAM :

THE HONOURABLE **Dr. JUSTICE R.N.MANJULA**

Rev.Aplw(MD).No.102 of 2025

M.Smiline Radhika
B.T.Assistat (Science)
Little Flower Girls Higher Secondary School,
Ramanputhur, Nagercoil 629 004
Kanyakumari District.

... Petitioner

versus

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.

3.The Chief Educational Officer,
The Office of the CEO
S.L.B.South Road,
Nagercoil, Kanyakumari District 629 001.

4.The District Educational Officer,
The Office of the DEO
S.L.B.South Road,
Nagercoil, Kanyakumari District-629 001.

5.The Correspondent,
Little Flower Girls Higher Secondary School,
Ramanputhur, Nagercoil -629 004.
Kanyakumari District.

... Respondents



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Prayer : This review application is filed under Order 47 Rule 1 and 114 of Code of Civil Procedure to review the order dated 11.07.2024 in W.P(MD).No.15398 of 2024.

For Petitioner : Mr.S.Amala Irudhaya Mary

For R1 to R4 : Mr.T.Amjadhkhan
Government Advocate

ORDER

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This review petition has been filed seeking to review the order of this Court in W.P(MD).No.15398 of 2024, dated 11.07.2024.

2. The learned counsel for the petitioner submitted that the Court has dismissed the petition on the observation that surplus teachers were available for the academic year 2016-2017 under the same corporate management. According to the learned counsel for the petitioner, it is factually not correct. It is submitted by the learned counsel for the petitioner that the petitioner has been appointed as B.T.Assistant in the vacant post of Secondary Grade Teacher and therefore, she will get the benefit of automatic upgradation.



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3. In support of his contention, the learned counsel relied on the judgment of this Court in *Government of Tamil Nadu, rep., by its Secretary to Government, Department of School Education, Madras and others vs. J.Remila and others*, reported in *2018(1) writ Law Reporter 410*. In the said judgment, it has been held that the minority institution does not require prior approval for upgradation of a post.

4. It is further submitted by the learned counsel for the petitioner that the Rule of Surplus for corporate management has come into effect only after the pronouncement of judgment in *Iruthayamary's case* and in that judgment, cut-off date is fixed as 31.03.2021. It is submitted that appointment of the petitioner has been made even prior to the said cut-off date and that has not been considered by this Court.

5. In view of the points now raised by the learned counsel for the petitioner, which has got the direct impact on the result of the proceedings, the review petition is admitted and taken up for hearing.

6. The learned Government Advocate submitted that there was a surplus in the post of secondary grade teacher during the year 2016-2017,



but the appointment has been made only as against the surplus post on 01.06.2016 and hence, no approval can be granted. The automatic upgradation can be done only if there are sanctioned vacancies in the B.T.Assistant post.

7. The learned Government Advocate submitted that the appointment of the petitioner has been done directly to the post of B.T.Assistant, as the vacancies were not available in the post of Secondary Grade Teacher. Even according to the appointment order of the petitioner, dated 01.06.2016, she was appointed as B.T.Assistant (Science) in the retired place of one J.Celine Stella Selva Kumari, the then Secondary Grade Assistant on 31.05.2016. It is further stated that even at that relevant point of time, there was surplus in the Secondary Grade Teacher post and further there was no vacancy in the B.T.Assistant post. Hence, the petitioner's approval of appointment cannot be granted. In case of the petitioner claiming that she has been appointed to a sanctioned vacancy available in the B.T.Assistant post, then the situation of obtaining 'No Objection' from the teachers, who are already working as Secondary Grade Teachers would arise.



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8. In reply, the learned counsel for the petitioner submitted that such Rule will not be applicable to the minority institution, which has got the discretion to make appointment without getting any consent from Secondary Grade Teacher, who might be in the zone of consideration for the promotion to the post of B.T.Assistant.

9. Heard both sides and perused the records.

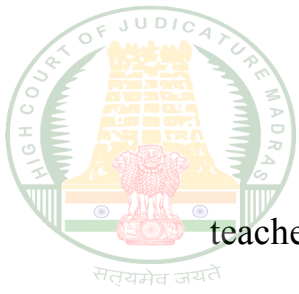
10. In the instant case, the request for approval for the appointment of petitioner to the post of B.T.Assistant with effect from 01.06.2016 has been rejected by the fourth respondent citing the following reasons:

(i) While fixing staff strength for the academic year 2016-2017, there is no B.T.Assistant surplus post fell under the corporate management.

(ii) Even in the fifth respondent school, there are surplus teachers working in secondary grade assistant from 01.08.2016 to 01.08.2023.

(iii) Had the surplus appointments been given by way of promotion, instead of making new appointments, this would have saved the Government from financial loss.

11. By citing the above reasons, approval has been rejected stating that new appointment ought not to have been done and the surplus



teachers in the Secondary Grade Assistant ought to have been promoted.

Reliance was placed on the judgment of the Division Bench of this Court held in W.ANo.1365 of 2024 dated 14.08.2024 by the petitioner stating that the Secondary Grade Teacher post would be automatically upgraded in view of the judgment of this Court reported in ***Government of Tamil Nadu vs. J.Remila*** reported in ***2018 (1) writ law reported 410***.

12. The petitioner school, being the minority institution claims that it does not require any prior approval for upgradation of a post and the petitioner has been appointed only as Secondary grade teacher and by automatic upgradation, the petitioner would be upgraded to B.T.Assistant and hence, the approval cannot be denied. It is further submitted that in view of the cut off date fixed in the ***Iruthaya Amali's case*** i.e.,31.03.2021, the concept of Rule of Surplus for corporate management cannot be considered in respect of the appointment made prior to 31.03.2021.

13. It is further submitted that in another judgment of the Division Bench of this Court in W.A(MD)No.2395 of 2024 dated 21.11.2024 it is held that the procedure contemplated under Rule 15(4) of Tamil nadu Recognized Private Schools (Regulation) Rules,1974 will not be



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applicable to the minority institutions and hence, the minority institutions cannot be compelled to fill up the post by way of giving promotion to the persons employed as Secondary Grade Teacher.

14. In the instant case, there is no question of promotion. The sanctioned staff position to the post of B.T.Assistant (Science) during the academic year 2016-2017 is only 3. There are 11 posts in the Secondary Grade Assistant. Out of 11 secondary grade sanctioned strength for the academic year 2016-2017, one post fell vacant due to the retirement of Tmt. J.Celin Stella Selva Kumari, in which place, the petitioner is said to have been appointed on 31.05.2016. As the appointment has been made against the permanent vacancy, it is claimed that the above post would automatically get upgraded into B.T.Assistant and the existing 11 post of Secondary Grade Assistant will be reduced to 10 or out of 11 secondary grade teacher, one will remain as an upgraded post and the said 10 posts will remain as unupgraded secondary grade teacher post. This is irrespective of the sanctioned strength of three B.T.Assistant post sanctioned for the year 2016-2017. The secondary grade assistants are expected to take Maths, Science and Social Science and English classes depending upon the qualification of individual.



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15. The petitioner has not been appointed directly to the post of B.T.Assistant against the exceeding three sanctioned posts of B.T.Assistant for the academic year 2016-2017 and she is accommodated only against the vacancy that fell in the post of Secondary Grade Assistant, which will have the automatic upgradation to B.T.Assistant. The sanctioned strength under the secondary grade teacher would be 10 unupgraded and one upgraded. There is no question that the appointment has been made exceeding the sanctioned strength under the B.T.Assistant post.

16. In view of the aforesaid discussion, this review application is allowed. Consequence thereof, W.P(MD)No.15398 of 2024 dated 11.07.2024 is allowed and the impugned order dated 24.06.2024 is quashed and the third and fourth respondents are directed to approve the appointment of the petitioner as B.T.Assistant (Science) in the fifth respondent school with effect from 01.06.2016 and disburse grant-in-aid towards her salary and other attendant benefits within a period of one month from the date of receipt of this order.

12.08.2025

Index : Yes/No
NCC : Yes/No.



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To

1. The Secretary
Department of School Education,
Fort St. George, Chennai -600 009.
2. The Director of School Education,
College Road, Chennai 600 006.
3. The Chief Educational Officer,
The Office of the CEO
S.L.B. South Road,
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R.N.MANJULA, J.,

Rmk

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