

W.A.(MD)Nos.1668 of 2023 and batch

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.03.2025

PRONOUNED ON : 30.04.2025

CORAM:

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

W.A(MD)Nos.1668, 137, 659, 1721, 1832 of 2023, 56, 61, 251, 377, 386, 461, 468, 472, 679, 683, 1100, 1151, 1159, 1208, 1324, 1422, 1549, 2273, 2364, 2525, 2536, 2543, 2552, 2579, 2589, 2609, 2621, 2626, 2664, 2702, 2712, 2723, 2725, 2731, 2732, 2744 of 2024, 54, 61 to 66, 77, 80, 83, 207, 219, 334 to 336, 520 to 523, 569 of 2025,

and

C.M.P.(MD)Nos.378/2025, 4970/2024, 18732/2024, 17706/2024, 18829/2024, 18507/2024, 8282/2024, 394/2025, 428/2025, 1778/2023, 455/2025, 5953/2023, 4042/2025, 4043/2025, 4044/2025, 4045/2025, 8828/2024, 10372/2024, 3288/2024, 18265/2024, 11004/2024, 12158/2024, 633/2024, 3818/2024, 3800/2024, 8895/2024, 3420/2024, 2231/2024, 17838/2024, 18173/2024, 13999/2023, 643/2024, 15908/2024, 18900/2024, 18901/2024, 18874/2024, 18148/2024, 18149/2024, 16413/2024, 18693/2024, 1315/2025, 1462/2025, 5033/2024, 3723/2024, 18246/2024, 2624/2025, 2626/2025, 2623/2025, 17910/2024, 17996/2024, 18211/2024, 5007/2024, 18877/2024, 369/2025, 371/2025, 373/2025, 375/2025, 377/2025, 344/2025, 18843/2024, 13201/2023, 4300/2025.

W.A(MD)No.1668 of 2023:

- 1.The State of Tamil Nadu,
Represented 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,
Thiruvattar, Kanyakumari District.

... Appellants

Vs.

1.R.Jino Robert

2.The Correspondent,
Arunachalam Higher Secondary School,
Thiruvattar – 629 177,
Kanyakumari District.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.12177 of 2022, dated 07.11.2022.

For Appellants	:Mr.R.Baskaran Additional Advocate General Assisted by Mr.J.Ashok Additional Government Pleader
For R1	:Ms.Amala
For R2	:Mr.R.Murugan

COMMON JUDGMENT

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

All the writ appeals have raised similar issues regarding surplus teachers, hence all the writ appeals are taken up together and a common order is passed.



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However, the facts and counter filed in W.P.(MD)No.12177 of 2022 is extracted
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hereunder.

PRAYER IN THE WRIT PETITION W.P.(MD)NO.12177 OF 2022:

2. The present writ appeal is filed by the State against the order dated 07.11.2022 passed in W.P.(MD)No.12177 of 2022. The writ petition was filed for issuance of a Writ of Certiorarified Mandamus to quash the impugned proceedings dated 14.12.2021 passed by 3rd respondent CEO and to direct the CEO to approve the appointment forthwith as Physical Education Teacher in the 5th respondent school with effect from 12.07.2018 and to release the salary with all monetary and service benefits.

BRIEF FACTS AS STATED IN W.P.(MD)NO.12177 OF 2022:

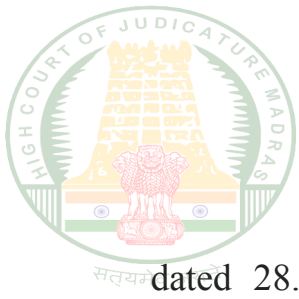
3. The brief facts as stated in W.P.(MD)No.12177 of 2022 are that the petitioner was working as Physical Education Teacher in the 5th respondent school, a Linguistic Minority institution, wherein one post of Physical Education Teacher became vacant on 01.07.2018 due to the retirement of previous incumbent Mr. M. Daniel on 30.06.2018 and the petitioner being eligible the



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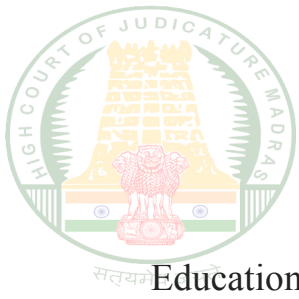
school had appointed him on 12.07.2018. The school was upgraded from Middle School to High School then to Higher Secondary School and offering education from standards VI to XII. The school was established for promoting education and social advancement of the minority Malayalam speaking people in the locality. The school is having 1478 students, having teaching staffs of 1 Headmaster, 15 PG Assistants, 4 Tamil Pandits, 1 Malayalam Teacher, 13 B.T. Assistants, 7 Secondary Grade Teachers, 2 Physical Education Teachers, 1 Drawing teacher, 1 Sewing teacher, 1 Agriculture teacher and 1 Music teacher and non-teaching staffs of 2 Junior Assistants, 1 Record Clerk, 1 Lab-Assistant, 2 Office Assistants and 1 Scavenger. The medium of instruction in the school is Tamil, English and Malayalam. After appointing the petitioner the school had submitted a proposal on 11.09.2019 to approve the appointment to DEO, but the DEO vide proceedings dated 19.12.2019 directed the school to comply the defects and the school resubmitted the proposal on 06.02.2020 along with all the documents. Even after repeated request by the school the respondents 4 and 5 had not passed order, hence W.P.(MD)No. 4907 of 2020 was filed and the Court directed to consider and pass orders. Thereafter the CEO vide impugned proceeding dated 14.12.2021 rejected the request of the petitioner stating that there are 44 surplus Physical Education Teachers in the Revenue District of Kanyakumari. In the same proceeding the CEO had referred to a communication



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dated 28.12.2018 in Muu.Mu.No.12416/E2/2018, wherein it is directed the schools not to appoint any vacancy from 01.06.2018 without obtaining prior permission and hence the petitioner's appointment is contrary to the said letter and consequently the request to approve was not accepted. But the school denies receipt of any such letter. The contention of the petitioner is that he was appointed in the regular sanctioned vacancy arose due to retirement, and working without salary and put to severe financial constrain and the family is driven to utter poverty, hence the reasons cited by the educational authorities is untenable and unconstitutional. The petitioner further stated that the school is a private linguistic minority institution and stand-alone school, hence has power of appointment in the sanctioned post. Further the Physical Education Teacher post is very much available in the staff fixation for the academic year 2017-2018 and the school is having 900 students from standard VI to X. However the staff fixation for the academic year 2018-2019 was issued only on 26.12.2018 declaring Physical Education Teacher as surplus which is after five months of appointment of the petitioner. The school objected to the said staff fixation and challenged in W.P.(MD)No.20705 of 2019, where interim order dated 26.09.2011 was granted. As per G.O.Ms.No.525 if the strength of VI to X is above 250, one post of Physical Education Teacher will be sanctioned and for every additional strength of 300 students, one additional post of Physical



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Education Teacher will be sanctioned subject to a maximum of three. When the school is having 900 students, the school is entitled to another Physical Education Teacher. The petitioner further stated the academic and physical education are two eyes of a person, hence the same is necessary for the students and relied on a report from USA, where it states most of the children are not getting regular physical activity in school. If the children are more physically active can perform better academically. The petitioner relied on mythology of Rama and Arjuna for their excellence in Archery since they were trained in gurukulam, which are schools in those days. Further relied on the achievements of Sachin Tendulkar, P.T. Usha, Abhinav Bindra as they were young talents identified in schools. Hence the present writ petition.

COUNTER FILED BY THE EDUCATION DEPARTMENT:

4. The respondents had filed counter wherein it is stated that the school had obtained linguistic minority status through judgment in O.S.No.7 of 1977 on the file of District Munsif Padmanabapuram confirmed in S.A.No.1847 of 1979 and the same is reflected in W.P.No.5181 of 1987. The school was transferred from P.Purushothaman Nair to A.M.M.Arunachalam Trust and the transfer was approved in Na.Ka.No.327487/G3/81 dated 20-01-1982 by Joint Director of



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School Education (Secondary) and on such transfer the minority status lapses on the date of transfer of management. The school ought to have obtained minority status from the Government or the National Minority Commission as per G.O.Ms.No.648 Education, Science and Technology Department dated 03-08-1994 and G.O.Ms.No.375 Schol Education (X1) Department dated 12-10-1998 and G.O.Ms.No.214 School Education (x2) Department dated 03-11-2008. It is seen from the Letter No.83 of 2021 dated 16-02-2021 that the school has not obtained such a minority status either from the Government or from the National Minority Commission, hence the school cannot be regarded as a minority one. When the vacancy of Physical Education Teacher arose school appointed the petitioner under the guise of minority status. The proposal was withheld since there were many surplus teachers in the District. The petitioner has no locus standi since there is no connection with the department, he is an outsider as his appointment was not approved and cannot challenge any orders of the respondent. The petitioner filed W.P.(MD)No.4907 of 2020 and the same was disposed directing the respondents to consider and pass orders. Thereafter the same was considered and rejected based on government orders and instructions from government. All the Secretaries / Correspondents of all aided schools in the Districts were strictly instructed not to fill up the post by making fresh appointments vide order in Na.Ka.No.5869/B1/2017 dated 04.05.2018 by



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the CEO, Kanyakumari. Further it is stated in the instructions that the said post should be filled up from the list of surplus teachers maintained at the District Level. In the District there are 44 surplus Physical Education Teachers who ought to be deployed till such the surplus teachers in minority and non-minority schools are deployed no new appointment of teachers shall be made. While considering the surplus teachers issue it was submitted before this Court that in the State there are 12,831 surplus teachers, consequently heavy financial burden is being faced by the government, hence it was directed to take immediate and necessary steps to deploy the surplus teachers, until then there cannot be any recruitment to the said post. Infact the government is incurring 60 crores per month by paying the surplus teachers alone. When the government is paying the grant, it has power to fix the post by taking into consideration of necessity and financial burden. Further the surplus teachers cannot be allowed to sit idle and pay salary thereby waste the public money. Under Section 26 of Tamil Nadu Recognised Private Schools Regulation Act 1973 the government has power to post the surplus teachers to any other needy school. Under Rule 15 of the Tamil Nadu Recognized Private Schools Regulation Rules the Government can sanction the post after taking into consideration of the overall financial consideration. Therefore if surplus teachers are available, the school ought not to appoint the person, until the surplus teachers become Nil. If any teacher is



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needed then the school ought to fill up the said post from the list of surplus teachers. In W.A.(MD).76 of 2019 batch the Court vide order dated 09.04.2019 directed that the government shall not approve any appointment till the surplus teachers are deployed in other schools coming within the same management. If single school, then the school shall approach the educational authority well in advance to deploy the eligible teachers. But the school had not approached the CEO for deploying a teacher from the list of surplus teachers. Infact based on the order, G.O.Ms.No.165 School Education SE2(1) Department dated 17.09.2019 was issued by the government issuing guidelines for passing deployment orders. The school should have approached the CEO to ascertain that there are no surplus Physical Education Teachers available for deployment as per the list maintained. But the said G.O. was suspended. Thereafter the Court passed final judgment in W.A.(MD)No.76 of 2019 batch cases on 31.03.2021, wherein in paragraph 95 clause (u) and (v) the Court has directed that till such surplus teachers are deployed no recruitment shall be made and in stand-alone school of minority institution right to appoint shall not be affected for the academic year 2021-2022. Since the school cannot be considered as minority institution, the school has to follow the directions issued under the clause and the school ought to have waited till the staff fixation for the year 2018-2019 is settled, in which year the post has been declared as surplus. Hence the appointment of the



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petitioner made on 12.07.2018 is illegal and against the rules. Hence the prayer of the petitioner cannot be granted and the writ petition is liable to be dismissed.

ORDER PASSED IN WRIT COURT:

5. The Writ Court had considered the rival submissions and has held that the issue is already considered by Division Bench in W.A.(MD)No.604 of 2022 (the Director of Elementary Education Vs. The Secretary, Thiagaraja Colony Primary School, Pasumalai, Madurai) wherein it is held subsequent fall in the students' strength cannot be a ground to decline approval, hence directed the respondents to grant approval. Aggrieved over the same the present writ appeal is preferred by the State.

6. The facts and the counters in other writ petitions are more or less same. A common order dated 02.09.2022 is passed in W.P.(MD)No.6340 of 2018 batch consisting of 137 cases. Aggrieved over the same, writ appeals are filed by the Education Department and some of them are connected along with the present writ appeals.

DISCUSSIONS:



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WEB COPY I. APPLICABILITY OF NEW RULES:

7. The issue of surplus was considered elaborately by a Coordinated Bench vide order dated 31.03.2021 in W.A.(MD)No.76 of 2019 batch. Thereafter, the schools submitted the proposal for approval of appointment and the same was rejected, hence several writ petitions. The writ petitions were allowed, aggrieved over the same the present batch of writ appeals are filed by the State.

8. In W.A.(MD)No.76 of 2019 batch the Coordinated Bench had issued various directions vide order dated 31.03.2021. One such direction is after the new rules are notified the directions issued by the Court shall be ceased to be in execution. It is seen that the New Rules were issued and notified on 13.01.2023. Hence as per the judgment, from 13.01.2023 the directions issued by the Court in W.A.(MD)No.76 of 2019 batch had ceased to be in execution.

9. But a plea had been taken that the new rules are not having retrospective effect. It is settled proposition that unless there is explicit provision for retrospective application of the rules, then the rules are applicable prospectively only i.e. from the date of notification. In the present case the rules have not stated



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the effective date. Hence a question arises whether the judgment can grant effective date, then the answer is negative.

10. In such circumstances, as per the judgment if the directions cease to exist, then a question would arise what would be the directions to the period prior to the judgment. Since the the judgment in W.A.(MD)No.76 of 2019 is silent about this issue, therefore, this Court is of the considered opinion that the directions issued in W.A.(MD)No.76 of 2019 are applicable until 12.01.2023. Any appointment prior to 12.01.2023, then the same ought to be dealt with as per the directions issued in W.A.(MD)No.76 of 2019 dated 13.01.2023.

11. It is also seen that the New Act and Rules are challenged and there is an interim stay. In such circumstances, until the interim stay is in force, the directions issued in W.A.(MD)No.76 of 2019 ought to be applicable. Therefore, the said directions shall be applicable until the stay is in force for the subsequent period also.

II. DEPLOYMENT ORDERS:



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12. The next issue is that the deployment orders ought to be passed by the educational authorities only and not the corporate management or the schools. It is seen even in the G.O.Ms.No.525, the Directors of the Departments (School Education and Elementary Education) are the competent authorities to pass deployment orders. In Vigila's case also the Court had held that the educational authorities ought to pass the deployment orders. Even in W.A.(MD)No.76 of 2019 it has been held the educational authorities ought to pass deployment orders. Therefore, this Court confirms that the educational authorities' alone have power to pass the deployment orders. And the teachers and the schools are bound by the said deployment orders and any violations would be taken seriously.

III. WHETHER DEPLOYMENT ORDERS OUGHT TO BE PASSED, BEFORE GRANTING APPROVAL OF APPOINTMENT:

13. The next issue that arises is when there were surplus teachers at the time of passing the order in W.A.(MD)No.76 of 2019, whether the deployment orders ought to be passed, thereafter only based on the available vacancy the approval to the appointment can be granted as claimed by the Learned Additional Advocate General. Or whether the approval of appointment ought to be granted, thereby the newly appointed would be added on to the list of surplus teachers,



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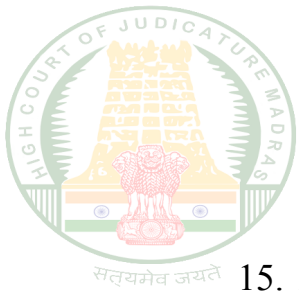
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then issue deployment orders to the needy school as and when vacancy arises as claimed by the schools and teachers. To put it differently when the appointment is made prior to 13.03.2021 (the date of the order passed in W.A.(MD)No.76 of 2019), whether the appointments ought to be approved before passing the deployment orders. The earlier Coordinated Bench had not considered the said issue. Therefore, in order to consider the said issue, certain factors are taken for consideration.

14. It is seen in G.O.Ms.No.525 dated 29.12.1997 speaks about surplus teachers and the relevant portion is extracted hereunder:

*"8. ... Those who may be rendered as **surplus** due to application of these norms, shall, as far as possible be redeployed to the needy schools."*

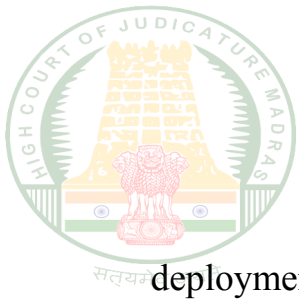
Hence, it is evident that the issue of surplus was prevailing during 1997 and even prior to 1997. It is pertinent to mention that apart from government schools and aided schools, several schools like Matriculation, CBSE, International etc. were established. This had led to decrease in students' strength in the government schools and aided schools, which is one of the factors for decline in the students' strength.



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15. As early as 2010 the Director of Elementary Education had issued a proceeding dated 27.12.2010 in Na. Ka. No. 28541 / H3 / 2010 wherein it is stated that the surplus teachers in the school management ought to be deployed and ensure that there are no surplus teachers. And also stated that before making appointment, the surplus teachers should be deployed to the vacancy, so that vacancy would not be available to appoint a new teacher. Had this circular been followed the issue of surplus would not have arisen.

16. That apart, the issue was considered in several cases by following G.O.Ms.No.525. The said G.O. states that those who may be rendered surplus due to application of these norms shall as far as possible be redeployed to the needy schools and the redeployment shall be done by the Directors of the Department. In case where redeployment is difficult then the teacher may be allowed to continue until the said teacher's retirement or otherwise, thereafter the said post will not be available to the school. The truncated portion of the G.O. was taken advantage by the teachers and schools and pleaded that "there is surplus, hence approve and deploy to needy school". Based on the said plea the Courts had directed to approve the appointment and thereafter deploy the new appointee to the needy school. But the other portion of the G.O. has granted power to pass deployment orders, but the department could not pass any



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deployment orders since the schools without prior permission appointed new teachers and after retirement of the said surplus teacher the school without informing the education department or without obtaining prior permission had appointed new teacher, thereby the said G.O. was left in lurch. With no other option the department started passing orders as per Court's direction, which had led to a situation that the count of surplus teachers started increasing. Further in almost all cases deployment became difficult, hence the teachers were permitted to continue until their retirement. Of course without available of periods to work, but getting salary without work.

17. While hearing a case in W.A.(MD) No.70 of 2012 the Hon'ble Division Bench vide order dated 13.03.2012 had directed the Director to pass deployment orders if there is surplus teachers. But the deployment orders could not be passed for the reasons as stated supra. If passed the same could not be implemented due to resistance from the schools. While hearing a subsequent appeal in W.A.(MD)No.639 of 2015 the Hon'ble Bench vide order dated 17.06.2015 had referred to the W.A.(MD)No.70 of 2012 and observed that,

“7. When a specific question was posed to the learned Special Government Pleader, as to whether appointment of Mr.S.Austin Jeba Solomon, a teacher in TDTA Primary and Middle Schools, Devarkulam Pastorate, Tirunelveli District /1st respondent in W.A(MD)No.70 of 2012 was



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*approved or not, notwithstanding the observations made by the Hon'ble Division Bench in the above appeal, filed by the State, the answer was in the affirmative and therefore, it is evident that even after the said observations, the department had chosen to approve the appointment of the said teacher. For another question posed to the learned Special Government Pleader, as to whether the department had taken steps to redeploy the excess teachers, as observed, the answer was in the negative. **Thus in the absence of any steps being taken by the department** and when appointments of the writ petitioners, are against sanctioned posts, in the respective schools and considering the fact that the department itself, had chosen to approve the appointment of one Mr.S.Austin Jeba Solomon, on its own, party respondent in W.A.No.70 of 2012, wherein, the abovesaid observations were made, this Court is of the view that the writ petitioners are entitled for approval of their appointments, as Secondary Grade Teachers.”*

The Court held since the department failed to take steps to deploy the teachers to needy school, hence the said reasons cannot be cited for denying approval.

18. The aforesaid order further deteriorated the situation and the department had no other option than to approve the appointments and continued to grant approval. But the above observation of the Court that the department had not taken steps to pass deployment orders may not be right. Since the department



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did pass deployment orders, but the same was resisted by the schools and teachers. There were several inter connected litigations filed by schools and teachers. The school where the teachers were deployed refused to accept the newly deployed teachers. The minority institutions stated that the deployment orders are affecting their minority rights to choose the teachers of their choice and appoint new teachers. In effect the deployment orders were passed, but remained unimplemented orders under the clutches of several litigations. Therefore, the department alone cannot be blamed for not passing and implementing the deployment orders, it is because of the schools and the teachers, the deployment orders could not be implemented. Unless strict orders are passed for implementing the deployment order, then the same cannot be implemented, the surplus teachers cannot be reduced. In fact the surplus teachers list exploded with more than 12,500 (approximately) surplus teachers. In writ appeal the government had taken a ground that during 2012 to 2016 the government incurred 17.67 crores by paying the surplus teachers' salary. Further the government is incurring Rs.5,63,10,789/- for surplus teachers in School Education Department and Rs.31,54,48,720/- for surplus teachers in Elementary Education Department for subsequent years. In short the government is incurring approximately Rs.37.20 crores per month for paying salary to the surplus teachers alone.



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19. The another dimension of this issue is the plea of prior permission. The schools have taken a stand that prior permission is not necessary for making any new appointment in the sanctioned vacancy and especially the minority institutions have right to appoint and hence the minority institutions need not seek any prior approval. It is seen based on the above plea that prior permission is not necessary, there were indiscriminate appointments by the institutions at their own whims and fancies. The vacancy which could have been filled up from the list of surplus teachers, was filled up with new teachers by the school. Infact there were allegations that by receiving huge amount the vacancies are being filled by the institutions with new teachers. Hence, there were stiff resistance for deployment orders passed by the educational authorities from the schools. Also, there were resistance to the deployment orders from the teachers citing their personal reasons.

20. In such circumstances now the plea raised supra “when the appointment is made prior to 13.03.2021 (the date of the order passed in W.A.(MD)No.76 of 2019), whether the appointments ought to be approved before the passing deployment orders”. The answer would be the schools are not entitled to approval, unless the deployment orders are implemented. Especially the corporate management ought to implement the deployment orders, thereafter



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only the new appointments can be approved based on the vacancy and needy schools. There are reasons for holding “deployment first, then only approval”. If the claim of the schools and teachers are accepted that approval first, then the count of the surplus teachers would increase. When already there are surplus teachers, by granting approval for the newly appointed teacher, the count of surplus teachers would increase. Further there will not be available period for the teachers to take classes, then the said surplus teacher would be sitting idle and get salary without work, which is against the principle of “no work no pay”. Infact it is “no work with full pay”, which is totally against service jurisprudence. Since the government is granting grant-in-aid, the government cannot be punished for providing grant-in-aid. Furthermore, by appointing new teachers in the vacancy, literally the school is not allowing the department to exercise their power to pass deployment orders. Once the new teacher is appointed, then there will not be any vacancy to deploy the surplus teacher. Infact the plea “approval and deploy to needy school” itself is misleading phrase. In short, on one hand by granting approval there will be increase in the count of surplus teachers and on the other hand there will not be vacancy to pass deployment orders. The surplus teachers are taken note in G.O.Ms.No.525 dated 29.12.1997, now more than 28 years are over, still the issue is persisting. Unless the issue is handled strictly the issue cannot be resolved. If there is cooperation



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from the schools (both minority and non-minority) and the teachers, the issue can be solved within few years. Otherwise, when even after 28 years the same could not be resolved, then in future even after another two or three decades the issue cannot be resolved. In other words, the direction that “deployment first, then only approval” ought to be strictly implemented, if not the issue can never ever be solved even after several decades.

21. Now the crucial question is from which date onwards the approval of appointment cannot be considered. It is seen that the Director had issued Circular on 27.12.2010 and the department could not implement the circular. The order in W.A.(MD)No.639 of 2015 was passed on 17.06.2015 blaming the educational authorities had not taken steps to pass deployment orders. But the fact remains the department had passed deployment orders but the same was resisted by the schools and teachers and the department could not implement the deployment orders. Then the government issued G.O.(Ms)No.261, School Education dated 20.12.2018 wherein it is directed if there is surplus in other schools of the corporate management, then approval of appointment cannot be granted. Therefore, it would be appropriate if it is taken from academic year 2015-2016 based on the judgment 17.06.2015 passed in W.A.(MD)No.639 of 2015. If any appointment is made by the corporate management schools without deploying

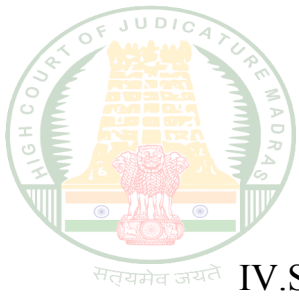


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the surplus teaches in their own management from academic year 2015-2016, then the said management is not entitled to any approval of appointment of any new teachers from the academic year 2015-2016. Any such appointment made would be in queue of waiting list of approval and such teacher would be entitled for approval once the entire surplus in the corporate management becomes nil and also the surplus teachers in the State of Tamil Nadu becomes nil.

22. As far as “stand alone school” the Court in W.A.(MD)No.76 of 2019 has held that “(v) Like that insofar as aided minority institutions are concerned, if it is a stand-alone institution, their right of appointing a teacher in a vacancy within the sanctioned strength for the academic year 2021-22 shall not be affected because of the identified excess teachers in other schools”. The Court had held until 2021-2022 the stand-alone school cannot be affected. Therefore, it is made clear that the “stand-alone school” are entitled to approval until the academic year 2021-2022. From the academic year 2022-2023 onwards the stand alone schools also cannot appoint any new teachers and the school shall seek any teacher from the list of surplus teachers through deployment orders. And the stand-alone school ought to accept the deployment orders and accommodate the deployed surplus teacher, otherwise the schools are not entitled to grant-in-aid as held in W.A.(MD)No.76 of 2019.



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IV.SURPLUS TEACHERS LIST IN EMIS: WEB COPY

23. It is pertinent to state that the surplus details ought to be uploaded in the web portal as per the direction in Clause (q) in W.A.(MD)No.76 of 2019. It is seen that the department had uploaded in EMIS, a special web portal for the education department. All the schools have exclusive pin number and password to access the same. The complete details are available in EMIS and the same can be accessed by the schools. Therefore, as and when there is any need for teacher by any schools, then the said school shall access the said list of surplus teachers and seek for deployment of such teacher of their choice from the list alone. On such request the educational authorities shall pass deployment orders at the earliest. If the school is not stating any choice the authorities shall choose any one of them and pass deployment orders.

V. WHETHER THE NEWLY APPOINTED TEACHER IS ENTITLED TO APPROVAL IRRESPECTIVE OF SUBSEQUENT FALL IN STRENGTH:

24. The issue raised is recurring issue. The academic year starts from 1st June of every year to 31st May of next year. The department would issue staff fixation order at the end of the academic year, for example for the academic year



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1st June 2017- 31st May 2018 the staff fixation order would be issued from
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January to March 2018 only. Infact this late issuing of staff fixation order has contributed further problem to the issue. However, this issue has already been dealt with in W.A.(MD)No.76 of 2019 wherein it is held that the admission of students ought to be over by June or at least by July, then staff fixation order ought to be issued by 15th August. If the same is issued by 15th August, then the school would know its position regarding vacancy. Therefore, this Court is strictly directing the official respondents to issue the staff fixation orders before 15th August.

25. The next question that arises is if the department failed to issue the staff fixation orders before 15th August, whether the school would get any right to appoint new teacher in the interregnum period, then also the answer is negative, the school is not entitled to appoint new teacher. The substantial problem of surplus issue is due to this kind of appointment. The issue can be dealt as “fall in strength before issuance of staff fixation order” and “fall in strength after issuance of staff fixation order”.

26. The facts stated in W.A.(MD)No.1668 of 2023 falls under the category of “fall in strength before issuance of staff fixation order”. In the said case the



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vacancy arose on 01.07.2018 due to retirement of the incumbent. The vacancy falls in the academic year 1st June 2018 to 31st May 2019. Then the school ought to have waited for the staff fixation order for the academic year 2018-2019, which ought to be issued before 15th August 2018. The school cannot fill the said vacancy by relying on the previous staff fixation order issued for the academic year 2017-2018. Therefore, the plea of the teacher that there is subsequent fall in the strength is incorrect and not true. There was fall in the strength during the same academic year that too before issuance of staff fixation order. In such circumstances, this Court is of the considered opinion that the Writ Court had erred in rendering a finding that there is fall in the strength in subsequent academic year.

27. The other category is “fall in strength after issuance of staff fixation order”, which means the vacancy arose from 1st September of the academic year till 31st May of the next year. In this category also the school cannot appoint new teacher, since the department is entitled to pass deployment orders to the said vacancy. Infact the school ought to seek a teacher from the list of surplus teachers. In such circumstances, there is no question of vacancy belongs to which year, whether it belongs to previous year or present year or next year. At the cost of repetition, if there is any vacancy, then the school ought to seek a teacher from



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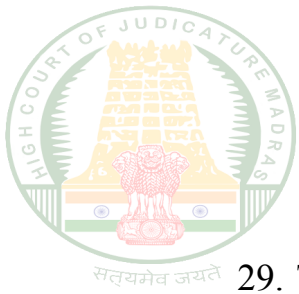
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the list of surplus teachers alone and the school shall not appoint any new teacher. Therefore, from any angle the school ought to wait until the surplus teachers list are exhausted.

28. It is seen in some cases the school had taken the English Medium sections and claiming the total strength. The claim of the schools is incorrect. As per G.O.Ms.No.148 School Education Department dated 20.07.2018 the schools were permitted to carve out one English Medium from the Tamil Medium section and utilize the service of the teachers working in Tamil Medium. And while doing so the government cannot be made to incur further financial liability. In such circumstances, the schools cannot include the English Medium strength. The said staff fixation ought to be carefully considered while fixing the staff strength. In W.P.(MD)No.12177 of 2022 the Tamil Medium strength in standards 11th and 12 is only 77. In standards 6 to 10 is only 241 students i.e.

6th standard – 27 students
7th standard – 29 students
8th standard – 30 students
9th standard – 71 students
10th standard – 84 students

Totally – 241 students only and the grand total is 318 (77+241) only. In such circumstances, the school is entitled to only one Physical Education Teacher.



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29. The schools and the individuals repeatedly raise a plea of “sanctioned post” which means that the post is sanctioned prior to 1991-1992 and hence the school is entitled to. And the Courts also entertain the said plea and has held if originally the post is sanctioned, the same cannot be taken away. But such a plea is incorrect, since the sanctioned post varies based on the students’ strength for each academic year. The schools and individuals frequently claims without understanding that there cannot be a “permanent sanctioned post”. Infact the staff fixation order is issued every academic year based on the students’ strength admitted during that academic year. Therefore “sanctioned post” will come into play only after issuance of staff fixation order for every academic year. If the students’ strength is reduced then the school shall not be entitled to the said post. If any person is working in the said post without students’ strength, then the post would be declared as “surplus along with person” and the person ought to be transferred or post on deputation or deployed to needy school. Likewise, if no person working in the said surplus post, then the same would be declared as “surplus without person” and the said post would be reverted to “Director’s Common Pool”. If in the next academic year, the school had increased the students strength and as per the strength if the school is entitled to the said post which was reverted to the “Director’s Common Pool”, then the school would be permitted to submit a request to revert the said post and the same ought to be



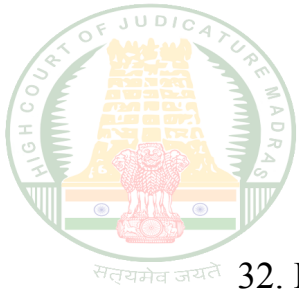
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considered in favour of the school. From the aforesaid procedure it is evident that there cannot be any “permanent sanctioned post”. Consequently, any claim that the appointment is made is “sanctioned post”, cannot straight away be accepted. The said claim ought to be scrutinised based on the staff fixation order for the disputed academic year. Therefore, the claim of schools and individuals that the post is sanctioned post is a misnomer and the Courts cannot entertain such plea while granting any relief.

30. While considering the other cases in the present batch of writ appeals, the facts of each case shall be taken and thereafter the appellants shall consider and pass orders as per the observations made supra.

31. Whenever a crisis arises then all the interested parties should come together to resolve the crisis. The surplus teacher issue is a crisis and the above directions are issued to all the parties in order to resolve the surplus teacher crisis. If the same is strictly followed then the issue of surplus can be tackled within few years. Thereafter the school would be at liberty to exercise their rights for new appointments. This Courts hopes that the issue would be solved in near future with the cooperation of the schools and teachers along with the education department and its officials.



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32. Based on the above discussion the following orders are issued:

- i. The directions issued in W.A.(MD)No.76 of 2021 is applicable to any appointments issued prior to 31.03.2021 (the date of order passed in W.A.(MD)No.76 of 2021).
- ii. The new Act and Rules are applicable to the appointments made after 31.03.2021. However, since the new Act and Rules are stayed, until the stay is vacated the directions issued in W.A.(MD)No.76 of 2021 is applicable.
- iii. Until the list of surplus teachers existed prior to 31.03.2021 are exhausted, any appointment made from the academic year 2015-2016 are **not entitled** to approval of appointment. However, the appointed teachers from the academic year 2015-2016 shall be kept in waiting list. As and when the list of surplus teachers is exhausted, then the teachers in waiting list are entitled to consider for approval of appointment.



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iv. The “stand-alone school” are entitled to approval of appointment until the academic year 2021-2022. From the academic year 2022-2023 onwards the stand-alone schools also cannot appoint any new teachers and the school shall seek any teacher from the list of surplus teachers through deployment orders.

v. Until the list of surplus teachers is exhausted, the schools are not entitled to the plea “there is no necessity to obtained prior permission”.

vi. The plea of sanctioned post is a misnomer, since the sanctioned vacancy varies every academic year based on the staff fixation order of that academic year. Therefore, the plea of sanctioned post cannot be entertained at all.

vii. There is no question of fall in the students’ strength in previous year, present year or next year and such claim is misnomer. Whenever any vacancy arises, then the educational authorities shall pass deployment orders. All the schools, whether minorities or non-



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minorities, shall seek any teacher from the list of surplus teachers maintained and published in EMIS.

viii. While fixing staff strength the G.O.Ms.No.148 shall be taken into account and the students' strength of Tamil Medium shall be considered to fix the staff strength.

ix. As far as other cases in the present batch cases are concerned, the appellants shall take the facts of each case and thereafter consider and pass orders as per the observations and directions stated supra.

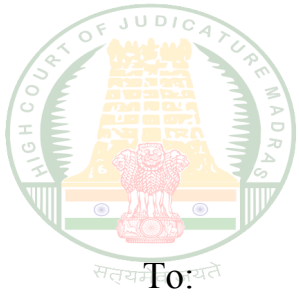
33. With the above observations and directions, the writ appeals are allowed. No costs. Consequently, all the connected miscellaneous petitions are closed.

[J.N.B., J.]

[S.S.Y., J.]

30.04.2025

Index : Yes / No
Tmg



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To:

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



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J.NISHA BANU, J.

and

S.SRIMATHY, J.

Tmg

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30.04.2025