

W.A.(MD)No.1103 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.04.2025

PRONOUNED ON : 24.06.2025

CORAM:

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

**W.A(MD)No.1103 of 2025
and
C.M.P.(MD)No.6929 of 2025**

- 1.The Government of Tamil Nadu,
Represented by its Principal Secretary,
Department of School Education,
Fort St. George, Chennai-600 009.
- 2.The Director of School Education,
DPI Campus, College Road,
Chennai-600 006.
- 3.The Chief Educational Officer,
The Office of the CEO, Dindigul,
Dindigul District.
- 4.The District Educational Officer,
The Office of the DEO, Batlagundu,
Dindigul District.

... Appellants

Vs.

1.J.Arul Selvi Thembavani



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2.The Correspondent,
R.C.Sahaya Rani High School,
Chinnalapatty, Dindigul District.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.15806 of 2022, dated 02.09.2022.

For Appellants	:Mr.J.Ashok Additional Government Pleader
For R1	:Mr.S.Savarimuthu for M/s.FR.Xavier Associates
For R2	:Mr.AT.Anbarasan

JUDGMENT

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

The present writ appeal is filed by the State against the order dated 02.09.2022 passed in W.P.(MD)No.15806 of 2022.

2. The writ petition was filed for issuance of a Writ of Certiorarified Mandamus to quash the impugned proceedings dated 09.05.2022, on the file of the 4th respondent and to direct the respondents to accord approval to the appointment of the petitioner Sr.J.Arul Selvi Thembavani, working as B.T. Assistant in the 5th respondent school and to release the salary with all monetary



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and service benefits.

3. The brief facts are that the petitioner was appointed as B.T. Assistant (Science) in the 5th respondent school with effect from 01.11.2017 in the sanctioned retirement vacancy due to retirement of J. Margaret Nirmala on 31.05.2016. The said school was established and administered by Congregation of the Immaculate Conception, Madurai, a Catholic Religious Congregation which comes "The Immaculate Conception Society, Madurai" a Registered Society as amended with effect from 27.08.2003 having Registration No.19 of 1956. The said society is administering number of educational institutions for the welfare of the Christian community and the poor and are governed under Article 30(1) of the Constitution of India. The 3rd respondent, vide proceedings, dated 21.10.2016 in Mu.Mu.No.6249/AA2/2016, upgraded the post from Secondary Grade Assistant to B.T. Assistant (Science) from 01.06.2016. The proposal for approval of the appointment of the petitioner as B.T Assistant (Science) in the above said school with effect from 01.11.2017 was forwarded to the authorities on 03.07.2018. The staff-fixation of the above said school for the academic years, 2017-2018, 2018-2019 and 2019-2020, clearly reveal the school is entitled to the said post. But the 4th respondent returned the proposal on 31.10.2019 stating that as per G.O.Ms.No.261 dated 20.12.2018 after surplus teachers in the corporate



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management schools becomes nil then it will be considered. The contention of the petitioner that her appointment is before the issuance of G.O.(Ms)No.261, dated 20.12.2018, hence the 5th respondent school resubmitted the proposal along with the statement that there is no surplus in B.T. Assistant (Science) in other schools of the corporate management. But the 4th respondent returned the same on 09.05.2022 stating that after receiving staff fixation orders from Chief Educational Officers of all Districts and if there is no surplus in the corporate management, then only there is possibility to fill up the post. The High Court passed a detailed judgement dated 31.03.2021 in W.A.(MD)Nos.76, 225, 341 of 2019, wherein the Court has given a compendium of schedule for issuing the staff fixation, identifying excess teachers, deploying the excess teachers to the needy schools. The Division Bench has given clear directions in respect of appointments to be made in minority schools as follows:

“95. (v) Like that insofar as aided minority institutions are concerned, if it is a standalone 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. At the same time, even if the school is a minority institution, however being administered by a joint management or corporate management, in respect of those schools, even though vacancy arose within the sanctioned strength of such school or schools



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under corporate management or joint management, those vacancies shall not be filled up unless the excess staff identified in all other schools under the same corporate or joint management are exhausted fully and only after exhausting the redeployment process on all excess teachers identified in the group of schools under the same corporate management, they shall be free to make appointment afresh from open market in the vacancy if any still, within the sanctioned strength.”

Therefore, the Court has clearly evolved the process to be followed before any new appointment is made in minority schools, which is as under:

- i. Excess staff has to be identified in all the schools under the management.
- ii. Those excess staff have to be exhausted by redeployment process among the schools coming under the same management.
- iii. After completion of the above-mentioned redeployment process, the management is free to make appointment afresh from open market.

In the present school there is no surplus teacher in the BT. Assistant (Science) cadre in the schools run by the management of the 5th respondent school and the same is sanctioned post available prior to G.O.Ms.No.261 dated 20.12.2018 and before the interim order dated 09.04.2019. Applying the directions of this Court in order, dated 31.03.2021, there is no B.T. Assistant (Science) surplus in the



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management of the 5th respondent. From the date of appointment, the petitioner is affixing her signature in the Master Attendance Register in the 5th respondent school till date. The petitioner is also affixing her signature in the attendance registers of the students and other documents, from the date of joining in the 5th respondent school. The 4th respondent, in his proceedings dated 09.05.2022, has cited that as per the staff fixation orders from the Chief Educational Officers of all Districts, it should be certified that there are no surplus teachers under the management of the 5th respondent, hence the proposal was returned. In catena of judgements, this Court has clearly expressed that every school is a single unit. Referring many cases, the Division Bench, by order, dated 31.03.2021, in W.A. (MD)Nos.76, 225, 341 of 2019, declared that every school is a single unit. Moreover, the educational authorities did not comply the directions of the Hon'ble Special Bench, wherein a compendium of schedule is given to issue staff-fixation orders, identify the surplus teachers and deploy them to the needy schools of the same management. But the official respondents have not even issued the staff-fixation orders of 2021-2022 to all the schools. Only when the staff-fixation is available, the surplus teachers can be identified. When they have not done their duty, they cannot state that they can approve only after receiving no surplus certificate from all the CEOs of all the districts and postpone the approval without



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any time limit. The welfare of the children was at stake as there was no one to teach Science to the students. The appointment of the petitioner should have been approved from the date of the appointment. Even according to the said G.O., it is the authorities who have to initiate the process of identifying the surplus teachers and deploy them to the needy schools of the management. But so far, no such process has been initiated by the authorities. Thereafter, a Hon'ble Special Bench was constituted and the Hon'ble Bench disposed the batch of cases, on 31.03.2021, with directions to deploy the surplus teachers to the needy schools, with a compendium of schedule for the execution of the same. Without applying the above legal position, the 3rd respondent perfunctorily rejected the proposal for approval of the appointment of the petitioner. The Tamil Nadu Government has preferred appeal before the Hon'ble Supreme Court, in S.L.P. (c) No. 15702 of 2021, challenging the order of this Court, dated 31.03.2021. The Hon'ble Supreme Court, by its order, dated 14.03.2022, has granted stay in respect of the direction contained only in 95(i) of the judgment of this Court, dated 31.03.2021, which stipulates to grant additional staff to the additional standards or additional classes, started after 1991-92 in those schools, which were aided as on the academic year 1991-92. In respect of other directions, there is no stay in the above SLP, which is pending for final adjudication. In the present case, there is no claim for any



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additional post. Therefore, the official respondents are bound to act upon the directions of the judgment, dated 31.03.2021 and to grant approval to the appointment of the petitioner from the date of appointment, hence the present writ petition.

4. After hearing the rival submissions, the Writ Court has quashed the impugned order in the writ petition, dated Nil.05.2022, on the file of the fourth respondent. Consequently, the Court directed to the concerned Educational Authorities to forthwith pass orders, approving the appointment of the petitioner, to the post of B.T. Assistant in the 5th respondent school, together with all service and monetary benefits within a period of four weeks. Aggrieved over the same, the present writ appeal is preferred by the State.

5. Heard Mr.J.Ashok, learned Additional Government Pleader appearing for the appellants, Mr.S.Savarimuthu, learned Counsel appearing for the 1st respondent and Mr.AT.Anbarasan, learned Counsel appearing for the 2nd respondent and perused the records.

6. The primary contention of the writ petitioner is that he was appointed

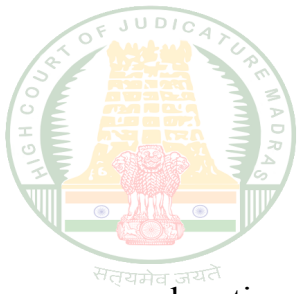


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on 01.11.2017 which is prior to G.O.Ms.No.261 dated 20.12.2018, hence the direction given in the said G.O. is not applicable to the petitioner's case. Such a contention of the petitioner is incorrect and cannot be accepted, since even in G.O.Ms.No.525 issued in the year 1997 has stated that the educational authorities were granted power to pass deployment orders and the relevant portion is extracted hereunder:

“8. A fresh assessment or grant for posts as per these orders shall be done on the basis of the attendance. The staff strength shall be fixed by the District Educational Officer concerned for the High & Higher Secondary Schools and the District Elementary Educational Officer in respect of Elementary-Middle School. Those who may be rendered surplus due to application of these norms shall as far as possible be redeployed to the needy schools. The redeployment of staff in schools shall be done by the Director of School Education Department and Director of Elementary Education Department or the officers to be authorized by them. This will be in supersession of the order issued in G.O.Ms.No.392 Education dated 24.06.1996....”

When the G.O.Ms.No.525 itself grants power for deployment of surplus teachers, the subsequent G.O.Ms.No.261 strictly directs unless the surplus is filled in needy place, fresh appointment would not be granted any approval. Therefore, the petitioner cannot state as if there is no power to pass orders of deployment by the



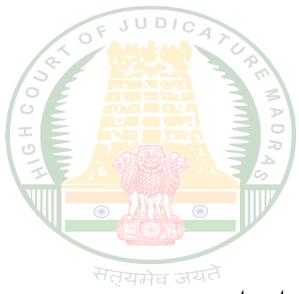
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educational authorities. Infact this is how the schools and teachers resist from passing deployment orders, therefore this Court is deprecating such practices.

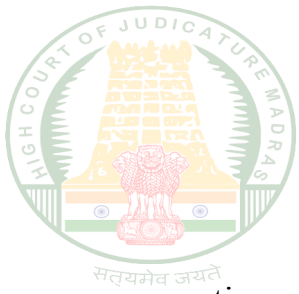
7. The next contention of the petitioner is that the corporate management school is not having surplus teachers in the category of B.T. Assistant (Science). It is seen there are 28 schools coming under the “Immaculate Conception, Madurai”, a corporate management. In the year 2018-2019 there are three surplus teachers in the B.T. Assistants (Science) in the other schools within corporate management in Lourdu Annai Girls High School, Madurai, St. John’s High School, Devakottai, Sivagangai District, St. Joseph Girls High School, Jawahar Nagar, Tirunelveli. Therefore, without passing deployment order, the appointment of the petitioner is against G.O.Ms.No.525 and other orders passed by the Courts.

8. The next contention of the petitioner is that the subsequent fall in the students’ strength cannot be a reason to deny the approval of appointment. The said contention cannot be accepted. It is seen that the vacancy arose in May 2016 and the petitioner was appointed on 01.11.2017 and school had forwarded the proposal only on 03.07.2018, nearly after 9 months of appointment. The academic



year starts from 1st June every year. 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”. If there is “fall in strength before issuance of staff fixation order”, then the school ought to wait for the staff fixation. For example, if the vacancy arose from 1st June of 2017, then the vacancy falls in the academic year 1st June 2017 to 31st May 2018. Then the school ought to wait for the staff fixation order for the academic year 2017-2018, which ought to be issued before 15th August 2017. The school cannot fill the said vacancy by relying on the previous staff fixation order issued for the academic year 2016-2017. Further, in the present case the vacancy arose in May 2016, during May the school is on vacation, hence there is no need for any new teacher at all.

9. The other category is if the “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 the present case the vacancy arose in May 2016 and the school has appointed the petitioner 01.11.2017. 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



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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 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.

10. In W.A.(MD)No.76 of 2019, it is stated if the surplus within the corporate management is deployed, thereafter also if any surplus is available, then the educational authorities ought to deploy the teachers to other schools outside the corporate management. For the sake of arguments, if this argument that there is no surplus in the corporate management in the academic year 2017-2018 is accepted, then the school ought to wait for the deployment orders from the educational authorities from the other schools outside the corporate management.

The relevant portion is extracted hereunder:

“(ix) After making this redeployment process, still excess staff are available, the Education Department shall take further effort, and those excess teachers still available at the hands of the Education Department to be redeployed to a needy school beyond the corporate management concerned, i.e., to any school located in the same Educational District or Revenue District and even beyond which if still excess staff are available, they can be redeployed to any school beyond the Revenue District of



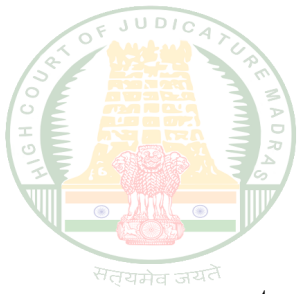
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course after getting the choice of such teacher concerned and that shall be completed by 10th October.”

In the present case, by appointing the petitioner, the school had not allowed the Educational Authorities to exercise their power to pass deployment orders to other school beyond corporate management. From the above discussion it is evident that the school either ought to have sought for a teacher from their own corporate management schools or a teacher from the list of surplus teachers from the educational authorities.

11. A repeated contention is raised by the schools and teachers that it is the educational authorities who is responsible to pass deployment orders and if the authorities failed to do so the schools and teachers cannot be blamed. But the said contention cannot be accepted, since the school without informing the vacancy appoints a new teacher, without getting prior permission appointing the teachers and without giving opportunity to the authorities to exercise their power to pass deployment orders, the school appoint new teachers. Unless the schools cooperate by seeking a teacher from the list of surplus teachers, firstly from their own corporate management and secondly from the other schools outside their



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corporate management, the issue of surplus cannot be solved.

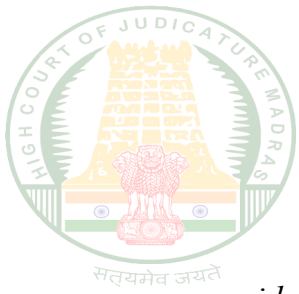
12. Further the repeated contention arises that the new teacher should be approved and deployed to the needy places. When there is steady decrease in the students' strength, all most all schools are having surplus teachers, there cannot be any needy place at all. Infact, at one stage there is no needy place at all, then there is no question of "passing deployment orders to needy schools". Therefore, the said argument that new teacher should be approved and deployed to the needy places becomes absurd, such an argument cannot be entertained at all. The judgments cited to this effect cannot be precedent, in the light of ground reality that there is no needy place at all. Therefore, from any angle the appointment of the petitioner in the retirement vacancy is not valid.

13. The issue of surplus was considered by the Court in W.A.(MD)No. 1668 of 2023 batch, wherein this Court had elaborately considered the issue and had passed the following orders:

"DISCUSSIONS:

I. APPLICABILITY OF NEW RULES:

7. The issue of surplus was considered elaborately by a Coordinated Bench



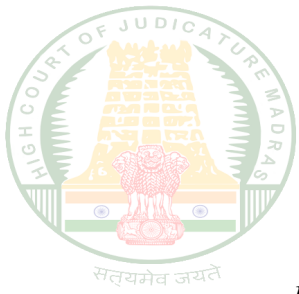
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vide order dated 31.03.2021 in W.A.(MD)No.76 of 2019 batch. Thereafter, the schools submitted the proposal for approval of appointment and the same was rejected, hence several writ petitions. The writ petitions were allowed, aggrieved over the same 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 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



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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:

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:



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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, 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

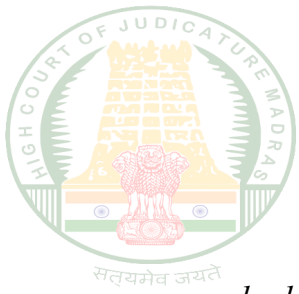


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one of the factors for decline in the students' strength.

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 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

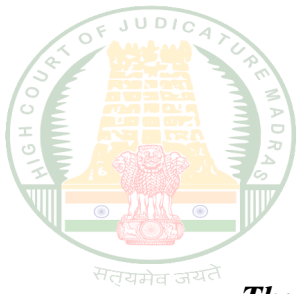


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had appointed new teacher, thereby the said G.O. was left in lurch. With no other option the department started passing orders as per Court's direction, which had led to a situation that the count of surplus teachers started increasing. Further in 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 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.



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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.

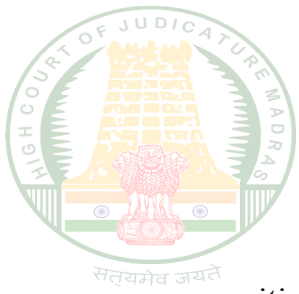
18. The aforesaid order further deteriorated the situation and the department had no other option than to approve the appointments and continued to grant approval. But the above observation of the Court that the department had not taken steps to pass deployment orders may not be right. Since the department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



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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.

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



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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 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*



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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 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 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.



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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.

IV.SURPLUS TEACHERS LIST IN EMIS:

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



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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 1st June 2017- 31st May 2018 the staff fixation order would be issued from 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



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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 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



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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 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

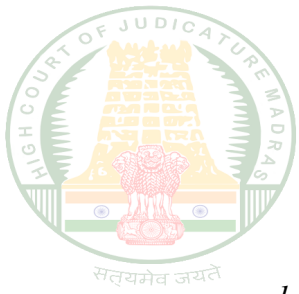
10th standard – 84 students

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 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*



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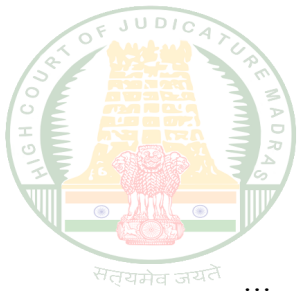
order for the disputed academic year. Therefore, the claim of schools and individuals that the post is sanctioned post is a misnomer and the Courts cannot entertain such plea while granting any relief.

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.

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.*



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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.*

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



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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 miscellaneous petitions are closed."

The above judgment is applicable to the present case also and the directions issued in the above case shall be followed in the present case also.

14. It is seen that the petitioner is working in the said place from 2017 onwards. Further it is seen that the one surplus vacancy is available in Xavier Middle School, Eruthaiyakulam, Tirunelveli which is one of the schools run by the corporate management. The official respondents are directed to pass deployment orders to petitioner. The said vacancy is available from 2022-2023 and the petitioner is entitled to salary from 2022 to 2023. As far as the salary from



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2017-2018 is concerned the school shall treat the said appointment as management staff and pay salary to the petitioner.

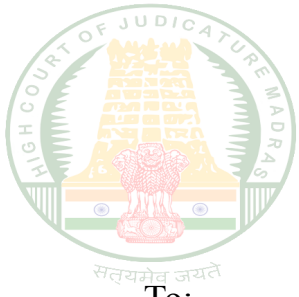
15. The aforesaid facts were not considered by the writ court hence the impugned order is liable to be set aside, accordingly set aside.

16. With the above observations and directions, the writ appeal is allowed. No costs. Consequently, connected miscellaneous petitions is closed.

[J.N.B., J.] [S.S.Y., J.]
24.06.2025

Index : Yes / No

Tmg

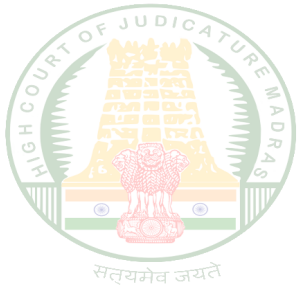


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To:

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- 1.The Principal Secretary,
Department of School Education,
Fort St. George, Chennai-600 009.
- 2.The Director of School Education,
DPI Campus, College Road,
Chennai-600 006.
- 3.The Chief Educational Officer,
The Office of the CEO, Dindigul,
Dindigul District.
- 4.The District Educational Officer,
The Office of the DEO, Batlagundu,
Dindigul District.



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W.A.(MD)No.1103 of 2025

J.NISHA BANU, J.

and

S.SRIMATHY, J.

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W.A(MD)No.1103 of 2025

24.06.2025