



W.A(MD)No.455 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.02.2025

CORAM:

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

**W.A(MD)No.455 of 2024
and
C.M.P(MD)No.3713 of 2024**

1.The Chief Educational Officer,
O/o.The Chief Educational Office,
Pudukottai,
Pudukottai District.

2.The District Educational Officer,
O/o.The District Educational Office,
Pudukottai,
Pudukottai District.

... Appellants/Respondents 1 and 2

VS.

1.Mohamed Ismail

... 1st Respondent/Writ Petitioner

2.The Correspondent,
Hasanathul Jariya Middle School,
Pudukottai,
Pudukottai District.

... 2nd Respondent/3rd Respondent



W.A(MD)No.455 of 2024

PRAYER : Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 02.09.2022 made in W.P(MD)No.12259 of 2022.

For Appellants : Mr.P.Sadiq Raja
Additional Government Pleader

For R – 1 : Mr.H.Mohammed Imran
for M/s.Ajmal Associates

For R – 2 : No appearance

JUDGMENT

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

The present Writ Appeal is directed against the order passed by the Writ Court dated 02.09.2022 made in W.P(MD)No.12259 of 2022.

2. The writ petition is filed for writ of Certiorarified Mandamus to quash the order dated 04.04.2022 and consequently direct the 1st respondent to approve the appointment of the petitioner as Secondary Grade Teacher with effect from 03.06.2019 within stipulated time.



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3. The learned Additional Government Pleader would submit that,

- (i) The respondent school, which is a minority school, would have no right to upgrade the sanctioned post without proper permission of the concerned authorities;
- (ii) Since there are surplus teachers in the other schools in the district, the respondent's request for approval of appointment cannot be considered; and
- (iii) The approval of appointment of the Teacher in the respondent school could not be granted on the ground that the Teacher does not possess a pass in the Teacher's Eligibility Test (TET);

On these grounds, he seeks for setting aside the order of the learned Single Judge.

4. Firstly, the issue with regard to rights of minority schools upgrading sanctioned posts has already been dealt with in several writ petitions as well as by the Division Benches of this Court holding that a minority institution



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will be well within its power to upgrade a sanctioned post. One such case of the coordinate Bench of this Court is ***the Chief Educational Officer, Tirunelveli and another Vs. S.Josephin Vijaya and another, dated 14.12.2017 in W.A.(MD).No. 1497 of 2017.***

5. In the present case the issue raised by the appellants is that the sanctioned post is only Secondary Grade Teacher. If the post is changed to B.T. Assistant then the aided private school both minority and non-minority schools ought to have obtained prior permission from the Chief Educational Officer, the appropriate authority under G.O.Ms.No.79. As held supra the Courts have held that the said upgradation is automatic as per G.O.Ms.No.79 and prior permission is not necessary. This Court is not inclined to deviate from the said settled proposition of the Court. However, the government is the payment disbursing authority through its officials. Therefore, the schools are directed to intimate / inform the respondents the date of vacancy, from which date the post was upgraded and from which date the teacher was appointed in the upgraded post, so that there can be easy upgradation and transition of post. Further it would enable the authorities to disburse the salary in the scale of pay applicable to the B.T. Assistant post.



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6. As far as second issue whether the educational authorities are empowered to reject the approval of appointment of a teacher in a minority school on the ground that there are surplus teachers in the other schools in the District, has already been dealt with by this Court in ***the Secretary to Government, Government of Tamil Nadu School Education Department, Fort St. George, Chennai – 9 Vs. Iruthaya Amali [W.A.(MD).No.76 of 2019 etc., batch dated 31.03.2021]***. It is seen in W.A.(MD)No.76 of 2019, the Division Bench has held that the government or the non-minority schools shall not appoint any fresh teachers unless the surplus teachers are transferred or deployed. As far as minority institutions are concerned, the “stand alone institution”, their right of appointing a teacher in a vacancy within the sanctioned strength for the academic year 2021-2022 shall not be affected. As far as minority schools within corporate management or joint management, the schools shall not fill the vacancy unless the excess staff in the same corporate or joint management are exhausted fully and only after exhausting the deployment process on all excess teachers identified in the group of schools, they can appoint fresh teachers. In other words, if surplus teachers in the corporate or joint management are not exhausted, the corporate or joint management shall not go for fresh appointment. And in minority stand-alone



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7. In the present case, the school is a “stand alone school”. The petitioner was appointed on 03.06.2019. As per the order in W.A.(MD)No.76 of 2019, the stand-alone school has right to appoint teacher in a vacancy within the sanctioned strength for the academic year 2021-2022 was not be affected. In other words, the “stand alone minority school” shall not appoint any teacher from the academic year from 2022-2023 unless the surplus teachers are deployed and exhausted. Since the present appointment is prior to 2021-2022 in a stand-alone school, the present appointment may be valid as per order in W.A.(MD)No.76 of 2019.

8. As far as third issue is concerned, it is seen that the writ petitioner has passed TET, hence the issue of TET is applicable to minority will not apply to this case.

9. Therefore, the order passed by the Writ Court is directing to grant approval is valid as far as this School is concerned. However, it is made clear the



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school shall not appoint any fresh candidate from academic year 2022-2023, since any vacancy ought to be filled up by the existing surplus teacher. Hence, the writ appeal is dismissed with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

[J.N.B.,J.] & [S.S.Y.,J.]
26.02.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
ps



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and
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ORDER MADE IN
W.A(MD)No.455 of 2024

DATED : 26.02.2025