



WP(MD)No.27439 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.04.2025

PRONOUNCED ON : 25.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE SHAMIM AHMED

WP(MD)No.27439 of 2022
WMP(MD)No.21538 of 2022

K.Kumari, W/o.Jose Herbert Raj,
Vadakkuvaroo House, Vavari, S.T Mangad,
Kanyakumari

Petitioner

Vs

1. The Government of Tamil Nadu, Represented by its Secretary,
School Education Department, Fort St.George,
Chennai 600 009.
2. The Director of School Education, DPI Complex, College Road,
Nungambakkam, Chennai – 600 034.
3. The District Educational Officer, Kuzhithurai at Marthandam,
Kanyakumari District
4. The Chief Educational Officer, Kanyakumari.
5. The Correspondent , Concordia Lutheran High School,
Kalparapota, Kollemcode Post, Kanyakumari

Respondent s



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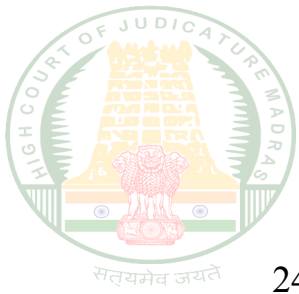
Prayer:- This Writ Petition has been filed, under the Article 226 of the Constitution of India, to issue a Writ of Certiorari and Mandamus, to call for the records, relating to the order of the 3rd Respondent in RC.No. 6183/A/2018, dated 09.11.2018 and to quash the same, as illegal and consequently, to direct the Respondents/Education Authorities to approve the Petitioner's appointment as B.T.Assistant in the 5th Respondent School for the period from 15.06.2011 to 24.05.2015, with all service and monetary attendant benefits.

For Petitioner : Mr.M.Mahaboob Athiff

For Respondent s : Mr.F.Deepak, SGP-rr1 to 4

ORDER

1. This Writ Petition has been filed, under the Article 226 of the Constitution of India, to issue a Writ of Certiorari and Mandamus, to call for the records, relating to the order of the 3rd Respondent in RC.No.6183/A/2018, dated 09.11.2018 and to quash the same, as illegal and consequently, to direct the Respondents/Education Authorities to approve the Petitioner's appointment as B.T.Assistant in the 5th Respondent School for the period from 15.06.2011 to



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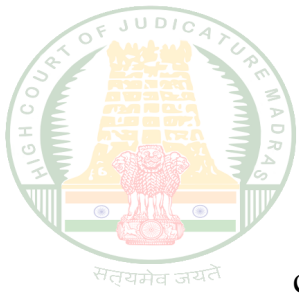
24.05.2015, with all service and monetary attendant benefits.

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2. The facts of the case, as set out in the affidavit filed in support of this Writ Petition, in a nutshell, led to filing of this Writ Petition and necessary for disposal of same, are as follows:-

(a) The Petitioner was appointed as a Probationary Teacher in the 5th Respondent School, a recognized religious minority Institution, on 15.06.2011. The Petitioner's mother tongue and first Language in the School is Malayalam. The Respondents/Education Authorities insisted the Petitioner to pass the Tamil Language Test, citing the Fundamental Rules, applicable to the Tamil Nadu Government Servants. However, these Fundamental Rules apply only to the Government Servants, recruited through the TNPSC and not to the Teachers in the private aided Schools. Teachers, in such Institutions, are governed by the Tamil Nadu Private Schools Regulation Act and the Rules framed thereunder and the Grant-in-Aid Code. However, the Petitioner, without prejudice, passed the Tamil Language Test on 25.05.2015.

(b) The Language Test in Tamil is only a compliance requirement to be



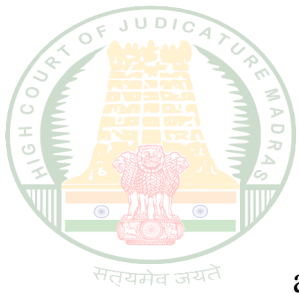
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completed after joining. However, the approval for the Petitioner's appointment was granted only on 31.03.2017, with effect from 25.05.2015. A subsequent proposal was sent to approve the period of employment from 15.06.2011 to 24.05.2015, but the 3rd Respondent rejected it, vide order, dated 09.11.2018 on the ground that as per the Fundamental Rules, which state that passing the Tamil Language Test is mandatory for those whose mother tongue is not Tamil and that since the Petitioner, whose mother tongue is Malayalam, passed the Tamil Language Test only in the year 2015, the approval for the earlier period could not be granted. However, passing the Tamil Language Test is not a requirement under the Tamil Nadu Private Schools Regulation Act or its Rules. Since the Petitioner has passed the Tamil Language Test, which is not a condition precedent for the validity of her appointment, but only a post-appointment compliance, primarily for Government servants, denying approval for the earlier period is unjustified.

(c) Aggrieved by the order, dated 09.11.2018, the Petitioner filed WP.No.12194 of 2019 before the Principal Seat of this Court, and



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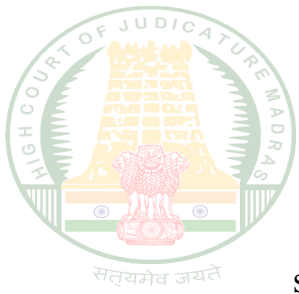


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after filing of the counter in the said Writ Petition, the Petitioner was permitted to withdraw the said Writ Petition, for want of jurisdiction, with a liberty to file a fresh Writ Petition before the appropriate Bench. In such circumstances, this Writ Petition has been filed, seeking the relief, as stated above.

3. In the counter affidavit, filed by the Respondents 1 to 4, it is averred as under:-

(a) The 3rd Respondent, by the proceedings, dated 31.03.2017 granted approval for the appointment of the Petitioner as a BT Assistant with effect from 25.05.2015, on which date the Petitioner passed the Tamil Language Test. The request of the 5th Respondent School to grant approval for period from 15.06.2011 to 24.05.2015 was rejected by the impugned order, dated 09.11.2018, on the ground that as per the Fundamental Rule 12A, if a candidate is selected and appointed on or after 09.02.1996, he should pass the Second Class Language Test in Tamil conducted by the TNPSC or pass the Language Test in Tamil, referred under the Rule 12-B (i) and (ii). The WP.No.12194 of 2019, filed by the Petitioner, challenging the



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same, was permitted to be withdrawn for want of jurisdiction.

- (b) The Government of Tamil Nadu has taken several initiatives to give priority to Mother Tongue and also introduced the Tamil Nadu Persons Studied in Tamil Medium Act, 2010 for giving such priority. As per the Rule 12A(b) of the General Rules for Tamil Nadu State and Subordinate Service, no person shall be eligible for appointment to any service by direct recruitment unless he has an adequate knowledge of the official Language of the State.
- (c) In 2014 (4) CTC 821, the Coordinate Bench of this Court was pleased to held that the Tamil Language shall be used for all official purposes in the State of Tamil Nadu and further held that in the Subordinate Courts, the proceedings shall be conducted and judgment shall be delivered only in Tamil Language, vide order, dated 01.07.2014. Mere joining of service, without fulfilling the prescribed qualifications, does not confer any right to claim benefits for the earlier period. The Petitioner is entitled to service benefits only from the date she met the eligibility criteria, which has already been granted. Hence, the question of granting approval for the



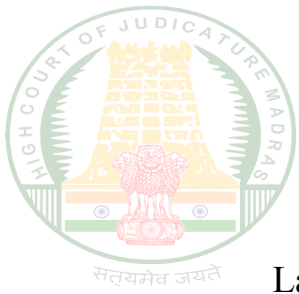
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period from 15.06.2011 to 24.05.2015 does not arise. The Government aid is neither a fundamental right nor automatic. The Government is well within its rights to refuse aid, if the management fails to comply with the departmental instructions under Section 14 of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973, and Rule 6 of the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977. The Educational Authorities cannot be compelled to release aid to Teachers, who do not meet eligibility requirements, especially when the aid is funded by the public money. Therefore, the present Writ Petition is devoid of merits and accordingly, is liable to be dismissed.

4. This Court heard Mr.M.Mahaboob Athiff , the learned counsel for the Petitioner and Mr.F.Deepak, the learned Special Government Pleader for the Respondents 1 to 4.
5. The learned counsel for the Petitioner submits that Annexure-V of the Tamil Nadu Recognised Private Schools (Regulation) Rules prescribes qualifications for the appointments of Teachers in the private Schools and that there is no such requirement of pass in



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Language Test prescribed under the Tamil Nadu Recognised Private Schools (Regulation) Act and the Rules made thereunder and that Rule 12A of the Tamil Nadu State and Subordinate Services Rules, which prescribes passing of Tamil Language Test as mandatory for all Government Servants, cannot be made applicable to the teaching Staff in the Private Schools. The learned counsel has further submitted that the act of the 3rd Respondent, denying approval of appointment as a B.T.Assistant to the Petitioner from the initial date of appointment viz., 15.06.2011 and granting approval only with effect from . 25.05.2015, on which date the Petitioner passed the Tamil Language Test and ignoring more than 4 years of the valuable service, is highly arbitrary, illegal, unconstitutional and without jurisdiction, as it is contrary to the Tamil Nadu Recognised Private Schools (Regulation) Act and the Rules framed thereunder and was passed without affording sufficient opportunity to the Petitioner.

6. The learned counsel for the Petitioner has placed reliance on the following decisions:-

i. 2002 (3) CTC 336 (S.Mohamood Basha Vs. The Director of



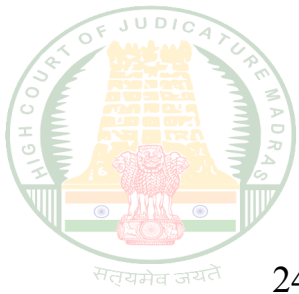
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Collegiate Education College Road, Madras 600 006).

- ii. Judgement and order, dated 29.07.2021 passed by the Coordinate Bench of this Court in W.P.(MD) No.11689 of 2017 (Fr.Geevarghese Mathew Vs. The State of Tamil Nadu and others).
- iii. 2009 (2) TNLJ 101 (Civil) (The Director of School Education, College Road, Chennai - 600 006 Vs. Geldon Wifred Viola and another).
- iv. Judgement and order, dated 20.10.2023 passed by the Coordinate Bench of this Court in WP(MD)No.16143 of 2016 (S.Rejani Vs. The State of Tamil Nadu, Represented by its Secretary, Department of School Education, Fort St.George, Chennai – 600 009).

7. Per contra, the learned Special Government Pleader for the Respondents 1 to 4, while reiterating the averments made in the counter affidavit, has submitted that the Government of Tamil Nadu has taken several initiatives to give priority to Mother Tongue and for the said purpose, also introduced the Tamil Nadu Persons Studied in Tamil Medium Act, 2010 and that the request of the 5th Respondent School to grant approval for the earlier period from 15.06.2011 to 24.05.2015 was rightly rejected by the impugned order, on the ground that since the Petitioner passed the Tamil Language Test only on



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24.05.2015, approval for the said earlier period cannot be granted and that as per the Rule 12A of the General Rules for Tamil Nadu State and Subordinate Service, no person shall be eligible for appointment to any service by direct recruitment unless he has an adequate knowledge of the official Language of the State. The learned Special Government Pleader has further submitted that the contention of the Petitioner that the Tamil Nadu State and Subordinate Services Sub-Rule(b) of Rule 12-A is not applicable, cannot be accepted, when the Petitioner enjoys privilege on par with the Government Servants and that mere joining of service, without fulfilling the prescribed qualifications, does not confer any right to claim benefits for the earlier period and that the Petitioner is entitled to service benefits only from the date she met the eligibility criteria and hence, the question of granting approval for the period from 15.06.2011 to 24.05.2015 does not arise and hence, this Writ Petition is devoid of merits and accordingly, is liable to be dismissed.

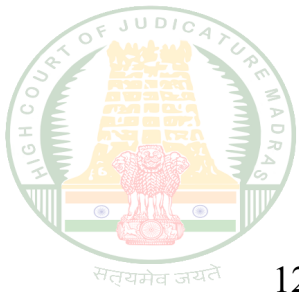
8. I have given my careful and anxious consideration to the contentions put forward by the learned counsel on either side and also perused the



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entire materials available on record.

9. The undisputed facts are that the 5th Respondent School is a recognised minority Institution and a Private Aided School. The Petitioner was appointed as a Probationary Teacher in the 5th Respondent School on 15.06.2011. The Petitioner's mother tongue and first Language in the School is Malayalam. The Respondents/ Education Authorities insisted the Petitioner to pass the Tamil Language Test, citing the Fundamental Rules, applicable to the Tamil Nadu Government Servants. The Petitioner passed the Tamil Language Test on 25.05.2015. The approval for appointment as a B.T.Assistant was granted to the Petitioner only with effect from 25.05.2015. The proposal to approve the period of employment from 15.06.2011 to 24.05.2015 sent by the 5th Respondent was rejected by the impugned order.
10. Now, the issues that arise for consideration in this Writ Petition are as to whether the Petitioner is entitled for approval of her appointment as a B.T.Assistant, with effect from 15.06.2011 or from 25.05.2015, on which date, she passed Tamil Language Test and whether the Rule



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12A of the Tamil Nadu State and Subordinate Services Rules, has any application to the Teachers, appointed in the Private Aided Schools, receiving grant from the Government of Tamil Nadu.

11. At this juncture, for better appreciation of the case, it is appropriate to extract the Rule 12A of the Tamil Nadu State and Subordinate Services Rules read as under:-

“Rule 12-A Linguistic Qualification:- (a) No person shall be eligible for appointment to any service by direct recruitment unless he has an adequate knowledge of the official Language of the State, namely, Tamil:

Provided that a person, being otherwise qualified for appointment to the post to which recruitment is to be made, may apply for recruitment to the post, despite the fact that, at the time of such application, he does not possess an adequate knowledge of Tamil.

Explanation:—For the purpose of this rule, a person shall be deemed to have an adequate knowledge of Tamil, if—

(i) In the case of a post for which the educational qualification prescribed is the minimum general educational qualification and above, he has passed the S.S.L.C. Public Examination or its equivalent examination with Tamil as one of the Languages; or studied the High School Course in Tamil Medium and passed the S.S.L.C. Public Examination or its equivalent Examination in Tamil Medium; or passed the Second Class Language Test in Tamil Conducted by the Tamil Nadu Public Service Commission.



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(ii) in the case of a post for which the educational qualification prescribed is VIII Standard and above but below S.S.L.C. he has studied in Tamil Medium in those standards or passed the Language Test in Tamil referred to in rule 12-B(i); and

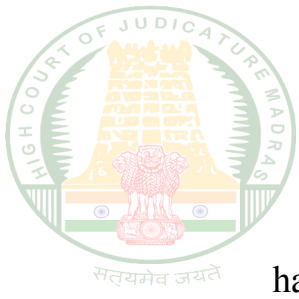
(iii) in the case of a post for which the educational qualification prescribed is below VIII standard, he has studied in Tamil Medium in those standards or passed the oral test in Tamil referred to in rule 12-(B) (ii).

(b) Every such candidate as is referred to in the proviso to sub-rule (a), shall, if selected and appointed on or after 9th February, 1996, pass the Second Class Language Test in Tamil conducted by the Tamil Nadu Public Service Commission, or pass the Language Test in Tamil referred to in rule 12-B (i) conducted by the appointing authority or pass the oral 12-B (ii) conducted by the appointing authority, as the case may be within a period of two years from the date of his appointment. If he fails to pass the said Language Test within the said period of two years, he shall be discharged from service.

(c) The syllabus for the Second Class Language Test in Tamil referred to in this rule shall be specified in Schedule I-A to these rules."

12. On a careful perusal of the above said Rule 12A of the Tamil Nadu State and Subordinate Services Rules, **it is clear that it does not have any application to the Teachers, appointed in the private Schools, receiving grant from the Government of Tamil Nadu.**

The said Rule 12A clearly contemplates that the Employee should



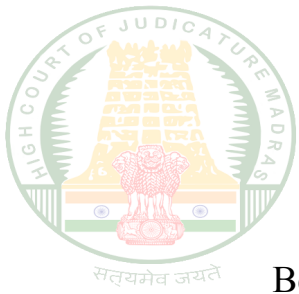
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have passed the Tamil Language Test conducted by the Tamil Nadu Public Service Commission or the Teachers Recruitment Board, within two years from the date of his/her appointment and it is condition to be fulfilled only after employment.

13. As the 5th Respondent School, which is a Private Aided School, is governed by the Tamil Nadu Recognised Private Schools (Regulation) Act and the Rules, framed thereunder and the grant-in-aid is made under the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1974, the requirement of Rule 12A of the Tamil Nadu State and Subordinate Services Rules does not have any application to the case of the Petitioner. In fact, this issue was already considered by the Coordinate Bench of this Court on several occasions, holding that the Rule 12A of the Tamil Nadu State and Subordinate Services Rules cannot be regarded a Statutory Rule in so far as the Employees of the Private Aided Institutions and Schools are concerned.

14. **In 2002 (3) CTC 336 (S.Mohamood Basha Vs. The Director of Collegiate Education College Road, Madras 600 006), the Principal**



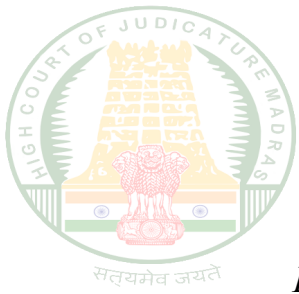
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Bench of this Court, while considering an identical issue, was pleased to observe, as follows:-

“7. This Court in paragraph 8 of that judgment pointed out that so far as the aided schools are concerned, the Rules cannot be treated as statutory Rules framed under the Article 309 of the Constitution as, the very Article is inapplicable to private schools. Rule 12A of the Tamil Nadu State and Subordinate Service Rules, therefore, cannot be regarded as statutory rule so far as the employees of the aided colleges are concerned. Moreover, the Government does not have the power under the Act to prescribe the qualification for the post. The Act specifically reserves that power to the University and it is the University which has to decide the qualification required to be possessed by the person appointed to the post in the aided colleges. Petitioner has those qualifications. The Government cannot withhold approval of his appointment on an extraneous ground, namely, his not having studied Tamil or taken a test prescribed for Government servants under the Rules governing and applicable to Government servants. The impugned order is, therefore, set aside. The writ petition is ordered accordingly. WMP. No.23331 of 1995 is closed.”

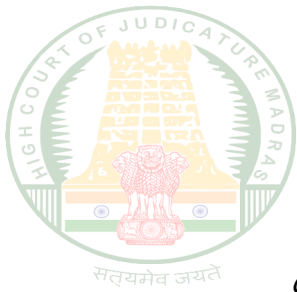
15. In, 2009 (2) TNLJ 101 (Civil) (The Director of School Education, College Road, Chennai - 600 006 Vs. Geldon Wifred Viola and another), the Principal Bench of this Court was pleased to observe as under:-

“5. Mr.S.Rajasekar, learned Additional Government Pleader would however submit that inasmuch as G.O.Ms.No.720, Education Department, dated 28.04.1981 and G.O.Ms.No.361



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Education Department, dated 31.12.1999 prescribe a minimum qualification for the said post viz., Bachelors' Degree as well as Post Graduate Degree in the subject, the teach is not eligible, as she does not possess a Bachelor's Degree in History. In our opinion, the said submission of course is made on the basis of the impugned order in the writ petition which is totally a misconception. A careful reading of those Government Orders would indicate that the qualifications prescribed thereunder are primarily intended for the appointment of Teachers in the Government Schools. Nevertheless Government Order contemplates that the said qualifications are also applicable in respect of aided Schools as well pending amendment to the relevant rules. It is well settled in law that the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and rules made thereunder are alone made applicable to the second Respondent -School and the qualifications are prescribed under the rules framed in exercise of the powers conferred under Section 56 of the Act. Any prescription of the qualification by way of the Government Order without amendment to the rules cannot be given effect to bind the private Schools and the appointments, conditions of service, qualification are all governed by the provisions of the Act and the rules made thereunder. The Government Order G.O.Ms.361 Education Department dated 31.12.1999 which is questioned though has been issued in exercise of the power under Article 309 of the Constitution of India, in our opinion, that would be made applicable only to the Government Servants viz., the Teachers who are employed in the Government Schools and not to the Teachers in private Schools, as those Teachers are governed only by the provisions of the Act and the rules made thereunder. In the given case, as the rules contemplate only a Master's Degree in the subject for appointment of a Junior Grade Post Graduate Assistant and does not mandate a Bachelor's Degree as well in the same subject. A Teacher who has secured a Mater's Degree in the subject would be entitled



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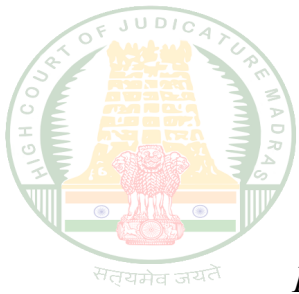
and is eligible for appointment to the post. The rejection of the request for approval to the said post is therefore erroneous, as it was done by following the Government Order G.O.Ms.361 Education Department, dated 31.12.2009.

6. In view of the above, we are of the considered view that the impugned order in the Writ Petition is unsustainable and accordingly, the same is liable to be set aside as has been done in the Writ Petition.

7. In the result, the writ appeal is dismissed. The Director of the School Education is directed to accord approval of the appointment of the first Respondent teacher – Ms.Geldon Wilfred Viola from the date of her appointment and provide all the benefits attached to the said post. No costs.”

16. The Coordinate Bench of this Court, by its **Judgement and order, dated 29.07.2021, in W.P.(MD) No.11689 of 2017 (Fr.Geevarghese Mathew Vs. The State of Tamil Nadu and others)**, was pleased to observe as under:-

“5. There is substantial force in the aforesaid submission made on behalf of the Petitioner. At the outset, it must be pointed out here that the circumstance that the State Government grants aid for payment of salary to the Petitioner employed in the School of the Fifth Respondent would not ipso facto mean that he is holding a post under the State Government to whose employees the Tamil Nadu State and Subordinate Service Rules containing Rule 12-A applies. It is common ground that the School of the Fifth Respondent is governed by the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the

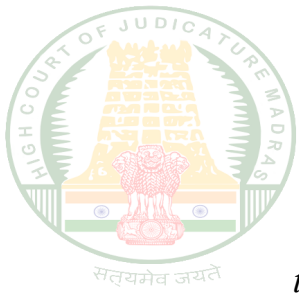


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Rules framed thereunder and the grant-in-aid is made under the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977. The First to Fourth Respondent s have not shown that the requirement to pass the Tamil Language Test conducted by the Tamil Nadu Public Service Commission or the Teachers Recruitment Board is a qualification prescribed in the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, or the Rules framed thereunder or the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977, and it is also not their case that Rule 12-A would apply by way of any legislation by incorporation or reference for receiving grant-in-aid for the School of the Fifth Respondent . In this context, it would be useful to refer to the decision of the Hon'ble Supreme Court of India in A.B.Krishna -vs- State of Karnataka [(1998) 3 SCC 495] where the legal position in this regard has been explicated with regard to a post under the fire services established by the State Government under the Fire Force Act, 1964, which reads as follows:-

“6. It is primarily the legislature, namely, Parliament or the State Legislative Assembly, in whom power to make law regulating the recruitment and conditions of service of persons appointed to public services and posts, in connection with the affairs of the Union or the State, is vested. The legislative field indicated in this article is the same as is indicated in Entry 71 of List I of the Seventh Schedule or Entry 41 of List II of that Schedule. The proviso, however, gives power to the President or the Governor to make Service Rules but this is only a transitional provision as the power under the proviso can be exercised only so long as the legislature does not make an Act whereby recruitment to public posts as also other conditions of service relating to that post are laid down.

7. The rule-making function under the proviso to Article 309 is a legislative function. Since Article 309 has to operate subject

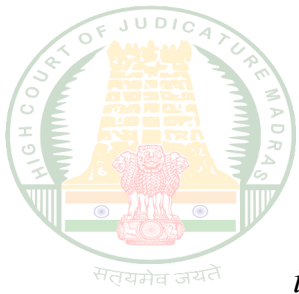


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to other provisions of the Constitution, it is obvious that whether it is an Act made by Parliament or the State Legislature which lays down the conditions of service or it is a rule made by the President or the Governor under the proviso to that article, it has to be in conformity with the other provisions of the Constitution specially Articles 14, 16, 310 and 311.

8. The Fire Services under the State Government were created and established under the Fire Force Act, 1964 made by the State Legislature. It was in exercise of the power conferred under Section 39 of the Act that the State Government made Service Rules regulating the conditions of the Fire Services. Since the Fire Services had been specially established under an Act of the legislature and the Government, in pursuance of the power conferred upon it under that Act, has already made Service Rules, any amendment in the Karnataka Civil Services (General Recruitment) Rules, 1977 would not affect the special provisions validly made for the Fire Services. As a matter of fact, under the scheme of Article 309 of the Constitution, once a legislature intervenes to enact a law regulating the conditions of service, the power of the Executive, including the President or the Governor, as the case may be, is totally displaced on the principle of “doctrine of occupied field”. If, however, any matter is not touched by that enactment, it will be competent for the Executive to either issue executive instructions or to make a rule under Article 309 in respect of that matter.

9. It is no doubt true that the rule-making authority under Article 309 of the Constitution and Section 39 of the Act is the same, namely, the Government (to be precise, the Governor, under Article 309 and the Government under Section 39), but the two jurisdictions are different. As has been seen above, power under Article 309 cannot be exercised by the Governor,



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if the legislature has already made a law and the field is occupied. In that situation, rules can be made under the law so made by the legislature and not under Article 309. It has also to be noticed that rules made in exercise of the rule-making power given under an Act constitute delegated or subordinate legislation, but the rules under Article 309 cannot be treated to fall in that category and, therefore, on the principle of “occupied field”, the rules under Article 309 cannot supersede the rules made by the legislature.”

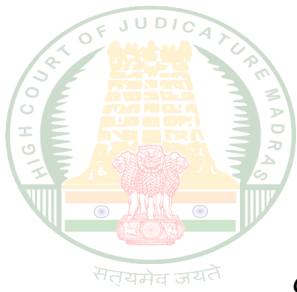
The said view is also fortified by the ruling of this Court in S.Mohamood Basha -vs- Director of Collegiate Education, College Road, Madras [(2002) 3 CTC 336] while dealing with grant-in-aid to a lecturer appointed in a private college governed by the Tamil Nadu Private Colleges (Regulation) Act, 1976. In the light of this legal position, it is not possible to sustain the impugned order, which has to be necessarily set aside.”

7. The upshot of the foregoing discussion is that the Writ Petition is disposed on the following terms:-

(i) the impugned Order in Na.Ka. No. 4382/A4/2013 dated 25.07.2013 passed by the Fourth Respondent is set aside and the matter is remitted for considering the matter afresh in accordance with law;

(ii) the concerned authority shall immediately consider the claim of the Petitioner for payment of salary by way of grant-in-aid from the Government of Tamil Nadu in terms of the proceedings in R.C. No. 4312/A4/2011 dated 29.07.2011 issued by the Fourth Respondent ;

(iii) if it is found that the Petitioner has not produced any details or supporting documents satisfying the eligibility



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criteria for the benefits claimed, the deficiencies in that regard shall be informed in writing to him and the Fifth Respondent requiring the same to be furnished within a time frame of not less than 10 working days;

(iv) in the event of the concerned authority not being satisfied with the compliance of the requirements even thereafter, an enquiry shall be conducted affording full opportunity of personal hearing to the Petitioner and the Fifth Respondent to explain their position in that regard and the concerned authority shall pass reasoned orders dealing with each of the contentions raised on merits and in accordance with law and communicate the decision taken to the concerned parties under written acknowledgment;

(v) it shall be ensured that the eligible amount of arrears of salary is paid within one month from the date of passing of that order and report of compliance in that regard shall be filed before the Registrar (Judicial) of this Court, apart from monthly salary for future months on the due dates; and

(vi) consequently, the connected Miscellaneous Petitions are closed; and there shall be no order as to costs.”

17. A Division Bench of this Court, by its **judgement, dated 29.11.2021 in WA(MD)No.2131 of 2021**, has confirmed the order of the above said order, dated 29.07.2021, made in WP(MD)No.11686 of 2017, by the Coordinate Bench of this Court.

18. In the **Judgement and order, dated 20.10.2023 made in WP(MD)No.16143 of 2016 (S.Rejani Vs. The State of Tamil Nadu,**



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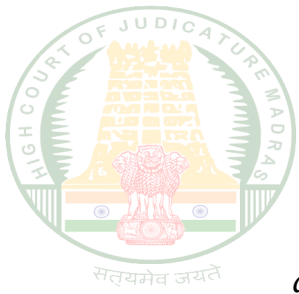
Represented by its Secretary, Department of School Education, Fort St.George, Chennai – 600 009), the Coordinate Bench of this

Court, was pleased to observe as under:-

18. On careful perusal of Rule 12-A of the Tamil Nadu State and Subordinate Services Rules, it is clear that the same does not have any application to the Teachers appointed in private schools receiving grant from the Government of Tamil Nadu.

19. As per the requirement of Rule 12A of the Tamil Nadu State and Subordinate Services Rules, the Petitioner should have passed the Tamil Language Test conducted by the Tamil Nadu Public Service Commission or the Teachers Recruitment Board within two years from the date of appointment. As the 5th Respondent -School is governed by the Tamil Nadu Recognised Private Schools (Regulation) Act and Rules, framed thereunder and the grant-in-aid is made under the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1974, the requirement of Rule 12A of the Tamil Nadu State and Subordinate Services Rules does not have any application to the Petitioner. In fact, this issue is already considered by this Court on several occasions holding that Rule 12A of the Tamil Nadu State and Subordinate Services Rules cannot be regarded a statutory rule so far as the employees of the aided institutions are concerned.

24. For the aforesaid reasons and in the light of the orders passed by this Court in identical circumstances, in the considered opinion of this Court, the services of the Petitioner with effect from 04.12.2007 has to be considered while granting approval of appointment of the Petitioner and as such, the order passed by the 4th Respondent in granting approval of appointment of the Petitioner with effect from 25.05.2013 is



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declared as illegal, unjust, arbitrary and contrary to the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act and Rules.

25. Accordingly, this Writ Petition is allowed with the following directions:-

i. The impugned order in Na.Ka.No.2505/A2/2016, dated 24.03.2016 is hereby set aside; and

ii. The Respondent No.4 is directed to grant approval of appointment of the Petitioner with effect from 04.12.2007 as Teacher in the 5th Respondent -School and grant all eligible amounts of arrears of salary to the Petitioner within one month from today, apart from monthly salary, her future amounts on the said date.

26. There shall be no order as to costs.

27. Consequently, connected miscellaneous petitions are closed.”

19. To sum and substance, the 5th Respondent School is a Private Aided School and the Petitioner was appointed as a Probationary Teacher in the 5th Respondent School with effect from 15.06.2011. The Petitioner passed the Tamil Language Test on 25.05.2015. The Rule 12A of the Tamil Nadu State and Subordinate Services Rules does not have any application to the Teachers, appointed in the Private Schools, receiving grant from the Government of Tamil Nadu.

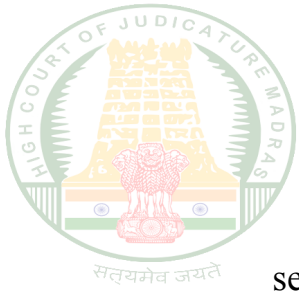


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Hence, the impugned order, rejecting the approval of the appointment, as a B.T.Assistant, with effect from 15.06.2011 of the Petitioner, relying on the said Rule 12A, is illegal and accordingly, is liable to be quashed. Accordingly, the services of the Petitioner as a B.T.Assistant, with effect from 15.06.2011 has to be considered. In such view of the matter, the impugned order passed by the 3rd Respondent, granting approval of appointment of the Petitioner, as a B.T.Assistant, with effect from 25.05.2015 appears to be illegal, unjust, arbitrary and contrary to the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act and Rules and approval must have been granted with effect from 15.06.2011.

20. In the result, in the light of the observations and the discussions made above and in the light of the decisions referred to above, this Writ Petition **is allowed**, as prayed for. The impugned order of the 3rd Respondent in RC.No.6183/A/2018, dated 09.11.2018 **is hereby quashed and modified** to the extent that the 3rd Respondent is directed to approve the Petitioner's appointment as B.T.Assistant in the 5th Respondent School with effect from 15.06.2011, with all



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service and monetary attendant benefits and to grant all eligible amounts of arrears of salary to the Petitioner within two months from today and pay the monthly salary regularly, without fail.

21. There shall be no order as to costs. Consequently, the connected Writ Miscellaneous Petitions is closed.

25.04.2025

Index: Yes/No

Web: Yes/No

Speaking/Non Speaking

Neutral Citation

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To:

1. The Government of Tamil Nadu, Represented by its Secretary, School Education Department, Fort St.George, Chennai – 600 009.
2. The Director of School Education, D.P.I.Complex, College Road, Nungambakkam, Chennai – 600 034.
3. The District Educational Officer, Kuzhithurai at Marthandam, Kanyakumari District
4. The Chief Educational Officer, Kanyakumari.
5. The Correspondent , Concordia Lutheran High School, Kalparapota, Kollemcode Post, Kanyakumari District.



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SHAMIM AHMED, J.

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Pre-Delivery Order in
W.P.(MD)No.27439 of 2022

25.04.2025