

W.A.(MD)No.201 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 19.03.2025

CORAM:

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

**W.A(MD)No.201 of 2025 &
C.M.P.(MD)No.1211 of 2025**

1.The Secretary to Government,
Education Department,
State of Tamil Nadu,
St. Fort George, Chennai - 9.

2.The Director of School Education,
College Road, Chennai - 6.

3.The Chief Educational Officer,
Tenkasi District, Tenkasi.

4.The District Educational Officer,
Tenkasi District, Tenkasi.

... Appellants

Vs.

1.Subbulakshmi

2.The Correspondent,
Chathiram Bharathi Girls High School,
Kadaiyam, Tenkasi District.

... Respondents



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Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.5393 of 2024, dated 17.04.2024.

For Appellants :Mr.J.Ashok,
Additional Government Pleader

For Respondents :Mr.S.Chellapandian for R1

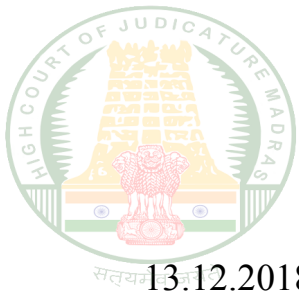
JUDGMENT

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

The present writ appeal is filed against the order dated 17.04.2024 passed in W.P.(MD)No.5393 of 2024.

2. The writ petition was filed for Mandamus directing the respondents to approve the petitioner's appointment as Record Clerk in the fifth respondent school and disburse all service and monetary benefits from 01.06.2018.

3. The brief facts are that the petitioner was appointed as Record Clerk on 26.11.2018 in the 2nd respondent school namely Chathiram Bharathi Girls High School run by Kadayam Annadhana Chatram Trust and the proposal dated



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13.12.2018 was submitted by the school to the District Educational Officer, who is the fourth respondent in the writ petition. The fourth respondent forwarded the same to the third respondent vide proceedings dated 15.04.2019. In the meantime, the Government issued G.O.Ms.No.238, School Education Department, dated 13.11.2018 whereby based on the students' strength, non-teaching staffs were prescribed to the schools. Since the petitioner's appointment is after the said Government Order, the approval was withheld by the third respondent, Chief Educational Officer. The petitioner preferred W.P.(MD)No.2381 of 2020 and the same was disposed on 10.02.2020 directing the third respondent to consider the proposal and pass orders. The third respondent declined to grant approval by relying on G.O.Ms.No.238, School Education Department, dated 13.11.2018 and further stated the adjudication to the said G.O. is pending in W.A.(MD)No.816 of 2023. The contention of the writ petitioner is that the restriction in G.O.Ms.No. 238 dated 13.11.2018, is not applicable to the petitioner's case, since the Chief Educational Officer has already granted approval to fill up the post of the Record Clerk vide proceedings dated 15.11.2018 and the said post is not a surplus post. The petitioner was appointed in the retirement vacancy of one S.Karpaga Vinayagam. Hence, the question of filling up the vacancy and thereafter deploying to other aided school in Revenue District will not arise. Therefore, the

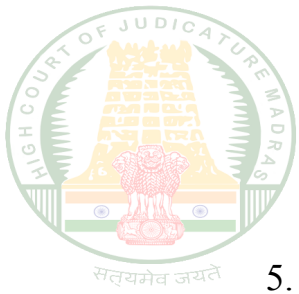


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petitioner is entitled to approval of appointment. Aggrieved over the rejection of approval of appointment, the petitioner has filed the writ petition inter alia praying for approval of appointment. On the other hand, the respondent department had submitted that the validity of G.O.Ms.No.238, School Education Department, dated 13.11.2018 was upheld in W.P.(MD)No.13428 of 2020. Therefore, any approval ought to be as per G.O.Ms.No.238 and therefore the appointment cannot be approved.

4. The Writ Court after considering the rival submissions had held that a portion of G.O.Ms.No.238, School Education Department, dated 13.11.2018, is stayed in W.A.(MD)No.816 of 2023. However, the appellants have not denied the vacancy position and it is a sanctioned post for the relevant academic year. The only objection is with regard to the implication of G.O.Ms.No.238, School Education Department, dated 13.11.2018. Since the matter is sub judice, the Writ Court directed to grant approval. Aggrieved over the same, the respondents in the writ petition had filed the present writ appeal.



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5. Heard Mr.J.Ashok, the Learned Additional Government Pleader appearing for the appellants and Mr.S.Chellapandian, the Learned Counsel appearing for the respondent / writ petitioner and perused the records.

6. Without prejudice to the contention on merits, the appellants contended that the appointment order states that the writ petitioner was appointed by the school with effect from 12.12.2018, but the writ petitioner is seeking approval with effect from 01.06.2018. When the writ petitioner was appointed as per the appointment order on 12.12.2018, then the writ petitioner seeking to approve from 01.06.2018 is erroneous.

7. Again, without prejudice to the contention on merits, the appellants contended that the appointment order states that the writ petitioner was appointed from 12.12.2018 but the appointment order was signed by the Secretary of the School on 26.11.2018. When there is discrepancy in the appointment order, the authorities are not bound to approve the appointment unless the discrepancy is rectified along with the evidence like attendance register etc. Further if at all the petitioner is entitled to approval, it is only from 12.12.2018 and not any prior date.



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8. The next contention of the appellants is that the writ petitioner was appointed on 12.12.2018, but in the meantime the G.O.Ms.No.238 dated 13.11.2018 had come into force, hence the school is not entitled to approval of appointment. In order to consider this submission, the dates and sequence of events in necessary. It is seen that the department had granted prior permission to fill up the vacancy on 15.11.2018, based on the same the school had conducted interview on 11.12.2018 and the writ petitioner was appointed on 12.12.2018. In the meanwhile, G.O.Ms.No.238, School Education Department, dated 13.11.2018, came into force. Infact the G.O.Ms.No.238 had come into force 13.11.2018 which is two dates prior to the grant of prior permission itself i.e. on 15.11.2018. In such circumstances, the prior permission itself is erroneous because of the intervening G.O.Ms.No.238. Based on the erroneous permission the appointment is made hence the writ petitioner is not entitled to approval dehors G.O.Ms.No.238.

9. The Writ Court had held that even though the validity of the said G.O.Ms.No.238 is upheld by the Writ Court in W.P.(MD)No.13428 of 2020 dated 07.02.2023, the issue is pending in W.A.(MD)No.816 of 2023, wherein a portion of the order was stayed, hence directed to grant approval of appointment. This



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Court is of the considered opinion, the interim stay is writ appeal will not grant a right of approval to the writ petitioner. The said issue is considered by another Division Bench in W.A.(MD)No.703 of 2020 batch and vide order dated 15.09.2020 it has been held as under:

“15. It is a well settled position of law that interim orders are granted to maintain status-quo to protect the interest of the parties pending disposal of the writ petition and it cannot be the basis to allow the main writ petition. As rightly pointed out by the learned Special Government Pleader, there is likelihood of dismissal of the writ petitions with a consequential order for vacating the interim orders also.

16. In the light of the above facts and circumstances and the reasons assigned above, the impugned orders passed in the writ petitions warrant interference.

17. In the result, the writ appeals are partly allowed and the order dated 22.10.2019 passed in W.P(MD)No.20761 of 2019 and the orders dated 20.11.2019 passed in W.P(MD)Nos.21121 and 21123 of 2019 respectively, are set aside and the writ petitions are once again remanded to the Honourable Single Bench for disposal. In the circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.”

This Court also concur with the aforesaid Division Bench order that it is a well settled position of law that interim orders are granted to maintain status-quo to protect the interest of the parties pending disposal of the writ petition and it cannot be the basis to allow the main writ petition. Further in this case already the G.O.Ms.No.238 is upheld and the appeal is preferred by the schools and



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individuals and not by the government. In such circumstances, the Mandamus granted by the Writ Court to grant approval of appointment is against the settled principle of law.

10. If the contention of the writ petitioner and the school is accepted that the some individuals and the school managements had preferred writ appeal and the litigation is pending along with interim stay, then also a positive direction to grant approval cannot be granted. At the most it can be held that the proposal for approval of appointment will be kept pending and the proposal would be considered after the disposal of the writ appeal. In the present case the Writ Court had granted positive direction to approve the appointment, which is against law. Further if the writ appeal filed by the individuals and schools is dismissed, then the approval granted to the writ petitioner would become illegal and the government would be put to prejudice. Hence such an argument can never be accepted. Accordingly this contention is dismissed.

11. The contention of the writ petitioner is that her appointment is on the retirement vacancy arises due to retirement of one S.Karpaga Vinayagam, therefore the said post is sanctioned post, in such circumstances the department



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cannot deny approval. This Court is of the considered opinion that the “sanctioned post” is claimed frequently by the individuals and the schools without understanding that there cannot be a “permanent sanctioned post”, since the same varies based on students’ strength. Infact the staff fixation order is issued every academic year based on the students’ strength, 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 surplus post, then the post would be declared as “surplus along with person”. Likewise, if there 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 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 is 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 facts it is evident that there cannot be any “permanent sanctioned post”. Consequently any claim that the appointment is made is “sanctioned post”, it ought to be seen based on the staff fixation order for the said academic year. Therefore, the claim



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of the writ petitioner that the appointment is in sanctioned post is a misnomer and the same cannot be considered.

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12. Now comes the crucial question regarding non-teaching posts granted to schools. It is seen as early as 1966 the government issued G.O.Ms.No.583 School and Public Health Department dated 23.04.1966, wherein the staff fixation was granted as under:

Categories of Non-Teaching Staff	Number Strength			
	Below 250	More than 250 but below 1000	More than 1000 but below 1500	More than 1500
Clerks	Nil	Nil	2	3
Librarian or Clerk for Library	Nil	1	Nil	Nil
Attenders for Office	1	1	1	1
Peons	1	1	2	3
Watchman	1	1	1	1
Waterman	-	-	-	-
Gardener Cum Sweeper	-	-	-	-
Gardener	-	-	-	-
Sweeper	1 part time	1 part time	1 part time	1
Scavengers	1 part time	1 part time	1 part time	1



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13. All these years the government was following the G.O.Ms.No.583. Nearly after 52 years the government had taken a policy decision to modify the staff fixation for non-teaching staffs through G.O.Ms.No.238 dated 13.11.2018 and the same is detailed below:

Categories of Non-Teaching Staff	Students Strength			
	Until 250	From 251 to 1000	More than 1001	Remarks
Junior Assistant or Assistant or Record Clerk	Nil	1	2	Maximum 2
Office Assistant	1		2	Maximum 2
Watchman	1			Maximum 1

14. As per the aforesaid G.O. the post of Junior Assistant or Assistant or Record Clerk are considered as one post. The salient feature of the said G.O. is narrated in a nut shell as under:

- i.If the school is having below 250 students, then the school is **not entitled** to any Junior Assistant **or** Assistant **or** Record Clerk posts, but is **entitled** to one post of Office Assistant and one post of Watchman.
- ii. If the school is having above 250 and below 1000 students, then the school is **entitled** to one post of Junior Assistant **or** Assistant **or** Record Clerk and one post of Office Assistant and one post of Watchman.



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iii. If the school is having above 1001 students, then the school is entitled to **two** posts of Junior Assistant **or** Assistant **or** Record Clerk (with maximum of **two** posts only) and **two** post of Office Assistant (with maximum of **two** posts only) and one post of Watchman (with maximum of one post only).

15. In the present case as per staff fixation order for the academic year 2017-2018 the students strength is 582. Now the staff fixation order ought to be read with G.O.Ms.No.238. As per G.O.Ms.No.238 the school is entitled to either one post of Junior Assistant **or** Assistant **or** Record Clerk. And one post of Office Assistant and one post of Watchman, totally only three posts. As per staff fixation order 2017-2018 the post of Junior Assistant and Record Clerk ought to be considered as single post, already one person is working in the post of Junior Assistant, in such circumstances, the school is not entitled to the post of Record Clerk or Assistant posts, consequently the appointment of writ petitioner in the post of Record Clerk is without “sanctioned post in the staff fixation order of 2017-2018” read with G.O.Ms.No.238.

16. The contention of the school is that the school had challenged the staff fixation order 2017-2018 and the same is pending, in such circumstances the



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appointment ought to be considered. When the case is pending for adjudication, the same will not grant any right to the school to appoint the petitioner.

17. Further the existing staff fixation order 2017-2018 would have lapsed validity with the said academic year of 2017-2018. Now the staff fixation order for the academic year 2018-2019 would have been issued and the same would be in accordance to G.O.Ms.No.238. And the petitioner's appointment is on 12.12.2018 which would come within the staff fixation order issued for the academic year 2018-2019 and not under academic year 2017-2018. In such circumstances, the litigation of staff fixation order 2017-2018 have no impact in the present case. Therefore, the said contention of the petitioner and the school ought to be rejected.

18. The next contention of the petitioner is that there is no surplus in the said school. But it is stated by the appellants that there are three posts of Record Clerk declared as surplus in the Revenue District. Firstly, it has to be seen whether there is surplus in the school, then it has to be seen whether there are surplus in the Revenue District, then only it can be declared there is surplus or not. When there is surplus in Revenue District, then the school is not entitled for fresh



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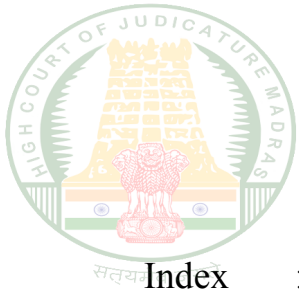
recruitment. On this angle also the petitioner and the school are not entitled to approval of appointment.

19. At this juncture, this Court is inclined to record that all educational institutions have “social responsibility”. Since the government is granting grant-in-aid from the “tax payer money”, then the government has every power to control and reduce the surplus staffs, until then all the educational institutions are bound to discharge their social responsibility by refraining from appointing any new person until the surplus staffs are accommodated in any available vacancy. The government cannot be put to financial constraints.

20. For the reasons stated supra, the order passed by the Writ Court is liable to be set aside and accordingly set aside. The writ petitioner is not entitled to any approval of appointment. Therefore, the Writ Appeal is allowed. No costs. Connected Miscellaneous Petition is closed.

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

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Index : Yes / No
NCC : Yes / No
Speaking / Non-speaking order

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To

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Education Department,
State of Tamil Nadu,
St. Fort George, Chennai - 9.
- 2.The Director of School Education,
College Road, Chennai - 6.
- 3.The Chief Educational Officer,
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