

W.A.(MD)No.2376 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.04.2025

CORAM:

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

**W.A(MD)No.2376 of 2024
and
C.M.P.(MD)Nos.16473 of 2024 and 1255 of 2025**

1.The Chief Educational Officer,
Office of the Chief Educational Officer,
Madurai.

2.The District Educational Officer (Secondary),
Office of the District Educational Officer,
Madurai, Madurai District.

... Appellants

Vs.

1.J.Packialakshmi

2.The Secretary,
Savithabai (Kovai) Higher Secondary School,
Thirunagar, Madurai District – 625 006.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.15063 of 2024, dated 09.07.2024.

For Appellants	:Mr.J.Ashok Additional Government Pleader
For R1	:Mr.V.R.Shanmuganathan
For R2	:Mr.S.Kumar



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JUDGMENT

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

The writ appeal is filed against the order dated 09.07.2024 passed in W.P. (MD)No.15063 of 2024.

2. The writ petition was filed for issuance of a Writ of Certiorarified Mandamus, to quash the order passed by the first respondent in Na.Ka.No.1012/A5/2024, dated 13.02.2024 and consequently to direct the respondents 1 and 2 to grant permission to fill up the post of Post Graduate Assistant (English) in the 3rd respondent School and grant approval of appointment with effect from 30.01.2023 with all consequential monetary and service benefits.

3. The brief facts as stated in the writ petition are that the 3rd respondent in the writ petition is a private recognised non-minority aided school. In the said school, a vacancy arose in the post of Post Graduate Assistant (English), which is a sanctioned post pursuant to the retirement of the incumbent S.Uma, on 31.10.2022. There is no other post in the said school to teach the subject English except the said incumbent and the petitioner is qualified to be appointed as a P.G.



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Assistant (English), hence the school appointed the petitioner on temporary basis, in order to cater the immediate needs of the students, till the said vacancy is duly filled up as per law. The retirement of the incumbent was approved by the management on 31.10.2022, the school committee in its meeting on 21.11.2022 decided to fill up the said post, the proposal was forwarded on 26.11.2022 to the respondents 1 and 2 in the writ petition seeking their permission to fill up the said post and through proceedings dated 20.12.2022 the 1st respondent had accepting the retirement of the aforesaid incumbent but did not pass any orders granting prior permission to the school to fill up the said post. Instead, the proposal sent by the management was kept without any orders. The school management considering the imminent necessity for taking classes to the students in English, gave a paper publication inviting applications for the post and pursuant to the selection procedure of selection committee, selected and appointed the petitioner as P.G. Assistant (English) vide order dated 30.01.2023 and the petitioner assumed office, the school had forwarded the proposal to the respondents 1 and 2 seeking approval for the appointment of the petitioner, but the respondents 1 and 2 did not consider either the proposal for the prior permission or the proposal for approval of the writ petitioner. Hence, the writ petitioner filed W.P.(MD)No.8170 of 2023 seeking a Mandamus, to direct the respondents 1 and 2 to approve the



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appointment of the writ petitioner with effect from 30.01.2023. This Court, vide order, dated 27.11.2023 disposed the petition by recording the statement made by the Learned Additional Government Pleader that the application for approval will be considered and orders will be passed. Even thereafter, there was no response from the respondents 1 and 2, hence the petitioner issued legal notice dated 01.02.2024, requesting the respondents 1 and 2 to forthwith comply the orders and again vide letter dated 27.02.2024 requested to the respondents 1 and 2 to consider and approve the appointment. While so, the writ petitioner received a phone call from the 3rd respondent that the 1st respondent vide order dated 13.02.2024 rejected the approval of appointment on the premise that his initial appointment on 30.01.2023 was without prior permission and also conveyed that the respondents 1 and 2 insisted the management should not permit the petitioner to continue in the school and also given the copy of the order to the petitioner on 29.06.2024. Hence, the present writ petition was filed.

4. The respondents 1 and 2 in the writ petition contended that as per the Rule 28-7 of the Tamil Nadu Private School (Regulation) Rules, 2018, no appointment in a non-minority school shall be made by the school Committee without the prior permission of the competent authority and there cannot be any



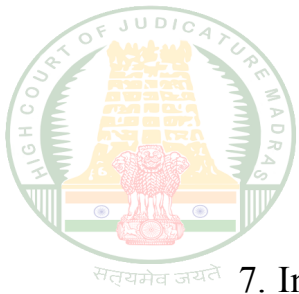
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violation of the said mandatory Rule. Hence, the proposal to approve the appointment of the writ petitioner was rejected.

5. After hearing the rival submissions, the Writ Court held that since impugned order in the writ petition was passed on account of technical ground of delay, the same is liable to be set aside. The Writ Court quashed the impugned order and directed the third respondent school to re-submit proposal seeking approval of the writ petitioner's appointment to the first respondent within a period of two weeks. On receipt of the same, the first respondent shall consider the proposal on its own merits and in accordance with law and in light of the observations made above within a period of four weeks from the date of receipt of fresh proposal. Aggrieved over the same, the Government / respondents 1 and 2 have preferred the present writ appeal.

6. Heard Mr.J.Ashok, Learned Additional Government Pleader appearing for the appellants, Mr.V.R.Shanmuganathan, Learned Counsel appearing for the 1st respondent and Mr.S.Kumar, Learned Counsel appearing for the 2nd respondent and perused the records.



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7. In order to decide the issue, the time line of the events is necessary. The incumbent S.Uma retired on 31.10.2022 which falls under the academic year “June 2022 – May 2023”. Thereafter based on the “students’ strength” for the academic year “June 2023 – May 2024”, the staff fixation order would be issued. Based on the staff fixation order it ought to be determined whether the school is eligible for the said post. Therefore, this Court is of the considered opinion that the school cannot expect the appellants to pass order during the academic year June 2022 – May 2023. At the same breath the appellants cannot evade from passing order for the petition seeking prior permission. The appellants ought to have considered the prior permission petition during the academic year June 2023 – May 2024 and passed orders at least by August 2024. If not passed by August 2024, then the School Management shall consider the same as deemed prior approval to appoint and proceed to select candidates and submit for approval of appointment.

8. Further, the management is bound to appoint by following Rule 15(4) of Tamil Nadu Private School Regulation Rules and the appellants are bound to verify whether the appointment is made by following the said Rule.



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9. Now the question arises whether the school should function without teacher which would cover major portion of two academic years and wait for the process to complete. This Court is of the considered opinion that the school has provision to appoint temporary teacher until the approval of prior permission is granted, so that the students would not be affected without teacher.

10. When the above procedures are not followed there are always disputes between the school management and the appellants. Therefore, this Court is of the considered opinion a “standard operating procedure” ought to be stipulated for the prior permission and approval of appointment and the same is as under:

- (i). If any vacancy arises in the middle of academic year, then the school ought to engage a temporary teacher for the remaining period for the academic year. The present case may be taken as example. The incumbent retired on 30.10.2022, the period from 01.11.2022 the school ought to engage temporary teacher.
- (ii) The prior permission application shall be considered after the admission of students for the next academic year. The admission would be until July of every academic year. In the present case the



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academic year is June 2023 – May 2024, then the prior permission shall be considered by August 2023. If no orders are passed by the Department by August of that year, then the school shall consider the same as deemed approval.

(iii) If the department is seeking further time for scrutiny under Rule 15(4), then a further one month i.e. by September of that year may be taken by the department. However, a written communication ought to be sent to the school before the expiry of August month that the department is processing the application, if no such communication is sent then the deemed approval clause would become operative.

(iv). Based on deemed approval the school shall proceed to conduct the selection process and appoint the candidate. Then the appointed candidate shall be considered for approval without the plea of prior approval by the department.

(v) The appellant department shall strictly follow the above stated directions in all future appointments.

11. In the present case, the appellants failed to pass orders in the prior permission application, therefore the school is entitled to deemed approval. If



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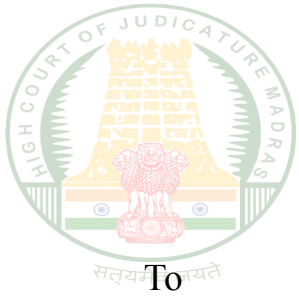
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there is no surplus in the school, then the school is entitled to approval of appointment. In the Trichy Revenue District there are “two surplus teachers” in P.G. Assistant (English) is concerned for the academic year 2024-2025. Since the appointment is for the previous year i.e. academic year 2023-2024, the school is entitled to approval of appointment. However, in future if the school needs any P.G. Assistant (English), the school shall not be fill up the post until the surplus of P.G. Assistant (English) in the Revenue District becomes “Nil”. It is made clear that by such direction the school will not be affected, since the school is extending its support to the government to full fill their social responsibility. Further it is only a temporary situation, once the surplus becomes ‘Nil’ then the schools would get their right to appoint teachers.

12. This Court is not inclined to interfere with the order passed by the Writ Court for the reasons stated supra apart from the reasons stated in the Writ Court order. Hence, the writ appeal is dismissed, confirming the order passed by the Writ Court. No costs. Consequently, connected miscellaneous petitions are closed.

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