

W.P.(MD)No.23973 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on :	31/01/2025
Pronounced on :	18/02/2025

CORAM

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

W.P.(MD).No. 23973 of 2017

1. C.Alexander,
Watchman, CSI High School,
Manamadurai, Sivagangai District.
2. CSI High School,
through Correspondent K.Pitchai,
Manamadurai, Sivaganagai District.

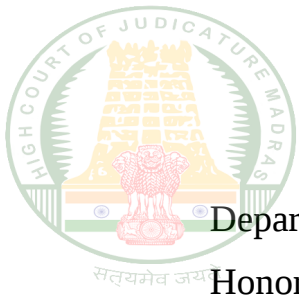
... Petitioners

Vs.

1. The Government of Tamil Nadu,
Represented by the Secretary to Government,
Education Department, Fort St. George,
Chennai – 600 009.
2. The Director of School Education,
Secondary Education, D.P.I.College Road,
Chennai – 600 006.
3. The District Education Officer,
Collector Office Compound,
Sivagangai - 623 560.

.... Respondents

Prayer: To issue a Writ, order or direction and in particular issue a writ in the nature of a Writ of Mandamus or any other appropriate writ directing the respondents 1 to 3 herein to regularize the first petitioner service as watchman by continuing the sanction accorded in G.O.Ms.926 Education (D1) Department dated 24.07.1989 read with G.O.Ms.No.525 Education



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Department dated 29.12.1997 in terms with the direction issued by this Honorable Court division Bench by its judgment reported in (2008) 4 MLJ 289 and to pay all service benefits, emoluments, arrears of salary within such time as this Honorable Court may be pleased to direct in so far as the petitioners are concerned.

For Petitioners : Mr.M.Joseph Thatheus Jherome

For Respondents : Mr.S.Shaji Bino
Special Government Pleader

JUDGMENT

Heard.

2. The present writ petition has been filed seeking regularization of the watchman post, along with the continuation of the sanction granted in the Government Order, as well as the corresponding service benefits and arrears of salary, as detailed above. The matter was admitted on 22.12.2017, and the learned Special Government Pleader took notice. Subsequent proceedings directed the respondent to submit a report on actions taken, and accordingly, the learned Assistant Government Pleader produced a copy of the proceedings issued by the Joint Director (Secondary) dated 25.06.2021. The order stated that representations had been received from the CSI Central Higher Secondary School, Arakkonam, Vellore District (dated 25.03.2014)



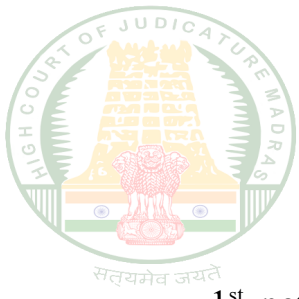
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and St. Joseph's High School, Pilanklai, Kanyakumari District (dated 25.03.2014) seeking salary grants for teaching and non-teaching posts.

These requests were examined and rejected as they did not fulfil the guidelines prescribed by the Hon'ble Division Bench in *W.A. No. 1329/1999* and batch cases dated 24.03.2008. The Order further stated:

“It is further stated that the representations of the above said school managements seeking grant for the teaching and non-teaching posts have been examined as per the directions given in para 29 of the common orders passed by the Hon’ble Division Bench of the Madras High Court in the batch cases in W.A.No 1329/1999 and etc. dated 24.03.2008 and rejected as the schools were not entitled for release of grant for the teaching and non teaching posts mentioned in the representations. Since they have not fulfilled the guidelines prescribed by the Hon’ble Division Bench in the common order passed in the Batch cases in W.A. No.1329 of 1999 and etc. dated 24.3.2008. The copies of the above said rejection orders are enclosed herewith.”

3. The 2nd respondent filed a counter affidavit dated 19.8.2019, and the 3rd respondent filed an additional counter affidavit dated 16.7.2021.



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4. The facts leading to the current writ petition are as follows: The 1st petitioner is employed as a watchman by the 2nd petitioner, an aided minority school. The school had previously filed *W.P. No. 8799 of 1988*, seeking a direction to grant aid for teaching and non-teaching staff from the year of recognition (1985) onwards as follows:

“to grant aid by way of allowance of teaching and non teaching staffs posts to the petitioner’s C.S.I High school, Manamadurai, Pasumpon Muthuramalingam District from the year or recognition (i.e.,) 1985 onwards with all benefits and privileges attendant there to in accordance with law and in particular in accordance with Rules 18 and 71 of the Tamil Nadu Education Rules, the Grant in Aid Code, G.O.Ms.No.581-Education, dated 22.04.1964, G.O.Ms.No. 583-Education dated 23.04.1966 and the Tamilnadu recognized Private Schools Regulation Act 1973 and Rules 1974 and the Tamilnadu Minority Schools Recognition and Payment of Grant Rules 1977”

5. Pending the writ petition, they filed a *WMP.No. 12878/88*, seeking interim directions and the relief claimed was as follows:

“ To direct the respondents 1 to 4 herein to grant interim aid to one Head master from 20.06.1986, one B.T.Assistants from 01.06.1988 onwards, Two Secondary Grade Teachers from 18.08.1988 onwards, One Junior Assistant from 18.08.1986 onwards, One Record Clerk from



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01.06.1988 onwards, one peon from 19.08.1988 onwards, One sweeper cum Scavenger from 01.06.1988 onwards with all benefits and privileges attendant thereto to the teaching and non teaching staffs working in the petitioner's C.S.I High school, Manamadurai, Pasumpon Muthuramalingam District pending disposal of the above writ petition."

6. An interim direction was granted by this Court on 04.08.1988. Subsequently, they filed *WMP No. 17658/88* to include the words "one watchman from 9.1.87 onwards" in the prayer for interim direction. In the meanwhile, on threat of contempt notice from this Court dated 07.07.1989, the 1st respondent Government issued G.O. Ms. No. 926, Education Department, dated 24.07.1989. The first three paragraphs of the order and the relevant portion of the annexure appended to the order read as follows:

Sanction is accorded for the creation of the temporary posts, as detailed in the annexure to this order, to the C.S.I High School, Manamadurai, Pasumpon Thevar Thirumagan District for the period up to 1.11.87 from the dates noted against each post as per the direction of the High Court, Madras in the order first read above. The staff grant will be released after the management furnishes security and guarantee as directed by the High Court.

2. The sanction, now accorded in paragraph I above is purely temporary and without prejudice to the orders of the



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High Court in the main Writ Petition No.8799/88. If the main Writ Petition is ultimately dismissed or the Government succeed in the Writ Appeal or the Special Leave Petition to be filed, in case the writ is disposed of against the Government, the institution would be liable to repay the entire grant received by them from Government.

3. The Chief Educational Officer, Pasumpon Thevar Thirumagan District and the District Educational Officer, Pasumpon Thevar Thirumagan District are requested to obtain either immovable property or Bank Guarantee as security for the amounts to be disbursed from time to time as ordered by High Court, Madras.

ANNEXURE

<i>Sl.No.</i>	<i>Name of the post</i>	<i>Date from which created</i>	<i>No. of posts</i>	<i>Scale of pay</i>
4	Watchman	080787	One	450-10-570 -15-720

7. The writ petition filed by the parties was later clubbed with other similar cases filed by other schools and was disposed of by the Division Bench by a common order in *Maryna Memorial High School, Bethelpuram v. Government of Tamil Nadu & Others* (1991 Writ LR 130, dated 06.12.1990).



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8. Following this, the Government issued orders G.O. Ms. No. 340, School Education dated 01.04.1992 and G.O. Ms. No. 410, School Education dated 06.01.1992 regarding staff sanction. Same school management filed a writ petition challenging these orders and sought directions for the sanction of posts for their schools. However, the High Court ruled against them, stating that educational institutions do not have a fundamental right to receive aid.

9. The matter was later appealed before a Division Bench. Meanwhile, the earlier batch of cases, in which orders were passed by the Division Bench on 6.12.1990, was also appealed to the Supreme Court by the 1st respondent State in Civil Appeal No.5381 of 1990. The Supreme Court set aside the Division Bench order and remanded all cases, directing the High Court to reconsider the issues in light of the landmark judgment in *TMA Pai Foundation & Ors. v. State of Karnataka (2002) 8 SCC 481*.

10. In the remand order, the Supreme Court observed as follows:

“ Status quo shall continue unless the High Court so decides to modify the same by an appropriate application made to it by any of the parties. The parties are at liberty to file fresh pleadings, if any, within the period fixed by the High Courts. It is made clear that all statutory enactments, orders,



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schemes, regulations will have to be brought in conformity with the decision of the Constitution Bench of this court in T.M.A. Pai Foundation and others Vs. State of Karnataka and Others (supra) case decided on 31.10.2002. As and when any problem arises the same can be dealt with an appropriate forum in an appropriate proceeding.”

11. On such remand, the matters were posted before the Division Bench which included the writ petition from the petitioners in W.P. No. 8799/88. The Division Bench disposed of the batch of cases on 24.3.2008, in a ruling titled *G. Sahadevan Nair vs. Government of Tamil Nadu*, reported in 2008 (4) MLJ 289. In paragraph 29 of the order, the Division Bench issued general directions for considering grant-in-aid applications based on eligibility criteria, but without guaranteeing grant approvals:

“ For the aforesaid reasons , we allow the various writ petitions by giving the following directions:-

(i) The state of Tamil Nadu and the other authorities concerned shall consider the application of each of the Institution for grant-in-aid within a period of 16 weeks without being influenced by the fact that such institutions had been established without obtaining any prior permission and also by the fact that such institutions had given letter in writing indicating that after obtaining recognition they will not claim any grant-in-aid. However, while considering such



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application, the relevant facts such as the existence of necessary infrastructure, teacher-student ratio and the eligibility of the concerned teacher to hold the post should be considered.

(ii) If it is found that any particular institution is entitled to receive any aid, decision should be taken with regard to eligibility within a period of four months and should be communicated to the concerned institution.

(iii) If any institution is found eligible to receive such aid, necessary payment shall be made within a further period of four months from the date of such sanction.

(iv) The continued right of any institution to receive any aid is to be considered keeping in view the relevant G.O., applicable from time to time.

(v) Similarly, in respect of minority institutions, which were receiving aid in respect of some of the posts and were seeking for approval and payment of aid for any additional post, such question is required to be considered within a period of four months by keeping in view the teacher-pupil ratio applicable during any particular period.

(vi) If, on the other hand, any school or any post is found ineligible for sanction of grant, such decision should be communicated to the concerned institution by giving brief reasons within a period of three weeks from the date of order of refusal".

[Emphasis added]



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12. In the meantime, by way of an amendment, the Tamil Nadu Legislature introduced Section 14A to the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973, which froze all new grants from the academic year 1991-92 onward. Section 14 A reads as follows:

“14 A. Grant not payable to new private schools and new class and course of instruction.- Notwithstanding anything contained in this Act or in any other law for the time being in force or in any judgment, decree or order of any court or other authority, no grant shall be paid to,-

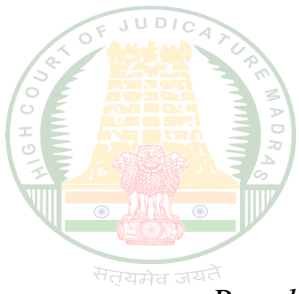
(a)any private school established and any class or course instruction opened in such private school, on or after the date of commencement of the academic year 1991-1992;

(b)any private school in existence on the date of commencement of the academic year 1991-1992 to which no grant has been paid by the Government immediately before the date of such commencement;

(c)any class or course of instruction in a private school in existence on the date of commencement of the academic year 1991-1992 to which no grant has been paid by the government immediately before the date of such commencement; and

(d)any class or course of instruction opened on or after the date of commencement of the academic year 1991-1992 in a private school in existence on the date of such commencement.

Explanation.- For the purpose of this section, private school includes a minority school.]”



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13. This provision was upheld by a Division Bench in *Maria Grace Rural Middle School v. Government of Tamil Nadu* (2007 (2) MLJ 497), where the Court ruled that no educational institution has an inherent right to receive financial aid, stating as follows:

“we hold that the impugned provision, viz...,section 14-A of the Tamil Nadu Private Schools(Regulation) Act does not violate any of the provisions of the Constitution and the same is constitutionally valid. Grant-In-Aid is neither a fundamental right, nor a statutory right and it depends upon the economic capacity of the State. There is no allegation or dispute as to the fact that the Government is providing free education to the children below 14 years. The particulars furnished show that no Government School or Aided School is denied the right of imparting free education to the children. The State Government, taking note of various aspects including the fact that it has achieved Gross Access Rate in the year 2003-2004 itself in fulfilling the constitutional mandate of providing free education to all children and that it is not in need of any more Private Schools in its efforts to achieve the goal of providing free education, has taken a policy decision not to grant aid to private schools established on or after the academic year 1991-92. Inasmuch as the policy decisions are exclusively within the executive domain and in the light of the facts and figures furnished in the Annexures which we have referred to in the earlier paragraphs, we are satisfied that there is no merit in the claim made by the petitioners. Consequently, the writ appeals as well as writ petitions filed by the Educational Institutions and others fail and they are, accordingly, dismissed.”



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14. Further, in 2018, the Tamil Nadu government replaced the 1973 Act with the Tamil Nadu Private Schools (Regulation) Act, 2018, in which Section 37 reaffirmed the grant-in-aid freeze. Section 37 of this new Act is similar to Section 14A of the repealed 1973 Act, which reads as follows:

“ 37. Notwithstanding anything contained in this Act or in any other law for the time being in force or any judgment, decree or order of any court or other authority, no grant shall be payable to ,-

(a) any private school established and any class, or course or medium of instruction opened in such private school, on or after the date of commencement of the academic year 1991-1992;

(b) Any private school inexistence on the date of commencement of the academic on the date of commencement of the academic year 1991-1992 to which no grant has been paid by the Government immediately before the date of such commencement; and

(c) Any class or course or medium of instruction opened on or after the date of commencement of the academic year 1991-1992 in a private school in existence on the date of such commencement.

Explanation: *-For the purposes of this section, private school includes a minority school.*

15. The Chief Education Officer for Sivagangai District, (not before this Court) through his proceedings (Na.Ka. No. 5269/A3/2018) dated 31.12.2018 assessed the staff strength for 2018-2019 and held only those



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posts are eligible for staff grant and found that the second petitioner school had no approved post for a watchman in respect of non-teaching staff. The petitioners, despite being notified, chose not to contest this finding likely because the present writ petition is already pending before this Court.

16. Notably, after the Division Bench's directions dated 24.3.2008, no specific relief was granted to the 1st Petitioner regarding the watchman post. The directions issued were general instructions to the government. However, while the matter was still pending before the Supreme Court, the 1st Petitioner filed *W.P. No. 9007 of 2002*, seeking for a direction to sanction one post of watchman for the second petitioner school as well as a direction is grant a time scale of pay in that post from November 1987. This Court, by order dated 15.03.2002, issued the following directions:

“ However, the learned counsel for the petitioner states that the strength of the school really warrants the sanction of the post of Watchman and that in this case, several representations have been forwarded on 15.07.1992, 02.09.1992, 04.11.1993, 09.06.1994 and 08.11.1996.

It is up to the authorities to consider and pass appropriate orders on the said representations and there is no justification for unnecessary delay in the matter. The representation as stated above have been made nearly about ten years back, without any result.



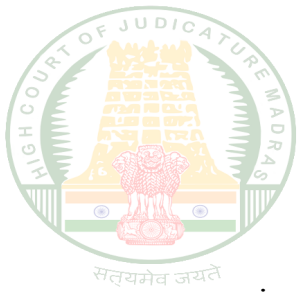
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With the result, there will be a direction to the petitioner to forward a proper representation to the respondent 1 and 2 within a period of two weeks from today and on receipt of such representation, the respondents 1 and 2 are directed to dispose of the same on merits and in accordance with law within a period of four weeks thereafter. The writ petition is disposed of accordingly.”

17. As can be seen from the above order, the Government never sanctioned the watchman post at the 2nd Petitioner School nor approved the appointment of the 1st Petitioner in the post of watchman. The Government Order dated 24.07.1989 was issued solely due to an interim court direction and under the threat of contempt proceedings. The temporary sanction of the post was explicitly contingent on the outcome of *W.P. No. 8799/88*. The Division Bench's rulings dated 6.12.1990 and 24.3.2008 did not specifically address the watchman position, nor did they grant the relief sought. The instructions given were general in nature. In fact, apprehending the result of that writ petition, the Petitioner chose to file a second writ petition. On 15.3.2002, a learned judge merely directed that the representation be considered on merits and in accordance with the law.

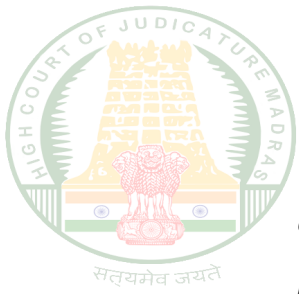


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18. Following the court's directive, both petitioners began submitting various representations to the Respondents, urging the approval of the post and the grant of a time-scale pay. In all their representations, the Petitioners only requested the continuation of the post pursuant to the court's orders. After persistently making representations for 15 years, the Petitioners filed the current writ petition, seeking the regularization of the first petitioner's service as a watchman and the payment of all associated service benefits, emoluments, and arrears of salary.

19. In the counter-affidavit submitted by the 2nd Respondent, it was stated in paragraphs 5 and 7 as follows:

“ 5. as per the report of the committee constituted in G.O.Ms.No. 495 Education Department dated 29.04.1991, and on the guidelines in G.O.No. 340 Education Department dated 01.04.1992 the Government issued G.O.Ms. No.455 Education (D1) Department dated 08.05.1992 on behalf of the 2nd petitioner school. The question of further continuance of grants for the posts sanction with reference to the interim orders issued in W.P.No.8799 of 1998 was examined carefully by the Government with reference to the directions in the High Court Judgement dated 18.09.1990 in a batch of cases and on the basis of the general orders issued in G.O.Ms. No. 340 and 341 Education dated 01.04.1992, settling the norms to be followed in the matter. Accordingly sanction was accorded to the



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assessment of staff grant from 01.06.1991 for the CSI High School Manamadurai for the following posts only.

1. Headmaster one
2. Tamil Pandit one
3. Junior Assistant one
4. Office Assistant one

In para 3 it was specifically instructed that the other posts mentioned in para 1 for which the government have not approved assessment, of grant from 01.06.1991 their costs will have to be met by the management from its own funds if it wants to continue them. The management was also free to disband them in its own discretion. Hence it is clear that the post of watchman was not allowed and the management made its own arrangement.”

6.

7.the norms fixed for the non teaching staff as per G.O.Ms.No.340 and 341 dated for schools with IX and X One Junior Assistant One Office Assistant or Watchman or Sweeper cum Sanitary Worker. Hence one post of Junior Assistant and one Office Assistant were sanctioned and therefore no other post is available. The fact was already intimated to the petitioner school. The petitioner has been appointed on self finance basis and therefore is not eligible for any assessment of grant.”

20. In the additional counter affidavit submitted by the 3rd respondent, paragraphs 7 and 8 contain the following statements:



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“ 7. The claim of the petitioner was considered and the said G.O.Ms.No. 455 was passed granting Headmaster, Tamil Pandit, Junior Assistant and Office Assistant. This would be evident from paragraph 1 and 2 of the said G.O. It is pertinent to state that the school was granted Tamil Pandit instead of watchman and now the school cannot claim to retain the post of Tamil Pandit and also to claim the post of watchman.

The Honourable Court has considered the said section 14-A in a recent judgment in Rev, Appl (M.D) No 180/2018 and has held the school is not eligible. Therefore the claim of the petitioners from any angle is not justifiable and is totally illegal and directly hit section 14-A”

21. The petitioner’s counsel in support of his contentions also relief upon the following judgments from different learned judges regarding the direction for the department to sanction a position and process salary payments.

1. S. Radhakrishnan Vs. The Govt. of Tamil Nadu & Ors.
(W.P.No. 15007 of 2010 dated 29.4.2022)
2. P.Nedumaran Vs. the Govt. of Tamil Nadu & Ors
(W.P.No. 17592 of 2018 dated 20.3.2023)
3. P.Gnana Vs. The Govt of Tamil Nadu & Ors
(W.P.No. 17593 of 2018 dated 20.3.2023)
4. A.Navaraj Vs. The Govt. of Tamil Nadu & Ors.
(W.P.No. 17594 of 2018 dated 20.3.2023)

22. The Learned AGP appearing for the Respondents submitted that



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very similar directions were issued by the learned judges, despite the amendment to the Act through the introduction of Section 14A, which pertains to the sanction of post and grant of aid. This amendment was challenged by the Government in Writ Appeal No. *W.A (MD) No. 928/2017*, which was dismissed by a Division Bench. In response to this dismissal, the state filed a Review Application, identified as *Review Appln (MD) No. 180 of 2018*. The matter was subsequently heard by a Division Bench led by Justice MM Sundresh (as he then was), and the review was allowed, resulting in a judgment on 25.3.2021.

23. In paragraph No 23 and 24, the Bench held as follows:

“ Having regard to the above-settled position of law, merely on the basis that some similarly placed institutions were already granted grant in -aid illegally or by mistake, as held by the Hon’ble Apex Court, no one can claim equality. Admittedly, in this case, recognition itself was granted on the condition that no grant will be paid. Besides, the validity of Section 14-A is upheld. The said facts were not taken by us into consideration and the learned Single Judge. Merely because in the earlier round of litigation the respondent succeeded in making the petitioners to consider the request for grant-in-aid not withstanding the voluntary undertaking given acknowledging the non-entitlement of grant-in -aid, the rigor of Section 14-A cannot be overlooked. The said provision does



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not facilitate such a benefit. It also takes its sweep, those cases, where orders were obtained from the Court. It is trite that Act can be retrospective. In any case, the respondent does not have the vested right, which is sought to be taken away.

Such view of the matter we are of the view that the judgment, made in the writ appeal by us without considering the scope of Section 14-A of the Act and the condition, on which recognition was granted, is liable to be reviewed. Accordingly, the review petition is ordered and the judgment of the learned Single Judge is hereby set aside.”

24. The Division Bench also referred to the Supreme Court judgment in the case of *State of Odisha vs. Anup Kumar Senapati*, reported in 2019 (19) SCC 626. In that case, the Court determined that grant-in-aid cannot be claimed as a matter of right. They also referred to another judgment of the Supreme Court in *State of Odisha vs. Mamata Mohanty*, reported in 2011 (3) SCC 436 where the Court concluded that even if certain similarly situated individuals received benefits inadvertently or by mistake, such orders do not grant the petitioner any legal right to receive comparable relief.

25. In this context, reference must be made to the judgment of the Supreme Court, *Kolavana Grama Vikas Kendra v. State of Gujarat*,

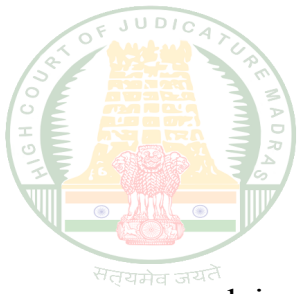


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reported in **2010 (1) SCC 133**, which held that even a minority-run aided educational institution must obtain prior approval before appointing a person to any post. The Court observed as follows:

“ It would be perfectly all right for a minority institution to select the candidates without any interference from the Government. However, the requirement of this prior approval is necessitated because it is for the Government to see as to whether there was actually posts available in the said institution as per the strength of students and secondly; whether the candidates, who were sought to be appointed, were having the requisite qualifications in terms of the rules and regulations of the Education Department. ”

26. It is unusual that the 2nd Petitioner, as the employer of the 1st Petitioner, has been litigating this issue for over three decades, having jointly filed three writ petitions along with an additional one filed individually by the 1st Petitioner. If the 2nd Petitioner school requires a watchman, it is free to appoint one and bear the salary expenses. However, merely being an aided institution does not entitle it to claim grants for posts that have not been sanctioned. The limited sanction previously granted for the watchman post was issued under an interim order of this Court, explicitly contingent on the final outcome of the main writ petition.



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27. The petitioners have not succeeded in their first writ petition to claim any benefits. The facts of this first writ petition, which was included in a batch of cases, were not addressed separately; instead, only general directions were issued by the Division Benches, first in 1990 and then in 2008. It was wrong for the first petitioner to file another writ petition while the matters were still pending before the Supreme Court. In that subsequent writ petition, filed in 2002, the court directed the petitioner to make further representations, which would then be considered by the respondents. Therefore, from the beginning, the 2nd petitioner was aware that even if they employed the 1st petitioner as a Watchman allegedly from 1987, they were not eligible for any official sanction of the post or for grants associated with such positions.

28. The 2nd Petitioner, despite being informed that the school was granted a Tamil Pandit post instead of a Watchman, as per G.O.Ms. No. 455, and as stated by the 3rd Respondent in the counter affidavit a fact that was not denied has suppressed a material fact before this Court.

29. It is important to note that the relationship between an employee and the management in an aided educational institution remains strictly



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between the management and the employee. The government, as the provider of financial aid, does not assume the role of an employer. In this context, reference must be made to the Supreme Court judgment in *Anadi Mukta Sadguru Shree Mukta Jeevanandasswami Suvarna Jaya v. V.R. Rudani*, reported in **1989 (2) SCC 691**, wherein the Court held as follows:

“ We are only concerned with the liability of the management of the college towards the employees. Under the relationship of master and servant, the management is primarily responsible to pay salary and other benefits to the employees. The management cannot say that unless and until the State compensates, it will not make full payment to the staff”

30. The Petitioners have not made out any case for compelling the Government to sanction a Watchman post or provide financial aid for the position. Accordingly, the writ petition is misconceived and stands dismissed, with no order as to costs. However, it is the obligation of the 2nd Petitioner to ensure that if the 1st Petitioner has been employed as a Watchman since 1987, the entire salary and other allowances due to him are duly paid.

18.02.2025

Index : Yes / No
Neutral Citation : Yes / No
Speaking Order : Yes / No
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To

1. The Secretary to Government,
The Government of Tamil Nadu,
Education Department, Fort St. George,
Chennai – 600 009.
2. The Director of School Education,
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DR. A.D.MARIA CLETE, J.

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Pre-Delivery Judgment made in
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