

W.A.(MD)Nos.99, 108 and 119 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.03.2025

PRONOUNCED ON : 28.04.2025

CORAM:

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

**W.A(MD)Nos.99, 108 and 119 of 2025
and
C.M.P.(MD)Nos.660, 697 and 752 of 2025**

1.The Chief Educational Officer,
Virudhunagar District.

2.The District Educational Officer,
Virudhunagar District.

... Appellants in all cases

Vs.

The Secretary,
S.H.N.Esthel Harvey Girls' Higher
Secondary School,
Sattur, Virudhunagar District.

... Respondent in all cases

Prayer in W.A.(MD)No.99 of 2025: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.5677 of 2024, dated 19.03.2024.

Prayer in W.A.(MD)No.108 of 2025: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.5743 of 2024, dated 12.04.2024.



W.A.(MD)Nos.99, 108 and 119 of 2025

Prayer in W.A.(MD)No.119 of 2025: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.5678 of 2024, dated 19.03.2024.

In all cases:

For Appellants :Mr.J.Ashok
Additional Government Pleader
For Respondent :Mr.V.Panneerselvam

COMMON JUDGMENT

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

All the three writ appeals are arising from the common order passed in the three writ petitions and the issue raised is same. Hence the three writ appeals are taken together and a common judgment is passed.

2.(i) The writ appeal in W.A.(MD)No.99 of 2025 is filed by the respondents against the order dated 19.03.2024 passed in W.P.(MD)No.5677 of 2024. The writ petition in W.P.(MD)No.5677 of 2024 was filed for issuance of a Writ of Certiorarified Mandamus, to quash the order, dated 15.02.2022 and the consequential order, dated 23.02.2022 and to direct the respondents to approve the appointment of K.Karuppasami as Junior Assistant with effect from



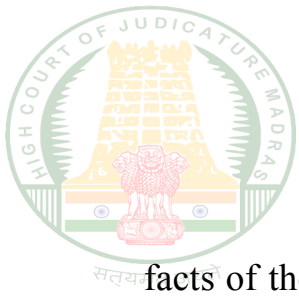
W.A.(MD)Nos.99, 108 and 119 of 2025

01.11.2019 with salary and other benefits.
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2.(ii) The writ appeal in W.A.(MD)No.108 of 2025 is filed by the respondents against the order dated 12.04.2024 passed in W.P.(MD)No.5743 of 2024. The writ petition in W.P.(MD)No.5743 of 2024 was filed for issuance of a Writ of Certiorarified Mandamus, to quash the order, dated 15.02.2022 and the consequential order, dated 22.02.2022 and to direct the respondents to approve the appointment of K.Packiyalakshmi as Office Assistant with effect from 11.12.2019 with salary and other benefits.

2.(iii) The writ appeal in W.A.(MD)No.119 of 2025 is filed by the respondents against the order dated 19.03.2024 passed in W.P.(MD)No.5678 of 2024. The writ petition in W.P.(MD)No.5678 of 2024 was filed for issuance of a Writ of Certiorarified Mandamus, to quash the order, dated 15.02.2022 and the consequential order, dated 23.02.2022 and to direct the respondents to approve the appointment of M.Mercy Kiruba Rani as Lab Assistant with effect from 01.11.2019 with salary and other benefits.

3. The school is the writ petitioner in all the writ petitions. The brief



W.A.(MD)Nos.99, 108 and 119 of 2025

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facts of the case as stated in the writ petitions are that the school was established in the year 1948 to provide education for girl students. Now, 1731 students are studying as per staff fixation order. The school is sanctioned with 6 posts under non-teaching category namely, Junior Assistant, Record Clerk, Lab Assistant, Office Assistant, Waterman-cum-Sweeper and Scavenger. A post of Junior Assistant fell vacant on 01.06.2017 due to voluntary retirement of Tmt.S.Padma. A post of Office Assistant fell vacant on 01.06.2018 due to promotion of Mr.M.Muthumanikandan. A post of Lab Assistant fell vacant on 04.08.2018 due to death of the incumbent Mr.G.Paramasivam.

4.(i) The school contended that though the school is not required to get prior permission to fill up the post under the statute in order to avoid the controversy and complications, the management submitted a proposal and the 1st respondent granted permission on 11.09.2019 after two years. Thereafter, paper publication was issued on 19.09.2019 and a list from employment exchange was also sought for. Then selection process was conducted as per rules and regulations and one K.Karuppasami was selected and appointed as Junior Assistant on 01.11.2019. The management submitted the proposal for approval on 01.11.2019 but the official respondents in the writ petition rejected the approval,



W.A.(MD)Nos.99, 108 and 119 of 2025

WEB COPY

vide order, dated 23.02.2022, by citing various litigations in W.P.No.31575 of 2019, dated 08.11.2019, W.A.(MD)No.76 of 2019, Government letter, dated 04.12.2019 and SLP Diary No.22676 of 2021. Aggrieved over the same, the writ petition in W.P.(MD)No.5677 of 2024 was filed.

4.(ii) Likewise, for the post of Office Assistant which became vacant on 01.06.2018 due to promotion vacancy, the prior permission was sought and the same was granted on 05.09.2019 after lapse of one year, thereafter the said post was filled by granting compassionate appointment on 11.12.2019 to one K.Packiyalakshmi wife of Paramasivam who died while serving as Lab Assistant. The management submitted the proposal for approval on 11.12.2019 but the official respondents in the writ petition rejected the approval, vide order, dated 23.02.2022, by citing various litigations in W.P.No.31575 of 2019, dated 08.11.2019, W.A.(MD)No.76 of 2019, Government letter, dated 04.12.2019 and SLP Diary No.22676 of 2021. Aggrieved over the same, the writ petition in W.P.(MD)No.5743 of 2024 was filed.

4.(iii) The Lab Assistant post became vacant on 04.08.2018 due to the death of the incumbent namely Paramasivam, prior permission was granted on

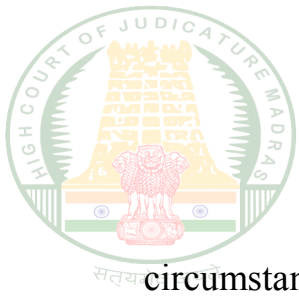


W.A.(MD)Nos.99, 108 and 119 of 2025

WEB COPY

05.09.2019 after lapse of one year. Thereafter, paper publication was issued on 19.09.2019 and a list from employment exchange was also sought for. Then selection process was conducted as per rules and regulations and one M.Mercy Kiruba Rani was appointed as Lab Assistant with effect from 01.11.2019. The management submitted the proposal for approval on 01.11.2019 but the official respondents in the writ petition rejected the approval, vide order, dated 23.02.2022, by citing various litigations in W.P.No.31575 of 2019, dated 08.11.2019, W.A.(MD)No.76 of 2019, Government letter, dated 04.12.2019 and SLP Diary No.22676 of 2021. Aggrieved over the same, the writ petition in W.P.(MD)No.5678 of 2024 was filed.

5. The contention of the writ petitioner is that the said litigations are pertaining to teaching staff in the school and the same has nothing to do with the appointment of non-teaching staff. On the other hand, the Additional Government Pleader submitted that even before the district wise surplus came to be exhausted, the appointment was made. Further G.O.Ms.No.238, dated 13.11.2018, was upheld by the Learned Single Judge. Aggrieved over the same, the school managements and individuals had preferred appeal in W.A.(MD)No.816 of 2023 and had obtained stay and a batch of writ appeals are pending. In such



W.A.(MD)Nos.99, 108 and 119 of 2025

WEB COPY

circumstances, the appointments cannot be approved.

6. After considering the rival submissions, the Writ Court had held that the appellants have granted permission to fill the vacancy. Having granted permission, the respondents cannot deny the approval of appointments. The Writ Court further held that the school is a “stand-alone non-minority school” and it is an admitted fact that there is no surplus in the petitioner school. The existence of surplus is irrelevant as far as stand-alone institutions are concerned and prior permission to fill the posts are not necessary. The order passed in W.A.(MD)No. 76 of 2019 is not applicable to the non-teaching staffs, moreover the SLP filed against the order passed in W.A.(MD)No.76 of 2018 is already dismissed. Therefore, the Writ Court quashed the denial order and the official respondents were directed to grant approval. Aggrieved over the same, the present writ appeals are preferred by the official respondents.

7. The primary contention of the appellants is that the school had appointed the following persons in the non-teaching posts on such dates as stated in the tabulation, but in the meantime the G.O.Ms.No.238, School Education Department, dated 13.11.2018, had come into force, hence the school is not



W.A.(MD)Nos.99, 108 and 119 of 2025

entitled to approval of appointment. The particulars of the appointed persons are
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stated below:

S. No.	Particulars regarding existing vacancy	Particulars regarding appointments
1	Junior Assistant fell vacant on 01.06.2017 due to voluntary retirement of Tmt.S.Padma. Prior permission granted on 11.09.2019	After selection process appointed K.Karuppasami as Junior Assistant on 01.11.2019
2	A post of Office Assistant fell vacant on 01.06.2018 due to promotion of Mr.M. Muthu Manikandan. Prior permission granted on 05.09.2019	Compassionate appointment as Office Assistant on 11.12.2019 to K. Packiyalakshmi wife of Paramasivam who died while serving as Lab Assistant
3	A post of Lab Assistant fell vacant on 04.08.2018 due to death of the incumbent namely Mr.G.Paramasivam. Prior permission granted on 19.09.2019	After selection process appointed M.Mercy Kiruba Rani as Lab Assistant on 01.11.2019

It is seen that the Chief Educational Officer had granted prior permission to fill up the vacancy on 11.09.2019 (Junior Assistant), 05.09.2019 (Office Assistant) and 19.09.2019 (Lab Assistant). Based on the same, the school granted Compassionate Appointment on 11.12.2019 and the school had conducted selection process and appointed other candidates on 01.11.2019. However, before



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granting “prior permission” to fill up the post, the G.O.Ms.No.238, School Education Department, dated 13.11.2018, came into force. In such circumstances, the Chief Educational Officer had committed mistake by granting prior permission to fill the post without considering the impact of G.O.Ms.No.238. It is pertinent to state that the said G.O.Ms.No.238 is the new “non-teaching staffs cadre strength fixation order”. And the school cannot take advantage of such mistake committed by the officials. Therefore, this Court is of the considered opinion the permission to fill up the post dehors G.O.Ms.No.238 is erroneous, hence the school may not be entitled to approval of appointment dehors G.O.Ms.No.238. But if the writ petitioner school is coming within the purview of G.O.Ms.No.238, then the school is entitled to approval. Hence it ought to be scrutinized, “whether the appointments are made within the parameters of G.O.Ms.No.238”, which this Court had analyzed in the following paragraphs.

8. The next issue raised by the school is 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 it is contended by the school that when there is stay for the said G.O.Ms.No.238, the approval cannot be denied



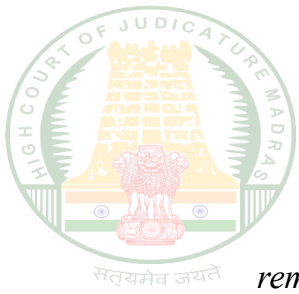
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by citing G.O.Ms.No.238. This Court is of the considered opinion, such contention of the school ought to be rejected. When there is stay neither approval can be granted nor approval can be denied, but the approval ought to be kept in pending or proposal ought to be kept in abeyance. The interim stay in writ petitions or writ appeals will not give a right to claim approval of appointment to the writ petitioner school. The said issue is already 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



W.A.(MD)Nos.99, 108 and 119 of 2025

WEB COPY

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.”

9. This Court fully concur with the aforesaid judgement of the Division Bench. It is a well settled position of law that interim orders are granted to maintain status-quo to protect the interest of both the parties pending litigations. Hence, the contention of the school that some individuals and the school managements had preferred writ appeal and the litigation is pending along with interim stay and they are eligible for approval and approval cannot be denied by citing G.O.Ms.No.230 is totally against law. Hence, the interim stay in writ appeal cannot be the ground to allow the main writ petition that too with a positive direction to grant approval. 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 totally illegal. Further if the writ appeals filed by the individuals and schools are dismissed, then the approval granted to the writ petitioner would become illegal. In such circumstances, the individual would claim equity. In the entire process the State Government would be put to prejudice. Hence such an argument can never be



W.A.(MD)Nos.99, 108 and 119 of 2025

WEB COPY

entertained and accepted. Accordingly this contention is rejected. Therefore, this Court categorically holding that neither the school is entitled to approval nor the government be forced to grant approval if there is interim stay of government orders. Further in this case already the G.O.Ms.No.238 is upheld and the appeal is preferred by the schools and individuals and not by the government. In such circumstances, the Mandamus with positive direction granted by the Writ Court to grant approval of appointment is illegal and totally against the settled principle of law.

10. The next contention of the school that all the appointments are made in the voluntary retirement vacancy, promotion vacancy and death vacancy, therefore the said post is sanctioned post, in such circumstances the department 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 for each academic year. 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



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not be entitled to the said post. If any person is working in the said post without students strength, then the post would be declared as “surplus along with person” and the person ought to be transferred or post on deputation to needy school. 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 academic 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 would be 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 procedure it is evident that there cannot be any “permanent sanctioned post”. Consequently any claim that the appointment is made is “sanctioned post”, cannot straight away be accepted. The said claim ought to be scrutinised based on the staff fixation order for the disputed academic year. Therefore, the claim of the writ petitioner that the appointment is made in sanctioned post is a misnomer and the same cannot be accepted.

11. 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

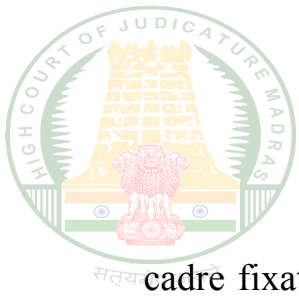


W.A.(MD)Nos.99, 108 and 119 of 2025

सत्य School and Public Health Department dated 23.04.1966, wherein the staff fixation
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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 Clerks 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

12. All these years the government was following the G.O.Ms.No.583 for granting non-teaching posts. Even in the aforesaid G.O. the post of Waterman, Gardener-Cum-Sweeper, Gardener posts are not granted to any schools as early as 1966 itself. The sweeper and scavengers were granted as part time only. Hence, the claim of the writ petitioner school that they were granted waterman-cum-sweeper is incorrect. Further the post of sweeper and scavenger are part time only. Nearly after 52 years the government had taken a policy decision to modify the



W.A.(MD)Nos.99, 108 and 119 of 2025

cadre fixation for non-teaching staffs through G.O.Ms.No.238 School Education
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Department dated 13.11.2018 and the same is detailed below:

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

13. As per the aforesaid G.O. the post of Junior Assistant or Assistant or Record Clerk are considered as single post . Further the Lab Assistant post was granted provided if it was already granted to school prior to the academic year 1991-1992. The other posts like sweepers and scavengers were directed “not to appoint” and such work shall be outsourced. The G.O. also states as under:

- 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.
- 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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W.A.(MD)Nos.99, 108 and 119 of 2025

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).

14. Now the staff fixation order ought to be scrutinized in the light of G.O.Ms.No.238. On perusal of the staff fixation order for the academic year 2019-2020 it is seen that the school is having standards 6 to 10 and also 11th and 12th standards, in which “self-finance” section is also available. The total strength of the students without self-finance section is more than “1001”. Then as per G.O.Ms.No.238 the school is entitled to “Junior Assistant or Record Clerk or Assistant to the **maximum of two**”. As per staff fixation one Record Clerk and one Junior Assistant is already granted and the said Record Clerk and Junior Assistant post are considered as single post in G.O.Ms.No.238. But based on students strength the school is entitled **with maximum of two of either Junior Assistant or Record Clerk or Assistant**.

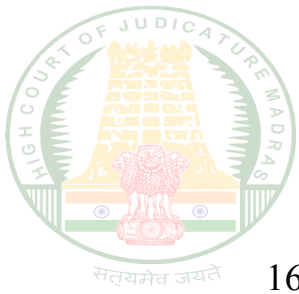
15. The respondent school contended that “prior permission to appoint in the vacant place is not necessary”. This Court is of the considered opinion that



W.A.(MD)Nos.99, 108 and 119 of 2025

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even though there are several orders, where it is held that prior permission is not necessary, this Court is not able to accept, since any new appointment ought to be made based on the staff fixation order for the said academic year. But the earlier orders cited by the respondent school had not dealt with the staff fixation order being the permission order, therefore the earlier orders had not laid down the correct position. In other words, the earlier judgments it has not be considered in the light to staff fixation order, therefore the said judgments cannot be relied on. Therefore, **the staff fixation order for the said academic year which starts from June this year to May next year will be the “permission order” to fill the vacancy.** In the present case, all the appointments were appointed during November and December 2019. Then the staff fixation order for the academic year **June 2019 to May 2020** would be the **“prior permission order”** to fill the said vacancy. And this is applicable to stand-alone school also. Therefore, this Court is of the considered opinion that the Writ Court has erred in holding that the prior permission is not necessary to stand alone school. **Therefore, this Court is categorically holding that staff fixation order passed in every academic year is the prior permission to fill up any vacant post.** If in between any post become vacant, either the school may appoint any person as temporary or may wait until the staff fixation order is issued.



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16. The next contention of the school is that there is no surplus in the said school and also submitted that the challenge in W.A.(MD)No.76 of 2019 is regarding teaching staff, hence the same may not be applicable for non-teaching staff. But it is stated by the appellants that there are few posts of Junior Assistant, Record Clerk and Assistant were declared as surplus in the Revenue District. After hearing the rival submissions this Court is of the considered opinion that the order passed in W.A.(MD)No.76 of 2019 is applicable only to teaching and not for non-teaching staff and the same is rightly pointed out by the school. As far as surplus of non-teaching staff is concerned 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 recruitment.

17. 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 payers 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



W.A.(MD)Nos.99, 108 and 119 of 2025

WEB COPY

new person until the surplus staffs are accommodated in any available vacancy.

The government cannot be put to financial constraints.

18. Therefore, all private aided schools whether it is stand-alone school or corporate management, whether it is minority or non-minority schools, if the school has surplus or if the Revenue District has surplus, then the non-teaching post shall not be filled up until the surplus of non-teaching staff in the Revenue District becomes “Nil”. It is made clear that by such direction the minority status of the school will not be affected, since the minority school are extending their 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 non-teaching staffs as per G.O.Ms.No.238.

19. Based on the aforesaid discussion, the appointment of Junior Assistant ought to be considered. The school is having more than 1001 students, as per G.O.Ms.No.238 the school is entitled to two Junior Assistants post with maximum of two posts alone (Junior Assistant or Record Clerk or Assistant – all the three posts are considered as single post). The staff fixation order 2019-2020 issued in March 2020 has granted two posts which is the maximum as per G.O.Ms.No.238,



W.A.(MD)Nos.99, 108 and 119 of 2025

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The new incumbent K.Karuppasami was appointed on 01.11.2019 (which fell vacant on 01.06.2017) and another post is Record Clerk. Hence, the two posts which is as per G.O.Ms.No.238 and the same is valid and consequently the new appointment of K.Karuppasami is valid. As far as the compassionate appointment of Office Assistant, the school is having the strength of 1001 and above and hence the school is entitled to maximum of two posts of Office Assistant and in one post the said K.Packiyalakshmi is appointed and hence the same is valid. As far as the Lab Assistant is concerned, if the school was sanctioned with the said post prior to 1991-1992, then the school is entitled to approval. Both the school and the appellants have not placed any details or documents whether the said post was granted prior to 1991-1992. Therefore the case is remitted as far as the appointment of Lab Assistant is concerned. The authorities are directed to ascertain whether the said post was granted prior to 1991-1992 to the school, if so the same may be approved. It was brought to the knowledge of this Court that pending these writ appeals, the authorities have granted approval of appointments to all the posts. Except for the Lab Assistant post, the other approval to Junior Assistant and Office Assistant post shall be confirmed and the Lab Assistant post is remitted for verification as stated supra.



W.A.(MD)Nos.99, 108 and 119 of 2025

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20. For the reasons stated supra, the orders, passed by the Writ Court is interfered to the extent stated supra. The W.A.(MD)No.99 of 2025 is dismissed, W.A.(MD)No.108 of 2025 is dismissed and W.A.(MD)No.119 of 2025 is disposed of with the above said direction. No costs. Consequently, connected miscellaneous petitions are closed.

[J.N.B., J.] [S.S.Y., J.]
28.04.2025

Index : Yes / No

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To

- 1.The Chief Educational Officer,
Virudhunagar District.
- 2.The District Educational Officer,
Virudhunagar District.



WEB COPY



W.A.(MD)Nos.99, 108 and 119 of 2025

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28.04.2025