



W.P.(MD)No.79 of 2025

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.04.2025

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.(MD)No.79 of 2025

and

W.M.P.(MD).No.61 of 2025

The Correspondent,
Muslim Higher Secondary School,
Abiramam, Ramanathapuram District.

... Petitioner

Vs.

1.The State of TamilNadu,
Rep. by its Secretary,
Department of School Education,
Fort St. George, Chennai-600 009.

2. The Director of School Education,
College Road, Chennai-600 009.

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

4. The District Educational Officer,
(Secondary Education)
Ramanathapuram,
Ramanathapuram District.

... Respondents



W.P.(MD)No.79 of 2025

WEB COPY

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned orders issued by the fourth respondent DEO in O.Mu.No. 936/B4/2023 dated ---05.2023 and the consequential proceeding in Moo.Mu.No.4975/B4/2024 dated ----11.2024 and quash the same and further direct the third respondent Chief Educational Officer herein to approve forthwith the appointment of S.M.Omar Abdul Basith as Lab Assistant w.e.f., 12.12.2022 in the petitioner's school namely, Muslim Higher Secondary School, Abiramam and disburse the grant-in-aid towards his salary with all attendant benefits from the said date.

For Petitioner : M/s.A.Amala

For Respondents : Mr.M.Siddharthan
Additional Government Pleader

ORDER

Heard, the learned Counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents and carefully examined materials available on record.



W.P.(MD)No.79 of 2025

WEB COP 2. The petitioner school is a recognized Aided Minority Educational Institution and it is a stand alone Institution. The petitioner school was established in the year 1934. Again it was upgraded as Higher Secondary School in the year 1978. The petitioner school had been sanctioned with single post of Lab Assistant way back in the year 1980 vide proceedings in RC.No. 6479/D1/80 dated 11.07.1980. The said post has fell vacant on 01.12.2022, due to the Voluntary Retirement of the then incumbent S.S.Mohammed Iliyas on 30.11.2022. In that vacancy, the school appointed one S.M.Omar Abdul Basith as Lab Assistant, with effect from 12.12.2022 and he continued to work in the school till date.

3. The petitioner school submitted a proposal to the third respondent through the fourth respondent on 10.02.2023 for approval of the appointment of S.M.Omar Abdul Basith as Lab Assistant with effect from 12.12.2022 and to disburse the grant-in-aid towards his salary. The said proposal was rejected by the third respondent vide proceedings in No.936/B4/2023 dated 19.05.2023. The reasons stated for rejection is that there is an instruction from the Commissioner of School Education with regard to the approval of Headmistress



W.P.(MD)No.79 of 2025

and PG Assistant, whereas with regard to other post there would be separate

instruction and the proposal of approval of Lab Assistant cannot be considered.

Thereafter, the school management submitted a detailed representation to the third respondent through the fourth respondent vide letter dated 09.08.2024 and the same was rejected by the third respondent vide proceedings in in Na.Ka.No. 4975/B4/2024 in the month of November 2024, rejected the proposal and refused to approve the appointment stating that there is a need to deploy the surplus staff and with regard to the approval of non-teaching staff their needs an instruction from the Director of School Education. Aggrieved by the said order, the present writ petition has been filed.

4. The learned Counsel for the petitioner would submit that the reason assigned by the third respondent and fourth respondent while rejecting the proposal of the petitioner school, to approve the appointment of the Lab Assistant is untenable and unconstitutional. The learned Counsel for the petitioner further submits that the school being the stand alone Educational Institution is empowered to make appointment in the sanctioned post with eligible candidate. Accordingly, the petitioner school had appointed one S.M.Omar Abdul Basith as Lab Assistant in the regular sanctioned vacancy.



W.P.(MD)No.79 of 2025

The Respondent No.3 ought to have not considered other incumbent had been appointed in the sanctioned regular vacancy arose due to the voluntary retirement of the previous incumbent in the post of Lab Assistant sanctioned in the year 11.07.1980.

5. The learned Counsel for the petitioner further contends that G.O.Ms.No.238 dated 13.11.2018, states that if the school had been sanctioned with the post of Lab Assistant prior to 1991-1992 the school is entitled for the said post and no new post would be sanctioned. The respondent Nos.3 and 4 failed to see that the school had filled up the post of Lab Assistant which had been sanctioned prior to 1991-1992 and more over the post is a single post and there is no concept of surplus in any schools. Without said post of Lab Assistant it is very difficult to maintain the Lab in the Higher Secondary School.

6. On behalf of the respondents a counter affidavit has been filed. Basing on the averments made in the said Counter Affidavit Mr.Siddharthan, the learned Additional Government Pleader would submit that originally there was ban for appointment of non-teaching staff by the State Government later it was lifted and thereafter Government issued G.O.Ms.No.115 and G.O.Ms.No.253 by



W.P.(MD)No.79 of 2025

imposing certain conditions for filling up the post of non-teaching staffs, which

was subject matter of batch of writ petitions before this Court. The said writ petitions were allowed by this Court by common order dated 15.03.2016.

7. The learned Additional Government Pleader further submits that the respondents have take necessary steps to prosecute the W.A.(MD).No.816 of 2023 and batch. The said writ appeal was filed against the order of learned Single Judge orders in W.P.(MD).No.11897 of 2019 dated 08.02.2023. The Hon'ble Division Bench of this Court was pleased to stay the operation of G.O.Ms.No.238, School Education (SE 6(1)) Department, dated 13.11.2018 vide order dated 14.06.2023 and the matters are posted for final hearing.

8. The learned Additional Government Pleader further contends that in many case, aided school based on the prior permission granted by the department without adhering to norms prescribed by the department making appointment through direct recruitment and by instigating the candidate insisting the department to grant approval without deploying surplus non-teaching staffs by placing, in order to avoid the same department have taken necessary steps to prosecute the appeal, where the matter is sub-judice before



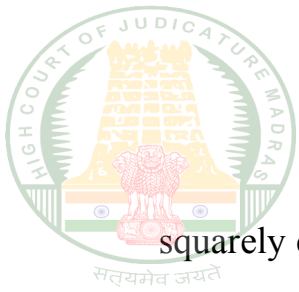
W.P.(MD)No.79 of 2025

this Court. He further submits that once the final order passed in writ appeals,

the respondents will pass appropriate orders on the proposal submitted by the school management.

9. Heard the submissions of the respective counsels and carefully perused the materials available on records.

10. Whether, the petitioner school is entitled for the vacancy of Lab Assistant post, which was sanctioned in the year 1980 or not. There is no dispute, the petitioner school is a Minority Educational Institution and the post of Lab Assistant has been sanctioned way back in the year 1980 vide proceedings in RC.No.6479/D1/80 dated 11.07.1980. The said post is fell vacant on 01.12.2022, due to the Voluntary Retirement of the then incumbent. The school has filled the said post of Lab Assistant with effect from 12.12.2022 and appoint one S.M.Omar Abdul Basith. The petitioner sent a proposal for approval of the said appointment and the same was rejected by the respondents. At this stage, the learned Counsel for the petitioner has drawn attention of this Court to an order in W.P.(MD).No.713 of 2022 dated 10.04.2023 passed by this court and she submitted that the issue involved in the present writ petition is



W.P.(MD)No.79 of 2025

squarably covered by the said order. The relevant portion of the said is extracted

WEB hereunder.

"9. The question that arises for consideration is whether the post of Lab Assistant should be treated to have lapsed following the retirement of the incumbent. That would be the position if Clause 3(ix) of the Government Order is literally applied. It is true that the said Clause reads that the posts of Junior Assistant or Assistant or Record Clerk or Office Assistant or Watchman would lapse if the incumbent retires or otherwise and that the School is not eligible to fill the lapsed post at all. But then Clause 3(iii) would be rendered otiose. I therefore hold that Clause 3(ix) of the Government Order will not include the post of Lab Assistant. In fact, I had taken such a view vide order dated 20.10.2022 in W.P(MD)No.10481 of 2021 (The Secretary Vs The State of Tamil nadu & Others). G.O(Ms)No.238 School Education (Pa.Ka. 6(1) Department dated 13.11.2018 states that as far as the post of Lab Assistant is concerned those posts will be allowed to be continued if they had been sanctioned at the commencement of the academic year 1991-92 and fresh posts will not be permitted. If the post of Lab Assistant is to lapse following the retirement of the incumbent, then obviously there is no need for Clause 3(iii). These two Clauses will have to be reconciled. The result of such reconciliation leads me to conclude that Clause 3(ix) does not envisage within its scope the post of Lab Assistant. The impugned order proceeds only on the footing that the post has become surplus. In as much as G.O(Ms)No.238 School Education (Pa.Ka.6(1) Department dated 13.11.2018 does not come in



W.P.(MD)No.79 of 2025

the way of approval of the petitioner's appointment, the order impugned in this writ petition is set aside. The respondents 1 to 4 are directed to release the salary grant to the petitioner from the date of her appointment. This exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order."

11. In the order stated supra, the learned single judge of this Court has categorically held that the clause 3(ix) of the Government order will not include the post of Lab Assistant. It is further held that in as much as G.O.Ms.No.238, School Education (Pa.Ka.6(1)) Department dated 13.11.2018 does not come in the way of approval of the petitioner's appointment.

12. Admittedly, in the present case, the post of Lab Assistant was sanctioned on 11.07.1980. As such in our considered view that the order of this Court relied by the learned Counsel for the petitioner is squarely applicable to the issue involved in the present case.

13. For the reasons stated above, this writ petition is allowed with the following directions :



W.P.(MD)No.79 of 2025

WEB COPY i) The impugned order in this writ petition is hereby set aside

ii) There shall be a direction to the third respondent to approve the appointment of one S.M.Omar Abdul Basith as Lab Assistant with effect from 12.12.2022 in the petitioner school.

iii) The third respondent shall disburse the grant-in-aid towards his salary with all attendant benefits from the date of appointment.

iv) The order of approval and disbursing grant-in-aid shall be made within a period of four weeks from the date of receipt of a copy of this order.

There shall be no order as to costs.

Consequently, connected miscellaneous petition is closed.

01.04.2025

NCC:yes/no
Index:yes/no
Internet:yes/no
gvn

10/12



W.P.(MD)No.79 of 2025

WEB COPY

To:

- 1.The Secretary,
Department of School Education,
Fort St. George, Chennai-600 009.
2. The Director of School Education,
College Road, Chennai-600 009.
3. The Chief Educational Officer,
Ramanathapuram,
Ramanathapuram District.
4. The District Educational Officer,
(Secondary Education)
Ramanathapuram,
Ramanathapuram District.



WEB COPY



W.P.(MD)No.79 of 2025

BATTU DEVANAND, J.

gvn

W.P.(MD)No.79 of 2025

01.04.2025