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W.P.No.39802 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.03.2026

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No. 39802 of 2024

&

W.M.P.No. 43116 of 2024

N.Robert Divine

...Petitioner

Vs.

1.The Director of School Education,
DPI Campus, College Road,
Chennai 600 006.

2.The Chief Educational Officer,
Thiruvannamalai
Thiruvannamalai District.

3.The District Educational Officer
Thiruvannamalai
Thiruvannamalai District.

4.The Correspondent,
ALC Higher Secondary School,
Thiruvannamalai District

...Respondents



Prayer: Writ Petition is filed under Section 226 of the Constitution of India for issue of Writ of Certiorarified Mandamus, calling for the records relating to proceedings issued by the 3rd respondent in Pa.Mu.No.1698/A2/2024 dated 21.11.2024 and quash the same and consequently directing the respondents to approve the appointment of the petitioner in the post of B.T.Assistant (English) in the 4th respondent school from the date of appointment on 08.02.2023 with all consequential and attendant benefits including the payment of salary from the date of appointment along with interest.

For Petitioner : Mr. S.Nedunchezhiyan

For Respondents : Mrs. Mythreye Chandru
1 to 3 Special Government Pleader

For Respondent 4: No Appearance.

ORDER

This writ petition is filed for the following relief:

“To call for the records relating to proceedings issued by the 3rd respondent in Pa.Mu.No.1698/A2/2024 dated 21.11.2024 and quash the same and consequently



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directing the respondents to approve the appointment of the petitioner in the post of B.T.Assistant (English) in the 4th respondent school from the date of appointment on 08.02.2023 with all consequential and attendant benefits including the payment of salary from the date of appointment along with interest.”

2.The 4th respondent school is a Religious Minority institution, established by the Corporate Management of Arcot Lutheran Church Dinish Mission Society and it remains to be a Government Aided School governed under the provisions of the Tamil Nadu Recognised Private Schools (Regulations) Act, 1973 and Rules 1974.

3. It is submitted that one Mrs. Lydial, who was working as a B.T.Assistant (Science) in the 4th respondent school had passed away and the said post was converted as B.T.Assistant (English) and in the said post the petitioner was appointed by orders of the 4th respondent dated 30.07.2023. Accordingly, the petitioner joined the service in the post of the B.T.Assistant (English) on 08.02.2023. Thereafter, the 4th



respondent school submitted a proposal on 05.07.2023, to respondents for approval of his appointment, with effect from 08.02.2023.

However, the same was rejected stating that the said post was surplus in corporate management, prior permission is required before appointing the petitioner to the converted post and the petitioner has not cleared TET examination.

4. Challenging the rejection of approval for sanctioned post in the 4th respondent School, the petitioner is before this Court.

5. This Court in a similar case in ***WA.(MD).No.1716 of 2024 dated 26.09.2024***, had observed as follows:

2.The order in the writ petition which is the subject matter of the appeal arose under the following circumstances: The petitioner which is an aided minority institution is under a corporate management. A vacancy arose in one of the schools due to the retirement of one M.G.Mary Isabell who was a B.T.Assistant (English) and the post was upgraded automatically as B.T.Assistant in



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*terms of G.O.Ms.No.79, School Education Department, dated 14.06.2022. In the upgraded vacancy, the corporate management transferred one Sr.Roselet Mary as a B.T.Assistant in English, by its order dated 01.06.2017 and she joined the school on 08.06.2017. When approval was sought for the said appointment that came to be rejected on the ground that there was a surplus teacher in the school from the years 2017-2018 to 2019-2020. This order was passed on 02.07.2020, despite the fact that this Court had as early as on 21.03.2012 by its pronouncement made in S.Rasheetha Banu vs. State of Tamil Nadu, Represented by its Secretary to Government, Chennai and others held that the question of surplus will have to be taken on the date of appointment and not thereafter. **It was also held that if the appointment is to a sanctioned post the fact that it becomes a surplus in view of subsequent reduction in student strength cannot be a ground for rejecting approval.** In fact that the judgment in S.Rasheetha Banu vs. State of Tamil Nadu, Represented by its Secretary to*



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Government, Chennai and others followed the pronouncement of Division Bench of this Court in W.A. (MD)No.703 of 2019. It is not in dispute that the judgment in S.Rasheetha Banu was not appealed against and it has become final. The appointment of Sr.Roselet Mary was on 08.06.2017. Therefore, it is within the period 2016-2017 for the purposes of staff fixation. The fact that at the staff fixation done during the month of August 2017 (2017-18), the student strength came down rendering one post as surplus cannot be a ground for rejecting approval. Therefore the only ground for rejection of approval made out in the order impugned in the writ petition does not survive.

3. Mr.S.P.Maharajan, learned Special Government Pleader would however contend that the modus adopted by corporate management in transferring a teacher and creating vacancy in another school is deplorable. There are several deplorable practices adopted both by the private managements as well as the Education



Department and this Court has no power to control or curb the same. It is for the State Government to step in legislatively in order to curb such deplorable practices.

We have to go by a law declared by this Court

6. In the said Judgement, it is held that if a person is appointed in a sanctioned post, the approval of appointment cannot be rejected and if there is fall in strength and the post become surplus, after granting approval of the post, the said teacher along with post could be transferred / deployed to a needy school.

7. The Division Bench of this Court in the Judgement reported in ***2022 SCC Online Mad 4513 – S.Halen Raja Soundari Vs. District Elementary Educational Officer and others***, has held as follows:

“b) Not qualified in Teacher Eligibility Test (TET): It is a well settled proposition that a qualification in the Teachers Eligibility Test (TET), is not a pre-requirement for appointment of a teacher in a private minority educational institution. Following this proposition, this Court in the



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case of T.Sahayam Vs. The District Educational Officer, Tiruchendur and others, passed in W.P.(MD)No.24902 of 2019, dated 05.07.2022, had placed reliance on other decisions of this Court, upholding this proposition, in the following manner:

“7. Insofar as the reason assigned by the respondent that the proposal cannot be accepted for want of TET qualification is concerned, this reasoning has also been dealt with by this Court in several writ petitions, wherein it was held that the pre-requirement of TET qualification for a teacher in a Minority Institution, is not mandatory.

8. In one such decision of this Court in the case of J.D.Christopher Asir Vs. The Director of School Education, DPI Campus, College Road, Chennai and others in W.P. (MD).No.13935 of 2018, dated 29.06.2018, this proposition was held in the following manner:

“9.The issue of requirement of TET qualification for any teacher employed or appointed in a school run by the



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minority management can no longer be res integra as in a number of cases, the said requirement directed not to be insisted upon. In this regard, as has been pointed out by the learned counsel appearing for the petitioner, the issue has been decided in a judgment of Division Bench of the Principal Seat of this Court in the matter of Secretary to Government, Government of Tamil Nadu, Education Department and others Vs. S.Jeyalakshmi and another reported in (2016) 7 MLJ.

10.In the said judgment, the Hon'ble Division Bench has made it clear that the requirement of TET qualification cannot be insisted upon from the teacher working in minority institutions and in this regard a view expressed by the Division Bench and the law held thereon are extracted hereunder:-

“58.In our opinion, non qualifying in TET by the Teachers already in service should not defeat the object of the Government to provide quality and standard education and therefore, the Government may, in the alternative,



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conduct a refresher course and also some interactive sessions during annual vacation, in order to ensure and enhance the quality of education.

59.Insofar as minority institutions are concerned, the contention of the learned senior counsel appearing for the minority Schools is that when Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 received the assent of the President of India and it is still in force, it cannot be supplanted by an Executive Order, namely, by G.O.Ms.No.181 dated 15.11.2011. Further, the Apex Court has clearly held in Pramati Educational and Cultural Trust V. Union of India (Supra) that RTE Act, 2009 is not applicable to the minority institutions. Therefore, we have no hesitation to hold that the right conferred under Article 30(1) of the Constitution cannot be abrogated. Consequently, G.O.Ms.No.181 dated 15.11.2011, which was issued pursuant to the directions of NCTE, cannot be made applicable to the minority institutions.

60.In the light of the above, we are of the view that



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the Government cannot insist upon the minority institution, both aided or unaided, to abide by any Regulation framed under the provisions of the RTE Act. Therefore, we hold that G.O.Ms.No. 181, School Education (C2) Department dated 15.11.2011 issued by the Government of Tamil Nadu, is not applicable to the minority institutions. Similarly, G.O.Ms.No.76 dated 18.03.2015 issued by the Government of Puducherry, is also not applicable to the minority institutions.”

11.Following the said judgment of the Division Bench, a number of orders have been passed in similar situations, where the teachers appointed in minority institutions / schools sent for approval to the authorities, where the said approval had been rejected on the ground that those teachers did not have the TET qualification.”

Thus, the respondents may not be legally justified in insisting that the petitioner, who is a teacher in Minority Institution, should have passed the TET.”

9.In the light of the aforesaid decisions, rejection of



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the proposals for appointment of the teachers in a minority educational institutions in these writ petitions, wherever applicable, on the ground that TET is a per-requirement for appointment of a teacher cannot be sustained.

Therefore, as on date the minority Schools need not the qualification of passing TET as it is not applicable to minority school. However, it is submitted that the petitioner in the meanwhile has passed the TET examination.

8. In the very same Judgment, the Division Bench of this Court had observed as follows:

“5. Prior Permission: *In a case when the Government refused to grant approval of appointment to the proposal made by the minority institution, a Division Bench of this Court in the case of the **Government of Tamil Nadu, Department of School Education and others Vs. J.Remila**, passed in W.A.(MD)No.1350 of 2017, dated 14.11.2017, had placed reliance on Article 30 of the Constitution of India and held that a recognized minority*



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educational institution has a right to establish and administer their institution and any claim for prior permission from the Government Authorities, for appointment of its teachers, would amount to abridgement / dilution of their constitutional rights. While holding so, the Hon'ble Division Bench had consequently held that no prior permission was required for a minority institution to appoint its own teaching and non-teaching staffs. The relevant portion of the order reads as follows:

“27.....In fact, Rule 6 (2) of the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977, does not stipulate that appointments can be made only after getting prior approval from the concerned authorities. It only says that for the eligibility of grant to a Minority Institution, all appointments made by the Minority institution will have to be approved by the concerned authorities. In the case on hand, the appointment of the First Respondent was made by the Second Respondent Institution and after the appointment, the Second



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Respondent Institution sought for approval from the concerned authorities, which is in agreement with Rule 6 (2). Further, it is not the case of the Appellants that they have stopped giving grant to the Second Respondent Institution due to the breach of Rule 6 (2) of the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977. Therefore, the submission of the Learned Special Government Pleader that the Second Respondent Institution has not followed Rule 6 (2) of the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977, cannot be accepted by this Court.”

6.The aforesaid decision of the Hon'ble Division Bench came to be followed in various other decisions including the case of Immaculate Arputha Mary Usha Vs. The Government of Tamil Nadu, represented by the Secretary, Education Department and others passed in W.P.No.16977 of 2018, dated 08.02.2022.

7.Thus, a prior permission of the Governmental Authorities for appointment of a teacher in a minority



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educational institutions is not required and therefore, the reasons assigned in this regard for rejection of the proposals for appointment of teachers in these writ petitions, wherever applicable, cannot be sustained.

.....“b) for the purpose of fixing the staff strength of a school, school shall be the unit and not the Educational agency / joint management / corporate management.”

14.Thus, for determining whether there was in existence any surplus teachers in a school, the school alone should be taken as a separate unit and not the schools run by the Corporate Management or the schools in the District as such. Thus, the reasons assigned in these writ petitions, wherever applicable, that approval cannot be granted till redeployment of the surplus teachers in the corporate management, cannot be sustained.

.....f) Minority school has a right to convert a



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sanctioned post: *In a batch of cases in The Director of School Education and others Vs. S.Vanith and others passed in W.A.(MD)Nos.828 of 2014, etc., dated 22.04.2016, an Hon'ble Division Bench of this Court had taken a view that minority institution has a right to convert a sanctioned post, which cannot be questioned by the authority while considering the proposal for approval of such appointment. Relevant portion of the order reads as follows:*

“12.Contention by the appellants that the returned proposals were not challenged by the management and hence it has to be treated as accepted and hence the teachers have no right to question the same cannot be accepted. It has to be seen that ultimately, it is the teachers who are affected. Therefore, even if the management has not taken up the cause, the aggrieved teacher has every reason to question the returned proposals. The educational authorities ought to have considered that the very object of the the Tamil Nadu Recognised Private Schools



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(Regulation) Act, 1973 and the Rules made thereunder are to protect the interests of the teachers and students. Therefore, right of the teacher cannot be said to be extinguished. Power of the educational authorities to issue directions to fill-up the posts on conversion cannot be questioned. At the same time, the schools should be given latitude to fill-up the required posts. If Maths and other subject teachers are already working in a school, the management should have the right to fill up the posts with other subjects, if there is a need for filling up the posts with the required subjects.”

18.Likewise, in the case of Correspondent, Amali Girls Higher Secondary School, Tirunelveli District Vs. The State of Tamil Nadu, Department of School Education and others passed in W.P.(MD)No.14584 of 2020, dated 29.06.2022, a similar view was taken in the following manner:

“3. Insofar as the conversion of the sanctioned post



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is concerned, this Court, in the case of *The Corporate Manager, CSI Corporate Schools Vs. The State of Tamil Nadu, Rep.by its Secretary, Department of School Education reported in 2006 (5) CTC 504*, has held that there was no impediment for the Management to fill up the post by appointing a Teacher in the relevant subjects, when no such qualified Teachers are available. The relevant portion of the order reads as follows:

“11. As rightly argued by the learned counsel for the petitioner, hitherto the concerned managements sent proposal for the conversion of posts and the second respondent used to grant permission to convert the post from one subject to the other needy subject. Learned counsel also submitted that by proceeding *Mu.Mu.No.137700/W6/88 dated 8.2.1989*, the second respondent at the request of the Management, granted permission to the *St.Francis Higher Secondary School, Vavarai, Kanyakumari District*, to convert the post of the *PG Assistant (Geography) into PG Assistant (Commerce)*.



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Similarly, by proceeding Thi.Mu.No. 89903/W6/98 dated 16.3.1999, at the request made by the management of the St.Mary Higher Secondary School, Colachal, the second respondent granted permission to convert the post of PG Assistant (Zoology) into PG Assistant (Commerce). From the above proceedings it is clear that the need of the particular subject teacher in a School will be ascertained by the concerned management and if any conversion of post is required, the concerned management will submit a proposal based on the workload and the second respondent after verifying the same, used to grant permission. But, by the impugned circular, the second respondent has directed the management to fill up the vacant posts by subject roaster without ascertaining the real need of the school with regard to the subject teacher. Hence the impugned circular is unreasonable and based on no material. It may be true, for a new school, when posts are sanctioned, the second respondent is justified in giving a subject roaster to fill up the posts, but cannot insist the Schools, where



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teachers are already working in different subjects.

12. The Director of School Education on his own has issued circular to fill up the post of Maths, English and Science in the vacancies arising from 1.6.2003. It is also stated in the said circular that for the subject of Scientific Tamil only Science teacher is competent to handle the classes, which is a new subject introduced. It is not in dispute that all the post in a school having standards 6 to 8 are earmarked as Maths, English and Science respectively. It is stated in the impugned circular that the retirement/death/resignation vacancies arising from 1.6.2003 shall be filled up by following the subject roster. The said circular do not consider the availability of qualified B.A. and B.Ed passed Secondary grade Teacher working in the school for handling English, Maths and Science Subjects. If really there are qualified teachers available to handle English or Maths or Science subjects in the school, it is definitely open to the management to fill up the post by appointing a teacher in the relevant subjects,



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where there are no qualified or sufficient teachers available. Hence it is clear that the second respondent issued the circular without application of mind and without considering the relevant facts such as availability of teachers in the subjects of English, Maths and Science in a particular school.

13. The impugned order is also in violation of the Tamil Nadu Recognised Private Schools (Regulation) Act and Rules, wherein it is not stipulated anywhere that the particular school should follow the subject roaster. Even G.O.Ms.NO.125 dated 12.11.2003, which is governing the appointment of Middle Grade Graduate Teachers in standards 6 to 8, nowhere states that subject-wise roaster should be followed. In the absence of anything contained in the said Government Order, the second respondent has no jurisdiction to issue the impugned circular and if at all subject roaster is to be followed by the management, it is the government who is competent to issue the subject roaster in accordance with Section 19 of the Tamil Nadu



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Recognised Private Schools (Regulation) Act, 1973.”

4. Thus, when there was no illegality or any other impediment for the petitioner to seek for conversion and approval of the appointment of the Teacher to the post of B.T.Assistant (English) in the sanctioned vacancy of B.T.Assistant (Social Science), the respondents were not justified in rejecting the proposal.”

19.In the light of the aforesaid decisions, a minority school would be entitled to appoint a teacher by converting a sanctioned post and thus, the reasons for rejection in this regard in the present writ petitions, wherever applicable, are liable to be set aside

9. The above judgements squarely applies to the facts of the instant case and accordingly the impugned order dated 21.11.2024 is quashed and the respondents are directed to approve the appointment of the petitioner in the post of B.T.Assistant (English) in the 4th respondent school from the date of his appointment i.e., on 08.02.2023 with payment of salary and other service and monetary benefits, within a

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period of 3 months from the date of receipt of a copy of this order.

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10. The learned Special Government Pleader on instructions would submit that after approval of the appointment of the petitioner, he should cooperate being accommodated in any school. The learned counsel for the petitioner would submit that the petitioner has no objection for the same after approval is granted.

11. In the result, this writ petition is allowed. Consequently, the connected miscellaneous petition is closed. No costs.

12.03.2026

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To

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1.The Director of School Education,
DPI Campus, College Road,
Chennai 600 006.

2.The Chief Educational Officer,
Thiruvannamalai
Thiruvannamalai District.

3.The District Educational Officer
Thiruvannamalai
Thiruvannamalai District.

4.The Correspondent,
ALC Higher Secondary School,
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