



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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**RESERVED ON : 10.11.2022**

**PRONOUNCED ON : 06.06.2023**

**CORAM**

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN  
AND  
THE HONOURABLE MRS.JUSTICE R.THARANI**

**REV.APLC(MD)No.136 of 2022 in  
W.A.(MD)No.1115 of 2019 and  
CMP(MD)No.9637 of 2022**

1. The State of Tamil Nadu,  
Rep. by its Secretary,  
Department of School Education,  
Fort St. George, Chennai – 600 009.
2. The Director of School Education,  
College Road, Chennai – 6.
3. The Chief Educational Officer,  
Tuticorin, Tuticorin District.
4. The District Educational Officer,  
Tuticorin, Tuticorin District. ... Review Petitioners / Appellants

**Vs.**

1. I.Jesu Praba,  
B.T.Assistant (Tamil),  
St.Joseph's Girls Higher Secondary School,  
Sathankulam – 628 704,  
Tuticorin District.



2. The Correspondent,  
St.Joseph's Girls Higher Secondary School,  
Sathankulam – 628 704,  
Tuticorin District.

... Respondents

**Prayer:** Review application is filed under Order 47 Rule 1 and 2 of CPC r/w. Section 114 of CPC., to review the order passed in W.A. (MD)No.1115 of 2019 dated 12.11.2019.

For Petitioners : Mr.S.Shaji Bino,  
Special Government Pleader.

For Respondents : Ms.A.Amala

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## J U D G M E N T

Heard the learned counsel on either side.

2. One Jesu Praba filed W.P.(MD)No.3601 of 2019 seeking approval of her appointment with effect from 09.06.2014 and for consequential disbursement of grant-in-aid towards salary and other attendant benefits.



3. St.Joseph's Girls Higher Secondary School, Sathankulam,

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comes under the corporate management of RC diocese of Tuticorin. It is an aided institution. Following the retirement of one M.Manimehalai on 21.06.2013, one post of Secondary Grade Teacher fell vacant in the said school. The management appointed Jesu Praba as B.T. Assistant on 09.06.2014. The school management submitted proposal to the District Education Officer, Tuticorin, seeking approval of her appointment. The school management gave an undertaking that no salary will be claimed until the conversion of the post of secondary grade teacher as B.T.Assistant (Tamil). Approval was given on 22.12.2017. The appointee was paid salary arrears with effect from the said date. Contending that her appointment must be recognized with effect from 09.06.2014, W.P. (MD)No.3601 of 2019 came to be filed.

4. Vide order dated 06.03.2019, the writ petition was allowed. Questioning the same, the State filed W.A.(MD)No.1115 of 2019. The Hon'ble Division Bench dismissed the appeal vide Order dated 12.11.2019. Seeking review of the same, the present review application has been filed.



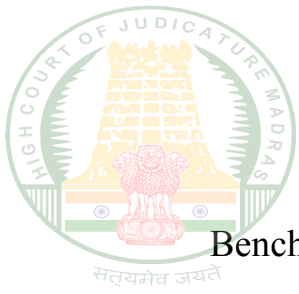
5. The learned Special Government Pleader reiterated all the contentions set out in the memorandum of grounds and called upon this Court to review the order dated 12.11.2019 dismissing the writ appeal and called upon this Court to dismiss the writ petition itself.

6. The learned counsel appearing for the first respondent filed a typed set of papers enclosing several earlier orders passed by this Court.

7. Per contra, the learned counsel appearing for the appointee contended that the position is too well settled and that the order under review does not suffer from an error on the face of record and hence the review application deserves summary dismissal.

8. We carefully considered the rival contentions and went through the materials on record.

9. We are satisfied that when once the competent authority had permitted conversion of the post of Secondary Grade teacher to that of B.T.Assistant (Tamil), it would relate back to the date of the candidate's appointment. The learned Single Judge as well as the Hon'ble Division



Bench had rightly upheld the contention of the learned counsel appearing for the appointee. The order under review does not call for interference.

10. However, we will not be justified in summarily dismissing this review application on that ground. The primary argument of the learned counsel appearing for the appointee is that the managements of minority schools have the fundamental right under Article 30 of the Constitution of India to make appointments without getting prior permission from the department. Her contention is that though the State is the pay master, the principle “ he who pays the piper calls the tune ” will not apply. The minority schools have so far been successful in exempting themselves from the purview of the Right of Children to Free and Compulsory Education Act 2009. Their teachers need not be TET-qualified. The requirement that appointments have to be made as per communal roster to achieve social justice does not apply to minority institutions. Though grant-in-aid comes out of public exchequer, appointments are often made as per the seniority list maintained by the respective dioceses. Petitions have been filed by aggrieved individuals contending that their local church has breached the seniority principle. It is a fact that the dioceses have been maintaining registers akin to the district employment



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exchanges. In other words, the managements need not invite eligible and meritorious candidates from the open market. Even a cursory survey would reveal that these appointees are invariably from the same religion or even denomination. Of course, Article 30 of the Constitution of India will be projected as a shield. However, certain developments have recently taken place. The department is faced with the issue of surplus teachers and their deployment. Corporate managements make appointments if a vacancy arises in a sanctioned post in one school, even if they have surplus teachers in the other schools. This issue is presently pending before the Hon'ble Supreme Court and interim orders have been granted. We, therefore, hold that the managements can fill up vacancies in teaching posts only after getting prior permission from the department. At the same time, we are conscious that the department often keep such proposals pending for an unreasonably long period. Since the Government itself is a party to this petition, we direct the department to pass order on any proposal that may be submitted by the managements within a period of ten weeks from the date of receipt of the proposals. Speaking order should be passed by the competent authority.



11. With this clarification that in future, vacancies in teaching posts can be filled up by managements only after getting prior permission from the department, this review application is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

**(G.R.SWAMINATHAN,J.)**

**(R.THARANI,J.)**

**06.06.2023**

NCS : Yes / No

Index : Yes / No

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