

W.A(MD).No.1158 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 03.09.2025

PRONOUNCED ON : 10.09.2025

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.A(MD).No.1158 of 2020
and
CMP(MD).No.6326 of 2020

1.The Secretary to Government
Education Department
State of Tamil Nadu
St.George Fort, Chennai -9

2.The Director of School Education
College Road, Chennai – 6

3.The Chief Education Officer
Tirunelveli District, Tirunelveli

4.The District Educational Officer
Cheranmahadevi, Tirunelveli

...Appellants/Respondents 1 to 4

Vs

1.J.Augustin

2.The Correspondent
West Tirunelveli Higher Secondary School
Nallur, Tirunelveli District

....Respondent/5th Respondent



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Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 22.10.2019 passed in WP(MD).No.21495 of 2019.

For Appellants : Mr.P.T.Thiraviyam
Government Advocate

For Respondents : Mr.Suresh Manickam
For Mr.S.Chellapandian for R1

: Mr.D.Deepak Arasu for R2

J U D G M E N T

(Made by **R.VIJAYAKUMAR,J.**)

The present writ appeal has been filed by the Education Department challenging the order passed by the writ Court in WP(MD).No.21495 of 2019 dated 22.10.2019.

2.The first respondent herein was appointed as a Waterman in the second respondent School on 01.20.2019 in the vacancy of one Jeyasingh who had attained superannuation on 31.01.2019. The second respondent School submitted a proposal to the authority on 28.03.2019 seeking approval for his appointment and for disbursement of grant-in-aid. The proposal was returned by the authorities by an order dated 15.05.2019 stating that as per G.O.Ms.No.238 School Education (Pa.Ka6(1) Department dated 13.11.2018, the post of Waterman has been abolished. The said order was put to challenge in the writ petition.



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3.The writ Court has proceeded to allow the writ petition on the ground that the above said Government Order has been challenged and an order of status quo has been granted in WP(MD).No.11897 of 2019 and an order of interim stay has been granted in WP(MD).No.20505 of 2019. The writ Court further pointed out that, so far the final order has not been passed in the writ petition.

4.Based on the above said observations, the writ Court had directed the authorities to approve the appointment of the first respondent herein subject to the result of the writ petition in WP(MD).No.20505 of 2019 wherein the Government Order is under challenge.

5.Challenging the above said order, the present writ appeal has been filed by the Educational Authority.

6.The learned Government Advocate appearing for the appellants submitted that WP(MD).No.11897 of 2019 was dismissed by the writ Court on 08.02.2023 upholding the validity of G.O.Ms.No.238 School Education (Pa.Ka6(1) Department dated 13.11.2018. The said order was challenged in WA(MD).No.816 of 2023 wherein an order of interim stay of operation of G.O.Ms.No.238 School Education (Pa.Ka.6(1) Department dated 13.11.2018



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has been granted taking into consideration that Sweepers and Scavengers are required in Schools with huge strength.

7.The learned Government Advocate also relied upon a judgment in ***WA(MD).No.201 of 2025 (The Secretary to Government, Education Department, Chennai and others Vs.Subbulakshmi and another)*** dated 19.03.2025 wherein the appeal filed by the Education Department challenging the writ Court order directing to grant approval to Record Clerk was set aside by a Co-ordinate Bench relying upon G.O.Ms.No.238, dated 13.11.2018.

8.The Government Advocate had further submitted that merely because there is an order of interim stay of operation of G.O.Ms.No.238 School Education (Pa.Ka. 6(1) Department dated 13.11.2018, the appointment of the first respondent herein cannot be made in violation of the said Government Order. He had further contended that the first respondent has been appointed as Waterman after issuance of G.O.Ms.238 and therefore, the appointment is clearly illegal under the said Government Order. Hence, the management cannot take advantage of the interim stay granted by the Division Bench in the year 2023 in order to get an approval for the appointment made in the year 2018.

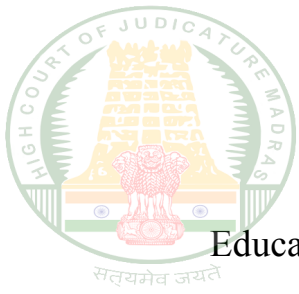


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9.Per contra, the learned counsel appearing for the respondents submitted that the first respondent was appointed in a post which fell vacant due to retirement of one Jeyasingh. Therefore, the appointment having been made to an sanctioned post on a retirement vacancy, should have been approved by the authorities. The post sanctioned under the statute cannot be taken away by way of a Government Order. He relied upon the interim order passed by this Court in WA(MD).No.816 of 2023 on 14.06.2026 wherein the operation of G.O.Ms.No.238 School Education (Pa.Ka. 6(1) Department dated 13.11.2018 has been stayed. In such circumstances, there is no legal impediment whatsoever for approving his appointment. Hence, he prayed for sustaining the order passed by the writ Court.

10.Heard both sides and perused the material records.

11.The Government has passed G.O.Ms.No.64 School Education (Pa.Ka.6(1) Department, dated 03.04.2018 instructing the Director of School Education to send proposal for abolishing the posts of Librarian, Library Assistant, Gardener and Waterman once the incumbents retired from the said posts. Pursuant to the said Government Order, the Director of School Education has sent his proposal to the Government on 19.04.2018. Based upon the said proposal, the Government has issued G.O.Ms.No.238 School



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Education (Pa.Ka. 6(1) Department dated 13.11.2018 abolishing the post of Librarian, Clerk, Waterman, Gardener/Cleaner and Gardener. In the said G.O, it was clearly indicated that as and when a vacancy arises in these posts due to the death, retirement or promotion of the incumbents, those posts would automatically get lapsed. Further the posts could not be revived. The first respondent herein has been issued with an appointment order as Waterman on 01.02.2019 which is three months after G.O.Ms.No.238. Therefore, when the appointment of the first respondent was made, the post had already been abolished.

12.It is contended on the side of the first respondent that the operation of G.O.Ms.No.238 has already been stayed by an interim order of this Court dated 14.06.2023 in WA(MD).No.816 of 2023. A perusal of the said order reveals that the stay order is restricted to Sweepers and Scavengers. That apart, a Co-ordinate Bench of this Court in WA(MD).No.201 of 2025 dated 19.03.2025 has allowed the writ appeal filed by the Education Department and has set aside the direction given by the writ Court to approve the appointment of a Record Clerk. The Division Bench has passed the said order relying upon G.O.Ms.No.238 School Education (Pa.Ka. 6(1) Department dated 13.11.2018.



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13.A Co-ordinate Bench of this Court in WA(MD).No.703 of 2020

batch case dated 15.09.2020 has held as follows:

“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 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.”

14.The interim order granted by the Court is only to protect the interest of the parties to the proceedings pending disposal of the writ petition. Had the first respondent been appointed prior to G.O.Ms.238, he could have taken advantage of the said interim order granted by the Division Bench in



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WA(MD).No.816 of 2023. The right to get an appointment/approval should be traceable to a statute or a Government Order. It cannot be traced through an interim order passed by the Court.

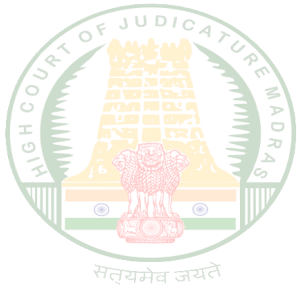
15.In view of the above said deliberations, the order of the Writ Court is set aside and the Writ Appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

(C.V.K.J.,)

(R.V.J.,)

10.09.2025.

Index :Yes/No
Internet :Yes/No
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AND
R.VIJAYAKUMAR,J.**

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Pre-delivery Judgment made in
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