



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.11.2016

CORAM:

THE HONOURABLE DR.JUSTICE S.VIMALA

W.P(MD)Nos.22677 to 22681 of 2016

& W.M.P(MD)Nos.16232 to 16236 of 2016

WEB COPY

The Correspondent,
Sacred Heart High School,
Pacode 629 168,
Kanyakumari District

: Petitioner in W.P.No.22677 / 2016

The Correspondent,
St. Lawrence Higher Secondary School,
Madathattuvilai, Villukurai,
Kanyakumari District 629 180

: Petitioner in W.P.No.22678 / 2016

The Correspondent,
St. Francis Higher Secondary School,
Vavarai, S.T.Mankad Post,
Kanyakumari District 629 172

: Petitioner in W.P.No.22679 / 2016

The Correspondent,
St. Joseph's High School,
Siluvaipuram, Kollamcode Post,
Kanyakumari District 629 160

: Petitioner in W.P.No.22680 / 2016

The Correspondent,
St. Peter's RC Higher Secondary School,
Chekkal, Thirparappu Post,
Kanyakumari District 629 161

: Petitioner in W.P.No.22681 / 2016

Vs.

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

: R-1 in all W.Ps.

2.The Chief Educational Officer,
Nagercoil, Kanyakumari District

: R-2 in all W.Ps.

3.The District Educational Officer,
Kuzhithurai, Kanyakumari District

: R-3 in W.P.No.22677 /
2016/22679 & 22680/16

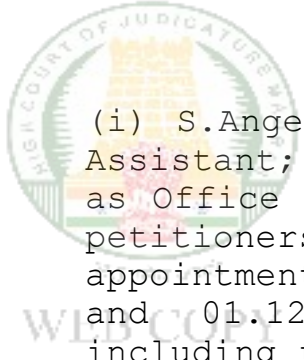
4.The District Educational Officer,
Thuckalay, Kanyakumari District

: R-3 in W.P.Nos.22678 &
22681 / 2016

PRAYER IN W.P. (MD) Nos.22677/2016, 22678/2016, 22679/2016, 22680/2016 and 22681/2016: Writ Petitions filed under Article 226

<https://hcservices.hccourts.gov.in/hcservices>

of the Government of India praying to issue a Writ of Mandamus directing the third respondent to approve the appointments of:



(i) S.Angel Mercy, as Office Assistant; (ii) S.Sajin, as Office Assistant; (iii) A.Lalitha Bai, as Office Assistant, (iv) S.Priya as Office Assistant and (v) R.Vijila, as Office Assistant, in the petitioners' school with effect from the date of their appointments, viz., 02.01.2014, 01.06.2016, 21.06.2016, 01.06.2016 and 01.12.2015, respectively, with all attendant benefits, including the arrears of salary and allowance.

For Petitioner in all W.Ps. : Mr.T.Cibi Chakraborty

For Respondents in all W.Ps. : Mr.V.R.Shanmuganathan
Special Government Pleader.

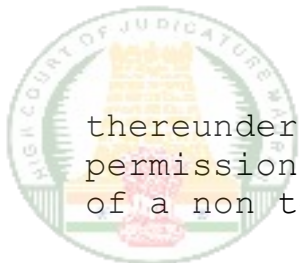
C O M M O N O R D E R

These writ petitions have been filed for issuance of a Writ of Mandamus seeking direction to the third respondent to approve the appointments of: (i) S.Angel Mercy, as Office Assistant; (ii) S.Sajin, as Office Assistant; (iii) A.Lalitha Bai, as Office Assistant, (iv) S.Priya as Office Assistant and (v) R.Vijila, as Office Assistant, in the petitioners' school with effect from the date of their appointments, viz., 02.01.2014, 01.06.2016, 21.06.2016, 01.06.2016 and 01.12.2015, respectively, with all attendant benefits, including the arrears of salary and allowance.

2. Heard the learned counsel appearing for the petitioners and the learned Special Government Pleader, who took notice for the respondents. By consent, the writ petitions are taken up for final disposal.

3. The case of the petitioners are that the petitioners' school are Private Aided Schools. The schools have appointed (i) S.Angel Mercy, as Office Assistant; (ii) S.Sajin, as Office Assistant; (iii) A.Lalitha Bai, as Office Assistant, (iv) S.Priya as Office Assistant and (v) R.Vijila, as Office Assistant, with effect from the date of their appointments, viz., 02.01.2014, 01.06.2016, 21.06.2016, 01.06.2016 and 01.12.2015, respectively, in the sanctioned posts, in the vacancy, which arose on account of the promotion of incumbents. The petitioners' schools have sent proposals dated 22.01.2014, 25.07.2016, 12.08.2016, 18.08.2016 and 15.12.2015 and reminders dated 10.08.2015, 09.09.2016, 08.07.2014, 26.09.2016, 08.09.2016 and 01.08.2016, respectively, to the third respondent to approve the appointments of the (i) S.Angel Mercy, (ii) S.Sajin, (iii) A.Lalitha Bai, (iv) S.Priya and (v) R.Vijila, as Office Assistants. Since the same did not yield any positive result, the petitioners have filed these writ petitions. According to the petitioners, as per Tamil Nadu Recognized Private Schools (Regulation Act), no prior permission is required to fill up the post of Record Clerk.

<https://hcservices.hqutls.gov.in/hcservices/> 4. The learned counsel for the petitioners would submit that the schools are governed by the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 and the Rules 1974 framed



thereunder and as per Rule 11(2) of the said Rules, no prior permission is required from any authority to fill up the vacancy of a non teaching staff, which would arise in a sanctioned post.

5. It is seen that the Government of Tamil Nadu vide G.O.Ms.212, dated 29.11.2001 imposed ban on appointment of different categories of post, excepting Police, Doctors and Teachers. The ban was lifted vide G.O.14, dated 07.02.2006 enabling the fulfillment of non-teaching staff. G.O.Ms.115, dated 30.05.2007, directed filling up of certain categories of non-teaching staff by appointment and the remaining categories of non-teaching staff to be outsourced. Vide G.O.Ms.No.189, dated 29.07.2009, the vacancies of Junior Assistants and Office Assistants are to be filled upon on a priority basis. Subsequently, G.O.203 dated 23.07.2010 mandated that certain categories of non-teaching staff like Junior Assistant, Librarian, Laboratory Assistant, Record Clerk and Office Assistant are to be approved from the date of appointment.

6. The learned counsel for the petitioners submitted that once the post is sanctioned by the Director under Rule 15(1) of the Rules, the respective third respondent are bound to sanction grant as per Rule 11(2) of the Rules and there is no need to get prior permission from any authority to fill the vacancies that would arise in the sanctioned post. Unless the State Government suitably amends the provisions of the Act and the Rules making it mandatory to obtain prior permission for filling up of those sanctioned non- teaching posts, the Government could not issue impugned Government Orders.

6.1. This Court is in entire agreement with the said submission. Since there is no such provision in the Act and the Rules to seek prior permission, the third respondent ought to have approved the appointments of S.Angel Mercy, S.Sajin, A.Lalitha Bai S.Priya and R.Vijila, as Office Assistants, in the petitioners schools.

6.2. The Hon'ble Division Bench of this Court in **The Manager, Concordia High and Higher Secondary Schools V. Tmt.S.Christy and Others**, reported in **2013 Writ L.R. 691** held as under:

"4. In considering the contentions as put forth in the writ petition, learned single Judge pointed out to the judgment passed by this Court in W.A.Nos.93 and 94 of 2009 decided on 06.01.2010 that for any sanctioned post, no prior approval is necessary. In respect of proceedings noting the availability of posts, the learned single Judge pointed out that there is no necessity for prior approval. In any event, the appointment without getting approval could not be a ground for not considering the writ petitioner's plea"

<https://hcservices.courts.gov.in/hcservices/>
6.3. A similar question arose for consideration in the case of **S.Rasheetha Banu V. State of Tamil Nadu, rep. by its Secretary to**



Government, Chennai and others, reported in (2012) 4 MLJ 198 wherein this Court has categorically held that "if a person is appointed in a sanctioned post in the Private Aided Minority School, the approval cannot be rejected for the purpose of grant on the ground that no prior permission was obtained before appointment". It is useful to extract paragraph 7 of the said order in this regard :

"7.The issue involved in this Writ Petition was already considered by a Division Bench of this Court in W.A.No.1263 of 2001, dated 22.1.2004. In the said Judgment, 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. The said Judgment of the Division Bench was followed in W.P.(MD)No.11353 of 2008, dated 11.9.2009. As against the said order dated 11.9.2009, the department preferred W.A.(MD)No.703 of 2009. A Division Bench of this Court, by Judgment dated 1.2.2011, dismissed the said Writ Appeal."

7.The question of approval to the appointment of non-teaching staff in the sanctioned post after the introduction of G.O.Ms.No.115 and G.O.203 came to be considered by this Court and the Madurai Bench of Madras High Court quashed G.O.Ms.115, dated 30.05.2007 and G.O.203, dated 23.07.2010, vide order, dated 15.03.2016 passed in W.P.(MD)Nos.11481 of 2008, etc. batch. It will be appropriate to extract the operative portion of the order as under:

"38. In the result, for the details reasons mentioned above,

- (i) All these writ petitions are allowed.
- (ii) Impugned G.Os., namely, G.O.Ms.No.115, School Education Department, dated 30.05.2007 and G.O.Ms.No.203, School Education Department, dated 23.07.2010 and Government Letter No.8884/D1/2011-2, dated 09.07.2012, are quashed.
- (iii) The impugned orders of the DEOs/DEEOs refusing to approve of the appointments of various non-teaching posts in these writ petitions are set aside and the official respondents are directed to approve of those appointments of the non-teaching staff in the Private Aided Schools concerned in these writ petitions and to sanction grant."

8. In view of the above stated position and also in the light of the Judgment of this Court in W.P(MD)Nos.11481 of 2008, etc. batch (stated supra), this Court is of the view that the third respondent in the writ petition should be directed to approve the appointments of S.Angel Mercy, S.Sajin, A.Lalitha Bai, S.Priya and R.Vijila, as Office Assistants.

9. Accordingly, these Writ Petitions stands disposed of, by directing the respective third respondent / District Educational Officer, to accord approval to the appointments of: (i) S.Angel Mercy; (ii) S.Sajin; (iii) A.Lalitha Bai; (iv) S.Priya; and (v) R.Vijila; as Office Assistants, in the petitioners' schools, with effect from the date of their appointments, viz., 02.01.2014, 01.06.2016, 21.06.2016, 01.06.2016 and 01.12.2015, respectively, with all monetary and other service benefits, within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(Crl.side)

/TRUE COPY/

Sub Assistant Registrar

To

- 1.The Director of School Education,
College Road, Chennai - 600 006.
 - 2.The Chief Educational Officer,
Nagercoil, Kanyakumari District
 - 3.The District Educational Officer,
Kuzhithurai, Kanyakumari District
 - 4.The District Educational Officer,
Thuckalay, Kanyakumari District
 - 5.The District Educational Officer,
Kuzhithurai, Kanyakumari District
- +5 cc to Mr.T.Cibi Chakraborty, Advocate,
SR.Nos.73331,73332,73333,73334,73335

ORDER MADE IN

**W.P (MD) Nos.22677 to 22681 of 2016
& W.M.P (MD) Nos.16232 to 16236 of 2016
25.11.2016**

srk

MKV-CM-MSA/21.2.2017/5p-11c