

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2017

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P. No. 8039 of 2017 & W.M.P. Nos.8788 & 8789 of 2017

A. Agustina

Mary Immaculate Girls Higher Secondary School

Tirupattur 635 601

Vellore District

Petitioner

vs.

1 The Government of Tamil Nadu
represented by its Secretary
Department of School Education
Fort St. George
Chennai 600 009

2 The Director of School Education
DPI Campus
College Road
Chennai 600 006

3 The Chief Educational Officer
Office of the Chief Educational Officer
Vellore
Vellore District

4 The District Education Officer
Office of the District Education Officer
Tirupattur
Vellore District

5 The Correspondent
Mary Immaculate Girls Higher Secondary School
Tirupattur 635 601
Vellore District

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus, calling for the records pertaining to the impugned order dated 21.11.2016 in Au. Thi. Mu. No.5252/AA2/16 on the file of the 4th respondent and quash the same, directing the respondents to accord approval to the appointment of the petitioner, A.Augustina, working as

Sweeper in the fifth respondent-Mary Immaculate Girls Higher Secondary School, Tirupattur - 635 601, Vellore District with effect from 01.06.2015 on the file of the fourth respondent with all service and monetary benefits.

For petitioner Dr. Fr. A. Xavier Arulraj, Sr. Counsel
for Ms. A. Arul Mary

For RR 1-4 Mr. T.M. Pappiah
Special Government Pleader

ORDER

Mr. T.M. Pappiah, learned Special Government Pleader, accepts notice for respondents 1 to 4. With consent, this writ petition is taken up for final disposal at the admission stage itself.

2 This writ petition has been preferred challenging the order dated 21.11.2016 passed by the fourth respondent, in and by which, the fifth respondent school's proposal seeking approval of appointment of the petitioner as Sweeper has been returned and for a direction to the respondents to accord approval to the appointment of the petitioner as Sweeper with effect from 01.06.2015 with all service and monetary benefits.

3 The petitioner was appointed as Sweeper in the fifth respondent school on 01.06.2015 in a vacancy which arose owing to the demise of one Karuppan, Sweeper, who was appointed on 01.06.2002 on account of retirement of one Magimainathan, Sweeper, on 31.05.2002 and whose appointment was also approved by the fourth respondent, viz., the District Educational Officer. Since the fifth respondent school was established and administered by the Roman Catholic Congregation of Daughters of Mary Help of Christians and also being a minority educational institution governed by Article 30(1) of the Constitution of India, the fifth respondent school forwarded the proposal of the petitioner's appointment as Sweeper with effect from 01.06.2015, with relevant documents, to the fourth respondent for approval on 14.10.2016. But, the fourth respondent, vide the impugned order dated 21.11.2016, has returned the proposal on the ground that the fifth respondent school can fill up the post of Sweeper only after getting prior permission from the Director of School Education. Hence, the instant writ petition seeking the aforesaid relief.

4 At the threshold, it is pertinent to point out that the aforesaid reasoning assigned by the fourth respondent for

returning the proposal made by the fifth respondent school is wholly untenable and is also running contrary to the settled legal position, inasmuch as, it has been held in a catena of decisions, more particularly in B. Arul Ananda Ganesh and another vs. The Secretary to Government, Education Department, State of Tamil Nadu, St. Fort George, Chennai-9 and others¹ that as and when any vacancy arises from any sanctioned post, either teaching or non teaching, especially in a minority educational institution, the concerned educational institution, before filling up the said post, need not get approval, much less prior approval, from the educational authorities.

5 The learned Special Government Pleader appearing for respondents 1 to 4 submitted that if the petitioner has been appointed in a sanctioned post which arose on account of the demise of Karuppan, who was appointed in the vacancy created by the retirement of his previous incumbent, Magimainathan, the proposal submitted by the fifth respondent school qua appointment of the petitioner as Sweeper, will be re-considered and reasoned orders passed within a period of four weeks.

6 When it has been clearly stated by the fifth respondent school in its proposal to the fourth respondent that it is a minority educational institution, the fourth respondent ought not to have returned the proposal submitted by the fifth respondent school stating that the fifth respondent school can fill up the post of Sweeper only after getting prior permission from the Director of School Education.

7 In view of the above discussion, this Court is of the considered view that the impugned order dated 21.11.2016 passed by the fourth respondent is wholly unsustainable and it is accordingly set aside and the fourth respondent is directed to consider the fifth respondent school's proposal dated 14.10.2016 and grant approval of the petitioner's appointment as Sweeper with effect from 01.06.2015 within a period of four weeks from the date of receipt of a copy of this order.

With the above direction, this writ petition stands disposed of. No costs. Connected W.M.Ps. are closed.

-Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

1 2017-1-WLR 51

To

- 1 The Secretary
Government of Tamil Nadu
Department of School Education
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Chennai 600 009
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Vellore District

+1 cc to M/s.A.Arulmary, Advocate Sr.No.20709
+ 1 cc to Government Pleader Sr.No.20577

W.P. No.8039 of 2017

AD(CO)

RRI 20/04/2017

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