

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2017

CORAM

THE HON'BLE MR. JUSTICE T. RAJA

W.P.No.6709 of 2017

B.Kalaiselvi

Junior Assistant

Honnegar Ashram Girls High School
Vellore

Petitioner

Vs.

1. The State Tamil Nadu
Rep by its Secretary to Government
Education Department, Chennai-9

2. The Director of School Education
D.P.I. Buildings, College Road
Chennai-6

3. The Chief Educational Officer
Vellore

4. The District Educational Officer
Vellore

5. The Correspondent
Honnegar Ashram Girls High School
Vellore

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the 4th respondent to approve the appointment of the petitioner as Junior Assistant in the 5th respondent School w.e.f. 31.08.2010 with all consequential monetary benefits, in the light of the order passed in W.A.No.908 of 2013 dated 25.04.2013 and Deva Asir Vs. Secretary to Government Education Department, reported in 2016 (3) LLJ 49.

For petitioner Mr. S.N.Ravichandran

For RR 1 to 4 Mr. V. Anandhamoorthy

Additional Government Pleader

ORDER

Mr. V. Anandhamoorthy, learned Additional Government Pleader, accepts notice for respondents 1 to 4.

2 This writ petition has been preferred seeking a writ of mandamus directing the District Educational Officer, Vellore, the fourth respondent herein, to approve the appointment of the petitioner as Junior Assistant in the fifth respondent school, viz., Honnegar Ashram Girls High School, Vellore, with effect from 31.08.2010, with all consequential monetary benefits, in the light of the order dated 25.04.2013 passed by this Court in W.A. No.908 of 2013 and also another judgment of this Court in Deva Asir vs. Secretary to Government, Education Department [2016 (3) LLJ 49].

3 Since the issue involved in this writ petition is covered by the judgments referred to above, with the consent of the learned counsel for the petitioner and the learned Additional Government Pleader appearing for respondents 1 to 4, this writ petition is taken up for final disposal, at the admission stage itself.

4 Honnegar Ashram Girls High School, Vellore, the fifth respondent herein, being an aided religious minority institution, is controlled by the Church of South India, Diocese of Vellore and governed by the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Rules made thereunder and also the various Government Orders issued from time to time. It has on its rolls, 407 students studying from VI standard to X Standard with 16 teaching staff and 2 non teaching staff with the grant-in-aid from the Government. While so, in the said school, a vacancy in the post of Junior Assistant arose due to the voluntary retirement of one Mohan, Junior Assistant on 20.03.2010. As the petitioner was fully qualified with Plust Two educational qualification, the fifth respondent school, being a minority educational institution, appointed her as Junior Assistant on 31.08.2010 in the sanctioned permanent vacancy as per the recommendation of the Education Board and approval of the Executive Committee, vide order dated 28.09.2010. Pursuant to the appointment order issued to the petitioner, the fifth respondent school submitted a proposal on 31.08.2010 to the fourth respondent seeking approval of her appointment as Junior Assistant with effect from 31.08.2010. The fourth respondent, vide letter dated 26.03.2011 addressed to the third respondent, has seemingly given an impression to the latter that the proposal made by the fifth respondent school to accord order of approval in favour of the petitioner can be considered, as her appointment was made after getting prior approval. Since there

was no prior approval obtained by the fifth respondent school from the educational authorities, the third respondent herein, after perusing the records, came to the conclusion that there was no prior approval accorded by the respondents in favour of the fifth respondent qua appointment of the petitioner and did not consider the fifth respondent's proposal seeking approval of the petitioner's appointment.

5 The learned Additional Government Pleader appearing for the official respondents submitted that in the vacancy caused in the fifth respondent school by the voluntary retirement of one Mohan with effect from 20.03.2010, the fifth respondent school appointed the petitioner as Junior Assistant on 31.08.2010 and subsequently, made a recommendation with a proposal on the same day, which was received in the office of the fourth respondent on 02.03.2011; on receipt of the same, the fourth respondent seemingly made a recommendation to the third respondent for approval of appointment of the petitioner stating that prior to her appointment, approval was obtained, while the fact remains that there was no prior approval obtained by the fifth respondent school from any of the educational authorities; therefore, the third respondent, till date, has not passed any order.

6 It is a well settled legal position that for filling up a permanent vacancy already approved by the school authorities, no prior permission is required. Moreover, Section 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, also is made inapplicable to the minority educational institutions as held by this Court vide order dated 25.04.2013 in the State of Tamil Nadu vs. SBM High School in W.A. No.908 of 2013. This was not taken note of by the third respondent. When it is the clear case of the fifth respondent school, which is a minority educational institution controlled by the Diocese of Vellore, that only in the permanent vacancy which arose on 20.03.2010 owing to the voluntary retirement of one Mohan who worked as Junior Assistant, the petitioner was appointed, the third respondent should not keep the proposal submitted by the fifth respondent school pending on the ground that no prior approval was obtained for appointing the petitioner in the post of Junior Assistant. Further, though there was no prior approval obtained by the fifth respondent before appointing the petitioner in the post of Junior Assistant, the records show that when one Mohan who was serving as Junior Assistant in the fifth respondent school opted to retire voluntarily with effect from 20.03.2010, a vacancy had arisen and to fill up the said vacancy, the fifth respondent school, being a minority educational institution, controlled by the Diocese of Vellore, selected and appointed the petitioner as Junior Assistant on 31.08.2010 as against the sanctioned permanent vacancy as per

the recommendations of the Education Board and approval granted by the Executive Committee vide order dated 28.09.2010. Ergo, the proposal made by the fifth respondent school, which is a minority educational institution, needs to be necessarily approved by the third respondent.

7 In such view of the matter, this Court grants four weeks time to the third respondent to pass appropriate orders on the proposal submitted by the fifth respondent school qua appointment of the petitioner in the post of Junior Assistant.

With the above direction, this writ petition stands disposed of. Costs made easy.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government
Government of Tamil Nadu
Education Department
Chennai-9
2. The Director of School Education
D.P.I. Buildings, College Road
Chennai-6
3. The Chief Educational Officer
Vellore
4. The District Educational Officer
Vellore
5. The Correspondent
Honnagar Ashram Girls High School
Vellore

+1cc to Mr.S.N. Ravichandran, Advocate, S.R.No.17245
+1cc to the Government Pleader, S.R.No.17971

ca(CO)
md(10/04/2017)

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