

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2017

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.33256 to 33258 of 2017

Sr.M.Jacintha .. Petitioner in W.P.No.33256 of 2017  
Mrs.R.Anitha .. Petitioner in W.P.No.33257 of 2017  
Mr.R.Sudhakar .. Petitioner in W.P.No.33258 of 2017

-vs-

1. The Government of Tamil Nadu  
rep.by the 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  
The office of the Chief Educational Officer  
Thiruvallur
  4. The District Educational Officer  
The office of the District Educational Officer  
Thiruvallur
  5. The Correspondent  
Immaculate Heart of Mary Girls Higher Secondary School  
Avadi, Chennai 600 054
- .. Respondents 1 to 5 in all the Writ Petitions

Petitions under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned orders dated 22.11.2016 & 23.11.2016 in O.Mu.No.1445/A5/2016, 1444/A5/2016 and 3155/A5/2016 respectively, on the file of the fourth respondent and quash the same, directing the respondents to accord approval to the appointments of the petitioners, namely, (i) Sr.M.Jacintha, working as Junior Assistant, (ii) Mrs.R.Anitha, working as Office Assistant, (iii) Mr.R.Sudhakar, working as Watchman, in Immaculate Heart of Mary Girls Higher Secondary School, Avadi, Chennai 600 054 w.e.f. 01.06.2010, 02.09.2013 & 01.06.2010 respectively, with all monetary and other service benefits.

For Petitioners:: Dr.Fr.A.Xavier Arul Raj  
Senior Counsel for Ms.A.Arul Mary

For Respondents:: Mr.V.Jayaprakash Narayanan  
Special Government Pleader  
for R1 to 4

ORDER

These three writ petitions have been filed by the non-teaching staff working in the fifth respondent School challenging the impugned orders dated 22.11.2016 & 23.11.2016 passed by the District Educational Officer, Thiruvallur, the fourth respondent herein rejecting the proposals made by the fifth respondent School seeking orders of approval of their appointments as Junior Assistant, Office Assistant and Watchman respectively, on the ground that there is a ban order imposed by the Government in G.O.Ms.No.212, Personnel and Administrative Reforms Department dated 29.11.2001. As the issue raised is common in all the writ petitions, with the consent of the other side, they are taken up together and disposed of by this common order.

2. Learned senior counsel for the petitioners submitted that Sister M.Jacintha, Mrs.R.Anitha and Mr.R.Sudhakar, the petitioners herein were appointed as Junior Assistant, Office Assistant and Watchman respectively, in the fifth respondent-Immaculate Heart of Mary Girls Higher Secondary School, Avadi, Chennai on 1.6.2010, 2.9.2013 and 1.6.2010 in the vacancies occurred on account of the retirement/voluntary retirement/retirement of Sister Philomenal, Mrs.R.Monica, Mr.T.Ramasamy. In an effort to fill up the said vacancies occurred in the sanctioned posts, the fifth respondent School, being a minority educational institution established and administered by the Congregation of "Franciscan Sisters of St.Joseph", which is registered under the Societies Registration Act, 1860, selected the petitioners and appointed them to the aforementioned posts on the dates mentioned above. Thereafter, to get the salary for the said non-teaching staff, the fifth respondent forwarded the proposals for approval with all the relevant documents to the District Educational Officer, Thiruvallur, the fourth respondent herein on 20.6.2010, 10.9.2013 & 7.10.2010 respectively. However, the learned senior counsel submitted that the said proposals were rejected by the fourth respondent without application of mind, citing a reason that in view of the ban order imposed by the Government in G.O.Ms.No.212, Personnel and Administrative Reforms Department dated 29.11.2001, the approval cannot be granted. Assailing the said approach adopted by the fourth respondent, the learned senior counsel submitted that when the Government has lifted the ban order imposed in G.O.Ms.No.212, Personnel and Administrative Reforms Department dated 29.11.2001 in another G.O.Ms.No.14, Personnel and Administrative Reforms (P) Department dated

7.2.2006, making it clear that the ban on filling up of posts by direct recruitment issued in the G.O.Ms.No.212 dated 29.11.2001 be lifted with immediate effect and consequently the said G.O.Ms.No.14 dated 7.2.2006 has also specifically and clearly mentioned that the orders issued in G.O.Ms.No.212 dated 29.11.2001 are cancelled, the fourth respondent, in all fairness, ought not to have wrongly and erroneously rejected the proposals citing the G.O.Ms.No.212 dated 29.11.2001, which was already cancelled by the Government. That shows the sheer callousness and non application of mind on the part of the fourth respondent, for which the petitioners have been put to grave problems. On this sole ground, the impugned orders are liable to be set aside, he pleaded.

3. The learned Special Government Pleader for the respondents 1 to 4 also, taking note of the factor that the earlier G.O.Ms.No.212 dated 29.11.2001 imposing ban for filling up of vacant posts, except certain categories of posts such as Teachers, Doctors and Police Constabulary, came to be lifted by another G.O.Ms.No.14 dated 7.2.2006 cancelling the earlier G.O., made a prayer to condone the inadvertent lapse committed by the fourth respondent.

4. As mentioned above, the proposals made by the fifth respondent School to grant approval of the appointments of the petitioners in the sanctioned posts of Junior Assistant, Office Assistant and Watchman with effect from 1.6.2010, 2.9.2013 & 1.6.2010 respectively cannot be rejected by the fourth respondent solely relying upon the G.O.Ms.No.212 dated 29.11.2001, since the said Government Order was already cancelled by the Government in the subsequent G.O.Ms.No.14 dated 7.2.2006. The fourth respondent could have at least taken reasonable care before passing the impugned orders by getting a clarification from the fifth respondent School, which has not been done. Moreover, this issue has been settled once and for all by various orders of this Court including the one passed by me in a batch of writ petitions in W.P.Nos.29998 of 2014 etc., dated 17.3.2017 (V.J.Manoj Kumar & others v. State of Tamil Nadu represented by its Secretary, Department of School Education and others), wherein it has been held as follows:-

"5. Thus the issue is well settled now that any school either minority/private/aided or unaided, is entitled to fill up the vacancy arising on account of promotion, retirement, removal, dismissal etc., against a sanctioned post already approved by the school authorities, without even obtaining prior permission from the Government. In the cases on hand, admittedly, the writ petitioners have been appointed against vacancies relating to sanctioned posts as non-teaching staff in various cadres and therefore, by following the

above cited case laws, this Court hereby directs the respective respondents to approve the appointments of the non-teaching staff by the private aided schools and to sanction the grant within a period of four weeks from the date of receipt of a copy of this order."

5. In view of the above, the impugned orders passed without application of mind and callousness are set aside with a direction to the fourth respondent to approve the appointments of the petitioners in the respective posts from the dates of their appointment forthwith on production of a copy of this order. Needless to mention that the salary including the arrears also shall be released to the petitioners without any delay. Further, this Court is not able to appreciate the conduct of the fourth respondent, as the fourth respondent, while invariably dealing with issues like this, should have been more careful. Since the fourth respondent, without even being aware of the fact of lifting of the ban order by the Government in the year 2006 itself, has committed a palpable wrong, this Court is constrained to impose costs of Rs.5,000/- to be paid by the fourth respondent from his own salary to the Tamil Nadu Mediation and Conciliation Centre attached to this Court within a period of four weeks from the date of receipt of a copy of this order. With this direction the writ petitions are allowed. Consequently, W.M.P.Nos.36677 to 33679 of 2017 are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government  
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  
The office of the Chief Educational Officer  
Thiruvallur

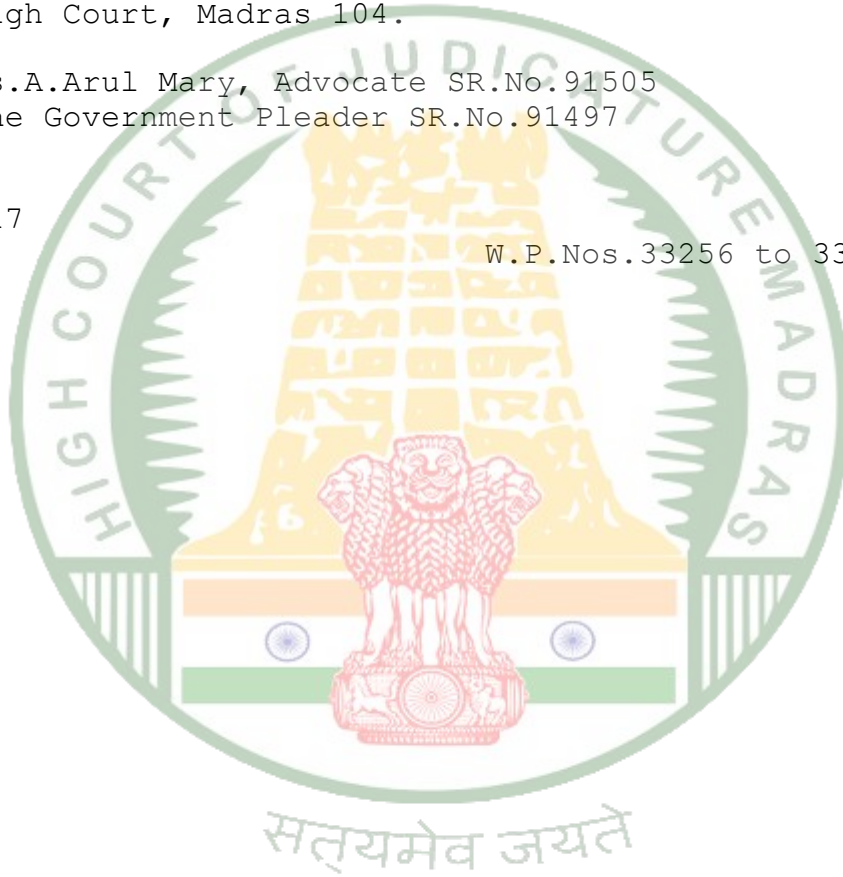
4. The District Educational Officer  
The office of the District Educational Officer  
Thiruvallur
5. The Correspondent  
Immaculate Heart of Mary Girls Higher Secondary School  
Avadi, Chennai 600 054

Copy to: The Secretary  
TamilNadu Mediation and Conciliation Centre,  
High Court, Madras 104.

+5cc to Ms.A.Arul Mary, Advocate SR.No.91505  
+1cc to the Government Pleader SR.No.91497

RJ(CO)  
sm:8.1.2017

W.P.Nos.33256 to 33258 of 2017  
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