

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2017

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.33259 of 2017

Mrs.A.Rekha

.. Petitioner

-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
TNAP Government School Complex
Veda Veethi Subramaniam Kovil Street
Tiruvannamalai District
4. The District Educational Officer
The office of the District Educational Officer (North)
Cheyyar
Tiruvannamalai District
5. The Correspondent
Sacred Heart Girls Higher Secondary School
Vandavasi 604 408
Tiruvannamalai District .. Respondents

Petition 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 order dated 22.11.2017 in Na.Ka.No.2796/A4/2017 on the file of the fourth respondent and quash the same, directing the respondents to accord approval to the appointment of the petitioner, namely, Mrs.Rekha, working as Office Assistant, in Sacred Heart Girls Higher Secondary School, Vandavasi 604 408 w.e.f. 01.02.2013 with all monetary and other service benefits.

For Petitioner :: 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

This writ petition has been filed by the non-teaching staff working in the fifth respondent School challenging the impugned order dated 22.11.2017 passed by the District Educational Officer (In charge), Cheyyar, the fourth respondent herein rejecting the proposal made by the fifth respondent School seeking an order of approval of the appointment of the petitioner as Office Assistant, on the ground that no orders have been received from the Government for filling up of the vacancy in the non-teaching post.

2. Learned senior counsel for the petitioner submitted that the petitioner herein was appointed as Office Assistant in the fifth respondent-Sacred Heart Girls Higher Secondary School, Vandavasi on 1.2.2013 in the vacancy occurred on account of the retirement of one Mr.Pathinathan. In an effort to fill up the said vacancy occurred in the sanctioned post, 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 petitioner and appointed her to the aforementioned post on the date mentioned above. Thereafter, to get the salary for the said non-teaching staff, the fifth respondent forwarded the proposal for approval with all the relevant documents to the District Educational Officer, Cheyyar, the fourth respondent herein on 1.2.2013. However, the learned senior counsel submitted that the said proposal was rejected by the fourth respondent, citing a reason that no orders have been received from the Government for filling up of the vacancy in the non-teaching post. The learned senior counsel for the petitioner also submitted that when the issue has been settled by this Court holding that a minority educational institution receiving grant-in-aid from the Government, before filling up the sanctioned vacancy in the non-teaching post, need not obtain prior permission from the educational authorities, the impugned order is liable to be set aside, he pleaded.

3. Heard the learned Special Government Pleader for the respondents 1 to 4 also.

4. The issue raised in this writ petition as to whether prior permission should be obtained by a minority educational institution receiving grant-in-aid from the Government before filling up of any vacancy occurred in a sanctioned post is no longer res integra, as I have held 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), 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 order passed by the fourth respondent is set aside with a direction to the fourth respondent to approve the appointment of the petitioner as Office Assistant with effect from the date of her appointment and to release the salary including the arrears to the petitioner within a period of four weeks from the date of receipt of a copy of this order. With this direction the writ petition is allowed. Consequently, W.M.P.No.36680 of 2017 is closed. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government
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Fort St.George
Chennai 600 009
2. The Director of School Education
DPI Campus, College Road
Chennai 600 006
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RJ(CO)
sm:8.1.2018

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