

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.33282 and 33283 of 2017 and
WMP.Nos.36712 and 36713 of 2017

A.Vimanraj .. Petitioner in W.P.No.33282 of 2017
D.Josephine Pushpa .. Petitioner in W.P.No.33283 of 2017

-vs-

1. The District Educational Officer
Thiruvallur, Thiruvallur District.
2. The Correspondent
R.C.M.Higher Secondary School,
Kamaraja Nagar, Avadi-600 071,
Chennai District. .. Respondents in both 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 order passed by the 1st respondent in his Proceedings Oo.Mu.No.4808/A4/2017 and Oo.Mu.No.4807/A4/2017 dated 05.12.2017 and quash the same and direct the respondents to approve the appointment of the petitioners as Office Assistants from the date of their initial appointment and confer all the consequential monetary benefits.

For Petitioners :: Mr.P.Ganesan

For 1st Respondent:: Mr.R.A.S.Senthilvel,
Additional Government Pleader

ORDER

These two writ petitions have been filed by the non-teaching staff working in the 2nd respondent School challenging the impugned orders dated 05.12.2017 passed by the District Educational Officer, Thiruvallur, the first

respondent herein rejecting the proposals made by the 2nd respondent School seeking orders of approval of their appointments as Office Assistants, 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 both the writ petitions, with the consent of the other side, they are taken up together and disposed of by this common order.

2. Learned counsel for the petitioners submitted that the petitioners herein were appointed as Office Assistants in the 2nd respondent- R.C.M.Higher Secondary School, Kamaraja Nagar, Avadi-600 071, Chennai District on 1.9.2017 in the vacancies occurred on account of the retirement and promotion of J.T.Josephine Packiya Rani and C.Anthoni. In an effort to fill up the said vacancies occurred in the sanctioned posts, the 2nd respondent School, being a minority educational institution, 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 2nd respondent forwarded the proposals for approval with all the relevant documents to the District Educational Officer, Thiruvallur, the 1st respondent herein on 05.12.2017. However, the learned counsel submitted that the said proposals were rejected by the 1st 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 1st respondent, the learned

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 1st 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 1st 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 1st respondents 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 1st respondent.

4. As mentioned above, the proposals made by the 2nd respondent

School to grant approval of the appointments of the petitioners in the sanctioned

posts of Office Assistants with effect from 01.09.2017 cannot be rejected by the 1st 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 1st respondent could have at least taken reasonable care before passing the impugned orders by getting a clarification from the 2nd 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 first 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 1st respondent, as the 1st respondent, while invariably dealing with issues like this, should have been more careful. Since the 1st respondent, without even 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 1st respondent 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, connected Miscellaneous Petitions are closed.

Speaking/Non speaking order

20.12.2017

Index : yes/no

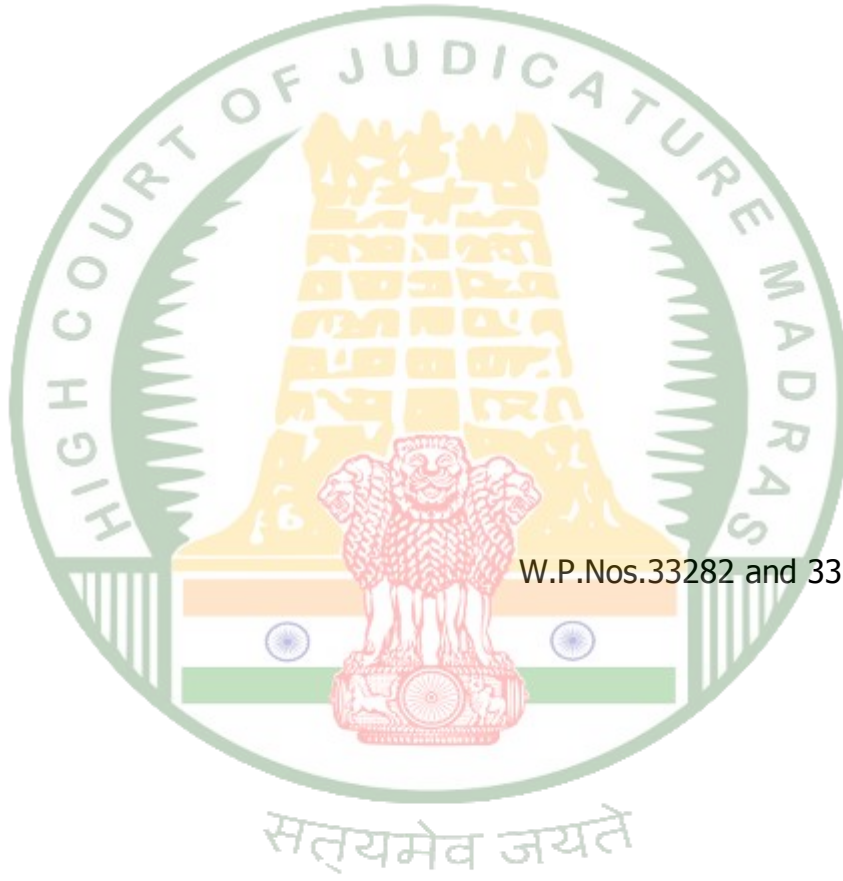
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To

1. The District Educational Officer
Thiruvallur, Thiruvallur District.

T.RAJA, J.

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W.P.Nos.33282 and 33283 of 2017

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