

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.12.2017

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THE HONOURABLE Mr.JUSTICE T.RAJA

W.P.No.33788 of 2017
and W.M.P.No.37431 of 2017

Sr.S.Thaines Tamilarasi,
Bethlehem Girls Higher Secondary School,
Ootacamund - 643 001. ... 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,
Ootacamund.

4. The District Educational Officer,
The Office of the District Educational Officer,
Cunnoor, Ootacamund.

5. The Correspondent,
Bethlehem Girls Higher Secondary School,
Ootacamund - 643 001.

...Respondents

Writ Petition filed under Article 226 of The Constitution of India seeking for issuance of Writ of certiorarified Mandamus, calling for the records pertaining to the impugned order dated 2.11.2016 in O.Mu. No.4424/AA2/2016 on the file of the 4th respondent and quash the same directing the respondents to accord approval to the appointment of the petitioner Sr.S.Thaines Tamilarasi working as Junior Assistant in Bethlehem Girls Higher Secondary School Ootacamund-643 001 w.e.f 1.6.2016 with all monetary and other service benefits.

For Petitioner : Dr.Fr.A.Xavier Arul Raj, Sr. Counsel
for Ms.A.Arul Mary

For Respondents : Mr.R.A.S.Senthilvel, (for R1 to R4)
Additional Govt. Pleader

O R D E R

This writ petition has been directed against the impugned order dated 02.11.2016 passed by the District Educational Officer, Cunnoor/ fourth respondent herein refusing the request of the fifth respondent School, namely, Bethlehem Girls Higher Secondary School, Ootacamund, to accord approval of appointment of Junior Assistant in favour of Sr.S.Thaines Tamilarasi, who was appointed on 01.06.2016 in a retirement vacancy caused due to the retirement of previous incumbent, Sr.Xavier Mary.

2.Heard the learned counsel appearing for both sides and perused the materials placed on record.

3.Learned Senior Counsel appearing for the petitioner submitted that the fifth respondent School is a minority educational institution established and administered by the Catholic Religious Congregation of Franciscan Missionaries of Mary for the welfare of the Catholic Christian Minority Community in the revenue districts of Salem and Namakkal, which is also governed under Article 30[1] of the Constitution of India. The fifth respondent appointed the petitioner as Junior Assistant on 01.06.2016 in a retirement vacancy, caused due to the retirement of previous incumbent, Sr.Xavier Mary, based on the staff fixation order dated 31.12.2015 issued by the third respondent. Therefore, a direction be issued to the respondents to accord approval to the appointment of the petitioner as Junior Assistant.

4.The fifth respondent School having got the benefit of an order of Staff Fixation dated 31.12.2015 sanctioning a post of Junior Assistant, when it fell vacant on the retirement of previous incumbent, the issue is no longer res integra. Similar issue has also been decided by this Court in W.P.No.29998 of 2014 etc. batch, clearly shows that if any vacancy arises in a sanctioned post either in teaching or non-teaching staff, the concerned educational institution without even obtaining prior approval from the educational authorities fill the vacancy and send the proposal seeking sanction for approval of appointment. The relevant portion of the said judgment is extracted hereunder :

" ... 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.

In fine, for the reasons stated above, the writ petitions are allowed by quashing the impugned orders. No costs. Consequently, connected miscellaneous petitions are closed."

5.The staff fixation order dated 31.12.2015 clearly shows that the fifth respondent School was already sanctioned with one post of Junior Assistant. When previous incumbent Sr.Xavier Mary served and retired from service w.e.f. 30.11.2013, the School appointed the petitioner in the said sanctioned post. Therefore, the impugned order returning the proposal to the fifth respondent asking them to enclose a copy of the Government Order is untenable. Therefore, the impugned order dated 02.11.2016 passed by the fourth respondent is set aside and the writ petition stands allowed and the respondents are directed to accord approval along with grant-in-aid, namely, the salary including arrears from the date of appointment within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary, Government of Tamil Nadu,
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,
Ootacamund.
4. The District Educational Officer,
The Office of the District Educational Officer,
Cunnoor, Ootacamund.

+ 2 ccs to Mr. A. Arulmary, Advocate Sr.91946

+ 1 cc to Government Pleader Sr.92540

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and

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