

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.33790 of 2017
and W.M.P.No.37433 of 2017

Mr.J.James Raj
Montfort Higher Secondary School,
1, Asherkhana St., Alandur,
Chennai-9.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-6.
3. The Chief Educational Officer,
The Office of the Chief Educational Officer,
Kancheepuram.
4. The District Educational Officer,
The Office of the District Educational Officer,
Chengalpattu - 603 001.
5. The Correspondent,
Montfort Higher Secondary School,
1, Asherkhana Street,
Alandur, Chennai-9. ... 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 19.07.2017 in O.Mu. No.1675/AA2/2017 on the file of the 4th respondent and quash the same directing the respondents to accord approval to the appointment of the petitioner Mr.J.James Raj working as Record Clerk in Montfort Higher Secondary School, No.1, Asherkhana Street, Alandur, Chennai 600 016 w.e.f 11.06.2014 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 19.07.2017 passed by the fourth respondent herein refusing the request of the fifth respondent School, namely, Montfort Higher Secondary School, Alandur, Chennai, to accord approval of appointment of Record Clerk in favour of J.James Raj, who was appointed on 11.06.2014 in a retirement vacancy caused due to the voluntary retirement of previous incumbent, Mary Immaculate.

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 congregation of the brothers of St. Gabriel, which is also governed under Article 30[1] of the Constitution of India. The fifth respondent appointed the petitioner as Record Clerk on 11.06.2014 in a retirement vacancy, caused due to the voluntary retirement of previous incumbent, Mary Immaculate, based on the staff fixation order dated 27.01.2015 issued by the third respondent. Therefore, a direction be issued to the respondents to accord approval to the appointment of the petitioner as Record Clerk.

4.The fifth respondent School having got the benefit of an order of Staff Fixation dated 27.01.2015 sanctioning a post of Record Clerk, 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 27.01.2015 clearly shows that the fifth respondent School was already sanctioned with one post of Record Clerk. When previous incumbent Mary Immaculate served and retired from service voluntarily w.e.f. 14.06.2013, 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 19.07.2017 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-9.

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,
Kancheepuram.

4. The District Educational Officer,
The Office of the District Educational Officer,
Chengalpattu - 603 001.

+ 1 cc to Mr. Arulmary, Advocate SR.91946

+ 1 cc to Government Pleader sr.92539

W.P.No.33790 of 2017
and W.M.P.No.37433 of 2017(3/4)

SSI (CO)
EU (22/01/2018)