

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.33791 of 2017
and WMP No.37434 of 2017

Mr.A.Arockianathan

St.Philomena's High School,
Sowripalayam,
Coimbatore - 641 028.

... Petitioner

Vs

1. The Government of Tamil Nadu,
Rep. by the Secretary,
Department of School Education,
Fort St. George, Chennai-9.

2. The Director of School Education,
DPI Campus, College Road, Chennai-6.

3. The Chief Educational Officer,
The Office of the Chief Educational Officer,
Coimbatore, Coimbatore District.

4. The District Educational Officer,
The Office of the District Educational Officer,
Coimbatore, Coimbatore District.

5. The Correspondent,
St.Philomena's High School,
Sowripalayam, Coimbatore-641 028.

... 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 11.7.2016 in A.Di.Mu. No.2893/AA4/2016 on the file of the 4th respondent and quash the same directing the respondents to accord approval to the appointment of the petitioner Mr.A.Arockianathan working as Watchman in St.Philomena's High School, Sowripalayam, Coimbatore 641 028 w.e.f 02.03.2016 F.N. 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 11.07.2016 passed by the fourth respondent herein refusing the request of the fifth respondent School, namely, St.Philomena's High School, Sowripalayam, Coimbatore, to accord approval of appointment of Watchman in favour of A.Arockianathan, who was appointed on 02.03.2016 in a retirement vacancy caused due to the retirement of previous incumbent, M.G.Sundaresan.

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 Franciscan Sisters of the Presentation of the Blessed Virgin Mary, Coimbatore, which is also governed under Article 30[1] of the Constitution of India. The fifth respondent appointed the petitioner as Watchman on 02.03.2016 in a retirement vacancy, caused due to the retirement of previous incumbent, M.G.Sundaresan, based on the staff fixation order dated 23.10.2015 issued by the fourth respondent. Therefore, a direction be issued to the respondents to accord approval to the appointment of the petitioner as Watchman.

4.The fifth respondent School having got the benefit of an order of Staff Fixation dated 23.10.2015 sanctioning a post of Watchman, 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 23.10.2015 clearly shows that the fifth respondent School was already sanctioned with one post of Watchman. When previous incumbent M.G.Sundaresan served and retired from service w.e.f. 31.01.2008, 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 11.07.2016 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-9.

2. The Director of School Education,
DPI Campus, College Road, Chennai-6.

3. The Chief Educational Officer,
The Office of the Chief Educational Officer,
Coimbatore, Coimbatore District.

4. The District Educational Officer,
The Office of the District Educational Officer,
Coimbatore, Coimbatore District
+ 1 cc to Mr. Arulmary, Advocate Sr.91946
+ 1 cc to Mr. Government Pleader SR.92539

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