

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 20.10.2017

CORAM

THE HON'BLE MR. JUSTICE T. RAJA

W.P.No. 26221 of 2017 &
W.M.P.No.27870 of 2017

G.Pauline Preetha

... Petitioner

v.

- 1 The District Educational Officer
Tiruvallur
Tiruvallur District
- 2 The Correspondent
Sacred Heart Girls Hr. Sec. School
Perambakkam Village, Kilacheri Post
Tiruvallur District

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance 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.3194/A5/2016, dated 23.11.2016 and quash the same and direct the respondents to approve the appointment of the petitioner as Record Clerk from the date of Appointment on 08.06.2012 and confer all the consequential benefits.

For Petitioner : Mr.P.Ganesan

For Respondents : Mr.V.Jayaprakash Narayanan
Special Government Pleader for R1

ORDER

Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents.

2. The petitioner, G.Pauline Preetha, aged about 25 years was appointed in a vacant post of Record Clerk on 08.06.2012, which arose on account of a retirement of erstwhile incumbent by name Merry Elizabeth, in the 2nd respondent School on 30.04.2010, after holding proper enquiry. The learned counsel appearing for the petitioner would submit that the 2nd respondent School viz., Sacred Heart Girls Higher Secondary School, Perambakkam Village, Kilacheri Post, Tiruvallur District, is a Minority Aided School. From the date of appointment viz., 08.06.2012, the petitioner has been discharging with the duties as Record Clerk and after her appointment, a proposal was sent by the 2nd respondent on 01.10.2014 to the 1st respondent seeking approval of her appointment as Record Clerk. But, the District Educational Officer, Tiruvallur, returned the same citing the reason that there was a ban order for appointment vide G.O.Ms.No.212 P & AR Department, dated 29.11.2001. On receipt of the proposal, the 2nd respondent also informed the petitioner that there was a ban order appointing non teaching staff in their school. In view of the above, the petitioner has come to this Court.

3. The learned counsel for the petitioner strenuously would submit that when G.O.Ms.No.212, P & AR Department dated 29.11.2001 was already set aside by this Court and the petitioner was appointed only in the sanctioned post, which fell vacant on account of retirement of erstwhile incumbent Merry Elizabeth on 30.04.2010 and in the said retirement vacancy the petitioner was appointed on 08.06.2012, question of application of ban order cannot be cited as a reason for non granting an order of approval to her appointment.

4. The learned Special Government Pleader appearing for the respondents also is unable to sustain the impugned order. The reason is firstly the justification given in the impugned proceedings dated 23.11.2016 that there has been a ban order in G.O.Ms.No.212, P & AR Department dated 29.11.2001 cannot be sustained since the said G.O. was already set aside by this Court and secondly the 2nd respondent, being a Minority Educational Aided Institution, as per the settled legal position, if any vacancy arises either in the teaching or non teaching post, if it is a sanctioned post, without conducting prior approval from the 1st respondent, the 2nd respondent can fill up the said vacancy. In the present case, a perusal of the appointment order dated 08.06.2012 clearly shows that the petitioner was appointed only in a sanctioned post which fell vacant on account of retirement of erstwhile incumbent Merry Elizabeth on 30.04.2010 and the petitioner was appointed as a Record Clerk on 08.06.2012 in the same sanctioned retirement post. Therefore, the impugned order dated 23.11.2016 is liable to be set aside.

5. Accordingly, the Writ Petition is allowed. The impugned order dated 23.11.2016 is set aside and the 1st respondent is directed to grant approval from the date of appointment of the petitioner and release the salary within a period of four weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

- 1 The District Educational Officer
Tiruvallur
Tiruvallur District
- 2 The Correspondent
Sacred Heart Girls Hr. Sec. School
Perambakkam Village, Kilacheri Post
Tiruvallur District

+1 cc to Mr.P.Ganesan Advocate sr 74953

+1 cc to Govt Pleader sr 74717

सत्यमेव जयते

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