

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.12.2017

CORAM

THE HONOURABLE Mr.JUSTICE T.RAJA

W.P.No.29922 of 2017

and

W.M.P.Nos.32425 & 32426 of 2017

The Headmaster/Correspondent,  
St.Mary's Higher Secondary School,  
Montfort Nagar, Karipatti,  
A.N.Mangalam,  
Salem 636 106.

... Petitioner

Vs

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

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

3.The Chief Educational Officer,  
District Collectorate Compound,  
Salem 636 001.

4.The District Educational Officer,  
District Collectorate Compound,  
Salem 636 007.

.... Respondents

Writ Petition filed under Article 226 of The Constitution of India seeking for issuance of Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the 4<sup>th</sup> respondent District Educational Officer in O.Mu.No.4148/AA2/2016 dated 31.10.2016, quash the same and further direct the 4<sup>th</sup> respondent District Educational Officer herein to approve forthwith the appointment of Mr.P.Arul Kumaran as Record Clerk in petitioner's St. Mary's Higher Secondary School, A.N.Mangalam, Salem w.e.f his date of appointment viz., 01.07.2011 and release salary and other benefits including the arrears of salary and allowanaces.

For Petitioner : Mr.P.Godson Swaminath  
for M/s.Isaac Chambers

For Respondents : Mr.V.Jayaprakash Narayanan  
Special Govt. Pleader

## O R D E R

This Writ Petition has been filed challenging the order dated 31.10.2016 passed by the District Educational Officer, Salem, refusing to accept the proposal seeking approval of appointment of Record Clerk in the petitioner's school.

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

3. Assailing the impugned order, learned counsel appearing for the petitioner submitted that the petitioner institution is one among the educational institutions established and administered by St. Gabriel Institute of Brothers, popularly known as Monfort Brothers and is a recognized religious minority educational institution in terms of Article 30[1] of the Constitution of India. The School was established in the year 1962 and it was upgraded as Higher Secondary School in the year 1995. The Government also granted financial aid towards staff salary upto high school level. While so, the District Educational Officer, Salem, passed Staff Fixation Order on 26.10.2010 for the year 2010-2011 granting sanction to appoint the staff both teaching and non-teaching, including the post of Record Clerk. Since the post of Record Clerk was sanctioned by the fourth respondent, one Mr. P. Arul Kumaran was appointed as Record Clerk w.e.f. 01.07.2011, in the place of one Mr. R. Sadhasivam, who was appointed as Record Clerk has left the job on 07.01.2009, as he secured a job in the Government service. The said Arul Kumaran also joined duty on the very same date i.e., on 01.07.2011. The petitioner School sent a proposal to the fourth respondent/District Educational Officer on 19.08.2015, requesting approval of appointment for the purpose of release of staff grant towards the salary of the appointed staff. The fourth respondent vide proceedings dated 04.09.2015, returned the proposal stating that the proposal be resubmitted with the Government Order permitting the School to fill up the post of Record Clerk. The petitioner School vide letter dated 19.09.2016, resubmitted the proposal to the fourth respondent. Subsequently, the fourth respondent without even referring to the Staff Fixation Order which was also enclosed along with the proposal, rejected the proposal vide impugned order dated 31.10.2016, citing a reason that the Government in Letter No. 8884/D1/2011-2 dated 09.07.2012, took a decision to form a Committee to decide on the filling up of vacant non-teaching posts and only after the decision of the Committee the Government will decide.

4. Learned counsel for the petitioner further contended that the impugned order clearly shows non application of mind of the

fourth respondent, since the said Government Letter No.8884/D1 2011-2 dated 09.07.2012 has been questioned before the Madurai Bench of this Court and finally, by a reported judgment in the case of Deva Asir Vs. The Secretary to Government, School Education Department, State of Tamil Nadu, Secretariat, Fort St. George, Chennai-9 and Others [2016-3-LW 152], quashed the Government Orders impugned therein and the Government Letter No.8884/D1/2011-2 dated 09.07.2012 by allowing the writ petition. Therefore, the letter based on which the order of refusal passed by the fourth respondent is no longer in existence, the same is liable to be set aside and this Writ Petition be allowed with a direction to accord approval to the proposal sent by the petitioner School.

5.Considering the fact that when there was a Staff Fixation Order passed by the fourth respondent on 26.10.2010, the very same fourth respondent should not have refused the proposal made by the petitioner School for granting approval of appointment of Record Clerk, this Court passed an order on 22.11.2017 calling upon the fourth respondent-District Educational Officer, Salem to file his explanation and also to produce the relevant documents.

6.Pursuant thereto, Mr.K.Thangavel, District Educational Officer, Salem, appeared before this Court and pleaded ignorance of the judgment passed by this Court, reported in [2016-3-LW 152], setting aside the Government Letter No.8884/D1/2011-2 dated 09.07.2012. He further pleaded that the proposal made by the petitioner School for approval of appointment of Record Clerk would be sanctioned forthwith.

7.Accepting his apology and recording his submission, this Writ Petition stands allowed and the impugned order passed by the fourth respondent in O.Mu.No.4148/AA2/2016 dated 31.10.2016 is set aside and the fourth respondent is hereby directed to pass appropriate orders forthwith including release of the arrears of salary to the petitioner from the date of appointment.

No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-  
Assistant Registrar(CS VIII)

//True copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,  
State of Tamil Nadu,  
Department of School Education,  
Fort St. George, Chennai-9.

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

3.The Chief Educational Officer,  
District Collectorate Compound,  
Salem 636 001.

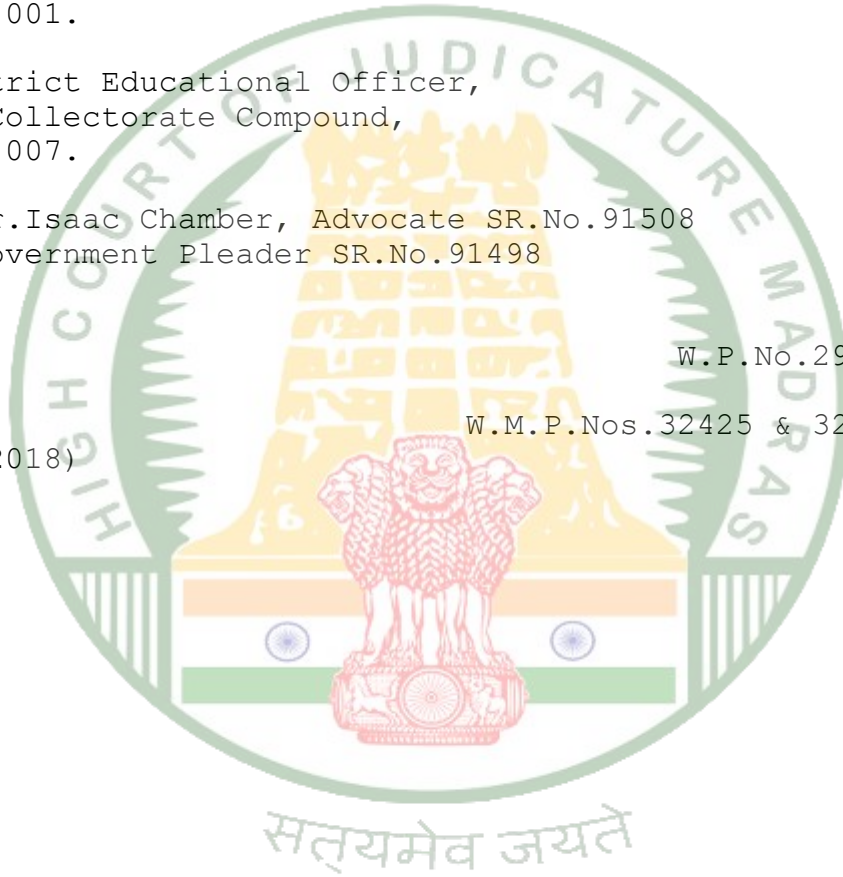
4.The District Educational Officer,  
District Collectorate Compound,  
Salem 636 007.

+lcc to Mr.Isaac Chamber, Advocate SR.No.91508  
+lcc to Government Pleader SR.No.91498

W.P.No.29922 of 2017  
and

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GN(22/01/2018)



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