



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.06.2017

CORAM :

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

WEB COPY

W.P.(MD) No.10741 of 2017

and

W.M.P.(MD) No.8188 of 2017

The Correspondent,
St. Francis Higher Secondary School,
Vavarai, S.T.Mankad Post,
Kanyakumari District - 629 172.

... Petitioner

Vs.

1. The Director of School Education,
College Road, Chennai - 600 006.
2. The Chief Educational Officer,
Nagercoil, Kanyakumari District.
3. The District Educational Officer,
Kuzhithurai, Kanyakumari District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 3rd respondent District Educational Officer herein to approve the appointment of D.Prabin as Officer Assistant in the petitioner's School with effect from the date of his appointment viz., 21.11.2016, with all attendant benefits including the arrears of salary and allowance.

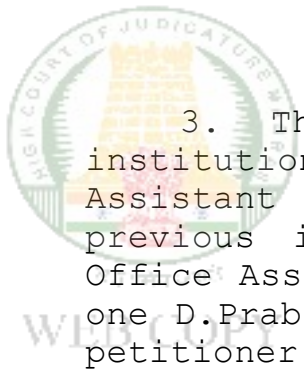
For Petitioner : Sr.A.Amala
For M/s.Isaac Chambers

For Respondents : Mr.M.Murugan,
Government Advocate.

ORDER

This Writ Petition has been filed by the petitioner for issuance of a Writ of Mandamus, directing the 3rd respondent District Educational Officer herein to approve the appointment of D.Prabin as Officer Assistant in the petitioner's School with effect from the date of his appointment viz., 21.11.2016, with all attendant benefits including the arrears of salary and allowance.

<https://hcservices.courts.gov.in/hcservices> the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents.



3. The petitioner school is a private minority aided institution. In the petitioner's school, one post of Office Assistant fell vacant on 03.06.2009, due to the promotion of previous incumbent one M.Mary Daisy, who was then working as Office Assistant. In the vacancy, the petitioner school appointed one D.Prabin as Office Assistant with effect from 21.11.2016. The petitioner school submitted the proposals to the third respondent on 10.03.2017. However, the said proposal is pending so far. According to the learned counsel for the petitioner, no prior approval is required in the case of appointment of non-teaching staff in private aided institutions.

4. The crucial fact whether the appointment was against sanctioned post or not was directed to be verified by the learned Government Advocate and the learned Government Advocate after getting instructions, has conceded the factual position that the persons to whom the approval is sought for are non-teaching staffs, who were appointed as against the sanctioned post. In this case the appointment is made in private school getting aid from the Government.

5. The question whether prior approval is required or not before appointing a non-teaching staff in a private aided institution has already been decided in favour of the petitioner holding that no prior permission is required. The attempt of the Government by restricting or preventing the private aided institution from making appointment as against sanctioned post was the subject matter of challenge in several writ petitions and this Court has consistently allowed all the writ petitions quashing the order refusing approval or other Government Orders or instructions preventing the private aided schools from making appointment on their own as against sanctioned post.

6. It is relevant to refer to the Division Bench judgment of this Court in the case of **The Manager, Concordia High and Higher Secondary School V. Tmt.S.Christy and others** reported in **2013 Writ L.R. 691** wherein it has been held as follows:

"4. In considering the contentions as put forth in the Writ Petition, learned Single Judge pointed out to the judgment passed by this Court in W.A.Nos.93 and 94 of 2009 decided on 05.01.2010 that for any sanctioned post, no prior approval is necessary. In respect of proceedings nothing the availability of posts, the learned Single Judge pointed out that there is no necessity for prior approval. In any event, the appointment without getting approval could not be a ground for not considering the

<https://hcservices.ecourts.gov.in/hcservices> petitioner's plea".

7. A similar issue also arose for consideration in the case

of ***S.Rasheetha Banu V. State of Tamil Nadu, rep. by its Secretary to Government, Chennai and others*** reported in (2012) 4 MLJ 198.

8. This Court has categorically held that the approval cannot be rejected on the ground that no prior permission was obtained before the appointment, if the appointment was against a sanctioned post in the private aided institution. The question of approval to the appointment of Non-Teaching Staff against the sanctioned post was considered by this Court in several cases and this Court has consistently taken the view that no prior permission is required before making appointment in various Non-Teaching posts in private aided institution. The conduct of respondents in passing orders against the Judgment of this Court is also commented in subsequent orders of this Court.

9. In view of the proposition laid down by this Court which has now been well settled, the third respondent, namely, the District Educational Officer, Kanyakumari District, is directed to accord approval to the appointment of D.Prabin as Office Assistant in the petitioner's school with effect from the date of appointment with all monetary and other service benefits within a period of four weeks from the date of receipt of a copy of this order. No Costs. Consequently the connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To,

1. The Director of School Education,
College Road, Chennai - 600 006.
2. The Chief Educational Officer,
Nagercoil, Kanyakumari District.
3. The District Educational Officer,
Kuzhithurai, Kanyakumari District.

+1 cc to M/S.ISAAC CHAMBERS , Advocate in SR.No. 61022
+1 cc to Special Government Pleader in SR.No.60989

pmu
AE/MR KKR/SAR3/11.07.2017/3P/6C