



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.09.2017

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P(MD)No.14431 to 14434 of 2017

and

W.M.P.(MD)Nos.11297 to 11300 of 2017

The Correspondent,
St.Francis Xaviers Higher Secondary School,
Thoothukudi-628 001,
Thoothukudi District.

...Petitioner in W.P.(MD)Nos.14431 to 14434 of 2017

Vs.

1.The State of Tamil Nadu,
Rep by its Secretary,
Department of School Education,
Fort St. George, Chennai-600 009.

2.The Director of School Education,
College Road, Chennai-600 006.

3.The Chief Educational Officer,
Thoothukudi,
Thoothukudi District.

4.The District Educational Officer,
Thoothukudi,
Thoothukudi District.

...Respondents in W.P.(MD)Nos.14431 to 14434 of 2017

Prayer in W.P.(MD)No.14431 of 2017: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of a Writ of Mandamus, directing the fourth respondent District Educational Officer to approve forthwith the appointment of M.Saravanan as Office Assistant in the petitioner-School with effect from 18.04.2016, with all attendant benefits including the arrears of salary and allowance.

Prayer in W.P.(MD)No.14432 of 2017: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of a Writ of Mandamus, directing the fourth respondent District Educational Officer to approve forthwith the appointment of A.Babu as Scavenger in the petitioner-School with effect from 20.04.2016,



with all attendant benefits including the arrears of salary and allowance.

Prayer in W.P.(MD)No.14433 of 2017: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of a Writ of Mandamus, directing the fourth respondent District Educational Officer to approve forthwith the appointment of M.Arun Charles Raja as Record Clerk in the petitioner-School with effect from 15.04.2016, with all attendant benefits including the arrears of salary and allowance.

Prayer in W.P.(MD)No.14434 of 2017: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of a Writ of Mandamus, directing the fourth respondent District Educational Officer to approve forthwith the appointment of K.Subburaj as Sweeper in the petitioner-School with effect from 04.08.2016, with all attendant benefits including the arrears of salary and allowance.

For Petitioner in all W.P.s : M/s.A.Amala

For M/s.Isaac Chambers

For Respondents in all W.P.s : Mr.R.Karthikeyan

Additional Government Pleader

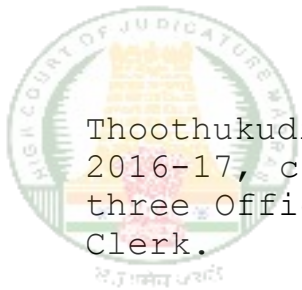
COMMON ORDER

By the consent of both sides, these writ petitions themselves are taken up for final disposal.

2.The petitioner School namely, St.Francis Xaviers Higher Secondary School, Thoothukudi District, is a recognized and aided Minority Educational Institution owned and administrated by a registered Society namely, "The Father's of Jesuit, Madurai". The Society has also been recognized as a Minority Society by the order of this Court in W.P.No.701 of 1975, dated 24.09.1976, and the School run by the said Society has been recognized as a Minority Educational Institution vide proceedings of the Director of School Education in R.C.No.24541-93/76 dated 20.11.1976.

3.The petitioner School was established as a Middle School in the year 1872 and subsequently, it was upgraded as High School in the year 1884. Later in the year 1978, it was upgraded as Higher Secondary School and is now offering education from standard VI to XII in Tamil and English medium and also providing education at free of charges, except the minimum fee prescribed by the Government. The admission is not restricted to any caste or creed or religion.

<https://hcservices.ecourts.gov.in/> The learned counsel appearing for the petitioner, drew the notice of this Court to the proceedings dated 24.12.2016, issued by the third respondent/Chief Educational Officer,



Thoothukudi and submitted that the staff fixation in the year 2016-17, clearly shows that the School was already sanctioned with three Office Assistants, one Scavenger, one Sweeper and one Record Clerk.

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5.A perusal the records would show that on the date of issuance of the staff fixation order for the academic year 2016-17, it has been clearly mentioned that three post of Office Assistant and one post of Record Clerk, Sweeper and Scavenger are lying vacant. In the three post of Office Assistant, one Mr.Saravanan was appointed on 18.04.2016 and in the post of Scavenger, one Mr.A.Babu was appointed on 20.04.2016, another post of Sweeper, one Mr.K.Subburaj was appointed on 04.08.2016 and in the post of Record Clerk, one Mr.M.Arun was appointed on 15.04.2016 in the petitioner's School. After making all these appointments, a proposal was sent to the District Educational Officer, Thoothukudi, on 25.04.2017, 25.05.2017 and 09.11.2016 respectively requesting to grant approval for all these appointments. But, the District Educational Officer, Thoothukudi, has not passed any order on the proposals.

6.This Court, in a batch of Writ Petitions in W.P.(MD) Nos.14115 to 14119 of 2016 in the case of The Correspondent, De Britto Higher Secondary School, Sivagangai vs The State of Tamil Nadu and others, has clearly held that there is no requirement under the provisions of Tamil Nadu Regulations Act, to seek prior permission to fill up any vacant post in an aided school, which has already been sanctioned for the academic year by the competent authority under the relevant Rule. While so, the second respondent ought not to have refused the request of the petitioner to grant approval of appointment to the post of Office Assistant, Scavenger, Sweeper and Record Clerk.

7.Heard, the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

8.With regard to the legal position in respect of Minority Institution, before filling up any sanctioned post which fell vacant, the Division Bench of this Court in the case of P.Ravichandran v. State of Tamil Nadu and others reported in (2013) 7 MLJ 641, has settled the issued as follows:

"20. In the light of the above findings as well as the decisions, we conclude this Judgment in the following manner:

<https://hcservices.ecourts.gov.in/hcservices/>

(1) there is no requirement under the Tamil Nadu Private Colleges (Regulation) Act, 1976 and Tamil Nadu Private



Colleges (Regulation) Rules, 1976, to seek prior permission to fill up any vacant post in an aided college, which has already been sanctioned for the academic year by the Director of Collegiate Education under Rule 11(1) of the Rules.

(2) If the appointment made by the College Committee in the sanctioned vacant post is in violation of any of the statutory provision, it is open to the Regional Joint Director of Collegiate Education to deny grant-in-aid to the said person appointed in the vacant post.

(3) The teaching staff appointed must be fully qualified, whose qualification is approved by the University to which the college is affiliated. Insofar as the non-teaching staff are concerned, the candidate must possess the qualification prescribed by the Government.

(4) The College Committee while filling up the vacant post, should follow the procedures stated in Rule 11(1A) to 11(4)(ii).

(5) If there is no rival candidate for any post, the appointment is bound to be approved for the purpose of payment of pay and allowances, by the Regional Joint Director of Collegiate Education.

The writ appeal is disposed of with the above directions. No costs."

9. In the light of the above, the issue raised in the present Writ petitions, being no more res integra, the petitioner School has rightly appointed the Office Assistant, Scavenger, Sweeper and Record Clerk in a sanctioned post, as per the staff fixation order passed by the third respondent on 24.12.2016. Therefore this Court hereby directs the respondents to consider the pending proposal and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this Order. Needless to say that the respondents are directed to grant all attendant benefits including the arrears of salary and allowance.

10. With the above directions, these Writ petitions are disposed of. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar.



To

1.The Secretary,
The State of Tamil Nadu,
Department of School Education,
Fort St. George, Chennai-600 009.

2.The Director of School Education,
College Road, Chennai-600 006.

3.The Chief Educational Officer,
Thoothukudi,
Thoothukudi District.

4.The District Educational Officer,
Thoothukudi,
Thoothukudi District.

+1CC to M/S.Isaac Chamber,SR.No.76267

+1CC to the Special Government Pleader SR.No.76156,76171,76172 and
76157

W.P (MD) Nos.14431 to 14434 of 2017

and

W.M.P. (MD) Nos.11297 to 11300 of 2017

01.09.2017

Mrn/DSK

AM/SV MMS/SAR 1/25.10.2017/5P/7C