



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

W.P. (MD) No.14912 of 2017

and

W.M.P. (MD) No.11750 of 2017

The Correspondent,
St.Xavier's Girl Higher
Secondary School,
Naidupuram, Kodaikanal,
Dindigul District-624 101.

... Petitioner

-Vs-

- 1.The State of Tamil Nadu,
Represented 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,
Dindigul District,
Dindigul.
- 4.The District Educational Officer,
Dindigul District,
Dindigul.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the fourth respondent, District Educational Officer, to approve forthwith the appointment of P.Enigo as Office Assistant in the petitioner school with effect from 01.08.2016 with all attendant benefits including the arrears of salary and allowances.

For Petitioner

: Ms.Amala Irudhaya Mary

For Respondents

: Mr.D.Muruganantham,
Additional Government Pleader

**ORDER**

By the consent of both sides, this writ petition itself is taken up for final disposal.

2. This Writ petition has been filed by the Correspondent, St. Xavier's Girl Higher Secondary School, Naidupuram, Kodaikanal, Dindigul District, seeking Writ of Mandamus, to direct the fourth respondent/District Educational Officer, Dindigul to approve forthwith the appointment of Mr. P. Enigo, as Office Assistant, in the petitioner school with effect from 01.08.2016, with all attendant benefits including the arrears of salary and allowances.

3. The learned counsel appearing for the petitioner would submit that the petitioner school is a recognized and aided Minority Educational Institution owned and administrated by the registered Society namely, "The Society of the Sisters of the Presentation of the blessed Virgin Mary", Madurai. The Society has also been recognized as a Minority Society by the order of this Court in W.P.No.703 of 1975, dated 24.09.1976 and the school run by the said Society has been recognised as a Minority Educational Institution vide proceedings of the Director of School Education in R.C.No.24541-G3/76 dated 20.11.1976.

4. The petitioner school was established as a High School in the year 1916, as Anglo Indian Board and in the year 1919, the School started Primary Section for Tamil Medium and it was subsequently, upgraded as High School in the year 1983. Later, in the year 2002, it was upgraded as Higher Secondary School. The school was recognized and aided by the Government of Tamil Nadu upto standard X and insofar as the standards XI and XII are concerned, they are under self finance and the medium of instruction is Tamil and English and no fee is charged except the minimum fee prescribed by the Government. The admission is not restricted to (on the basis of) any caste or creed or religion.

5. The learned counsel appearing for the petitioner drew the notice of this Court to the proceedings dated 05.01.2016, issued by the third respondent/Chief Educational Officer, Dindigul and submitted that the staff fixation for the academic year 2015-16, clearly shows that the school was already sanctioned with one Office Assistant post.

6. A perusal of the records would show that on the date of issuance of the staff fixation order for the academic year 2015-16, it has been clearly mentioned that one post of Office Assistant is lying vacant. In the said post, one Mr. P. Enigo was appointed on 01.08.2016 in the petitioner school. After making appointment to the said post, a proposal was sent to the District Educational Officer,



Dindigul, on 05.08.2016, requesting him to grant approval for the said appointment. Since the proposal, dated 05.08.2016, is not yet considered by the respondents herein, the appointed Office Assistant, Mr.P.Eniga, is not able to get his salary from the date of his appointment.

WEB COPY

7.This Court, in a batch of Writ Petitions in W.P.(MD) No.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. The second respondent ought not to have refused the request of the petitioner to grant approval of appointment to the post of Office Assistant.

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

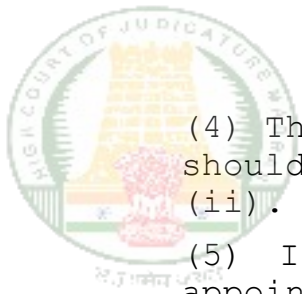
9.With regard to the legal position in respect of Minority Institution, before filling up sanctioned post which fell vacant, the Division Bench of this Court in the case of **P.Ravichandran v. State of Tamil Nadu and others** reported in (2013) 7 MLJ 641, has settled the issued as follows:

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

(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."

10. In the light of the above, the issue raised in the present Writ petition, has no more *res integra*, the petitioner school have appointed an Office Assistant only in a sanctioned post as per the staff fixation order passed by the third respondent on 05.01.2016. The impugned order is set aside and the respondents are directed to grant approval for the appointment within a period of four weeks from the date of receipt of copy of this Order.

11. With the above directions, this Writ petition is allowed. It is needless to say that the respondents are directed to disburse all the monetary benefits from the date of his appointment. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government of TamilNadu,
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,
Tiruchirappalli District,
Tiruchirappalli.

4. The District Educational Officer,
Tiruchirappalli District,
Tiruchirappalli.

+1cc to THE SPECIAL GOVERNMENT PLEADER in SR. No.72853

+1cc to ISAAC CHAMBERS in SR. No.72853

CMR/MRN

JS/MR.KKR/SAR.1/13.09.2017/4P-7C

W.P. (MD) No.14912 of 2017

and

W.M.P. (MD) No.11750 of 2017