

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 23.02.2017****CORAM:****THE HON'BLE Mr.JUSTICE S.VAIDYANATHAN****W.P.(MD) No.2085 of 2017****and W.M.P.(MD)No.1736 of 2017**

WEB COPY

R.A.Paulraj

... Petitioner

Vs.

1.The Director of School Education,
Chennai 600 006.2.The District Educational Officer,
Karur District.3.The Correspondent,
Marist Higher Secondary School,
P.Udayapatty,
Karur District.

... Respondents

Prayer: 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 impugned order passed by the 2nd respondent in O.Mu.No.2666/A3/2016, dated . 08.2016 signed on 02.09.2016 and quash the same and direct the respondents to approve the appointment of the petitioner as Junior Assistant from the date of appointment ie., 30.06.2010 with all consequential benefits.

For Petitioner	: Mr.V.Panneer Selvam
For Respondents	: Mr.A.K.Baskarapandian, Spl.G.P.for R1 and 2

O R D E R

This writ petition has been filed, seeking to quash the order of the 2nd respondent dated 02.09.2016 vide which, the 2nd respondent has returned the proposal, on the ground that prior permission for appointment of the petitioner was not obtained by the respondent / school.

2.The petitioner also sought a direction to the respondent concerned to approve the appointment of the petitioner as Junior Assistant in the 3rd respondent / school from the date of appointment with all consequential monetary benefits and arrears of salary as per proposal submitted by the school.

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

has been

Administration of Aided Minority School. Annexure - III of Rule 8

23.07.2010 mandated that certain categories of non-teaching staff

amends the provisions of the Act and the Rules making it mandatory

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impugned Government Orders and the consequential proceedings refusing to approve of the non-teaching posts for the purpose of grant are issued in gross violation of the provisions of Sections 19 and 20 of the Act read with Rule 15 of the Rules.

7.2. The Hon'ble Division Bench of this Court in ***The Manager, Concordia High and Higher Secondary Schools V. Tmt.S.Christy and Others***, reported in ***2013 Writ L.R. 691*** held as under:

"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 06.01.2010 that for any sanctioned post, no prior approval is necessary. In respect of proceedings noting 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 writ petitioner's plea".

7.3. A similar question 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*** wherein this Court has categorically held that "if a person is appointed in a sanctioned post in the Private Aided Minority School, the approval cannot be rejected for the purpose of grant on the ground that no prior permission was obtained before appointment". It is useful to extract paragraph 7 of the said order in this regard :

"7. The issue involved in this Writ Petition was already considered by a Division Bench of this Court in W.A.No.1263 of 2001, dated 22.1.2004. In the said Judgment, it is held that if a person is appointed in a sanctioned post, the approval of appointment cannot be rejected and if there is fall in strength and the post become surplus, after granting approval of the post, the said teacher along with post could be transferred/deployed to a needy school. The said Judgment of the Division Bench was followed in W.P.(MD)No.11353 of 2008, dated 11.9.2009. As against the said order dated 11.9.2009, the department preferred W.A.(MD)No.703 of 2009. A Division Bench of this Court, by Judgment dated 1.2.2011, dismissed the said Writ Appeal."

8.The question of approval to the appointment of non-teaching staff in the sanctioned post after the introduction of G.O.Ms.No.115 and G.O.203 came to be considered by this Court and the Madurai Bench of Madras High Court quashed G.O.Ms.115 dated 30.05.2007 and G.O.203 dated 23.07.2010 vide order dated 15.03.2016 passed in W.P.(MD) Nos.11481 of 2008, etc. batch. It will be appropriate to extract the operative portion of the order as under:



"38. In the result, for the details reasons mentioned above,

(i) All these writ petitions are allowed.

(ii) Impugned G.Os., namely, G.O.Ms.No.115, School Education Department, dated 30.05.2007 and G.O.Ms.No.203, School Education Department, dated 23.07.2010 and Government Letter No.8884/D1/2011-2, dated 09.07.2012, are quashed.

(iii) The impugned orders of the DEOs/DEEOs refusing to approve of the appointments of various non-teaching posts in these writ petitions are set aside and the official respondents are directed to approve of those appointments of the non-teaching staff in the Private Aided Schools concerned in these writ petitions and to sanction grant."

9. In view of the above stated position and also in the light of the judgment of this Court in W.P.(MD) Nos.11481 of 2008, etc. batch (stated supra), this Court is of the view that the impugned order of the 2nd respondent is liable to be set aside.

10. Accordingly, this Writ Petition is allowed. The impugned order dated 02.09.2016 of the 2nd respondent, returning the proposal of the respondent / school, amounting to refusal to approve the appointment of the petitioner, is set aside and the 2nd respondent is directed to accord approval to the appointment of the petitioner as Junior Assistant in the 3rd respondent / school from the date of appointment with all monetary and other service benefits, including arrears of salary and allowances, within a period of two weeks from the date on which the proposal is submitted / re-submitted by the respondent / School. No costs. Consequently, connected W.M.P. is closed.

Sd/-

Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1. The Director of School Education,
Chennai 600 006.

2. The District Educational Officer,
Karur District.

+1 CC to M/s.V.PANNERSELVAM, Advocate, SR No. 10400/17

+1 CC to THE SPECIAL GOVERNMENT PLEADER, SR No. 10510/17

NBJ

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23.02.2017