

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2018

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.5221 of 2018

Miss.Leemaroslien

.. Petitioner

-VS-

1. The Government of Tamil Nadu
rep.by its Secretary
Department of School Education
Fort St.George
Chennai 600 009
2. The Director of School Education
DPI Campus, College Road
Chennai 600 006
3. The Chief Educational Officer
The office of the Chief Educational Officer
Saidapet
Chennai 600 015
4. The District Educational Officer
The office of the District Educational Officer
Chennai East
Chennai 600 094
5. The Correspondent
Auxilium Girls Higher Secondary School
74/75, Mc.Nichols Road
Chetpet
Chennai 600 031

.. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the respondents 1 to 4 to accord approval to the petitioner as Office Assistant in Auxilium Girls Higher Secondary School, 74, 75, Mc.Nichols Road, Chetpet, Chennai 600 031 w.e.f. 01.02.2013 with all service and monetary benefits.

For Petitioner :: Dr.Fr.Xavier Arulraj
Senior Counsel for
M/s Father Xavier Associates

For Respondents :: Mr.P.Raja
Government Advocate for R1 to 4

ORDER

Miss.Leemaroslien was appointed as Office Assistant in the fifth respondent-Auxilum Girls' Higher Secondary School, Chetpet, Chennai, a minority educational institution receiving grant-in-aid from the Government, in a sanctioned vacancy, occurred on account of the retirement of Mrs.N.G.Moni Karolina on the afternoon of 31.1.2013, with effect from 1.2.2013. Although the proposal was submitted by the fifth respondent school on 27.4.2013 to the District Educational Officer, Chennai East, the fourth respondent herein seeking approval of her appointment, the learned senior counsel for the petitioner emphatically submitted that even after a lapse of five long years, the fourth respondent is sitting on the proposal, causing huge prejudice to the petitioner in not receiving her salary. Therefore, a direction be issued, as there is no impediment for the fourth respondent to approve the appointment of the petitioner from the date of her appointment, since the Chief Educational Officer, Chennai, while issuing the staff fixation orders for the years 2012-13 till 2017-18, had sanctioned the post of Office Assistant to the fifth respondent school.

2. Adding further, Dr.Fr.Xavier Arulraj, learned senior counsel for the petitioner submitted that initially G.O.Ms.No.212 was issued by the Government of Tamil Nadu, Personnel & Administrative Reforms (P) Department on 29.11.2001 imposing ban on the appointment of diffierent categories of posts of non-teaching staff in various schools and the said ban was lifted by the Government in G.O.Ms.No.14, Personnel & Administrative Reforms (P) Department dated 7.2.2006 enabling the appointment of various categories of non-teaching staff in the schools and subsequently also, one another G.O.Ms.No.115, School Education (D2) Department dated 30.5.2007 directing certain categories of non-teaching staff to be filled up with a further direction to various schools that certain other categories of non-teaching staff are to be out-sourced. Thereafter, the Government also issued G.O.Ms.No.203, School Education Department dated 23.7.2010 for filling up of the posts shown in Annexure-II in the aided schools with a further direction to approve the appointment from the date of appointment including for the post of Office Assistant. In the light of the above, the Chief Educational Officer, Chennai, the third respondent herein, appreciating the performance of the school doing yeoman service to the public, had issued the staff fixation order for the year 2012-13 on 23.1.2013 sanctioning,

among other posts, one post of Office Assistant in Serial No.6 to the fifth respondent school. Again for the next year 2013-14, staff fixation order was passed on 18.10.2013 sanctioning the post of Office Assistant. Thereafter, by the staff fixation orders dated 23.10.2014, 28.10.2015, 26.10.2016 and 8.12.2017 for the years 2014-15, 2015-16, 2016-17 & 2017-18 respectively, the school has been sanctioned with the post of Office Assistant continuously. Moreover, this issue has also been settled by this Court in umpteen orders, both reported and unreported, holding that no prior approval is required from the educational authority before filling up of the post of non-teaching staff not only in the minority educational institution, but also in the non-minority educational institution. When this being the settled legal position, the fourth respondent-District Educational Officer, Chennai, who is the approving authority, having received the proposal dated 27.4.2013 from the fifth respondent school, which is a minority educational institution, should have acted by approving the appointment and also releasing the salary from the date of her appointment. The reason is that the fifth respondent school is entitled to have one post of Office Assistant to cater to the needs of both the teaching and non-teaching staff and also the students coming to the school, which has not been done. Therefore, he sought a direction as prayed for in this writ petition.

3. The learned Government Advocate for the respondents 1 to 4 sought only two weeks time for the respondents 1 to 4 to pass orders of approval of the appointment of the petitioner.

4. I also find merits on the submissions made by the learned senior counsel for the petitioner. The reason is that the issue raised in the present writ petition is no longer res integra and in one such order passed in W.P.Nos.29998 of 2014 etc., dated 17.3.2017 (V.J.Manoj Kumar & others v. State of Tamil Nadu represented by its Secretary, Department of School Education and others), this Court has held as follows:-

"5. Thus the issue is well settled now that any school, either minority/private/aided or unaided, is entitled to fill up the vacancy arising on account of promotion, retirement, removal, dismissal etc., against a sanctioned post already approved by the school authorities, without even obtaining prior permission from the Government. In the cases on hand, admittedly, the writ petitioners have been appointed against vacancies relating to sanctioned posts as non-teaching staff in various cadres and therefore, by following the above cited case laws, this Court hereby directs the respective respondents to approve the appointments of the non-teaching staff by the Private Aided Schools and to sanction the

grant within a period of four weeks from the date of receipt of a copy of this order."

5. Recording the statement made by the learned Government Advocate for the respondents 1 to 4, this Court hereby directs the fourth respondent to consider the proposal sent by the fifth respondent school and pass orders of approval of the appointment of the petitioner in the post of Office Assistant with effect from 1.2.2013 and release the salary including the arrears within a period of two weeks from the date of receipt of a copy of this order, instead of imposing costs on his inaction for the last five years. With the above direction, the writ petition stands allowed. Consequently, W.M.P.No.6386 of 2018 is closed. No costs.

ss

Sd/-
Assistant Registrar (CS-VII)
/TRUE COPY/
Sub-Assistant Registrar

To

1. The Secretary to Government
Department of School Education
Fort St.George
Chennai 600 009
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+2CC to M/S.FATHER XAVIER ASSOCIATES Advocate SR.NO.17682
+1CC to The Govt Advocate SR.NO.18460

W.P.No.5221 of 2018

KJI [CO]
MK:26/03/2018