

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2018

CORAM

THE HON'BLE MR.JUSTICE T.RAJA

W.P.No.3301 of 2018
and WMP.Nos.4046 and 4047 of 2018

J.Jackson Solomon

...

Petitioner

Vs.

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

2.The District Educational Officer,
Coonoor, The Nilgiris.

3.C.S.I. CMM Higher Secondary School,
represented by the Correspondent,
237, Club Road,
Near: Collector's Office,
Ootacamund-643 001, The Nilgiris.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the second respondent in his proceedings No.Aa.Thi.Mu.5407/16/E2 dated 28.10.2016 and quash the same and direct the respondents to approve the appointment of the petitioner from 11.02.2016 and confer all the consequential benefits.

For Petitioner : Mr.P.Ganesan
for M/s.C.S.Associates

For Respondent : Mrs.P.Rajalakshmi
Addl. Government Pleader for R1 and R2

O R D E R

This Writ Petition has been filed challenging the proceedings of the second respondent dated 28.10.2016, rejecting the proposal of the third respondent school seeking approval for appointment of the petitioner viz., Thiru.J.Jackson Solomon for

the post of Office Assistant, which fell vacant on 01.03.2014 on account of promotion given to one Mr.S.Abraham Titus as Junior Assistant.

2. Since the third respondent school viz., C.S.I. CMM Higher Secondary School is a minority educational institution receiving grant and aid from the State Government, the petitioner was appointed only in the sanctioned post of Office Assistant, which fell vacant on 01.03.2014 due to the promotion given to Mr.S.Abraham Titus as Junior Assistant.

3. It is well settled that while filling up of sanctioned post in a minority educational institution, no prior permission/approval is required. This has been reiterated in umpteen number of decisions of this Court and one such order is dated 17.03.2017 passed in W.P.Nos.29998 of 2014 etc., batch [V.J.Manoj Kumar v. The Government of Tamil Nadu, Rep. by its Secretary, Department of School Education, Chennai and others]. It is relevant to extract para 5 of the said order:

"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 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."

4. Moreover, the District Educational Officer, Coonoor/second respondent herein himself has passed a staff fixation order dated 04.02.2016, wherein in Sl.Nos.18, the post of Office Assistant has been sanctioned, which fortifies the stand of the third respondent school that only in the sanctioned post of Office Assistant, which fell vacant on account of promotion given to previous incumbent, the petitioner has been appointed, for which prior permission is not required. However, the second respondent, as against the settled legal position, has deliberately returned the proposal sent by the third respondent school dated 19.10.2016, by passing the impugned order dated 28.10.2016 refusing to grant approval for appointment of the petitioner as Office Assistant. Therefore, this Court, vide order dated 15.02.2018 directed the second respondent herein to appear before this Court to show cause as to why the cost of

litigation incurred by the petitioner should not be imposed on him by directing him to pay the same from his personal salary. Pursuant to the said order, Mrs.K.Sridevi, District Educational Officer, Coonoor, Nilgiris appeared before this Court today in person and a detailed counter affidavit has also been filed.

5. Mrs.P.Rajalakshmi, learned Additional Government Pleader appearing for the respondents 1 and 2 has submitted that the impugned order was not passed by the present second respondent and it was passed by her predecessor and therefore, she cannot be held responsible and she has been duly passing orders as per law and she has not given any such complaint.

6. Therefore, accepting the unconditional apology given by her and since the second respondent has not passed the impugned order and it was passed only by her predecessor and she had also complied with the staff fixation order by approving the appointment of the petitioner in the post of Office Assistant, this Writ Petition stands allowed. Personal appearance of the second respondent is dispensed with. The respondents 1 and 2 are directed to confer the petitioner with all monetary benefits within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True copy//

Sub Assistant Registrar

jvm

To

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

2.The District Educational Officer,
Coonoor, The Nilgiris.

+1cc to Mr.C.S.Associates, Advocate SR.No.14899

W.P.No.3301 of 2018

GN(09/03/2018)