

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.3816 of 2018

Mrs.Flora Gladys

.. Petitioner

-vs-

1. The Government of Tamil Nadu
rep.by the 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
Erode
 4. The District Educational Officer
The office of the District Educational Officer
Gobichettipalayam
Erode District
 5. The Correspondent
St.Mary's High School
Kolappalur
Erode 638 456
- .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order dated 30.01.2018 in Na.Ka.No.8662/Aa3/2017 on the file of the fourth respondent and quash the same, directing the respondents to accord approval to the appointment of the petitioner Mrs.Flora Gladys, working as Junior Assistant in St.Mary's High School, Kolappalur, Erode 638 456 w.e.f. 10.03.2017 F.N., with all monetary and other service benefits.

For Petitioner :: Sr.A.Arul Mary

For Respondents:: Mrs.P.Rajalakshmi

Additional Government Pleader
for R1 to 4

ORDER

The petitioner was appointed as Junior Assistant in the fifth respondent-St.Mary's High School, Kolappalur, Erode District, which is a minority educational institution receiving grant-in-aid from the Government, in a sanctioned post, which fell vacant on account of the retirement of Mr.P.Palanisamy from the post of Junior Assistant on 31.12.2016. As the said vacancy had occurred in view of the retirement of the predecessor of the petitioner, the Correspondent of the fifth respondent school, considering the qualification possessed by the petitioner to the post of Junior Assistant, issued the appointment order appointing her from 10.3.2017. After sometime, a proposal was also sent on 27.12.2017 to the fourth respondent-District Educational Officer, Gobichettipalayam requesting for an order of approval so that the petitioner would be able to receive her monthly salary.

2. Learned counsel for the petitioner also submitted that the District Educational Officer, Gobichettipalayam, in his proceedings dated 8.8.2017, fixing the teaching and non-teaching staff to the fifth respondent school, also passed an order granting sanction for one post of Junior Assistant. A perusal of the staff fixation order shows that the fifth respondent school was already sanctioned with one post of Junior Assistant. Therefore, it goes without saying that the request of the fifth respondent for granting approval of the appointment of the petitioner to the post of Junior Assistant should have been granted without asking the fifth respondent school to get prior permission.

3. The learned Additional Government Pleader for the respondents 1 to 4 also, taking note of the staff fixation order dated 8.8.2017 issued by the District Educational Officer, Gobichettipalayam sanctioning one post of Junior Assistant to the fifth respondent school, is unable to support the impugned order and she is also aware of the settled legal position that a minority educational institution, before filling up of the vacancy in a sanctioned post, is not required to get prior permission from the authorities.

4. This Court is unable to sustain the impugned order. The reason is that this issue has already been settled once and for all in umpteen orders. 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. In the light of the above, the impugned order is set aside and the respondents 1 to 4 are hereby directed to accept the proposal and approve the appointment of the petitioner in the post of Junior Assistant in the fifth respondent school from the date of her appointment on 10.3.2017 and release the salary including the arrears within a period of four weeks from the date of receipt of a copy of this order. With the above direction, the writ petition is allowed. Consequently, W.M.P.No.4648 of 2018 is closed. No costs.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

ss

To

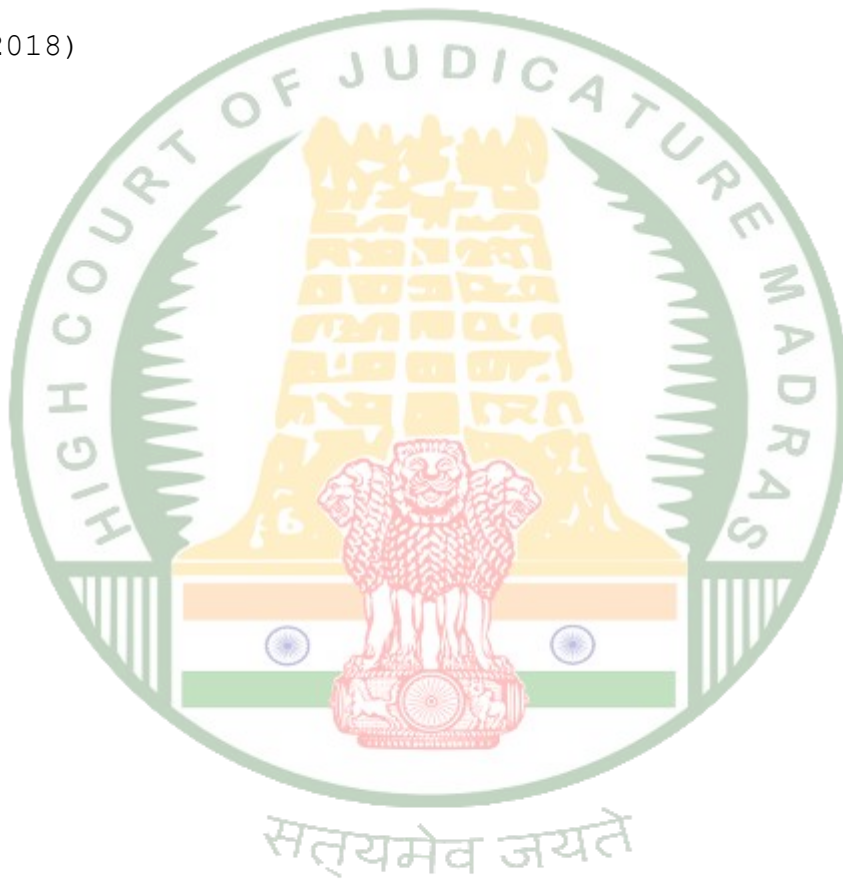
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+1 CC to Govt. Pleader sr 14523.
+2 Ccs to Mr.Father Xavier Associates sr 13521

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NRI (CO)
SP(13/03/2018)



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