

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2018

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.3817 to 3819 of 2018

Mr.P.Felix Martin .. Petitioner in W.P.No.3817 of 2018
Mr.F.Sam Kumar .. Petitioner in W.P.No.3818 of 2018
Mr.B.Martin .. Petitioner in W.P.No.3819 of 2018

-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
Thiruvallur
4. The District Educational Officer
The office of the District Educational Officer
Thiruvallur
5. The Correspondent
Don Bosco Higher Secondary School
Pannur
Thiruvallur 602 1.. Respondents in all the writ petitions

Petitions 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 orders dated 16.09.2016, 23.11.2016 in O.Mu.No.1932/A5/2016, O.Mu.No.1933/A5/2016, O.Mu.No.1934/A5/2016 on the file of the fourth respondent and quash the same, directing the respondents to accord approval to the appointments of the petitioners Mr.P.Felix Martin, working as Record Clerk in Don Bosco Higher Secondary School, Pannur, Thiruvallur 602 108 w.e.f. 01.02.2014; Mr.F.Sam Kumar, working as Waterman in Don Bosco Higher Secondary School, Pannur, Thiruvallur 602 108 w.e.f. 01.03.2014; Mr.B.Martin, working as Office Assistant in Don Bosco Higher

Secondary School, Pannur, Thiruvallur 602 108 w.e.f. 02.05.2014 respectively, with all monetary and other service benefits.

For Petitioners:: Sr.A.Arul Mary

For Respondents:: Mrs.P.Rajalakshmi
Additional Government Pleader
for R1 to 4

ORDER

The petitioners were appointed as Record Clerk, Waterman & Office Assistant respectively in the fifth respondent-Don Bosco Higher Secondary School, Pannur, Thiruvallur, which is a minority educational institution receiving grant-in-aid from the Government, in the sanctioned posts, which fell vacant on account of the promotion of Mr.F.Kumar to the post of Junior Assistant on 31.1.2014; retirement of Mr.A.Anthonysamy on 28.2.2014; promotion of Mr.K.I.A.Arockiasamy on 1.5.2014 to the post of Lab Assistant, respectively. As the said vacancies had occurred in view of the promotion/retirement of the predecessors of the petitioners, the Correspondent of the fifth respondent school, considering the qualifications possessed by the petitioners to the post of Record Clerk, Waterman and Office Assistant, issued the appointment orders appointing them from 1.2.2014, 1.3.2014, 2.5.2014 respectively. Accordingly, proposals were also sent to the fourth respondent-District Educational Officer, Thiruvallur requesting for orders of approval so that the petitioners would be able to receive their monthly salary.

2. Learned counsel for the petitioners also submitted that the Chief Educational Officer, Thiruvallur, in his proceedings dated 27.5.2014, fixing the teaching and non-teaching staff to the fifth respondent school, also passed an order granting sanction for one post of Record Clerk, one post of Waterman and one post of Office Assistant. A perusal of the staff fixation order shows that the fifth respondent school was already sanctioned with one post of Record Clerk, one post of Waterman and one post of Office Assistant. Therefore, it goes without saying that the request of the fifth respondent for granting approval of the appointments of the petitioners to the posts of Record Clerk, Waterman and Office 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 27.4.2014 issued by the Chief Educational Officer, Thiruvallur sanctioning one post of Record Clerk, one post of Waterman and one post of Office 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 vacancies in the sanctioned posts, is not required to get prior permission from the authorities.

4. This Court is unable to sustain the impugned orders. 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 orders are set aside and the respondents 1 to 4 are hereby directed to accept the proposals and approve the appointments of the petitioners in the post of Record Clerk, Waterman and Office Assistant respectively in the fifth respondent school from the date of their appointment on 1.2.2014, 1.3.2014 & 2.5.2014 respectively 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 petitions are allowed. Consequently, W.M.P.Nos.4649 to 4651 of 2018 are closed. No costs.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

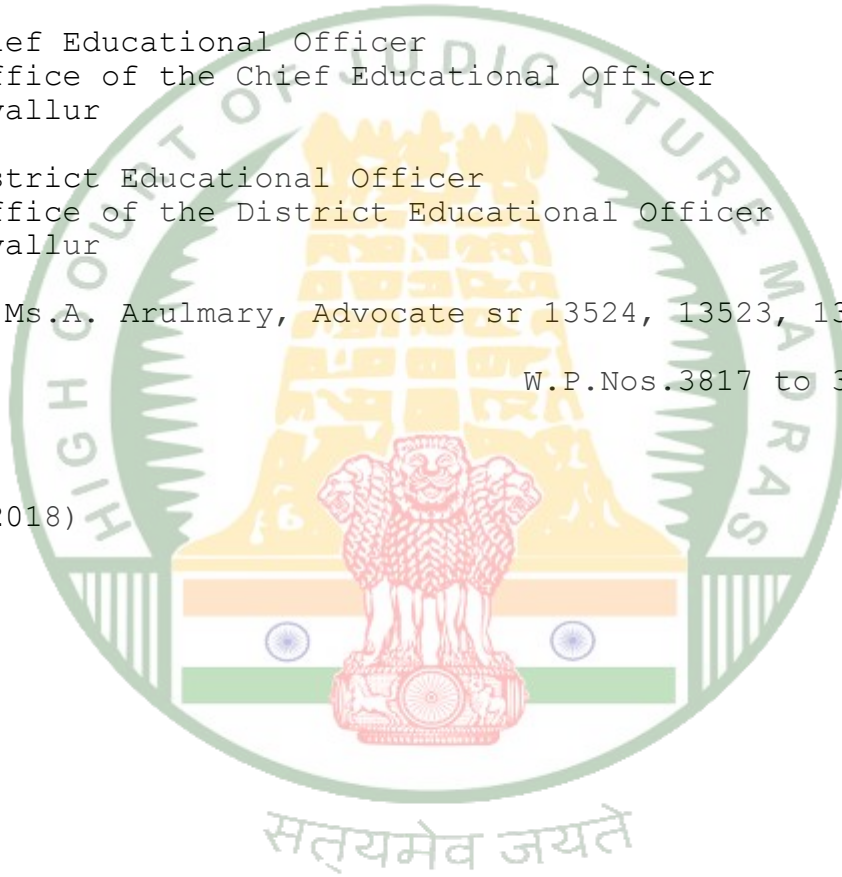
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To

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- +6 CCS to Ms.A. Arulmary, Advocate sr 13524, 13523, 13522

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



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