

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.28074 of 2017

and

W.M.P.No.30158 of 2017

K.Nithya

... Petitioner

Vs

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

2.The Chief Educational Officer,
Panagal Building, Saidapet,
Chennai 600 015.

3.The District Educational Officer,
Chennai North,
Chennai 600 008.

4.The Manager & Correspondent,
Sri Arangiah Naidu High School,
New No.211, O.No.81, Konnur High Road,
Ayanpuram,
Chennai 600 023

.... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to to issue a Writ of Mandamus directing the respondents 1 to 3 to approve the appointment of the petitioner in the regular sanctioned post of Office Assistant in the 4th respondent School from the date of appointment on 03.07.2017 and to make the payment of salary with interest and other service benefits, within a time frame.

For Petitioner : Mr.G.Sankaran

For Respondents : Mrs.P.Rajalakshmi, (for R1 to R3)
Additional Government Pleader

O R D E R

This Writ Petition has been filed challenging the impugned proceedings dated 14.09.2017 issued by the District Educational Officer, Chennai North, the 3rd respondent herein, returning the proposal submitted by the 4th respondent School, seeking order

for approving the appointment of the petitioner Mrs.K.Nithya, who was appointed as Office Assistant on 03.07.2017, in a sanctioned post fell vacant on account of retirement of one Mr.B.Madhavan on 30.06.2017, on attaining the age of superannuation.

2.The learned counsel for the petitioner would submit that the 4th respondent school was sanctioned with the post of Office Assistant by the staff fixation order dated 27.11.2015 passed by the 3rd respondent herein, specifically giving sanction for the post of Office Assistant in the 4th respondent school. Only in the sanctioned post, which fell vacant on account of retirement of one Mr.B.Madhavan, the petitioner was appointed by the 4th respondent, which is a non minority educational institution, which receives aid from the Government. Therefore, now the question that arises for consideration is as to whether minority or non minority educational institution, has to obtain prior permission, while filling up of the sanctioned post. The said question has already been decided by this Court in umpteen number of orders by this Court, especially, in WP.Nos.29998 and 29999 of 2014 batch, dated 17.03.2017. For better appreciation, relevant portion thereof is extracted below:

"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"

3.In view of the above, the District Educational Officer, Chennai North, the 3rd respondent herein, who is the competent authority, ought not to have returned the proposal sent by the 4th respondent, which is not only dragging of the matter but also causing more prejudice to the petitioner, who, after his appointment, has been working without any salary till date. Therefore, the impugned proceeding, which has been passed without application of mind, is liable to be set aside.

4.The learned Additional Government Pleader appearing for the respondent, after taking note of the said legal position in the afore mentioned order, agreed with the submission of the

learned counsel appearing for the petitioner that the 3rd respondent, being the competent authority, ought not to have passed the impugned order returning the proposal sent by the 4th respondent recommending to sanction the appointment of the petitioner, as she was appointed in a sanctioned post. Therefore, he sought for only two weeks time to obtain an approval for the appointment of the petitioner in the 4th respondent school as Office Assistant, since the staff fixation order issued by the 3rd respondent also clearly shows that the 4th respondent can fill up the sanctioned post of Office Assistant, which fell vacant on account of retirement of Mr.B.Madhavan.

5.Recording the above said submission of the learned Additional Government Pleader, this Court hereby sets aside the impugned proceedings dated 14.09.2017. Consequently, the 3rd respondent herein is directed to approve the appointment of the petitioner in the post of Office Assistant, besides, releasing her salary from the date of appointment. The said exercise shall be completed within a period of two weeks from the date of receipt of a copy of this order.

5.With the above directions, this Writ Petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sai / kak

To

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

2.The Chief Educational Officer,
Panagal Building, Saidapet, Chennai 600 015.

3.The District Educational Officer,
Chennai North, Chennai 600 008.

+1 cc to Mr.G.Sankaran Advocate sr 6143

+1 cc to Government Pleader sr 6627

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