

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.Nos.20231 to 20238 of 2008 and  
M.P.Nos.1 and 2 in all W.Ps.

A.Karol ... Petitioner in W.P.No.20231 of 2008  
A.SIRIAPUSHPAM ... Petitioner in WP No.20232/2008  
A.ROSALI MARY ... Petitioner in WP No.20233/2008  
N.SHANTHI ... Petitioner in WP No.20234/2008  
V.GEETHAMANI ... Petitioner in WP No.20235/2008  
**\* A. SANTI** ... Petitioner in WP No.20236/2008  
Y.JONES ... Petitioner in WP No.20237/2008  
MISS. AMALORPAVA MARY ... Petitioner in WP No.20238/2008

Vs

1. The Union Territory of Puducherry  
rep. by its Secretary (Education),  
Chief Secretariat (Education),  
Puducherry.
2. The Director of School Education,  
Directorate of School Education,  
Puducherry.
3. The Joint Director of School Education,  
Directorate of School Education,  
Puducherry.
4. Senior Accounts Officer,  
Directorate of School Education,  
Puducherry.
5. The Chief Educational Officer,  
CEO's Office,  
Thalatheru, Nehru Nagar,  
Karaikal.
6. The Correspondent,  
Nirmala Rane Girls Higher Secondary  
School, No.33 Nehru Street,  
Karaikkal-1. ... Respondents in all the WP's

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the Memorandum dated 03.07.2007, 03/03/2005, 18/09/2007 in No.2086/DSE/GIAS/U.III/2007-2008, 39896/EDN (GIAS)/U.III/2002, ( Directorate of School Education, on the file of the 2<sup>nd</sup> respondent and the Consequential Proceedings No.20861/DSE/GIAS/U.III/2007-2008 dated 04.02.2008, 10/01/2008 on the file of the 4<sup>th</sup> respondent, quash the same and for direction, directing the respondents to accord approval from the date of appointment w.e.f. 01.03.2007, 01/09/2007, 26/11/2003, 10/11/2003, 10/08/2005, 10/06/2003, 02/04/2007, 03/09/2003 to the petitioner working as Primary School Teacher, Sanitary Helper, Physical Education Teacher, Language Teacher (Tamil) in Nirmala Ranees Girls Higher Secondary School, No.33, Nehru Street, Karaikkal, regularizing her services with all attendant benefits.

For Petitioners : Dr.Fr.A.Xavier Arul Raj,  
Senior Counsel  
for Mr.S.M.Edward Stanley

For Respondents : Mr.R.Syed Mustafa,  
1 to 5 Special Government Pleader

#### C O M M O N O R D E R

All the eight writ petitions have been filed, challenging the Memorandum of the 2<sup>nd</sup> respondent, namely, the Director of School Education, Directorate of School Education, Puducherry and the consequential proceedings of the 4<sup>th</sup> respondent, namely, Senior Accounts Officer, Directorate of School Education, Puducherry, refusing to accord approval to the petitioners in their respective post from the date of their initial appointment, to quash the same and for further direction, directing the respondents to accord approval from the date of appointment of the petitioners, by regularizing their services with all attendant benefits.

2. Learned Senior Counsel appearing for the petitioners in all these Writ Petitions submitted that when all the petitioners were appointed in the sanctioned vacancies in the 6<sup>th</sup> respondent school, namely, Nirmala Ranees Girls Higher Secondary School, No.33, Nehru Street, Karaikkal, the respondents are not according approval from the date of their initial appointment and on the other hand, the respondents have accorded approval only from the date of the order of approval, as a result, all the petitioners are being deprived of their service benefits and salary.

3. The learned Senior Counsel for the petitioners further submitted that one A.Karol, the petitioner in W.P.No.20231/2008 is deprived of salary from 01.03.2007 to 02.07.2007. The action of the respondents in rejecting the approval from the date of her appointment w.e.f. 01.03.2007 citing the reason that due to financial constraints is wholly untenable. When the 2<sup>nd</sup> respondent after approving the appointment of A.Karol has released the salary from the date of approval i.e. w.e.f. 3.7.2007. It is unacceptable to plead before this Court for 4 months 2 days, they are not having sufficient financial capacity. Similarly, in the case of Siriapushpam, the petitioner in W.P.No.20232/2008, when the respondent has also granted approval of her appointment w.e.f. 09.01.2008 instead of 01.09.2007, she is also deprived of 4 months and 7 days salary and also in the case of one Rosali Mary, the petitioner in W.P.No.20233/2008, who was appointed as Secondary Grade Teacher on 26.11.2003, she is deprived of one year 3 months and 8 days salary because instead of granting approval from the date of her original appointment, namely, from 26.11.2003, they have granted approval only from 03.03.2005.

4. Continuing his arguments, the learned Senior Counsel for the petitioners also submitted that likewise, in the case of one N.Shanthi, the petitioner in W.P.No.20234 of 2008 instead of granting approval from the date of her original appointment on 10.11.2003, the approval was accorded only from 03.03.2005 and thus, she is deprived of 1 year 8 months and 17 days salary. In the case of V.Geethamani, the petitioner in W.P.No.20235/2008, instead of granting approval from the date of her original appointment on \* 10.8.2005, the approval was accorded only from \* 16.09.2007, thereby depriving salary for \* 2 year 1 months and \* 6 days. Likewise, in the case of one \* A.Santhi, the petitioner in W.P.No.20236/2008, though she was appointed on 10.6.2003, approval was accorded only on 03.03.2005 thereby she is deprived of 1 year 8 months and 24 days salary. In the case of one Y.Jones, the petitioner in W.P.No.20237/2008 instead of granting approval from 02.04.2007, the same was granted only on 03.07.2007 and thus, he is deprived of 3 months salary and in the case of one Amalorpava Mary, the petitioner in W.P.No.20238/2008 instead of according approval from the date of her original appointment, namely, 03.09.2003, the same was granted from 03.03.2005 thus, she is deprived of salary for 1 year 3 months and 8 days.

5. Adding further, the learned Senior Counsel appearing for the petitioners submitted that when it is a well settled legal position that once the school in which the petitioners are working have sent proposals seeking approval of appointments in

the sanctioned vacancies, the respondents 1 to 5, while according approval of appointments, they should consider that the proposal seeking order of approval should be from the date of initial appointment made in the sanctioned vacancies in the Minority Educational Institutions. In the cases on hand, when all the petitioners were appointed in the sanctioned vacancies in the Minority Educational Institution, namely, Nirmala Ranee Girls Higher Secondary School, No.33, Nehru Street, Karaikkal, the respondents cannot have any other say except following the settled legal principle as expounded by this Court in Thiruvalluvar Higher Secondary School, Palamaner Road, Gudiyattam, Vellore District rep. by the Secretary, School Committee, K.M.Govindarajan vs. The Government of Tamil Nadu rep. by its Secretary, Department of School Education, Fort St. George, Chennai-9 and 3 others reported in 2008 (8) CTC 648 wherein it is held that when once a proposal is sent by the Minority Educational Institution seeking an order of approval for appointment either to a teacher or non-teaching staff, the Government should have considered and approved the appointment of the petitioner from the date of initial appointment.

6. A detailed counter affidavit has been filed by the 2<sup>nd</sup> respondent, namely, the Director of School Education, Puducherry.

7. Learned Special Government Pleader, Puducherry, appearing for the respondents 1 to 5 submitted that Nirmala Ranee Girls Higher Secondary School, Karaikal, is one among the 35 Government Aided Private Schools functioning in the Union Territory of Puducherry and the said school was sanctioned with few teaching and non-teaching posts at the time of its inception. Since the school management has engaged the petitioners on consolidated pay basis and shown against them in the newly upgraded vacancies, the proposal of the school management seeking approval of the department for appointment in various posts was considered and duly granted. Therefore, when all the petitioners were appointed on consolidated pay basis, they cannot be appointed on regular basis under Grant-in-Aid stream retrospectively and the benefit of approval cannot be granted by the respondents from the date of their initial appointment. Hence, the present Writ Petitions are liable to be dismissed.

8. Adding further, the learned Special Government Pleader for the respondents 1 to 5 submitted that all the Government Aided Schools in the Union Territory of Puducherry are governed by Puducherry School Education Act, 1987 and Puducherry School Education Rules, 1996 framed therein. When all the petitioners

were initially engaged on consolidated pay basis by the school management, after the scrutiny of the proposals of the school Management, they were appointed in various dates. Therefore, on the basis of the recommendation of the Selection Committee constituted by the Government, the orders of approval of appointment have been given to all the petitioners. Therefore, the impugned order cannot be found fault with.

9. But this Court finds no merit in the submission of the learned Special Government Pleader, Puducherry, appearing for the respondents 1 to 5 nor valid reason in the counter affidavit filed by the 2<sup>nd</sup> respondent. The reason is simple. It is not in dispute that when the respondents have accorded approval of appointment of all the petitioners in the 6<sup>th</sup> respondent school, which is a Minority Educational Institution, who are receiving grant-in-aid from the Puducherry Government, they cannot give approval from the date of order of approval, since the proposals sent by the School Managements have specifically mentioned that the teaching and non-teaching staffs appointed in their schools are working in the sanctioned vacancies in the Minority Educational Institution. Hence, when the school Management had appointed the petitioners in the sanctioned vacancies, granting approval from the date of issuing the order is not right in law and the respondents should have granted approval of appointment from the date of their initial appointment.

10. Therefore, firstly, in the case of one Karol, the petitioner in W.P.No.20231/2008, who was appointed as Primary School Teacher, the respondents have to accord her approval in the said post from 01.03.2007, the date of her initial appointment instead of 03.07.2007. Secondly, Siriapushpam, the petitioner in W.P.No.20232/2008 appointed as Primary School Teacher, her appointment in the said post has to be approved w.e.f. 01.09.2007, the date of her initial appointment instead of 09.01.2008. Thirdly, Rosali Mary, the petitioner in W.P.No.20233/2008, her appointment has to be approved from 26.11.2003, the date of her initial appointment to the post of Secondary Grade Teacher instead of 03.03.2005. Fourthly, N.Shanthi, the petitioner in W.P.No.20234/2008, her appointment has to be approved from 10.11.2003 instead of 03.03.2005. Fifthly, V.Geethamani, the petitioner in W.P.No.20235/2008, her appointment in the post of Physical Education Teacher has to be approved w.e.f. \* 10.08.2005 instead of \* 16.09.2007, Sixthly, \* A.Santhi, the petitioner in W.P.No.20236/2008 holding the post of Secondary Grade Teacher, her appointment to the said post has to be approved w.e.f. 10.6.2003 instead of 03.03.2005. Seventhly, Y.Jones, the petitioner in W.P.No.20237/2008, his appointment to the post of Sanitary Helper has to be approved

from 02.04.2007 instead of 03.07.2007. Eighthly, Amalorpava Mary, the petitioner in W.P.No.20238/2008, her appointment has to be approved from 03.09.2003 instead of 03.03.2005.

11. In view of the above, this Court finds no reason whatsoever in the counter affidavit filed by the 2<sup>nd</sup> respondent and besides this Court also has settled the legal principle in the case of S.D.Rajkumar vs. State of Tamil Nadu rep. by its Secretary to Government, School Education Department, Secretariat, Chennai-9 (W.A. (MD) No.456 of 2008 dated 04.08.2008) holding that the appointments of the petitioners in their respective posts should be approved from the date of their initial appointment. The relevant portion is given hereunder:

'4. It has been brought to our notice that in similar circumstances, the Government has issued orders in respect of similar employees approving their services from the date of their initial appointment. When once the ban is revoked, the Government should have considered and approved the appointment of the petitioner from the date of his initial appointment. Therefore, the orders of the learned Single Judge needs to be modified to the extent. Accordingly, the Writ Appeal is allowed modifying the order of the learned single Judge dated 30.10.2007 made in W.P.(MD) No.484 of 2007 and directing the respondents to approve the appointment of the petitioner from the date of initial appointment. No order as to costs''.

The above observation clearly shows that if any appointment is made to the sanctioned vacancies in a Minority Educational Institutions, the approval shall be given from the date of appointment.

12. Therefore, in view of the foregoing reasons, the impugned orders are liable to be set aside and they are accordingly set aside. The respondents 1 to 5 are directed to issue orders granting approval from the date of initial appointment of the petitioners along with salaries. Needless to mention that the respondents shall also pay the salary of the petitioners from the date on which they were appointed, namely, from the date of their initial appointment. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this Order.

13. With the above observation and direction, the Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CO)

\* **Corrected as per order dated 27.05.2019**  
**19.08.2019 made in WMP.NO.17348 &**  
**17357 of 2019**

Sd/-

**Assistant Registrar (CO)**  
**dated 24.09.2019**

//True copy//

Sub Assistant Registrar

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To

1. The Secretary (Education),  
Union Territory of Puducherry,  
Chief Secretariat (Education),  
Puducherry.
2. The Director of School Education,  
Directorate of School Education,  
Puducherry.
3. The Joint Director of School Education,  
Directorate of School Education, Puducherry.
4. Senior Accounts Officer,  
Directorate of School Education,  
Puducherry.
5. The Chief Educational Officer,  
CEO's Office, Thalatheru,  
Nehru Nagar, Karaikal.

**To be Substituted to the**  
**Order already**  
**Despatched on**  
**08.07.2019**

+2cc to M/s.Father Xavier Associates, Advocate SR.No.39976  
+2cc to Government Pleader(Puducherry) SR.No.40849,40847  
W.P.Nos.20231 to 20238 of 2008

AD(CO)  
GMY(30/05/2019)  
CS/25/09/2019