

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2022

CORAM

THE HON'BLE MR.JUSTICE P.D. AUDIKESAVALU

W.P.No.17477 of 2018
and
W.M.P.No.20751 of 2018

LourthMary

...Petitioner

-vs-

1. The District Educational Officer,
Tiruvallur,Tiruvallur District.
2. The Correspondent,
Secred Heart Girls Hr. Sec. School,
Perambakkam Village,
Kilacheri Post,
Tiruvallur District.

...Respondents

Prayer:-Writ Petitions filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the First Respondent in his proceedings Oo. Mu. No. 3195/A5/2016 dated 23.11.2016 and quash the same and direct the Respondents to approve the appointment of the Petitioner as Water Woman from the date of appointment on 01.04.2013 and confer all the consequential benefits.

For Petitioner : Mr. P.Ganesan

For Respondents: Mrs. C.Sangamithirai,
Special Government Pleader (for R1)

Ms. A.Arulmary
for M/s. Father Xavier Associates
(for R2)

O R D E R

Heard Mr. P.Ganesan, Learned Counsel for the Petitioner and Mrs. C.Sangamithirai, Learned Special Government Pleader appearing for the First Respondent and Ms. A.Arulmary, Learned Counsel for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2.The Second Respondent is a private school receiving grant-in-aid from the Government of Tamil Nadu for payment of salaries to its teachers. The Petitioner claims to have been appointed against the vacancy in the non-teaching post of Waterman in the school of the Second Respondent by order dated 01.04.2013 and has been continuing to work from then onwards. The proposal for approval of that appointment sent by the Second Respondent was rejected by the First Respondent in his proceedings dated 23.11.2016 referring to G.O. Ms. No. 212, Public and Human Resource Management Department dated 29.11.2001 issued by the Government of Tamil Nadu imposing a ban on recruitment in various posts. Aggrieved thereby, the Petitioner has filed this Writ Petition challenging the said order and sought for consequential direction to approve her appointment and make payment of all consequential benefits.

3.This Court in Deva Asir -vs- Secretary to Government, School Education Department [(2016) 3 LW 152] has quashed the Governmental Orders denying approval of appointment of non-teaching staff in aided schools due to imposition of ban on recruitment and as such, the impugned order cannot be sustained.

4.In the Counter-Affidavit dated 04.10.2018, the First Respondent has referred to G.O. Ms. No.64, School Education Department dated 03.04.2018 issued by the Government of Tamil Nadu and contends that the post of Waterman, which is not a sanctioned post in a Government School, has to be withdrawn in Government Aided Schools as and when the incumbent vacates the post and the earlier sanctioned post has to be repealed. Inasmuch as the appointment of the Petitioner against the said vacancy had been made prior to that Governmental Order, it cannot have any retrospective applicability to the present case.

5.In such circumstances, the following order is passed:-

- (i) the impugned Order in Oo. Mu. No. 3195/A5/2016 dated 23.11.2016 passed by the First Respondent is set aside;
- (ii) the concerned authority shall immediately consider the claim of the Petitioner for approval of her appointment in the school of the Second Respondent for grant of aid for payment of her salary, if she is otherwise eligible for it and had actually worked during the relevant period;
- (iii) if it is found that any details or supporting documents satisfying the eligibility criteria for the benefits claimed had not been produced, the deficiencies in that regard shall be informed in writing to the Petitioner and the Second Respondent requiring the same to be furnished within a time frame of not less than 15 clear working days;

- (iv) in the event of the concerned authority not being satisfied with the compliance of the requirements even thereafter, an enquiry shall be conducted affording full opportunity of personal hearing to the Petitioner and the Second Respondent to explain their position in that regard and the concerned authority shall pass reasoned orders dealing with each of the contentions raised on merits and in accordance with law and communicate the decision taken to the concerned parties under written acknowledgment;
- (v) if the Petitioner is entitled to the approval of appointment, it shall be ensured that the eligible amount of arrears of salary is paid within one month from the date of passing of that order, apart from the monthly salary for future months on the due dates; and
- (vi) the concerned authority shall file a report of compliance in that regard by 30.09.2022 before the Registrar (Judicial) of this Court;

In the result, the Writ Petition is disposed on the aforesaid terms. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vjt

To

The District Educational Officer,
Tiruvallur, Tiruvallur District.

Copy to

The Registrar (Judicial),
Madras High Court,
Chennai - 600 104.

+2cc to M/s.Father Xavier Associates, Advocate, S.R.No.18960
+1cc to Mr.P.Ganesan, Advocate, S.R.No.18455
+1cc to the Government Pleader, S.R.No.18784

W.P. No. 17477 of 2018

GSM(CO)
RGA(10/06/2022)