



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **20.06.2022**

CORAM:

THE HONOURABLE **MR.JUSTICE M.S.RAMESH**

W.P. (MD)No.5062 of 2018

and

W.M.P. (MD)No.5047 of 2018

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G.Jansi Mary

... Petitioner

/vs./

1.The Govt. of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St. George, Chennai - 9.

2.The Director of School Education,
DPI Campus, College Road, Chennai - 6.

3.The Chief Educational Officer,
The Office of the Chief Educational Officer,
Thanjavur, Thanjavur District.

4.The District Educational Officer,
The Office of the District Educational Officer,
Kumbakonam,
Thanjavur District.

5.The Correspondent,
Regina Caeli Girls Higher Secondary School,
Ammamet,
Thanjavur District - 614 401.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order dated 15.06.2017 in Na.Ka.No.1361/A3/2017, on the file of the fourth respondent and quash the same, directing the respondents to accord approval to the appointment of the petitioner, Mrs.G.Jancy Rani as Office Assistant in Regina Caeli Girls Higher Secondary School, Ammapet, Thanjavur District - 614 401, w.e.f. 01.03.2017, with all monetary and other service benefits.

For Petitioner	:	Mr.FR.V.John Kennedy
For Respondents 1 to 4	:	Mr.S.Shaji Bino Special Government Pleader
For Respondent No.5	:	Mr.K.Ragatheesh Kumar for M/s.Isaac Chambers



ORDER

The proposal for approving the petitioner's appointment as Office Assistant was rejected through the impugned order stating that such appointment was made without prior permission of the District Educational Officer.

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2. The issue as to whether the prior permission of the authorities to appoint a person in the sanctioned non teaching posts is required or not, came up for consideration before the Hon'ble Division Bench of this Court in W.A.No.1022 of 2020 in the case of **The Director of School Education, Chennai and Others Vs. S.Murugan and another** and the Hon'ble Division Bench has held that such prior permission is not necessary. The relevant portion of the order reads as follows:-

"6. What is of importance is whether an aided School is required to obtain prior permission from any authority to undertake the process of appointment upon a vacancy arising in a sanctioned non-teaching post. The appellants have not been able to indicate any Rule or Notification or the like requiring prior permission to be sought before undertaking the exercise to look for a replacement upon a sanctioned post falling vacant in the non-teaching category.

7. It is possible that there may be surplus staff in other Government-aided Schools in the District or nearby areas. It is equally possible that the Government may require the surplus staff to be deployed at other aided Schools upon vacancies in similar post arising thereat. However, there has to be a mechanism which has to be put in place for such purpose and the process has to be certain. It would not do for the Department to refuse an appointment merely because at the time of appointment, the Department finds surplus staff of similar description in other aided Schools in the District or the locality. The position as to surplus staff ought to exist at the time is undertaken and a person is identified, it may no longer be open to the Department to refuse the appointment and undo the process by citing surplus staff.

8. In such a scenario, the Department may do well to either bring in Rules that would require aided Schools to obtain permission from the



relevant District Educational Officer before undertaking an appointment procedure and the District Educational Officer being required to respond to the request within a fixed time, so that the relevant School can fill up the vacancy without undue delay. In the alternative, the relevant District Educational Officer may circulate the description and number of the surplus staff at various levels to all Schools for such Schools to be able to fill up any vacancy that arises from the surplus staff at the relevant post. In the absence of either, an aided School cannot be faulted for undertaking the exercise of appointing a person to a sanctioned post or seeking the appointment. The permission that is sought is not permission to fill the post as such, but permission to enable the District Educational Officer to scrutinize whether the appointment procedure was alright and whether the incumbent fits the bill."

3.The aforesaid extract is self explanatory. Since the petitioner herein was also appointed in a vacancy arising out of the sanctioned non teaching post and the respondent had rejected it on the ground that the fifth respondent School had not sought for prior permission for such appointment, the dictum laid down by the Hon'ble Division Bench in the aforesaid decision squarely applies to the case in hand. Accordingly, the impugned order dated 15.06.2017, cannot be sustained.

4.In the result, the impugned order passed by the fourth respondent in Na.Ka.No.1361/A3/2017 dated 15.06.2017, is hereby quashed. Consequently, there shall be a direction to the fourth respondent to approve the appointment of the petitioner in the regular sanctioned posts of Office Assistant in the fifth respondent School from the date of his appointment i.e., from 01.03.2017 and disburse the salaries payable to her, atleast within a period of twelve (12) weeks from the date of receipt of a copy of this order. The Writ Petition stands allowed. There shall be no orders as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/07/2022

Sub Assistant Registrar(CS)



To

1.The Secretary,
Govt. of Tamil Nadu,
Department of School Education,
Fort St. George, Chennai - 9.

2.The Director of School Education,
DPI Campus, College Road, Chennai - 6.

3.The Chief Educational Officer,
The Office of the Chief Educational Officer,
Thanjavur,
Thanjavur District.

4.The District Educational Officer,
The Office of the District Educational Officer,
Kumbakonam, Thanjavur District.

+1 CC to M/s.FATHER XAVIER ASSOCIATES, Advocate (SR-27006[F]
dated 21/06/2022)

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-27251[F] dated 21/06/2022)

+1 CC to M/s.SPL.GP (SR-27412[F] dated 22/06/2022)

Order made in
W.P. (MD) No.5062 of 2018
Dated:20.06.2022

ARK (CO)
GC(01.07.2022) 4P 8C