



W.P.(MD)No.6064 of 2017 & W.P.(MD)No.20222 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 17.11.2022

Pronounced on : 16.06.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.6064 of 2017

and

W.P.(MD)No.20222 of 2021

and

W.M.P.(MD)Nos.4784, 10483 and 10596 of 2017

and

W.M.P.(MD)No.16890 of 2021

W.P.(MD)No.6064 of 2017:-

J.Jasmine

... Petitioner

Vs.

1.The Chief Educational Officer,
Kanyakumari District,
At Nagercoil.

2.The District Educational Officer,
Nagercoil,
Kanyakumari District.

3.The Administrative Committee of
the Kanyakumari Diocese,
Church of South India,
Diocesan Office,
71-A, Dennis Street,
Nagercoil – 1,



W.P.(MD)No.6064 of 2017 & W.P.(MD)No.20222 of 2021

Kanyakumari District,
Pin : 629 001.
Rep. by its Secretary.

- 4.The Bishop,
Kanyakumari Diocese, C.S.I.,
71, Dennis Street, Nagercoil,
Kanyakumari District,
Pin : 629 001.
- 5.The Corporate Management Schools,
Kanyakumari Diocese, C.S.I.,
71, Dennis Street, Nagercoil,
Kanyakumari District,
Pin : 629 001,
Rep. by its Corporate Manager Cum Secretary
of Board of School Education.
- 6.Duthie Higher Secondary School For Girls,
Nagercoil-1, Kanyakumari District,
Pin - 629 001,
Rep. by its Correspondent.

7. G.W.Merline
*(R7 is impleaded vide order dated 14.11.2017
in W.M.P.(MD)No.10485 of 2017 in
W.P.(MD)No.6064 of 2017 by PDAJ)*

8.The Board of School Education,
Kanyakumari Diocese, C.S.I.,
71-A, Dennis Street,
Nagercoil, Kanyakumari District,
Pin : 629 001.
Rep. by the Bishop of Kanyakumari
Diocese, C.S.I.

... Respondents

*(R8 is impleaded vide order dated 26.02.2019
in W.M.P.(MD)No.2192 of 2019 in
W.P.(MD)No.6064 of 2017 by RMDJ)*



W.P.(MD)No.6064 of 2017 & W.P.(MD)No.20222 of 2021

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records of the 5th respondent, pertaining to its order in proceedings CM20A/2017-2018 dated 13.06.2017 on its file, quash the same, directing respondents 4, 5 and 8 to appoint and post the petitioner as Post Graduate Assistant in Physics with effect from the forenoon of 01.06.2017 in the vacancy, which arose due to the retirement of Mrs.K.Sumathy, Post Graduate Assistant in Physics in the Duthie Higher Secondary School for Girls, Nagercoil, Kanyakumari District, and respondents 1 and 2 to forebear from approving the appointment or posting of anybody other than the petitioner in the said vacancy.

(Prayer is amended vide order dated 14.11.2017 in W.M.P.(MD)No.10484 of 2017 in W.P.(MD)No.6064 of 2017 by PDAJ).

(Prayer is amended vide order dated 26.02.2019 in W.M.P.(MD)No.2193 of 2019 in W.P.(MD)No.6064 of 2017 by RMDJ)

For Petitioner : Mr.K.N.Thambi

For Respondents : Mr.N.Satheesh Kumar,
Addl. Govt. Pleader for R1 & R2.

Mr.Ramsundarvijayaraj for R3.

Mr.F.Deepak for R4 to R6.

Mr.E.V.N.Siva for R7.

No appearance for R8.



W.P.(MD)No.6064 of 2017 & W.P.(MD)No.20222 of 2021

W.P.(MD)No.20222 of 2021:-

G.W.Merline

... Petitioner

Vs.

1.The Chief Educational Officer,
Kanyakumari District.

2.The District Educational Officer,
Nagercoil, Kanyakumari District.

3.The Corporate Manager,
Corporate Management Schools,
CSI Diocese of Kanyakumari,
71-A, Dennis Street,
Nagercoil 629 001,
Kanyakumari District.

4.The Correspondent,
Duthie Higher Secondary School for Girls,
Nagercoil 629 001, Kanyakumari District.

5. J.Jasmine

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 1st respondent herein in Na.Ka.No.9311/E/2019 dated Nil 06.2021 quash the same and further direct the respondents 1 and 2 herein to approve forthwith the appointment of the petitioner herein as Post Graduate



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Assistant (Physics) in the 4th respondent-School from 13.06.2017

onwards with salary and other attendant benefits.

For Petitioner : Mr.E.V.N.Siva

For Respondents : Mr.N.Satheesh Kumar,
Addl. Govt. Pleader for R1 & R2.

Mr.F.Deepak for R3 & R4.

Mr.K.N.Thambi for R5.

COMMON ORDER

Heard the learned counsel on either side.

2.The issue raised in both the writ petitions are one and the same. Vacancy arose in the post of P.G. Assistant (Physics) in Duthie Higher Secondary School for Girls, Nagercoil. It is an aided minority institution. The management appointed G.W.Merline, the petitioner in W.P.(MD)No.20222 of 2021 on 13.06.2017. She joined duty and she is working ever since. The appointment of G.W.Merline was put to

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challenge by one Jasmine by filing W.P.(MD)No.6064 of 2017. Citing the pendency of the writ petition, the appointment of Merline was rejected by the competent authority vide order dated 30.06.2021. Challenging the same, W.P.(MD)No.20222 of 2021 has been filed.

3.The learned counsel on either side reiterated the stand set out in the respective pleadings.

4.I carefully considered the rival contentions and went through the materials on record. The only ground on which Jasmine assails the appointment of Merline is that the management has over-looked the diocesan seniority. It is well settled that minority institutions are entitled to appoint candidates of their choice subject to their possessing the prescribed qualifications. The learned counsel for the petitioner in W.P. (MD)No.6064 of 2017 relied on the decision reported in **2017 (2) CTC 667 (Ivy C.Da Conceicao Vs. State of Goa)** for the proposition that even a minority institution is obliged to adhere to fair procedure.



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5.The only ground on which Jasmine assails the appointment of Merline is that the diocesan seniority was not adhered to. Seniority lists maintained by diocese have no legal backing. This ground is insufficient to fault the appointment of Merlin.

6.Three grounds have been set out in the impugned order dated 30.06.2021 passed by the competent authority negating the approval of Merline. One reason is pendency of W.P.(MD)No.6064 of 2017. The said writ petition has come to an end today ie., 16.06.2023. Therefore, the said ground no longer survives. The primary ground appears to be that there were surplus teachers in the post of P.G. Assistant as per staff fixation done on 01.08.2018. The petitioner was appointed on 13.06.2017. The position that obtained when the petitioner was appointed has not been taken into account. Therefore, the impugned order dated 30.06.2021 is set aside and the matter is remitted to the file of Chief Educational Officer, Nagercoil, Kanyakumari District. All the contentions of the appointee are left open. The Chief Educational Officer, Nagercoil, Kanyakumari District shall pass final order on merits



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and in accordance with law after hearing the management within a period of ten weeks from the date of receipt of a copy of this order.

7.W.P.(MD)No.6064 of 2017 is dismissed and W.P.(MD)No.20222 of 2021 is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

16.06.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

- 1.The Chief Educational Officer,
Kanyakumari District,
At Nagercoil.
- 2.The District Educational Officer,
Nagercoil,
Kanyakumari District.



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G.R.SWAMINATHAN, J.

ias

**Pre-Delivery Common - Order in
W.P(MD)No.6064 of 2017
and
W.P.(MD)No.20222 of 2021**

16.06.2023