



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.03.2015

CORAM:

THE HONOURABLE MR. JUSTICE K. RAVICHANDRABAABU

Writ Petition(MD)No.2410 of 2015

and

M.P (MD)No.1 of 2015

The Secretary,
Holy Cross College (Autonomous),
Nagercoil - 629 004,
Kanyakumari District.

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by it Secretary,
Department of Higher Education,
Fort St. George,
Chennai - 600 009.

2.The Director of Collegiate Education,
College Road,
Chennai - 600 006.

3.The Joint Director of Collegiate Education,
Tirunelveli Region,
Tirunelveli - 627 002.

... Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceeding issued by the 3rd respondent Joint Director in A.Thi.Mu.N.14830/E3/2014, dated 02.01.2015, quash the same and further direct the 3rd respondent Joint Director to approve forthwith the appointment of 24 non-teaching staff (name list annexed) in the petitioner's college and disburse the grant-in-aid towards their salary and allowances w.e.f. the date of their appointment viz., 01.12.2014 and pass such further or other orders.

(Name list annexed vide separate sheet)

For Petitioner : Mr.Ragatheesh Kumar
for Mr.Isaac Mohanlal

For Respondents : Mr.S.Kumar
Additional Government Pleader

ORDER

The petitioner is aggrieved against the order of the third respondent, dated 02.01.2015 whereby approval sought for by the petitioner in respect of appointment of 24 non-teaching staff in the petitioner's College was rejected on the ground that such appointment was made without obtaining prior permission from the Director of College Education.



2. It is not in dispute that those appointments were made against the sanctioned post. Therefore, the only issue that is to be considered is as to whether prior permission from the Director of College Education is required before filling up the post in the vacancies that has caused in the sanctioned post. The said issue is no more *res integra* in view of the earlier order passed by this Court in **C.Manikandan Vs. State of Tamil Nadu, Rep. by its Secretary and others** reported in (2012) 4 MLJ 918 which in turn came to be passed after referring to various decisions of this Court. It has been observed therein that for making appointment in a sanctioned post by the College therein, there need not be any prior permission from respondents 1 to 3 therein before filling up the said post. Paragraph Nos. 19 to 22 of the said order reads as follows:-

"19. Insofar as the other point with regard to the requirement of prior permission before filling up the vacancy is concerned, it is seen that the post of Waterman was sanctioned by the second respondent through his proceedings dated 27.05.1977 and the said post was not resumed are withdrawn later. Therefore, when the petitioner was appointed in the year 1996 by the 5th respondent-college to the post of Waterman, the said post was very much available with 5th respondent-college as a sanctioned post and consequently, when the petitioner was appointed in a sanctioned post by the 5th respondent-college there need not be any prior permission from the respondents 1 to 3 before filling up the said post. The same issue as to whether any prior permission is required before filling up the post in a sanctioned vacancy was considered by a learned Single Judge of this Court in W.P.No.4960 and 14450 of 1997 dated 10.07.2007 (cited supra) and the learned single Judge has held that once the appointment of the person in a sanctioned post is made in accordance with law no prior permission from the Directorate of Collegiate Education is required. The said order of the learned Single Judge was appealed against in W.A.No.92 and 93 of 2008 and the Hon'ble Division Bench dismissed the Writ Appeals on 06.01.2010 by observing as follows at paragraphs 3 and 4:-

"3. The learned single Judge has dealt with both the above said Writ Petitions together and by following the decision of this Court rendered in W.P.No.28396, dated 29.03.2006, the learned Judge has categorically held that once appointment of a person in a sanctioned post is made in accordance with law, no prior permission from the Director or Collegiate Education is required. While holding so, the learned Judge has quashed the impugned proceedings, dated 28.02.1997 and directed the appellants to approve the writ petitioner's (C.Karunakaran) appointment from 2.7.1990 with all consequential service benefits.

4. In view of the such a categoric conclusion of the learned single Judge which was arrived by him by following



the earlier decision of this Court rendered in W.P.No.28396, dated 29.03.2006, we do not find any scope to interfere with the said order, except to confirm the same.

20. Likewise the Hon'ble Division Bench of this Court in W.A.No.140 of 2006 etc., dated 21.10.2010 (cited supra) has considered the same issue and held as follows at paragraph 4:-

"4. We have perused the impugned order as well as the earlier Division Bench decision. In the earlier Division Bench decision, it was categorically held that once appointment of a person in a sanctioned post is made in accordance with law, no prior permission from the Directorate of Collegiate Education is required. In the case on hand, the issue involved is appointment of persons against the sanctioned post. Therefore, the ratio of the earlier Division Bench decision is squarely applicable to the facts of the present case."

21. Further a learned Single Judge of this Court in his judgment dated 27.04.2010 made in W.P(MD)No.174 of 2009 (cited supra) has considered the same issue and by following the earlier order passed by the Hon'ble Division Bench at paragraphs 13, 14, 15, and 16 as held as follows:-

"13. The purport of Rule 11(1) of the Rules, came to be discussed by Mr. Justice ELIPE DHARMA RAO in the order dated 29.03.2006 in W.P. (MD) No. 28396 of 2004, when the Government took a similar stand and raised such an argument, and the learned Judge has held that no prior permission is required so long as such appointment has been made within the sanctioned post. Following are the relevant paragraphs in this regard, which read as follows:-

"9. So, the question that now arises for consideration is as to whether the appointment of the petitioner is well within the sanctioned post. In this context, it would be worthwhile to extract Rule 11(1) of the Rules:

"The number of teachers employed in a college shall not exceed the number of posts fixed by the Director from time to time, with reference to the academic requirements and norms of work load prescribed by the respective Universities and over all financial considerations."

10. Thus, it is evident from the above, any such appointment of teachers should not exceed the number of posts fixed by the Director. In the present case, the third respondent college has been sanctioned with two posts of Malayalam Lecturers and since a vacancy has arisen due to



the retirement of one Dr.A.M.Vasudevan Pillai, the petitioner herein was appointed through direct recruitment process in the said vacancy.

11. Further, as regards the other limbs of the rule relating to the norms of the workload and financial considerations also, when there is no reduction of workload in the third respondent college and in the absence of any order passed by the second respondent pointing out any such reduction of financial constraints, it can be held that the appointment of the petitioner is done in accordance with the Rule and therefore, no prior permission is required to appoint the petitioner.

12. Therefore, it is clear that the order passed by the second respondent is contrary to Rule 11(1) of the Rules and has to be set aside. Accordingly, the same is set aside. The second respondent is directed to pass the order of approval of the petitioner from the date of his initial appointment within a period of six weeks from the date of receipt of a copy of this order. Consequently, connected WPMP is closed."

Thereby held that the rejection of proposal for approval of the appointment made is contrary of the Provisions of Rule 11(1) of the Rules.

14. That proposition was followed by Mr.Justice S.RAJESHWARAN in the order in W.P.Nos.4960 & 14450 of 1997, dated 10.07.2007, wherein the learned Judge after referring to Rule 11(1) of the Rules, has set aside the rejection order, which was made on the ground that prior approval was not obtained and directed the educational authorities to grant approval.

15. The said Judgment of the learned Single Judge, came to be questioned by the educational authorities in W.A.Nos.93 and 94 of 2008, which came to be decided by a Division Bench of this court and in the Judgment dated 06.01.2010, while the Division Bench confirmed the stand of the leaned single Judge, has held as follows:

"The learned single Judge has dealt with both the above said writ petitions together and by following the decision of this court rendered in W.P.No.28396 of 2004, dated 29.03.2006, the learned Judge has categorically held that once appointment of a person in a sanctioned post is made in accordance with law, no prior permission from the Director of Collegiate Education is required. While holding so, the learned Judge has quashed the impugned proceedings, dated 28.02.1997 and directed the appellants to approve the writ petitioner's (C.Karunakaran) appointment from 02.07.1990 with all consequential service benefits."



16. In the context of the categorical legal pronouncement on the issue, especially that of the Division Bench as stated above, there is absolutely no substance in the impugned order, which on the face of it is not sustainable in law and the same is liable to be set aside. Accordingly, the impugned order of the first respondent, dated 02.12.2008 is set aside and the writ petition stands allowed with a direction to the first and second respondents to grant approval for the appointment of the petitioner in the third respondent college with effect from the date of his appointment i.e. on 16.07.2001 and also release the teaching grant and such order shall be passed within four weeks from the date of receipt of a copy of this order."

22. From the categorical findings rendered by the Hon'ble Division Bench as well as the learned Single Judges of this Court as cited supra, it is clear that there is no necessity for the 5th respondent-college to seek prior permission before filling up the post in a sanctioned vacancy. The impugned order in this writ petition came to be passed only on two grounds, namely, that the 5th respondent-institution did not obtain minority status from the Government and that no prior permission was obtained before filling up the post. As I have found both reasons assigned by the respondents 1 to 3 in refusing to accord approval are unsustainable the writ petition is allowed and the impugned order is set aside. Consequently, the respondents 1 to 3 are directed to approve the appointment of the petitioner as a Waterman in the 5th respondent-college from the date of his appointment and pay salary and other attendant benefits available to him within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed."

3. Considering the present facts and circumstances and applying the above said decision made by this Court, I am of the view that this Writ Petition is to be allowed and accordingly, the same is allowed and the impugned order is set aside. Consequently, the petitioner is directed to resubmit the proposal to the third respondent within a period of two weeks from the date of receipt of a copy of this order. On receipt of such proposal, the third respondent shall pass appropriate orders in the light of the order passed in this Writ Petition within a period of eight weeks from the date of receipt of such proposal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

/TRUE COPY/



To

1.The Secretary,
Department of Higher Education,
Fort St. George,
Chennai - 600 009.

2.The Director of Collegiate Education,
College Road,
Chennai - 600 006.

3.The Joint Director of Collegiate Education,
Tirunelveli Region,
Tirunelveli - 627 002.

+1cc to Special Govt.Pleader,SR.No.11175

+1cc to Mr.Isaac Mohanlal,Advocate SR.No.11106

W.P (MD) No.2410 of 2015
05.03.2015

pm

PA/10.03.2015/6P/6C