

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.29075 of 2016

The Secretary,
Sacred Heart College (Autonomous)
Tirupattur - 635 601
Vellore District.

... Petitioner

vs.

1. The State of Tamil Nadu,
rep. by its 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,
Vellore Region,
Vellore District - 635 006.
 4. The Thiruvalluvar University,
rep. By its Registrar,
Serkadu,
Vellore District - 635 115.
- ... Respondents

Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of mandamus directing the 3rd respondent/Joint Director to approve forthwith the appointment of 13 teaching staff (Name List annexed) in the petitioner's college and disburse the grant-in-aid towards their salary and allowances with effect from the respective dates of their appointments.

For Petitioner : Mr.P.Godson Swaminath

For R1 to R3 : Mr.K.Dhananjayan,
Special Government Pleader

For R4 : Mr.S.T.Rajan

O R D E R

The petitioner College has come up with this Writ Petition seeking a direction to the 3rd respondent/Joint Director of Collegiate Education to approve forthwith the appointment of 13

teaching staff as per the List annexed, in their college and disburse the grant-in-aid towards their salary and allowances with effect from the respective dates of their appointments.

2. According to the petitioner College, it is a recognized religious Minority Educational Institution, established in the year 1951. The members of the Congregation of the Salesians of Don Bosco (SDB) are popularly known as Salesians. The Congregation is a world wide organization of religious men and women, numbering about 15,762 and spread all over the world, of which, nearly 2605 are working in various Provinces of India. In Tamil Nadu alone, there are 384 Salesians working in various Schools and Colleges, youth services and social work centres, in Parishes and Mission Outreach programmes. There are 4 Arts and Science Colleges, 2 Colleges of Education, 1 Professional College, 10 Industrial Training Institutes, 34 Schools and 2 Centres for Street Children under the Salesian Province of Chennai.

3. The petitioner College, a partially aided Arts and Science College, established in the year 1951, became an autonomous College in 1987. However, it continues to remain affiliated to the 4th respondent/Thiruvalluvar University. It is autonomous in the sense that it is free to frame its own courses of studies and adopt innovative methods of teaching and evaluation. The University confers the degree on the students passing the examinations held by the College and the name of the College will be indicated in the Degrees.

4. It is further stated by the petitioner that their College, a Co-educational Institution, is one of the oldest and reputed Colleges in the State, offering best general and secular education in Graduate, Post-Graduate, Pre-Doctoral and Research (Doctoral) levels. Some courses are aided by the State and others are self-financed by the College. Although, it is a minority institution, admission is not denied to anyone on the grounds of religion, caste or creed. There are over 1200 students; 60 teaching staff and 32 non-teaching staff in the aided sections of the College and there are over 2400 students, 102 teaching staff and 60 non-teaching staff in the unaided Section of the College.

5. Out of the 60 teaching posts under the Aided Scheme, as and when the posts fell vacant, the College filled them and sought qualification approval from the 4th respondent University and approval of appointment from the 3rd respondent/Joint Director of Collegiate Education. Earlier, as the 3rd respondent refused approval in relation to 11 posts, the petitioner College filed W.P.No.14866 of 2014 before this Court and by an order dated 05.12.2014, the Writ Petition was disposed of. Later, respondents 1 to 3 preferred Writ Appeal No.1264 of 2015 and

this Court modified the order in the Writ Petition. When the order in Writ Appeal was not complied with, the petitioner filed Contempt Petition No.2792 of 2015 before this Court and the respondents approved the appointments of the said 11 Assistant Professors vide proceedings dated 20.01.2016 in Mu.Mu.No.21284/G4/2015.

6. It is further stated by the petitioner that 13 posts require approval of appointment by respondents 1 to 3, despite qualification approval granted by the 4th respondent University, details of which are as follows:

S.No	NAME	QUALIFICATION	DATE OF APPOINTMENT	VACANCY DETAILS
DEPARTMENT OF ECONOMICS				
1	S.John Sundar	M.A., M.Phil.,	20.06.2013	Rev.Dr.A.T.Thomas Assistant Professor of Economics, retired on 31.05.2013
DEPARTMENT OF ENGLISH				
2	V.Madhan Kumar	M.A. SET	20.06.2013	D.Sebastian, Associate Professor of English, died on 17.01.2009
DEPARTMENT OF MATHEMATICS				
3	M.Antony Arockiasamy	M.Sc., M.Phil.,	20.06.2013	Dr.M.Maria Susai Manuel, Associate Professor in Mathematics, retired on 30.04.2010
DEPARTMENT OF CHEMISTRY				
4	Dr.S.Lawrance	M.Sc., M.Phil., Ph.D.,	05.07.2013	R.Mohan, Associate Professor in Chemistry, retired on 31.05.2013
5	Dr.M.Wilson Bosco Paul	M.Sc., Ph.D.	18.06.2015	Rev.Dr.C.M.Vargese Associate Professor in Chemistry, retired on 31.05.2014

S.No .	NAME	QUALIFICATION	DATE OF APPOINTMENT	VACANCY DETAILS
6	Dr.R.Jude Vimal Michael	M.Sc., M.Phil., Ph.D.,	18.06.2015	Dr.S.Lawrance, Assistant Professor, resigned on 31.05.2015
DEPARTMENT OF COMMERCE				
7	Dr.G.Prakash Raj	M.Com., Ph.D., UGC-NET	18.06.2015	Dr.M.Joseph Belson, Associate Professor resigned on 31.05.2013
8	Dr.S.Harihara n	M.Com., M.Phil., Ph.D., UGC-NET	18.06.2015	Dr.M.Raguraman, Assistant Professor, resigned on 31.05.2015
DEPARTMENT OF COMPUTER SCIENCE				
9	M.Maria Dominic	M.Sc., M.Phil.,	20.06.2013	Rev. Dr. S.Thadeus, Assistant Professor in Computer Science, resigned on 16.07.2009
DEPARTMENT OF SOCIAL WORK				
10	Fr.J.Andrews Raja	M.S.W.	18.06.2012	Rev.Dr.S.Thanisl as, Associate Professor in Social Work, retired on 31.05.2009
11	Dr.K.Arockiar aj	M.S.W., M.Phil.,	20.06.2013	Dr.C.Maria Joseph Bosco, Associate Professor in Social Work, retired on 31.05.2013
DEPARTMENT OF TAMIL				
12	Dr.M.Thomas	M.A., M.Phil., Ph.D.	18.06.2015	Rev.Dr.S.M.Mariap pan, Assistant Professor in Tamil, resigned on 31.05.2015

S.No .	NAME	QUALIFICATION	DATE OF APPOINTMENT	VACANCY DETAILS
13	Dr.G.Mohangan dhi	M.A., M.Phil., Ph.D., UGC- NET	18.06.2015	Rev.Dr.A.Maria Soosai, Associate Professor in Tamil, retired on 31.05.2013

7. The petitioner further states that proposals have been sent for approval of appointment of the aforesaid appointees to the 1st respondent on 22.10.2013 and to the 2nd respondent through the 3rd respondent on 22.10.2013. Thereafter, after filling the remaining vacancies, proposals for approval of appointment of candidates were sent on 26.08.2015 to the 2nd respondent through the 3rd respondent. Later, a consolidated proposal dated 02.05.2016 for all the 13 candidates were sent to the 3rd respondent. Finding no response, a reminder dated 11.07.2016 was sent to the 3rd respondent and approval of appointment of 13 teachers was requested. Pursuant thereto, the 2nd and 3rd respondents, on enquiry, informed the petitioner orally that without getting prior permission of the 2nd respondent, appointments cannot be made and therefore, the approval of 13 Teachers cannot be given. Hence, this Writ Petition.

8. When the matter is taken up for consideration, learned counsel for the petitioner submitted that appointment of 13 teaching staff is against vacancies arising in sanctioned posts and that the 3rd respondent is bound to grant approval for the same. It is his contention that even as the affiliating University has given its qualification approval for 13 teachers, the act of the 2nd and 3rd respondents insisting on prior permission is highly illegal and arbitrary. To substantiate his case, he has relied upon a decision of this Court in the case of P.Ravichandran vs. State of Tamil Nadu, rep. by Secretary to Government, Chennai (2013) 7 MLJ 641.

9. Heard the learned counsel on either side and perused the material documents available on record.

10. For better appreciation of the case, relevant portion of the judgment rendered in P.Ravichandran vs. State of Tamil Nadu, rep. by Secretary to Government, Chennai (2013) 7 MLJ 641, is extracted hereunder:

'19. (a) The Division Bench decision reported in 1997 (3) CTC 76 (The Association of Managements of Private Colleges v. State of Tamil Nadu) arose when an attempt was made by the Government to select 50% of seats in Private Self-financing Arts and Science Colleges by Government Agency. The said Government order was challenged and the Division

Bench of this Court held that,

"..... the State Government over-stepped their power in issuing the impugned Government Order under Article 162 of the Constitution, as such power cannot be exercised over the subject occupied by law passed by the competent legislature, which is otherwise known as 'theory of occupied field' "

The Division Bench for arriving at the said conclusion relied on the judgment of the Supreme Court reported in AIR 1964 SC 1823 (Chitraleka v. State of Mysore). In the said case the power of the University which granted affiliation to an aided college to select candidates for admission was question and the Supreme Court held that the University had no power to make admission to affiliated colleges although the University could prescribe necessary eligibility conditions for admission. In that decision it is further held that the Syndicate of the University could not interfere with the internal administration of the private colleges such as admission of students, by taking over the power from them. The Division Bench in the above referred judgment in paragraph 65 further held thus, "65. When the colleges were started on the basis of the permission granted subject to conditions mentioned in such permissions based on Government Order, and the managements have started the colleges by investing huge amounts and putting lot of efforts on the basis of such permissions, as rightly contended by the learned counsel for the petitioners, the respondent cannot either make the 50% of the seats as Government seats in private unaided colleges or take away the right of admission of students to that extent, particularly so when as per section 14 of the Act, to carry on the general administration of the private college excluding the properties and funds of the private college, is one of the functions assigned to the college committee, and under Rule 9(5) the Principal is given the exclusive responsibility in the matter such as admission, examination, promotion of students and other academic matters. Hence the doctrine of promissory estoppel, in our view, comes to the aid of the petitioners."

20. In the light of the above findings as well as the decisions, we conclude this Judgment in the following manner:

(1) There is no requirement under the Tamil Nadu Private Colleges (Regulation) Act, 1976 and Tamil Nadu Private Colleges (Regulation) Rules, 1976, to seek prior permission to fill up any vacant post in an aided college, which has already been sanctioned for the academic year by the Director of Collegiate Education under Rule 11(1) of the Rules.

(2) If the appointment made by the College Committee in the sanctioned vacant post is in violation of any of the statutory provision, it is open to the Regional Joint Director of Collegiate Education to deny grant-in-aid to the said person appointed in the vacant post.

(3) The teaching staff appointed must be fully qualified, whose qualification is approved by the University to which the college is affiliated. Insofar as the non-teaching staff are concerned, the candidate must possess the qualification prescribed by the Government.

(4) The College Committee while filling up the vacant post, should follow the procedures stated in Rule 11(1A) to 11(4) (ii).

(5) If there is no rival candidate for any post, the appointment is bound to be approved for the purpose of payment of pay and allowances, by the Regional Joint Director of Collegiate Education.''

11. In the light of the finding rendered in the above decision, this Court holds that there is no requirement under the Tamil Nadu Private Colleges (Regulation) Act, 1976 and Tamil Nadu Private Colleges (Regulation) Rules, 1976, to seek prior permission to fill up any vacant post in an aided College, which has already been sanctioned for the academic year by the

Director of Collegiate Education under Rule 11(1) of the Rules.

12. Therefore, the 3rd respondent/Joint Director of Collegiate Education, Vellore, is directed to forthwith approve the appointment of 13 teaching staff (mentioned supra), in the petitioner's college and disburse the grant-in-aid towards their salary and allowances with effect from the respective dates of their appointments. Such exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

The Writ Petition is allowed with the above direction. No costs. Consequently, connected W.M.P.No.25128 of 2016 is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To :

1. The Secretary,
State of Tamil Nadu,
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,
Vellore Region,
Vellore District - 635 006.
4. The Registrar,
Thiruvalluvar University,
Serkadu,
Vellore District - 635 115.

+1 cc to Mr.S.T.Rajan Advocate sr 70827
+1 cc to Mr.Godson Swaminathan Advocate sr 70294
+1 cc to Government Pleader sr 70593

W.P.No.29075 of 2016

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