

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2016

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THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.34854 of 2016

and W.M.P.Nos.30013 to 30015 of 2016

N.Thufail Ahmed ... Petitioner

Vs.

- 1 The Secretary to Government
School Education Department
Government of Tamil Nadu
Fort St. George, Chennai 9
- 2 The Director of School Education
College Road, DPI Campus
Chennai - 6
- 3 Chief Educational Officer
Vellore District
- 4 District Educational Officer
Tirupattur, Vellore District
- 5 The Correspondent
Islamiah Higher Secondary School
Pernambut
Vellore District 635 810 ... Respondents

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified mandamus calling for the records of the fourth respondent pertaining to his letter A. Thi. Moo. No. 2980/Aa2/2016 dated 1.8.2016 (signed on 1.8.2016) and quash the same and also direct the respondents 1 to 4 to grant approval of the petitioner's appointment as Office Assistant in the fifth respondent's Minority Aided School.

For Petitioner : Mr.V.Raghupathi
For Respondents : Mr.K.Dhananjayan,
Spl. Govt. Pleader,
for R1 to R4

ORDER

The petitioner has come up with the present writ petition challenging proceedings of the fourth respondent pertaining to his letter A. Thi. Moo. No. 2980/Aa2/2016 dated 1.8.2016 (signed on 1.8.2016) and to direct the respondents 1 to 4 to grant approval of his appointment as Office Assistant in the fifth respondent's Minority Aided School.

2. It is the case of the petitioner that he was appointed as Office Assistant in the regular vacancy caused due to the retirement of one E.Doraiswamy in the fifth respondent school on 9.8.2011. Since the fifth respondent school is a religious minority school, certain posts of teaching and non-teaching staff have to be recognized and sanctioned and approved by the Government. Hence, the fifth respondent school sent a proposal dated 21.6.2016 to the fourth respondent, who in turn returned the same by proceedings dated 1.8.2016, with the following objections:-

1. Returned.
2. No copy of the acceptance of appointment is enclosed.
3. The appointment of Office Assistant by the Correspondent of the school is found to be from 9.8.2011 but newly appointed office Assistant Thurfail Ahmed is stated as 8.9.2011 but the correspondent asked for approval of the appointment from 9.8.2011. The proposal for approval of the post is wrongly stated.
4. Further, so far no Government Order has been passed till date to approve the post of non-teaching staff in aided schools.

After receiving the said return, the fifth respondent clarified the doubts by letter dated 29.8.2016. Once the authorities have sanctioned the appointment of Office Assistant to certain restricted categories in any minority school, the Government is bound to pay salary for such non-teaching staff. Hence, challenging the proceedings of the fourth respondent, the

petitioner has come up with the present writ petition.

3. Today, when the matter was taken up for consideration, learned counsel appearing for the petitioner submitted that the petitioner was appointed in a sanctioned post and the Division Bench of this Court in the case of P.Ravichandran v. State of Tamil Nadu and others reported in (2013) 7 MLJ 641 has held that in the minority institutions, there is need to get approval from the Government to appoint a non-teaching staff. But, without considering this aspect, the fourth respondent has returned the proposal sent by the fifth respondent. Thus, he sought to set aside the order of the fourth respondent.

4. I have also heard the learned Special Government Pleader, who has taken notice on behalf of the respondents 1 to 4. In view of the limited order to be passed hereunder, this Court is of the view that notice is not necessary to the fifth respondent.

5. Keeping the submissions made on either side, I have carefully gone through the entire materials available on record.

6. In the decision reported in (2013) 7 MLJ 641 - P.Ravichandran v. State of Tamil Nadu and others, in paras 17 and 20, the Division Bench has held as follows:-

" 17. A Division Bench of Madurai Bench of this Court in W.A(MD)No.462 of 2006, judgment, dated 01.12.2006, considered the scope of Rule 11(1) of the Tamil Nadu Private Colleges(Regulation) Rules, 1976 relying upon the earlier order passed on 13.08.2006, and held that for filling up an existing post in a Private Aided College, no prior approval is necessary as any such appointment shall be subsequently approved by the Department, and at that point of time the Department would have an opportunity to consider the availability of such post and rejection of approval on the ground that no prior approval was obtained before appointment, was set aside. Same is the view taken in the following orders of this Court:-

(i)W.P.No.30618 of 2005, order dated 21.09.2005;

(ii)W.P.No.28396 of 2004, order dated 29.03.2006;

(iii)W.A.Nos.92 & 93 of 2008, judgment dated 06.01.2010;

(iv)W.P(MD)No.174 of 2009, order dated 27.04.2010;

(v)W.A.Nos.140, 811/2006 & 805/2007,
judgment dt. 21.10.2010;

(vi)W.A.No.2858 of 2010, judgment dated 21.03.2011;

(vii)W.A(MD)Nos.1088 of 2011, judgment dated
19.10.2011;

(viii)W.A.Nos.2345 of 2011, judgment dated
05.03.2012;

(ix)Dr.S.Sukumaran v. State of Tamil Nadu,
(2012) 5 MLJ 670 rendered by one of us
(NPVJ); and

(x)W.A.No.474 of 2013, judgment dated 03.04.2013.

Thus, the issue regarding seeking prior permission for filling up the vacant post in aided College within the academic year was already settled in series of decisions and all the above said orders are implemented by the respondents 1 and 2. In such circumstances, it is not open to the respondents to again and again contend that only after getting prior permission from the Director of Collegiate Education, vacant sanctioned posts can be filled up by the management.

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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.

The writ appeal is disposed of with the above directions. No Costs. "

Since the issue raised in the present writ petition has already been settled by the Division Bench of this Court in the decision cited above, I am of the opinion, the impugned proceedings of the fourth respondent are liable to be quashed.

7. Accordingly, the impugned proceedings of the fourth respondent pertaining to his letter A. Thi. Moo. No. 2980/Aa2/2016 dated 1.8.2016 (signed on 1.8.2016) are quashed and the writ petition is allowed. The respondents 1 to 4 are directed to pass appropriate orders with regard to approval of the petitioner's appointment as Office Assistant in the fifth respondent's Minority Aided School 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.

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-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

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School Education Department
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Fort St. George, Chennai 9

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

3 Chief Educational Officer
Vellore District

4 District Educational Officer
Tirupattur, Vellore District

+ 1 cc to Government Pleader, SR.No.58947

+ 1 cc to M/S. V.Raghupathi, Advocate SR.No.58718

VSN(co)
YJ/12/11/2016

W.P.Nos.34854 of 2016



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