



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.08.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P(MD).Nos.15474 and 15477 of 2016

and

W.M.P(MD)No.11373 and 11376 of 2016

B.Arul Ananda Ganesh

... Petitioner in W.P(MD)No.15474 of 2016

M.Jayaprakash

... Petitioner in W.P(MD)No.15477 of 2016

Vs.

1.The Secretary to Government,
Education Department,
State of Tamil Nadu,
St. Fort George,
Chennai - 9.

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

3.The District Educational Officer,
Tenkasi.

4.The Secretary,
Rayagiri Hindu Nadar Urvinmurai
Thiru P.Sivanthi Athithanar Hr. Sec School,
Rayagiri, Tirunelveli District.

... Respondents in both petitions

Prayer in W.P(MD)No.15474 of 2016 : Writ Petition filed under Article 226 of the Constitution of India for the issuance of a WRIT OF MANDAMUS to direct the 3rd respondent to approve the appointment of petitioner as Office Assistant at 4th respondent school and consequently disburse all the service and monetary benefits from 19.05.2016 in accordance with the provisions Tamil Nadu Private School Regulation Act and Rules.

Prayer in W.P(MD)No.15477 of 2016 : Writ Petition filed under Article 226 of the Constitution of India for the issuance of a WRIT OF MANDAMUS to direct the 3rd respondent to approve the appointment of petitioner as Junior Assistant at 4th respondent school and consequently disburse all the service and monetary benefits from 19.05.2016 in accordance with the provisions Tamil Nadu Private School Regulation Act and Rules.



For petitioner
in both Wps : Mr.S.Chellapandian
For respondents : Mr.V.R.Shanmuganathan
in both Wps Special Govt. Pleader
For R1 to R3

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COMMON ORDER

These writ petition have been filed for the issuance of a Writ of Mandamus directing the 3rd respondent to approve the appointment of petitioners as Office Assistant and Junior Assistant respectively at 4th respondent school and consequently disburse all the service and monetary benefits from 19.05.2016 in accordance with the provisions Tamil Nadu Private School Regulation Act and Rules.

2. With regard to the legal position in respect of minority institutions, whether prior permission should be obtained before filling up any vacancy in a sanctioned Post, the Honourable Division Bench of this Court even three years ago, in *P.Ravichandran v. State of Tamil Nadu and others* reported in (2013) 7 MLJ 641, has settled the issue. It is relevant to extract paragraph Nos.17 and 20 of the above said judgment:-

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.

.....

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.

3. A cursory reading of the aforementioned Honourable Division Bench judgment in (2013) 7 MLJ 641, clearly shows that the issue raised in the present Writ Petitions, is no longer *res integra*, because the Honourable Division Bench of this court in the aforementioned judgment has also made it clear 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.

4. Therefore, the issues raised in the present Writ Petitions having been settled by this Court, I have no hesitation to accept the prayer made by the petitioners.

5. In the result, the Writ Petitions are disposed of with a direction to the respondents to approve the appointment of the petitioners in the fourth respondent school and to sanction grant, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, Connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub-Assistant Registrar

To

1. The Secretary to Government, Education Department,
State of Tamil Nadu, St. Fort George, Chennai - 9.

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

3. The District Educational Officer, Tenkasi.

4. The Secretary,
Rayagiri Hindu Nadar Urvinmurai
Thiru P. Sivanthi Athithanar Hr. Sec School,
Rayagiri, Tirunelveli District.

+2 ccs to Mr. S. Chellapandian, Advocate, SR.Nos. 46622 and 46621

+One cc to The Special Government Pleader, SR.No. 47278

skn

RL/8C/2P/KM/21.10.2016

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