



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.09.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

W.P(MD)No.15742 of 2016

and

W.M.P(MD)No.11532 of 2016

Mangalapuram Rukmani High School,
Rep. by its Secretary,
M.Edward Rajan,
S/o.P.Muthiah,
Mangalapuram,
Kadayanallur (Post),
Tirunelveli District.

... Petitioner

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.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, call for the records in respect of the order passed by the 3rd respondent in OM.U.No.3493/A3/2016 dated 02.08.2016 and quash the same and consequently direct the 3rd respondent to approve the appointment of Jeyaprakash as Office Assistant in the petitioner's school from 01.07.2016 with all service and monetary benefits.

For Petitioner : Mr.S.Chellapandian
For R1 to R3 : Mr.V.R.Shanmuganathan
Special Government Pleader

ORDER

The petitioner has filed this writ petition for issuance of a Writ of Certiorarified Mandamus, to call for the records in respect of the order passed by the 3rd respondent in OM.U.No.3493/A3/2016, dated 02.08.2016, to quash the same and consequently direct the 3rd



respondent to approve the appointment of Jeyaprakash as Office Assistant in the petitioner's school from 01.07.2016 with all service and monetary benefits. Approval has been rejected on the ground that prior permission should be obtained before filling up any vacancy in a sanctioned Post.

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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.

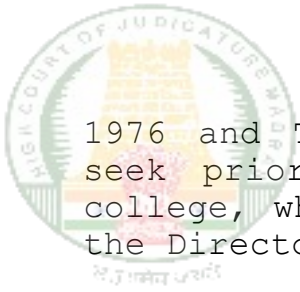
(3) The teaching staff appointed must be fully qualified, whose qualification is approved by the University to which the college is affiliated. Insofar as the non-teaching staff are concerned, the candidate must possess the qualification prescribed by the Government.

(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 Petition having been settled by this Court, I have no hesitation to accept the prayer made by the petitioner.

5. In the result,

(i) The Writ Petition is allowed.

(ii) The impugned order is set aside.

(iii) The respondents are directed to approve the appointment of Jeyaprakash as Office Assistant in the petitioner's school with effect from 01.07.2016 and to sanction grant, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, W.M.P(MD)No.11532 of 2016 is closed.

Sd/-

Assistant Registrar(CSI)

/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.

+One cc to Mr.S.Chellapandian, Advocate, SR.No.49911
+One cc to The Special Government Pleader, SR.No.50165

nbi

RL/6C/4P/DB/19/9/2016

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