

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 01.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE **T.RAJA**

W.P. (MD) No.16145 of 2016
and
W.M.P. (MD) .No.11811 of 2016

M.Sahaya Napoleon

... Petitioner

Vs.

1. The State of Tamil Nadu
represented by its Secretary to Government,
School Education Department,
Secretariat,
Chennai-9.
2. The Director of School Education,
College Road,
Chennai.
3. The Chief Educational Officer,
Nagercoil,
Kanyakumari District.
4. The District Educational Officer,
Thuckalay,
Kanyakumari District.
5. St. Mary's High School,
represented by its Correspondent,
Kesavanputhenthurai,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records on the file of the fourth respondent pertaining to its order bearing Aa.Thi.Moo.No.2764/A1/2012 dated 10.01.2013 and quash the same and consequently direct the respondents to regularise the service of the petitioner as Watchman with effect from 01.06.2010 by considering the proposal resubmitted by the fifth respondent on 19.08.2016 and to grant service benefits and disburse all the monetary benefits consequent to the same.



For Petitioner : Mr.S.C.Herold Singh
For R1 to R4 : Mr.V.R.Shanmuganathan
Special Govt. Pleader

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O R D E R

The issue is relating to approval of appointment of non-teaching staff in a sanctioned Post in any minority school.

2. The learned counsel appearing for the petitioner assailing the reasons given by the the Secretary, Department of School Education and the Director of School Education that any vacancy falling after the G.O.Ms.No.115 School Education Department, dated 30.05.2007 and G.O.Ms.No.203, dated 23.07.2009 read with Government letter No.8884/D1/12, dated 08.07.2012, would be filled up after getting prior permission would contend that they are liable to be set aside for the simple reason that G.O.Ms.No.115 and 203, dated 30.05.2007 and 23.07.2009, were already set aside by this Court making it clear that so far as making appointment of teaching/non-teaching staff in a sanctioned Post in any minority or non-minority schools are concerned, no prior permission is required.

3. Placing on record the judgment of this Court passed by the learned single judge in a batch of Writ Petition in W.P(MD) No.11481 of 2008 etc., batch, dated 15.03.2016, the learned counsel for the petitioners submitted that this Court having set aside G.O.Ms.No.115, dated 30.05.2007 and another G.O.Ms.No.203, dated 23.07.2009 and also the Government Letter No.8884/D1/12, dated 08.07.2012, issued directions to the respondents therein to approve the appointment of non-teaching staff in the Private Aided School and to sanction grant and with a further direction to comply with the directions issued therein. He further submitted that although the impugned orders are passed prior to the aforementioned judgment, the same are also liable to the quashed.

4. Again 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 also settled the issue, for the sake of brevity, following paragraph Nos.17 and 20 of the above said judgment are extracted hereunder:

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.

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(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.

5. A cursory reading of both the learned single judge's order, dated 15.03.2016 in W.P(MD)No.11481 of 2008 etc., batch and Paragraph No.20 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 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.

6. Therefore, the issue raised in the present Writ Petition having been settled repeatedly by this Court, I have no hesitation to accept the prayer made by the petitioner.



7. In the result,

(i) The Writ Petition is allowed.

(ii) Accordingly, the impugned order is set aside.

(iii) The respondents 1 to 4 are directed to approve the appointment of non-teaching staff in the Private Aided School and to sanction grant, within a period of eight weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(T&P)

/True copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
School Education Department,
Secretariat, Chennai-9.

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

3. The Chief Educational Officer, Nagercoil, Kanyakumari District.

4. The District Educational Officer,
Thuckalay, Kanyakumari District.

+1 cc to M/S.S.C.Herold Singh, Advocate in SR.No.50145

akv

CSL/GSV-PM/20.09.2016 :5P/6C

W.P. (MD) No.16145 of 2016

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