



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.09.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P(MD).Nos.16728, 16740 and 16741 of 2016
and

W.M.P(MD)Nos.12157, 12158, 12162, 12163 and 12164 of 2016

W.P(MD).No.16728 of 2016

The Secretary
Fatima College (Autonomous)
Mary Land, Madurai - 625 018,
Madurai 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,
Madurai Region, Madurai,
Madurai District - 620 020.
4. Madurai Kamaraj University,
Palakalai Nagar, Madurai - 625 021,
rep. by its Registrar.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for the issuance of a WRIT OF CERTIORARIFIED MANDAMUS to call for the records relating to the impugned proceeding issued by 3rd respondent/Joint Director in A. Thi. Mu. No.3583/004/2016, dated 00.04.2016, quash the same and further direct him to approve forthwith the appointment of P.Magdalene Virjini as Assistant professor in the Department of Home Science with Food Bio Technology in the petitioner's college and disburse salary and aid towards her salary and allowances w.e.f. 17.06.2015.



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For petitioner : Mr.T.Cibi Chakraborty
For respondents : Mr.T.R.Janarthanam
Addl. Govt. Pleader for R1 to R3
Mr.T.Sakthikumaran for R4

W.P(MD).No.16740 of 2016

The Secretary
St. Joseph's College (Autonomous)
Tiruchirapalli - 625 002,
Tiruchirapalli 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,
Tiruchirapalli Region, Tiruchirapalli,
Tiruchirapalli District - 620 020.
4. Bharathidasan University,
Tiruchirapalli - 620 024,
Tiruchirapalli District - 620 020.
rep. By its Registrar.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for the issuance of a WRIT OF CERTIORARI FIED MANDAMUS to call for the records relating to the impugned proceeding issued by 3rd respondent, Joint Director in A.Thi.Mu.No.0853/E1/2015 dated 23.03.2015, quash the same and further direct him to approve forthwith the appointment of 4 teaching staff, namely, Mr.C.Rajaathinam, Dr.Vasantha Arockia Selvi, Dr.A.Rajathi and Mrs.S.Shagila Banu in the petitioner's college and disburse the grant-in-aid towards their salary and allowances w.e.f. the respective dates of their appointment.

For petitioner : Mr.T.Cibi Chakraborty

For respondents : Mr.T.R.Janarthanam

Addl. Govt. Pleader for R1 to R3



W.P(MD) .No.16741 of 2016

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The Secretary
St. Joseph's College (Autonomous)
Tiruchirapalli - 625 002,
Tiruchirapalli 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,
Tiruchirapalli Region, Tiruchirapalli,
Tiruchirapalli District - 620 020.

4.Bharathidasan University,
Tiruchirapalli - 620 024,
Tiruchirapalli District - 620 020.
rep. By its Registrar.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for the issuance of a WRIT OF Mandamus directing the 3rd respondent, Joint Director to approve forthwith the appointment of 3 teaching staff, namely, Dr.A.Francis Vijayakumar, Dr.M.Antony Arockiaraj, and Dr.R.Vijayakumar in the petitioners college and disburse the grant-in-aid towards their salary and allowances w.e.f. the respective dates of their appointments.

For petitioner : Mr.T.Cibi Chakraborty

For respondents : Mr.T.R.Janarthanam

Addl. Govt. Pleader for R1 to R3

Mr.V.R.Shanmuganathan for R4

COMMON ORDER



the same, these writ petitions are taken up together and disposed of, by this common order.

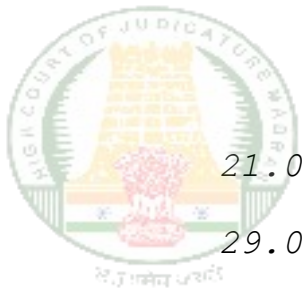
2. Challenging the return of proposals of the petitioner's college, seeking to approve the appointments made by them in the teaching posts against the sanctioned vacancies, W.P(MD)Nos.16728 and 16740 of 2016 have been filed, to quash the impugned return, with a consequential direction to the respondents, to approve the proposals of the petitioner's college from the date of appointments made by the petitioners.

3. W.P(MD)No.16741 of 2016 has been filed by the Secretary of St. Joseph's College, Tiruchirapalli District, seeking for a direction to the 3rd respondent/Joint Director of Collegiate Education, Tiruchirapalli District, to approve the appointment of 3 teaching staff, namely, Dr.A.Francis Vijayakumar, Dr.M.Antony Arockiaraj, and Dr.R.Vijayakumar in the petitioner's college and to disburse the grant-in-aid towards their salaries and allowances, with effect from the respective dates of their appointments.

4. In W.P(MD)Nos.16728 and 16740 of 2016, approval has been rejected on the ground that prior permission should be obtained before filling up any sanctioned vacancy in a minority institution. W.P(MD)No.16741 of 2016 has been filed seeking to approve the proposal of the petitioner's college as stated above.

5. 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.

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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 ~~as per the instructions~~ 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.

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(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.

6.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 categorically 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. In the case on hand, the petitioners' colleges are Autonomous and partly aided by the Government.

7. Therefore, the issue raised in the present writ petitions having been settled by this Court, I have no hesitation to accept the prayer made by the petitioners.

8. In the result,

(i) All the Writ Petitions are allowed.

(ii) The impugned orders in W.P(MD)Nos.16728 and 16740 of 2016 are set aside.

(iii) The respective respondents are directed to approve the appointments of teaching staff made by the respective petitioners' colleges in these cases 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 (CS-I)



Sub Assistant Registrar

To

1. The 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,
Madurai Region, Madurai,
Madurai District - 620 020.
4. The Registrar,
Madurai Kamaraj University,
Palakalai Nagar, Madurai - 625 021.
5. The Joint Director of Collegiate Education,
Tiruchirapalli Region, Tiruchirapalli,
Tiruchirapalli District - 620 020.
6. The Registrar,
Bharathidasan University,
Tiruchirapalli - 620 024,
Tiruchirapalli District - 620 020.
- + 1 CC TO Mr.T.CIBI CHAKRABORTHY, ADVOCATE IN SR NO. 50106
+ 2 CC's to M/S.T.CIBI CHAKRABORTHY ADVOCATE SR.No. 50104 & 50105
SKN
TE/KM : 14/12/2016 : 7P/10C

W.P(MD).Nos.16728, 16740 and 16741 of 2016
and
W.M.P(MD)Nos.12157, 12158, 12162, 12163 and
12164 of 2016
02.09.2016