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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 31.08.2016
CORAM

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

W.P(MD) .Nos.6038 and 6047 of 2016
and
W.M.P(MD)Nos.5346 and 5354 of 2016

D.Gabriel Johnson ... Petitioner in W.P(MD)No.6038 of 2016

S.Anand K.P.Menon ... Petitioner in W.P(MD)No.6047 of 2016

Vs.

1.The District Educational Officer,
Tenkasi Educational District,
Tenkasi, Tirunelveli District.

2.The Correspondent,
West Tirunelveli Higher Secondary School,
Nallur, Alangulam Taluk,
Tirunelveli District.

...Respondents in W.P(MD)No.6038 of 2016

1.The District Educational Officer,
Cheranmahadevi, Tirunelveli.

2.The Correspondent,
Salvation Army Noble Memorial High School,
Valliyoor,
Tirunelveli District.

...Respondents in W.P(MD)No.6047 of 2016

Prayer in W.P(MD)No.6038 of 2016 : 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 of the impugned order of the 1st respondent in O.Mu.No.2856/A3/2015 dated 18.5.2015 and quash the same and consequently direct the 1st respondent to approve the petitioner's appointment as Junior Assistant in the 2nd respondent school from date of appointment i.e. 17.07.13 and pay all monetary and service benefits within the time fixed by this Court.

Prayer in W.P(MD)No.6047 of 2016 : 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 of the impugned order of the 1st respondent in O.Mu.No.3763/A1/2014 dated



19.09.14 and quash the same and consequently direct the 1st respondent to approve the petitioner's appointment as Junior Assistant in the 2nd respondent school from the date appointment i.e. 02.05.14 and pay all monetary and service benefits within the time fixed by this Court.

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For petitioner
in both Wps : Mr.H.Arumugam
For respondents : Mr.V.R.Shanmuganathan
in both Wps Addl. Govt. Pleader for R1
No appearance for R2
:Mr.S.Sathesh Kumar for R2
in WP (MD) No.6038/2016

COMMON ORDER

Challenging the return of proposals of the respective minority schools, seeking to approve the appointments made by them for the Non Teaching Posts as against the sanctioned vacancies or seeking a direction to the official respondents to grant approval for the appointments made by such minority schools, both the writ petitions have been filed. Approval has been rejected on the ground that prior permission should be obtained before filling up any vacancy in a sanctioned Post.

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,

(i) Both the Writ Petitions are allowed.

(ii) The impugned orders are set aside.

(iii) The respective respondents are directed to approve the appointments of non-teaching staff in the Private Aided Schools 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(AE)

/True copy/

Sub Assistant Registrar

To

1.The District Educational Officer,
Tenkasi Educational District, Tenkasi, Tirunelveli District.

2.The District Educational Officer, Cheranmahadevi, Tirunelveli.

+2 cc's to M/s.H.Arumugam, Advocate in SR.Nos.48830 & 48828

+2 cc's to The Special Government Pleader in SR.No. 49358 &49357

W.P(MD) .Nos.6038 and 6047 of 2016
and W.M.P(MD)Nos.5346 and 5354 of 2016

31.08.2016