

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2017

CORAM

THE HONOURABLE Mr. JUSTICE T.RAJA

W.P.No.7492 of 2017

and WMP.Nos.8183 and 8184 of 2017

The Correspondent

Nirmala Girls Higher Secondary School

Ariyalur - 621 704

Ariyalur District.

.. Petitioner

Vs.

1.The State of Tamil Nadu

Rep. by its Secretary,

Department of School Education,

Fort St.George, Chennai - 600 009.

2.The Director of School Education

College Road, Chennai - 600 009.

3.The Chief Educational Officer

Ariyalur - 621 704

Ariyalur.

4.The District Educational Officer,

Ariyalur - 621 704

Ariyalur District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings issued by the fourth respondent District Educational Officer in Na.Ka.No.2195/Aa2/2016 dated 16.02.2017, quash the same and further direct the 4th respondent District Educational Officer herein to approve forthwith the appointment of Selvan.J.Jeffri as Watchman in the petitioner school w.e.f. 01.02.2016 with all attendant benefits including the arrears of salary and allowance.

For Petitioner :

Mr.P.Godson Swaminath

For Respondents

: Mr.P.Sanjay Gandhi

Additional Government Pleader

ORDER

The writ petition has been filed by the petitioner to quash the proceedings of the fourth respondent dated 16.02.2017 and to direct the 4th respondent District Educational Officer to approve forthwith the appointment of Selvan.J.Jeffri as Watchman in the petitioner school w.e.f. 01.02.2016 with all attendant benefits including the arrears of salary and allowance.

2. The petitioner school is a recognised, aided minority institution owned and run by Congregation of the Sisters of St.Annes', Thiruchirapalli, having 37 teaching staff and 7 non-teaching staff in the sanctioned posts. Due to retirement of the previous incumbent one K.Natarajan in the post of Watchman on 31.01.2016, on attaining superannuation, the petitioner school has appointed one Selvan J.Jeffri w.e.f. 01.02.2016 in the sanctioned post vide appointment order dated 07.06.2016. His pay was fixed in the pay band PB-1A and his monthly salary will be drawn and paid only after approval from the authority concerned. Thereafter, on 07.06.2016, the petitioner-school sent a proposal to the fourth respondent enclosing relevant records for approval. But the fourth respondent vide his proceedings dated 16.02.2017 has refused to approve the proposal pursuant to the order passed by the Government in G.O.Ms.No.212 (Personnel and Administrative Reforms-) dated 29.11.2001, stating that a ban was imposed by the government in filling up of the vacant post by direct recruitment.

3. The learned counsel for the petitioner submitted that the said G.O. dated 29.11.2001 does not relate to appointment of non-teaching staff in private and minority schools. He further stated that to lift the ban, the Government has passed another G.O.Ms.No.14 (Personnel and Administrative Reforms-) dated 07.02.2006, and therefore the said G.O. dated 29.11.2001 stood cancelled. He further submitted that the said Selvan J.Jeffri has been working in the petitioner-school since 01.02.2016 without salary, which had put both the petitioner-school and Selvan J.Jeffri to grave hardships. Challenging the impugned order, the petitioner-school is before this Court in this Writ Petition.

4. The contention raised by the learned counsel is that only one post is fixed in the cadre of Watchman in the petitioner school having 2300 students and 44 staff on its roll, and in the said circumstances, denying to approve the proposal for appointment of Watchman in the petitioner-school is highly arbitrary. Further, the petitioner-school was not given an opportunity of hearing prior to the passing of the impugned order.

5. The learned counsel also submitted that there is no requirement to obtain prior permission from the Educational Authority as per the settled legal position including the order in W.P.Nos.29998 of 2014 & etc. batch passed by this Court.

6. Mr.P.Sanjay Gandhi, learned Government Pleader accepts notice for the respondents.

7. When this Court, in similar and identical circumstances, has held that with regard to filling up of vacancies irrespective of teaching and non-teaching staff in aided minority educational institutions, under sanctioned posts, no prior permission is required to be obtained. Useful reference can be had from the orders passed by this Court in WP.No.29998 of 2014 :

" 4. The issue involved in these writ petitions for filling up of vacancies against the sanctioned strength of Non-teaching staff by the Minority Institutions is no longer res integra, for, a 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 that issue and, following the said judgment, I have also, in a batch of writ petitions, i.e., in W.P.(MD) Nos.14115 to 14119 of 2016 etc. (batch cases), (decided on 19.08.2016), ordered the official respondents therein to accord approval for filling up of the vacancies against sanctioned posts of non-teaching Staff by the Private Aided Schools. For better appreciation, relevant portions of the order passed by me are extracted below:-

"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.

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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 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) All 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."

7. In the light of the decisions cited supra, the impugned order is set aside. The fourth respondent is hereby directed to approve the appointment of petitioner as Watchman in petitioner-school and sanction the grant within a period of six weeks from the date of receipt of a copy of this order. The Writ Petition stands allowed. Consequently, connected miscellaneous petitions are closed. No costs.

-sd/-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To:

- 1.The Secretary
Government of Tamil Nadu
Department of School Education,
Fort St.George, Chennai - 600 009.
- 2.The Director of School Education
College Road, Chennai - 600 009.
- 3.The Chief Educational Officer
Ariyalur - 621 704
Ariyalur.
- 4.The District Educational Officer,
Ariyalur - 621 704
Ariyalur District.

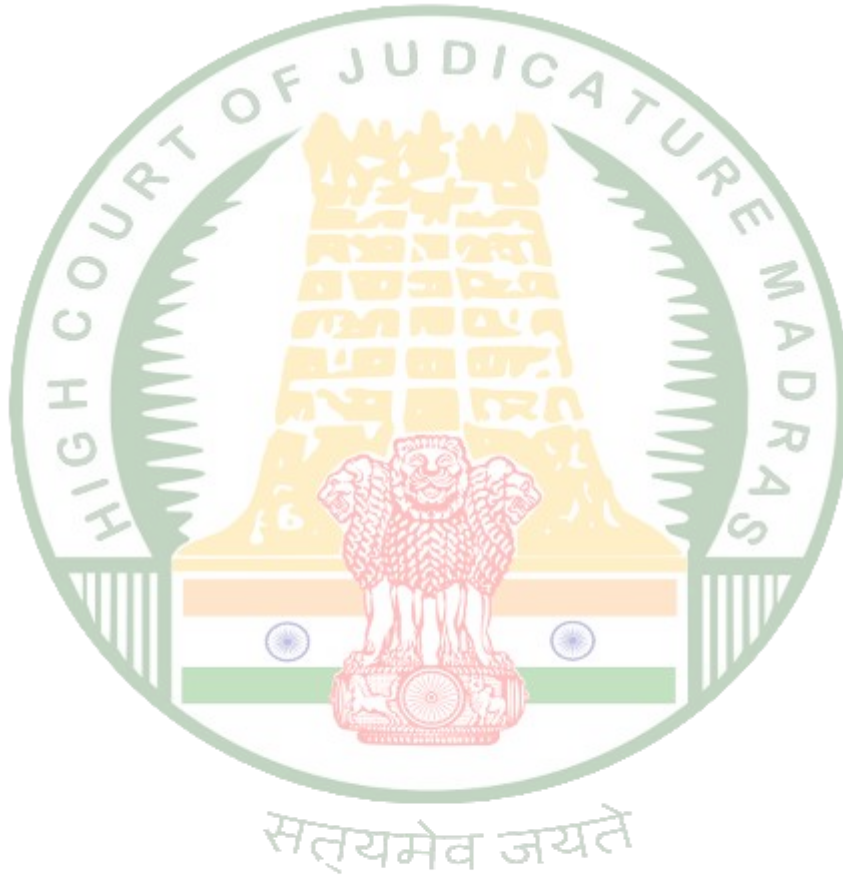
+1 C.C. to MR.P.GODSON SWAMINATH Advocate SR.NO.19111

+1 C.C. to The Government Pleader, SR.NO.19682

WP.No.7492 of 2017

PVS (CO)

VS 30.10.2017



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