

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2017

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.30602 of 2017

Selvi E.Parimala

.. Petitioner

-vs-

1. The Secretary to Government
School Education Department
Government of Tamil Nadu
Fort St.George
Chennai 600 009
2. The Director of School Education
College Road, DPI Campus
Chennai 600 006
3. Chief Educational Officer
Vellore District
4. District Educational Officer
Tirupattur, Vellore District
5. The Correspondent
Rameeza Oriental (Arabic) Girls High School
Pernambut, Vellore District 635 810 .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records of the fourth respondent pertaining to his letter Na.Ka.No.4951/A2/16 dated 04.09.2017 and quash the same and also direct the respondents 1 to 4 to grant approval of the petitioner's appointment as Office Assistant in the fifth respondent's minority aided school.

For Petitioner : Mr.V.Raghupathi

For Respondents : Mr.R.A.S.Senthilvel
Additional Government Pleader
for R1 to 4

ORDER

This writ petition has been filed challenging the impugned proceedings dated 4.9.2017 of the District Educational Officer, Tirupattur, Vellore District returning the proposal sent by the fifth respondent School seeking approval of the appointment of the petitioner, on the ground that G.O.Ms.No.115, Education Department dated 30.5.2007 states that prior approval for appointment of non-teaching staff is required before appointing the petitioner to the post of Office Assistant and since the fifth respondent School has not obtained prior approval before making appointment as per the said Government Order, the proposal has been returned.

2. Heard the learned counsel for the petitioner and the learned Additional Government Pleader taking notice on behalf of the respondents 1 to 4.

3. The issue raised in this writ petition is no longer res integra, as the same has been settled once and for all in umpteen judgments of this Court including the one passed by me in a batch of writ petitions in W.P.Nos.29998 of 2014 etc., dated 17.3.2017 (V.J.Manoj Kumar & others v. State of Tamil Nadu represented by its Secretary, Department of School Education and others), wherein it has been held as follows:-

"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) 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."

4. Thus, the crux of the issue settled by this Court shows that there is no requirement under the Tamil Nadu Private Colleges (Regulation) Act 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 competent authority. In the case on hand, the petitioner was appointed by the fifth respondent, which is a religious minority school receiving grant-in-aid, on 1.9.2016 as Office Assistant in the regular vacancy caused by the retirement of Mrs.A.Shah Noor Begum. As the petitioner is possessing the necessary qualification and eligibility for the post of Office Assistant, the fifth respondent School viz., Rameeza Oriental (Arabic) Girls High School was already sanctioned with the post of Office Assistant. In the sanctioned post, one Mrs.A.Shah Noor Begum was serving and after reaching the age of superannuation, she retired from service. In the said retirement sanctioned vacancy, the fifth respondent School appointed the petitioner. Subsequently, the proposal also has been sent on 22.9.2016 seeking approval of her appointment. But the same has been wrongly returned citing G.O.Ms.No.115 dated 30.5.2007 stating that prior approval has not been obtained. As the ratio laid down by the Division Bench has been followed by me in a batch of writ petitions in W.P.Nos.29998 of 2014 etc., dated 17.3.2017 and the said principle equally applies to the private aided school also, the respondents 1 to 4 are hereby directed to approve the appointment of the petitioner as Office Assistant with effect from the date of her appointment on 1.9.2016 and release the arrears of salary within a period of four weeks from the date of receipt of a copy of this order. The writ petition is allowed. Consequently, W.M.P.No.33508 of 2017 is closed. No costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ss

To

1. The Secretary to Government
School Education Department
Fort St.George
Chennai 600 009.

2. The Director of School Education
College Road, DPI Campus
Chennai 600 006.

3. The Chief Educational Officer
Vellore District.

4. The District Educational Officer
Tirupattur, Vellore District.

+1cc to Mr.V.Ragupathi, Advocate, S.R.No.84417

+1cc to the Government Pleader, S.R.No.84354

W.P.No.30602 of 2017

SV(CO)

RRK(18/12/2017)



WEB COPY