

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2017

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.30650 of 2017

A.Carolin Arul Priya .. Petitioner

-vs-

1. The Director of School Education
DPI Campus, College Road
Chennai 600 006
2. The Chief Educational Officer
Central Chennai, Panagal Building
Saidapet
Chennai 600 015
3. The District Educational Officer
Central Chennai
Chennai 600 015
4. The Correspondent
Santhome Higher Secondary School
No.143-A, Santhome High Road
Mylapore
Chennai 600 004 .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the respondents 1 to 3 to approve the appointment of petitioner in the post of BT Assistant (Science) in the fourth respondent school with effect from 29.08.2017 by passing orders on the proposal forwarded by the fourth respondent school in No.Nil dated 20.09.2017 including payment of arrears of salary with all consequential and other service benefits.

For Petitioner ::Mr.G.Sankaran

For Respondents ::Mr.P.Sanjay Gandhi
Additional Government Pleader
for R1 to 3

ORDER

This writ petition has been filed seeking issuance of a mandamus, directing the respondents 1 to 3 to approve the appointment of petitioner in the post of BT Assistant (Science) in the fourth respondent school with effect from 29.08.2017 by passing orders on the proposal forwarded by the fourth respondent school in No.Nil dated 20.09.2017 including payment of arrears of salary with all consequential and other service benefits.

2. Heard the learned counsel for the petitioner and the learned Additional Government Pleader taking notice on behalf of the respondents 1 to 3.

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.

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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."

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 fourth respondent-Santhome Higher Secondary School, Chennai is a minority educational institution receiving grant-in-aid from the Government and the school has also been sanctioned with the post of BT Assistant. In the said sanctioned post, one Mrs.Leema Rose was serving and on reaching the age of superannuation, she retired from service on 30.6.2017. In the said retirement sanctioned vacancy, the fourth respondent, which is a minority educational institution, appointed the petitioner as BT Assistant (Science) on 3.7.2017. The order dated 29.8.2017 passed by the Chief Educational Officer, Chennai Central also shows that the post of BT Assistant (Science) has been approved. Therefore, the proposal sent on 20.9.2017 pending on the file of the third respondent deserves consideration. 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 third respondent is hereby directed to consider the proposal sent by the fourth respondent school on 20.9.2017 to approve the appointment of the petitioner as BT Assistant (Science), in the light of the sanction order passed by the second respondent on 29.8.2017, 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. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Director of School Education
DPI Campus, College Road
Chennai 600 006
2. The Chief Educational Officer
Central Chennai, Panagal Building
Saidapet
Chennai 600 015

3. The District Educational Officer
Central Chennai
Chennai 600 015

+1 cc to M/s.G.Sankaran Advocate sr 84394
+1 cc to the Govt Pleader sr 84728

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