

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2017

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.30793 to 30795 of 2017 and
WMP Nos.33718 to 33720 of 2017

S.Marianandam
St.Antony's Higher Secondary School,
Elathagiri, Krishnagiri .. Petitioner in W.P.No.30793 of
2017

M.James Arundoss
St.Antony's Higher Secondary School,
Elathagiri, Krishnagiri .. Petitioner in W.P.No.30794 of
2017

N.Santha
St.Antony's Higher Secondary School,
Elathagiri, Krishnagiri .. Petitioner in W.P.No.30795 of
2017

-vs-

1. The Government of Tamilnadu
rep. by its Secretary,
Department of School Education,
Fort St. George, Chennai - 9
2. The Director of School Education,
DPI Campus, College Road, Chennai - 6
3. The Chief Educational Officer,
The office of the Chief educational Officer,
Krishnagiri.
4. District Educational Officer,
The Office of the District Educational Officer,
Krishnagiri
5. The Correspondent,
St.Antony's Higher Secondary School,
Elathagiri, Krishnagiri .. Respondents in all petitions

Petitions are filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order dated 03.04.2017 in O.Mu.No.2776/A3/2014, O.Mu.No.551/A3/2016 and O.Mu.No.550/A3/2016 respectively on the file of the 4th respondent and quash the same and direct the respondents to accord approval to the appointment of the petitioners, S.Marianandam, James Arundoss and N.Santha working as Record clerk, Night Watchman and Scavenger respectively in 5th respondent school with effect from 01.07.2014, 01.04.2016 and 01.09.2009 respectively with all monetary and other service benefits.

For Petitioners :: Dr.Fr.A.Xavier Arul Raj,
Senior Counsel for Mrs.A.Arulmary

For Respondents :: Mr.V.Jayaprakash Narayanan
1 to 4 Special Government Pleader

C O M M O N O R D E R

With consent, the main Writ Petitions are taken up for final disposal at the admission stage. Since the issue involved in these petitions are one and the same, they are taken up together and a common order is being passed.

2. The petitioners were appointed as Record Clerk, Night Watchman and Scavenger respectively in St.Antony's Higher Secondary School, Elathagiri, Krishnagiri District, 5th respondent herein on 01.07.2014, 01.04.2016 and 01.09.2009 respectively, in a promotional vacancy / retirement vacancy, respectively, caused by the previous incumbent, namely, P.Natesan, C.Sengole and K.Kulandai respectively, who were serving as record clerk, night watchman and scavenger respectively, and the said P.Natesan was promoted as Lab assistant in the 5th respondent school. The 5th respondent-School is run by Roman Catholic Diocese of Dharmapuri, which is a religious charitable educational institution, receiving the grant in aid from the State Government. When the 5th respondent, School is a minority educational institution covered under Article 30 (1) of the Constitution of India, it is the claim made by the 5th respondent-School that they are entitled to fill up the vacancy in the sanctioned post, because the said vacancy arose on account of promotion / retirement respectively to previous incumbent, namely, P.Natesan to the post of Lab Assistant. Moreover, the post of record clerk, night watchman and scavenger respectively were also originally sanctioned in a staff fixation order passed on 29.01.2015; 28.04.2016 and 12.09.2008 respectively passed by the Chief Educational officer,

Krishnagiri in Na.Ka.No. (m3)/0019/15 dated 29.01.2015, Na.Ka.No.1679(m3)/2016 dated 28.04.2016 and Na.Ka.No.(m6)/4638/08 dated 12.09.2008 respectively.

3. Learned counsel appearing for the petitioner taking support on latest proceedings dated 28.04.2016 fixing the staff strength of the 5th respondent for the year 2015-2016, again, submitted that post of record clerk/ night watchman and scavenger respectively were sanctioned post. Therefore, when the 5th respondent, School, which is a minority educational institution has filled up the post of record clerk, night watchman and scavenger respectively, which fell vacant on account of promotion given to previous incumbent, namely, P.Natesan to the post of Lab assistant on 01.07.2014 / retirement of C.Sengole / retirement of K.Kulandai respectively, as per settled legal position, no prior permission is required to fill up the sanctioned post. Further, referring to an order passed by me in a batch of writ petitions, i.e., W.P.No.29998 of 2014 etc., batch submitted that this issue has been once and for all decided. It is pertinent to extract a relevant portion of the order as follows:

"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. A perusal of the said order passed by me clearly shows that the crux of the issues, whether minority educational institutions before filling up the sanctioned post should obtain prior permission has been settled by this Court, therefore, the

issue is no longer res integra.

5. In view of the above, the Impugned orders in O.Mu.No.2776/A3/2014, O.Mu.No.551/A3/2016 and O.Mu.No.550/A3/2016 respectively passed by the 4th respondent dated 03.04.2017 are set aside. The respondents are directed to accord approval to the petitioners working as Record Clerk / Night Watchman / Scavenger respectively in 5th respondent-School from the date of their appointment and release their salary within a period of four weeks from the date of a receipt of copy of this common order.

6. In fine, the writ petitions stand allowed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

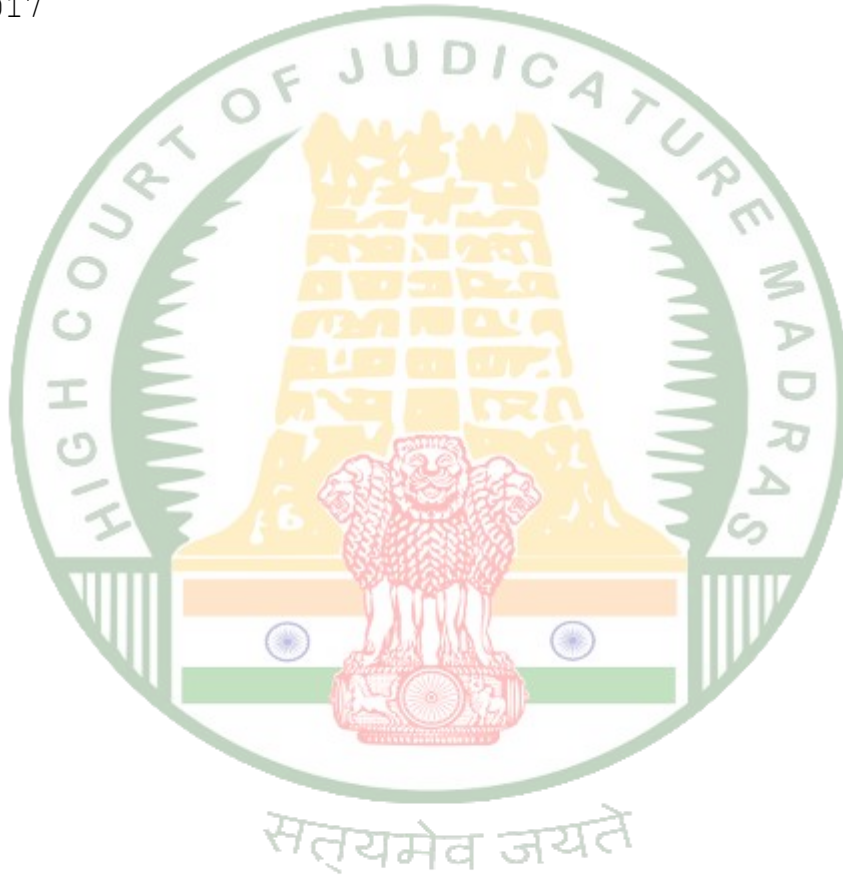
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+3 ccs to M/s.A.Arul marry Advocate sr 84660,84658,84659

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