

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2017

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.30848 & 30849 of 2017

S.Premasainath .. Petitioner in W.P.No.30848 of 2017
P.Rajasekar .. Petitioner in W.P.No.30849 of 2017

-VS-

1. The Director of School Education
DPI Campus, College Road
Chennai 600 006 .. 1st Respondent in both the writ
petitions
2. The Joint Director of School Education (Personnel)
Directorate of School Education
DPI Campus, College Road
Chennai 600 006 .. 2nd Respondent in W.P.No.30849 of 2017
3. The Chief Educational Officer
Panagal Building
Saidapet .. 2nd Respondent in W.P.No.30848 of 2017
Chennai 600 015 ... & 3rd Respondent in W.P.No.30849 of 2017
4. The District Educational Officer
Central North .. 3rd Respondent in W.P.No.30848 of 2017
Chennai 600 008 ... & 4th Respondent in W.P.No.30849 of 2017
5. The Secretary
Pananthope Railway Colony
Aided Higher Secondary School
No.294, Constable Road
Pananthope Quarters
Ayanavaram .. 4th Respondent in W.P.No.30848 of 2017
Chennai 600 023 ... & 5th Respondent in W.P.No.30849 of 2017

W.P.No.30848 of 2017 is filed 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 the petitioner in the regular sanctioned post of Record Clerk in the fourth respondent School from the date of appointment on 02.08.2017 and to make the payment of salary with interest and other service benefits, within a time frame to be fixed by this Hon'ble Court.

W.P.No.30849 of 2017 is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the respondents 1 to 4 to approve the appointment of the petitioner in the regular sanctioned post of Office Assistant in the fifth respondent School from the date of appointment on 09.10.2017 and to make the payment of salary with interest and other service benefits, within a time frame to be fixed by this Hon'ble Court.

For Petitioners:: Mr.G.Sankaran

For Respondents:: Mr.R.A.S.Senthilvel
Additional Government Pleader
for R1 to 3 in W.P.No.30848 of 2017
& for R1 to R4 in W.P.No.30849/17

ORDER

These writ petitions have been filed seeking issuance of a mandamus directing the respondents 1 to 3/1 to 4 to approve the appointments of the petitioners in the posts of Record Clerk and Office Assistant in the fourth/fifth respondent School with effect from the date of appointment on 2.8.2017 and 9.10.2017 respectively, including payment of salary and arrears of salary with all consequential service benefits.

2. Heard the learned counsel for the petitioners and the learned Additional Government Pleader taking notice on behalf of the respondents 1 to 3/1 to 4.

3. Pananthope Railway Colony Aided Higher Secondary School at Ayanavaram, which is a private aided educational institution, initially appointed one Mrs.D.Priya in the post of Record Clerk. Since the said Mrs.D.Priya died suddenly due to heart ailment on 19.9.2016 while in service, necessitating the said vacancy to be filled up immediately, on the basis of the staff fixation order issued by the Chief Educational Officer, Chennai in Na.Ka.No.6722/A2/2016 dated 21.10.2016, the said School appointed the petitioner in W.P.No.30848 of 2017 viz., Mr.S.Premasainath as Record Clerk on compassionate ground on 31.7.2017 and he also joined the post on 2.8.2017. Since then, he has been continuously working without any salary, since the proposal sent by the School to the District Educational Officer, Chennai North seeking approval of his appointment in the post of Record Clerk with effect from 2.8.2017 has not been till date approved. Learned counsel for the petitioner further submitted that it is a clear case for granting approval of the appointment of Mr.S.Premasainath, who was appointed only on compassionate ground in lieu of his wife's demise suddenly due to heart ailment while serving as Record Clerk in the School.

4. Similarly, on the basis of the staff fixation order issued by the Chief Educational Officer, Chennai in Na.Ka.No.6722/A2/2016 dated 21.10.2016, the School appointed the petitioner in W.P.No.30849 of 2017 viz., Mr.P.Rajasekar in the post of Office Assistant on 7.10.2017 and he also joined the post with effect from 9.10.2017. Since then, he has been continuously working without any salary, since the proposal sent by the School to the District Educational Officer, Chennai North seeking approval of his appointment in the post of Office Assistant with effect from 9.10.2017 has not been till date approved.

5. The proposal dated 4.10.2017 sent by the Pananthope Railway Colony Aided Higher Secondary School also shows that Mr.S.Premasainath was appointed as Record Clerk only in a sanctioned post, which fell vacant due to the sudden demise of his wife Mrs.D.Priya on 19.9.2016. Similarly, Mr.P.Rajasekar was also appointed as Office Assistant in a sanctioned post. Secondly, the staff fixation order issued by Chief Educational Officer, Chennai in Na.Ka.No.6722/A2/2016 dated 21.10.2016 also shows that the School was also sanctioned with the posts of Record Clerk and Office Assistant. Therefore, it is not known how the respondents have not considered the proposal sent by the School seeking approval of their appointments. Hence, this Court finds no impediment to direct the respondents to accept the proposals, as the petitioners were appointed only in the sanctioned posts of Record Clerk and Office Assistant.

6. Moreover, the issue whether an aided or minority educational institution is required to obtain prior approval from the school authorities before filling up of the sanctioned vacancies has already been answered 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."

7. As the ratio laid down by the Hon'ble 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 3/1 to 4 are hereby directed to pass orders approving the appointments of the petitioners as Record Clerk and Office Assistant and release the salary along with arrears within a period of four weeks from the date of receipt of a copy of this order. With this direction, both the writ petitions are allowed. Consequently, W.M.P.Nos.33771 & 33772 of 2017 are closed. 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 Joint Director of School Education (Personnel)
Directorate of School Education
DPI Campus, College Road
Chennai 600 006
3. The Chief Educational Officer
Panagal Building
Saidapet
Chennai 600 015
4. The District Educational Officer
Central North
Chennai 600 008

+2 ccs to M/s.G.Sankaran Advocate sr 84994
+1 cc to Govt Pleader sr 85444

W.P.Nos.30848 & 30849 of 2017

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