

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.12.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.33331 of 2017 and
WMP.Nos.36774 of 2017

Sri Mahaveer Jain Higher Secondary School
 rep. by its Secretary S.Nemichand Jain,
 No.770, Thiruvotriyur High Road,
 Thiruvotriyur, Chennai-19. ...Petitioner

Versus

1. The Secretary to Government,
 School Education Department,
 Fort St. George, Chennai.
2. The Director of School Education,
 DPI Campus, College Road,
 Chennai-6.
3. The District Educational Officer,
 Ponneri, Thiruvallur District. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the 3rd respondent in his Proceedings Oo.Mu.No.2031/Aa.3/2017 dated 29.07.2017 and Oo.Mu.No.2042/Aa.3/2017 dated 29.07.2017 and quash the same and direct the respondents to approve the appointment of S.Kumar in the post of Record Clerk w.e.f. 03.09.2012 and G.Pradeep in the Post of Night Watchman w.e.f. 02.05.2013 in the light of the orders passed in

W.A. (MD) No.308/2008 dated 04.08.2008, W.A.No.258/2009 etc.

batch dated 12.07.2010 and W.A.Nos.727 to 729/2011 dated 11.11.2011 and W.P.No.29998/2014 etc. cases dated 17.03.2017 with all other service benefits.

For Petitioner : Mr.K.H.Ravikumar

For Respondents : Mr.R.A.S.Senthilvel,
1 to 3 Addl. Govt. Pleader

ORDER

The present Writ Petition has been filed challenging the impugned order passed by the 3rd respondent in his Proceedings in Oo.Mu.No.2031/Aa.3/2017 dated 29.07.2017, refusing the request of the petitioner school to accord approval of payment of non-teaching staff, namely, Record Clerk and Watchman on the ground that there was no Government Order issued or any order obtained from the Government to fill up the said posts.

2. Learned Counsel for the petitioner School submitted that the petitioner School is a Linguistic Minority Educational Institution, receiving grant-in-aid from the Government and since there are more than 400 students studying in that school, the Government had already fixed the strength of non-teaching staff on 28.11.2012 granting one post of Record Clerk and one post of Watchman to the petitioner school. Pursuant to the same, one Mr.N.Sudheendran was appointed as a Record Clerk and one Mr.K.Raman has been appointed

as Night Watchman. Since both of them attained the age of superannuation and retired from service w.e.f. 31.8.2012 and 30.04.2013 respectively, the petitioner School in the sanctioned posts appointed one Mr.S.Kumar as Record Clerk and one Mr.G.Pradeep as Night Watchman and they have also joined duty on 03.09.2012 and 02.05.2013 respectively. Since, their salary has to be paid, proposals have been sent by the petitioner School on 05.09.2012 and 05.05.2013 to the 3rd respondent. But the respondents have not come forward to consider the said proposals. After repeated representations, the 3rd respondent has passed the present impugned order rejecting the proposals made in favour of both S.Kumar and G.Pradeep citing a reason that the Government has not passed any orders for filling up the said posts.

3. Learned Counsel appearing for the petitioner further drawing the attention of this Court to a Common Order passed by this Court in W.P.No.29998/2014 etc. batch, dated 17.03.2017 submitted 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 school, which has already been sanctioned for the academic year. The relevant portion is extracted here under :

"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.

.....

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."

5. Thus, the issue is well settled now that any school, either minority/private/aided or unaided, is entitled to fill up the vacancy arising on account of promotion, retirement, removal, dismissal etc., against a sanctioned

post already approved by the school authorities, without even obtaining prior permission from the Government. In the cases on hand, admittedly, the writ petitioners have been appointed against vacancies relating to sanctioned posts as Non-teaching staff in various cadres and therefore, by following the above cited case laws, this Court hereby directs the respective respondents to approve the appointments of the Non-teaching staff by the Private Aided Schools and to sanction the grant within a period of four weeks from the date of receipt of a copy of this order.

In fine, for the reasons stated above, the writ petitions are allowed by quashing the impugned orders. No Costs. Consequently, connected miscellaneous petitions are closed."

4. Learned Special Government Pleader appearing for the respondents sought for 4 weeks to consider the request of the petitioner School.

5. In view of all the above, since the issue raised in this Writ Petition is no longer res integra, the Writ Petition stands allowed and the impugned orders passed by the 3rd respondent in his Proceedings in Oo.Mu.No.2031/Aa.3/2017 dated 29.07.2017 and Oo.Mu.No.2042/Aa.3/2017 dated 29.07.2017 are set aside and the

respondents 1 to 3 are directed to consider the case of the petitioner school and accord approval to the appointment of one Mr.S.Kumar as Record Clerk w.e.f. 03.09.2012 and one Mr.G.Pradeep as Night Watchman w.e.f. 02.05.2013 in the light of the orders passed in Writ Appeal (MD) No.308/2008 dated 04.08.2008, W.A.No.258/2009 etc. batch dated 12.7.2010 and W.A.Nos.727 to 729/2011 dated 11.11.2011 with all other service benefits, within a period of four weeks from the date of receipt of a copy of this Order. No costs. Consequently, connected Miscellaneous Petition is also closed.

20.12.2017

Index:Yes/No
Internet:Yes/No
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To

1. The Secretary to Government,
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Fort St. George, Chennai.
2. The Director of School Education,
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3. The District Educational Officer,
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**T.RAJA, J.
tsi**



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