

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.12.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.33348 of 2017 and
WMP.Nos.36792 and 36867 of 2017

G.Sarasu

...Petitioner

Versus

1. The Principal Secretary to Government,
School Education Department,
Fort St. George, Chennai.
2. The Director of School Education,
DPI Campus, College Road,
Chennai-6.
3. The Joint Secretary (Secondary),
DPI Campus, College Road,
Chennai-6.
4. The District Educational Officer,
Cheyyar, Tiruvannamalai District.
5. Arni St. Joseph Girls Higher Secondary School
rep. by its Correspondent,
Arni-632 301,
Tiruvannamalai 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 of the 4th respondent in Na.Ka.No.2472/A4/2017 dated 22.11.2017, quash the same and consequently, direct the respondents to approve the appointment of the petitioner as per the proposal forwarded by the 4th respondent dated 22.05.2017.

For Petitioner

: Ms.Dakshayani Reddy

For Respondents
1 to 4

: Mr.R.A.S.Senthilvel,
Addl. Govt. Pleader

O R D E R

The present Writ Petition has been filed challenging the impugned order passed by the 4th respondent, namely, the District Education Officer, Cheyyar, Tiruvannamalai District, in his Proceedings in Na.Ka.No.2472/A4/2017 dated 22.11.2017 refusing the proposal, made by the 5th respondent School to accord approval for the appointment of the petitioner herein as Record Clerk and quash the same.

2. Learned Counsel for the petitioner submitted that the 5th respondent School is a Minority School being administered under the Minority Educational Agency called Salesian Sisters, Mazzarello Convent with the grant given from the Government and the Government also has come forward to pass order fixing the staff strength including the teaching and non-teaching staff by order dated 23.10.2017 for the year 2017-18.

3. Learned Counsel for the petitioner further drawing the attention of this Court to the Annexure-I attached with the Order of the 4th respondent dated 22.11.2017 submitted that a Post of Record Clerk was sanctioned to the 4th respondent School. Since the previous incumbent, namely, Tmt.Alphonsa Mary, who was already appointed as Record Clerk has been transferred to another school, the post of Record Clerk already sanctioned by the Government in the 5th respondent school felt vacant.

4. 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.''

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 order passed by the 4th respondent in his Proceedings in Na.Ka.No.2472/A4/2017 dated 22.11.2017 is set aside and the respondents 1 to 4 are directed to approve the petitioner appointment in the post of Record Clerk w.e.f. 22.05.2017 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 Petitions are also closed.

WEB COPY

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

tsi

To

1. The Principal Secretary to Government,
School Education Department,
Fort St. George, Chennai.
2. The Director of School Education,
DPI Campus, College Road,
Chennai-6.
3. The Joint Secretary (Secondary),
DPI Campus, College Road,
Chennai-6.
4. The District Educational Officer,
Cheyyar,
Tiruvannamalai District.

+1 cc to the Govt Pleader sr 91467

+1 cc to M/s.Dakshayani Reddy Advocate sr 92077 dt 01/02/2018

W.P.No.33348/2017

aa01/02/2018



WEB COPY