

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2017

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.33380 to 33386 of 2017

P.Ilakiya	..	Petitioner in W.P.No.33380 of 2017
R.Rajalakshmi	..	Petitioner in W.P.No.33381 of 2017
T.Gnanasoundari	..	Petitioner in W.P.No.33382 of 2017
A.Barani	..	Petitioner in W.P.No.33383 of 2017
P.Sriya Pushpam	..	Petitioner in W.P.No.33384 of 2017
G.Jayanthy	..	Petitioner in W.P.No.33385 of 2017
V.Velankanni	..	Petitioner in W.P.No.33386 of 2017

-vs-

1. The Director of School Education
DPI Campus, College Road
Chennai 600 006
2. The Chief Educational Officer
Panagal Building
Saidapet
Chennai 600 015
3. The District Educational Officer
Chennai North, Egmore
Chennai 600 008
4. The Correspondent
The Lourdes Girls' Higher
Secondary School
Perambur
Chennai 600 011 .. Respondents in all the Writ Petitions

Petitions 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 appointments of the petitioners in the regular sanctioned posts of Junior Assistant, Junior Assistant, Office Assistant, Record Clerk, Lab Assistant, Water Woman, Watchman in the fourth respondent School from the date of appointment on 09.06.2014, 09.06.2014, 09.06.2014, 11.06.2012, 09.06.2014, 01.08.2011, 01.06.2010 respectively, 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.V.Jayaprakash Narayanan
Special Government Pleader
for R1 to 3

ORDER

These writ petitions have been filed seeking issuance of a mandamus directing the respondents 1 to 3 to approve the appointments of the petitioners in the posts of Junior Assistant, Junior Assistant, Office Assistant, Record Clerk, Lab Assistant, Water Woman, Watchman in the fourth respondent School from the date of appointment on 09.06.2014, 09.06.2014, 09.06.2014, 11.06.2012, 09.06.2014, 01.08.2011, 01.06.2010 respectively, and to pay the salary including arrears of salary with all consequential service benefits.

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

3. The Lourdes Girls' Higher Secondary School at Perambur, which is a minority educational institution under the Management of Society of Sisters of St.Anne, Chennai, receiving grant-in-aid for the teaching and non-teaching staff from the State Government, appointed the petitioners in the sanctioned posts of Junior Assistant, Junior Assistant, Office Assistant, Record Clerk, Lab Assistant, Water Woman, Watchman in the fourth respondent School with effect from 09.06.2014, 09.06.2014, 09.06.2014, 11.06.2012, 09.06.2014, 01.08.2011, 01.06.2010 respectively, caused due to the retirement/promotion/voluntary retirement of the previous incumbents. Since then, the petitioners have been continuously working without any salary, since the proposals dated 11.11.2016 sent by the fourth respondent School to the District Educational Officer, Chennai North seeking approval of their appointments have not been till date approved. Therefore, they are constrained to approach this Court, as the issue regarding filling up of the vacancies by the minority educational institution in the sanctioned posts of non-teaching staff without prior permission has already been settled by this Court.

4. The proposals dated 11.11.2016 sent by the fourth respondent School also show that the petitioners, namely, Mrs.P.Ilakiya, Mrs.R.Rajalakshmi, Mrs.P.Sriya Pushpam, Mr.A.Barani, Mrs.T.Gnana Soundari, Mrs.V.Velankanni & Mrs.G.Jayanthi were appointed only in the sanctioned posts as Junior Assistant, Junior Assistant, Office Assistant, Record Clerk, Lab Assistant, Water Woman, Watchman in the fourth respondent School with effect from 09.06.2014, 09.06.2014, 09.06.2014, 11.06.2012, 09.06.2014, 01.08.2011, 01.06.2010 respectively, which fell vacant due to the retirement/promotion/voluntary retirement of the previous incumbents. Therefore, it is not known how the respondents have

not considered the proposals sent by the fourth respondent 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 aforementioned sanctioned posts.

5. Moreover, this Court, in similar circumstances, has held that with regard to filling up of vacancies irrespective of teaching and non-teaching staff in aided minority educational institutions under sanctioned posts, no prior permission is required to be obtained. Useful reference can be had from the order 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:-

"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 the 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."

6. In the light of the above, the respondents are hereby directed to approve the appointments of the petitioners in the posts of Junior Assistant, Junior Assistant, Office Assistant, Record Clerk, Lab Assistant, Water Woman, Watchman in the fourth respondent School from the date of appointment on 09.06.2014, 09.06.2014, 09.06.2014, 11.06.2012, 09.06.2014, 01.08.2011, 01.06.2010 respectively and sanction the salary including arrears within a period of four weeks from the date of receipt of a copy of this order.

7. When this Court, considering the conduct of the third respondent, was inclined to impose costs, the learned Special Government Pleader for the respondents 1 to 3 requested this Court not to impose costs, as the proposals have been returned inadvertently by the third respondent. With all hesitation, this Court accepts the said request. However, the learned Special Government Pleader is directed to address the Director of School Education, Chennai on this issue, who in turn shall address all the subordinate officers at the level of Chief Educational Officer, District Educational Officer under him not to pass any orders either rejecting or returning the proposals being sent by the schools against the settled legal position, more particularly, with reference to the ratio laid down by the Hon'ble Division Bench in the aforementioned judgment, which is equally applicable to the minority/private aided schools, in respect of filling up of the vacancies in the sanctioned teaching or non-teaching posts.

8. With the above direction, these writ petitions are allowed. Consequently, W.M.P.Nos.36841 to 36847 of 2017 are closed. No costs.

Sd/-

Deputy Registrar

//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
Panagal Building
Saidapet
Chennai 600 015

3. The District Educational Officer
Chennai North, Egmore
Chennai 600 008

+7cc to Mr.G.Sankaran, Advocate Sr.No.91888

sm:9.1.2018

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