

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2017

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.33438 of 2017

The Correspondent & Headmistress
The Fathima Girls Higher Secondary School
Omalur, Salem 636 455 ..

Petitioner

-vs-

1. The State of Tamil Nadu
rep.by its Secretary
Department of School Education
Fort St.George
Chennai 600 009
2. The Director of School Education
College Road
Chennai 600 006
3. The Chief Educational Officer
District Collectorate Compound
Salem 636 001
4. The District Educational Officer
Sankagiri
SH-86, Sankagiri-Tiruchengode Road
Salem District 637 301 ..

Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order issued by the fourth respondent District Educational Officer vide proceedings in O.Mu.No.4029/2017/A3 dated 15.09.2017, quash the same and further direct the fourth respondent District Educational Officer to approve forthwith the appointment of Sr.A.Louis Arockia Mary as Junior Assistant in the petitioner school with effect from the date of her appointment viz., 02.01.2016 and disburse the grant-in-aid towards her salary and allowances, with effect from the date of her appointment.

For Petitioner	:: Ms.H.Mary Sowmi Rexi
For Respondents	:: Mr.V.Jayaprakash Narayanan Special Government Pleader

ORDER

This writ petition has been filed challenging the impugned order dated 15.9.2017 passed by the District Educational Officer, Sankagiri, the fourth respondent herein rejecting the proposal made by the petitioner School seeking an order of approval of the appointment of Sr.A.Louis Arockia Mary as Junior Assistant in the petitioner school with effect from the date of her appointment viz., 02.01.2016 and disburse the grant-in-aid towards her salary and allowances with effect from the date of her appointment.

2. Learned counsel for the petitioner submitted that when the petitioner School, being an aided minority educational institution, was established in the year 1963 administered by the Roman Catholic Congregation of Immaculate Heart of Mary, one post of Junior Assistant fell vacant on 1.1.2016 due to the retirement of one Sr.S.Philominal on 31.12.2015 and in an effort to fill up the said vacancy, the petitioner School appointed Sr.A.Louis Arockia Mary as Junior Assistant with effect from 2.1.2016 and she also joined duty on the same day. Thereafter, the petitioner School forwarded the proposal for appointing Sr.A.Louis Arockia Mary along with the relevant documents to the fourth respondent on 29.2.2016 requesting approval of the said appointment. But the fourth respondent-District Educational Officer, Sankagiri returned the proposal vide his proceeding dated 14.3.2016 for compliance of certain defects. Thereafter, after complying with the defects, the petitioner School re-submitted the proposal on 15.6.2016 to the fourth respondent. But the fourth respondent vide proceedings dated 15.9.2017 again rejected the proposal on the ground that as per G.O.Ms.No.37, School Education Department dated 8.2.2007, G.O.Ms.No.115, School Education Department dated 30.5.2007 and G.O.Ms.No.203, School Education Department dated 23.7.2010, approval would be granted for her appointment only after permission is given by the Government and the Director after considering the qualification based on rules, without even knowing the fact that the said G.O.Ms.No.115, School Education Department dated 30.5.2007 and another G.O.Ms.No.203, School Education Department dated 23.7.2010 and Government Letter No.8884/D1/2011-2 dated 9.7.2012 were quashed by this Court on 15.3.2016 in W.P.(MD) Nos.11481 of 2008 etc., batch, which reflects the total non-application of mind. The learned counsel further submitted that when Sr.A.Louis Arockia Mary has been working as Junior Assistant in the petitioner School since 2.1.2016 without salary. It was also further pleaded that when only one post is fixed in the cadre of Junior Assistant in the petitioner School having 2780 students with 53 teaching and 4 non-teaching staff on its roll, the denial of approval by the fourth respondent, without giving an opportunity of hearing before passing the

impugned order, is highly arbitrary. Therefore, the impugned order is liable to be set aside.

3. Heard the learned Special Government Pleader for the respondents also.

4. At the outset, it must be mentioned that the proposal made by the petitioner School to grant approval of the appointment of Sr. Sr.A.Louis Arockia Mary as Junior Assistant with effect from 2.1.2016 cannot be refused by the fourth respondent solely relying upon the G.O.Ms.No.115 dated 30.5.2007 and G.O.Ms.No.203 dated 23.7.2010, since the said Government Orders were already quashed by this Court in the judgment in Deva Asir v. The Secretary to Government and others, 2016-3-L.W.152. 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.

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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."

5. In the light of the above, the impugned order is set aside and the fourth respondent is hereby directed to approve the proposal submitted by the petitioner School for appointment of Sr.A.Louis Arockia Mary as Junior Assistant with effect from the date of her appointment viz., 2.1.2016 and sanction the salary including arrears within a period of four weeks from the date of receipt of a copy of this order. The writ petition stands allowed. Consequently, W.M.P.Nos.36932 & 36933 of 2017 are closed. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government
Department of School Education
Fort St.George
Chennai 600 009
2. The Director of School Education
College Road
Chennai 600 006
3. The Chief Educational Officer
District Collectorate Compound
Salem 636 001

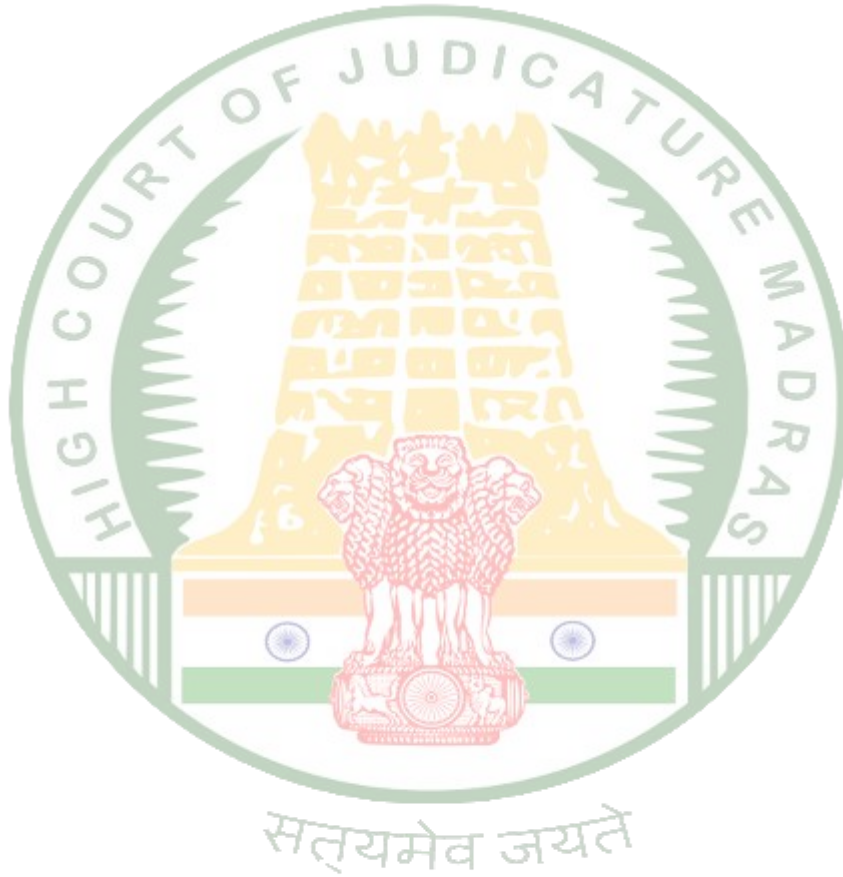
4. The District Educational Officer
Sankagiri
SH-86, Sankagiri-Tiruchengode Road
Salem District 637 301

+1cc to Mr.Issac Chambers, Advocate, S.R.No.91507

+1cc to the Government Pleader, S.R.No.92518

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