

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10-08-2017

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.21841, 32946, 33613, 34067, 34068, 34101 of 2015,
27398, 31173, 41865 to 41868, 43015 of 2016,
6211, 14439 and 17707 of 2017

And

M.P.Nos.1, 2, 1, 1, 1, 1, 1 of 2015 and
WMP Nos.11020, 15717, 23604, 29047, 27021, 38492, 35848, 35851,
36867 of 2016 and
6137, 8631, 6697, 15646 and 19209 of 2017

WP No.21841 of 2015:

1. MR. R.GEORGE RAVI KORENELIUS
... PETITIONER in WP No.21841 of 2015
1. SHAUKATHUL ISLAM (B.M.S.)
REP BY ITS CORRESPONDENT
K.E.P.MOHAMED ALI
... PETITIONER in WP No.32946 of 2015
1. T.VIJAYALAKSHMI
... PETITIONER in WP No.33613 of 2015
1. FATIMA GIRLS HIGHER SECONDARY
SCHOOL JAYANKONDAM-621802 ARIYALUR
DISTRICT REP. BY ITS CORRESPONDENT SR.
MARY VIANNEY.
... PETITIONER in WP Nos.34067 of
2015, 34068/2015 and W.P.No.34101/15.
1. S.ANU
... PETITIONER in WP No.27398 of 2016
1. J.KANCHANA
... PETITIONER in WP No.31173 of 2016
1. T.E.L.C. HIGHER SECONDARY
SCHOOL NORTH MAIN STREET PUDUKOTTAI 622
001 REP BY ITS CORRESPONDENT D.MASILAMANI
PRINCE PACKIANATHAN S/O.M.DEVAMANDHAN
... PETITIONER in WP Nos.41865 of
2016 to W.P.41868/2016.

1 K.RAMPRAKASH

... PETITIONER in WP No.43015 of 2016

1 THE SECRETARY
SWAMI DAYANANDA HIGHER SECONDARY SCHOOL
MANJAKKUDI - 612 610. THIRUVARUR DISTRICT.

... PETITIONER in WP No.6211 of 2017

1 THE MANAGER
RC SCHOOLS SALEM DIOCESE SOCIETY (SALEM-
NAMAKKAL DISTRICTS) MARY PALACE NO.63
THAMMANNAN ROAD SALEM 636 009

... PETITIONER in WP No.14439 of
2017 and W.P.17707/2017.

Vs.

1. The State of Tamil Nadu rep by
its Secretary, Education Department
Fort. St. George
Chennai 9.

...1st Respondent in
W.P.21841/15,14439/17 &
17707/17.

2. The District Educational Officer
Villupuram, Villupuram District

...3rd Respondent in
W.P.21841/15.

3. The Correspondent
Danish Mission High School
Parikkal, Villupuram

...4th Respondent in
W.P.21841/15.

4. The Director of School
Education, DPI Campus
College Road
Chennai

...2nd Respondent in
W.P.21841/15, 33613/15,27398/16,
31173/16,41865/16, 41866/16,
41867/16, 41868/16,14439/17
and W.P.17707/17.

..1st Respondent in
W.P.32946/15,34067/15,34068/15
34101/15,43015/16.

5. The Joint Director of School
Education(Secondary)
DPI Campus, College Road
Chennai 6.

..2nd Respondent in
W.P.32946/15,34067/15,
34068/15,34101/15 &
W.P. 43015/16.

6. The District Educational
Officer, Kumbakonam
Thanjavur District

..3rd Respondent in W.P.32946/15.
..4th Respondent in W.P.43015/16.

7. The State of Tamil Nadu
Rep by its Principal Secretary
to Government School Education Department
Secretariat, Fort. St. George
Chennai 9.

..1st Respondent in
W.P.33613/15,27398/16,
31173/16,41865,41866,
41867 & 41868/16.

8. The Chief Educational Officer
Panagal Buildings
Saidapet
Chennai 15.

..3rd Respondent in
W.P.33613/15,27398/16,
31173/16.

9. The District Educational Officer
Chennai North
Egmore, Chennai 8.

..4th Respondent in
W.P.33613/15,27398/16.

10. The Secretary , Moongibai Goenka
Girls Higher Secondary School
Ramanujar Street
Sowcarpet, Chennai 79.

..5th Respondent in
W.P.33613/15.

11. The District Educational Officer
Udayrapalayam
Ariyalur District

..3rd Respondent in
W.P.34067/15,34068/15
34101/15.

12. The Correspondent
Shree K.Sugunibai Sanatana Dharma Girls
Higher Secondary School No. 3 & 4 Chinna
Naikaran Street Sowcarpet Chennai-600 079.

..5th Respondent in
W.P.27398/16.

13. The District Educational Officer
Chennai Central, Chennai 15.

..4th Respondent in
W.P.31173/16.

14. The Secretary
Kumararaja Muthiah Higher Secondary School
New No.4 Old No.7 Crescent Avenue Road
Gandhi Nagar,Adyar ,Chennai-600 020.

..5th Respondent in
W.P.31173/16.

15. The District Educational Officer
Pudukottai, Pudukottai District.

..3rd Respondent in
W.P.41865/16,41866,41867,
41868/16.

16. The Chief Educational Officer
Thanjavur District
Thanjavur.

..3rd Respondent in
W.P. 43015/16.

17. The Correspondent
Thiruvavaduthurai Adhinam Higher Secondary
School Thiruvaidaimaruthur-612 104
Thanjavur District.

..5th Respondent in
W.P.43015/16.

18. The Chief Educational Officer
Collectorate Campus
Thiruvavarur, Thiruvavarur District.

..1st Respondent in
W.P.6211/2017.

19. The District Educational officer
Collectorate Campus
Thiruvavarur,Thiruvavarur District.

..2nd Respondent in
W.P.6211/17.

20. The Chief Educational Officer
District Collectorate Compound
Salem 636 001.

..3rd Respondent in
W.P.14439/17 & 17707/17.

21. The District Educational Officer
District Collectorate Compound
Salem

..4th Respondent in W.P.14439/17
W.P.17707/17.

WP No.21841 of 2015:

These Writ Petitions are filed under Article 226 of the constitution of India, and praying to issuance of a Writ of Mandamus directing the respondents to approve the appointment of the petitioner in the post of Office Assistant in the 4th respondent school and to make payment of salary from the date of appointment with interest and to extend all benefits both service and monetary.

WP No.32946 of 2015:

directing the respondents to approve the appointment of Honourable Division Bench in the post of Junior Assistant in the petitioner School in the regular sanctioned post from the date of appointment on 15.6.2011 and to make payment of salary with interest along with consequential and other attendant benefits.

WP No.33613 of 2015:

To call for the records relating to the impugned proceedings issued by the 4th respondent in O.MU.No.854/A1/2015 dated 24.04.2015 dated and to quash the same and consequently directing the Respondents 1 to 4 to approve the appointment of the Petitioner in the post of Junior Assistant in the 5th Respondent school from the date of initial appointment on 11.02.2015 with all consequential and other attendant benefits along with interest.

WP No.34067 of 2015:

Directing the Respondents to approve the appointment of Thiru. A.A.Chinnapparaj in the post of Watchman in the Petitioner school in the regular sanctioned post from the date of initial appointment on 01.03.2007 and to make the payment of salary from the date of initial appointment along with interest with all consequential and other attendant benefits.

WP No.34068 of 2015:

Directing the Respondents to approve the appointment of Thiru. S.Chinnapparaj in the post of Record Clerk in the Petitioner school in the regular sanctioned post from the date of initial appointment on 01.03.2010 and to make the payment of salary from the date of initial appointment along with interest with all consequential and other attendant benefits.

WP No.34101 of 2015:

Directing the Respondents to approve the appointment of Tmt. M.Mariapushpam in the post of Office Assistant in the Petitioner school in the regular sanctioned post from the date of initial appointment on 01.03.2010 and to make the payment of salary from the date of initial appointment along with interest with all consequential and other attendant benefits.

WP No.27398 of 2016:

Directing the respondents 1 to 4 to approve the appointment of the petitioner in the post of Record Clerk in the 5th respondent school from the date of initial appointment on 01.09.2009 and to make the payment of salary from the date of initial appointment with all consequential and other attendant benefits.

WP No.31173 of 2016:

Directing the respondents 1 to 4 to approve the appointment of the petitioner in the post of Library Attender in the 5th respondent school from the date of initial appointment on 03.12.2015 and to make the payment of salary from the date of initial appointment with all consequential and other attendant benefits.

WP No.41865 of 2016:

directing the respondents to approve the appointment of Thiru W. Praveen in the regular sanctioned post of Lab Assistant in the petitioner School from the date of appointment on 1.11.2013 and to make the payment of salary with interest and other service benefits.

WP No.41866 of 2016:

directing the respondents to approve the appointment of Tmt.J. Latha in the regular sanctioned post of Record Clerk in the petitioner School from the date of appointment on 14.2.2013 and

to make the payment of salary with interest and other service benefits.

WP No.41867 of 2016:

directing the respondents to approve the appointment of Thiru A.S. Lenin Ranjithkumar in the regular sanctioned post of Junior Assistant in the petitioner School from the date of appointment on 18.6.2012 and to make the payment of salary with interest and other service benefits.

WP No.41868 of 2016:

directing the respondents to approve the appointment of Thiru V.Joshuva Priyanth in the regular sanctioned post of Watchman in the petitioner School from the date of appointment on 1.11.2014 and to make the payment of salary with interest and other service benefits.

WP No.43015 of 2016:

Directing the 1 and 2 respondent to approve the appointment of the petitioner in the regular sanctioned post of Junior Assistant in the 5th respondent school from the date of appointment on 11.11.2016 and to make the payment of salary with interest and other service benefits.

WP No.6211 of 2017:

calling for the records relating to the impugned order issued by the 2nd respondent District Educational Officer Vide Proceedings in Na.Ka. No.981/A3/2017 dated 01.03.2017, quash the same and further direct the 2nd respondent District Educational Officer to approve forthwith the appointment of Mr.K. Sivakumar as lab assistant in the petitioners school and disburse the grant - in-aid towards his salary and allowance with effect from the date of his appointment Viz.,02.02.2017.

WP No.14439 of 2017:

calling for the records relating to the impugned proceedings issued by the 4th respondent District Educational Officer in A.Thi.Mu.No.6526/A2/2013 dated 14.02.2014 and Na.Ka.No.3998/A2/2016 dated 18.11.2016 quash the same and further Direct the 4th respondent District Educational officer herein to approve forthwith the appointment of Mr.S.Maria Paul Durairaj as Junior Assistant in petitioners little Flower Higher Secondary School, Four Roads, Salem-7 with effect from his date of appointment viz., 12.06.2013 and release salary and other benefits including the arrears at salary and allowances.

WP No.17707 of 2017:

calling for the records relating to the impugned proceedings issued by the 4th respondent District Educational Officer in O.Mu. No.8226/ A2/ 2009 dated 14.01.2011, Quash the same and further direct the 4th respondent District Educational Officer

herein to approve forthwith the appointment of Mr.S.Lawrence as Watchman in petitioners Little Flower Higher Secondary School, Four Roads, Salem-7 with effect from his date of appointment viz., 24.09.2009 and release salary and other benefits including the arrears of salary and allowances.

For Petitioner: Ms. T. Dharani for W.P. 21841/15.

Mr.G. Sankaran for W.P. Nos
32946/15,33613,34067,34068,34101/15.
27398/16,31173/16,41865 to 41868/16 and 43015/16.

Mr.P. Godson Swaminathan for
W.P.6211/17,14439/17 and 17707/17.

For Respondent: Mr.M.E. Raniselvam, Additional Govt. Pleader
for W.P.21841 of 2015.

Mr.K. Dhananjayan, Special Govt. Pleader
for W.P.21841/15 & R1 to R4 in W.P.33613/15.

Mr.S.Gunasekaran, Govt. Advocate for
W.P.34067,34068,34101/15 and R1 to R4 in
W.P. 27398/2016.

Mr.C.C. Rangarajan, Govt. Advocate for
W.P.41865 to 41868/16 and R1 to R4 in
W.P.31173/2016.

Mr.M. Perumal, Govt. Advocate of R1 to R4
in W.P.43015/16 and R1 & R2 in W.P.6211/2017.

Mr.J.H. Iniyan, Govt. Advocate in W.P.14439/2017.

Mr.R.S. Selvam , Govt. Advocate for W.P.17707/17.

COMMON ORDER

Challenging the impugned action of the State in retuning the Proposal submitted by the respective Minority Schools, seeking to approve the appointments made by them against the sanctioned vacancies in the Non-Teaching Posts, these writ petitions have been filed.

2. Heard both sides.

3. It is submitted by the learned Senior Counsel for the petitioners that, as and when vacancies arose against the regular & sanctioned posts relating to Non-Teaching staff in various cadres, the Aided Minority Schools concerned had

filled up the same by appointing suitable hands without prior permission to fill up those vacancies and, while this practice continued till the academic year 2000-2001 with the Government according approval to such appointments regularly, now, by way of the present impugned proceedings, the Education Department have returned the proposals sent by the Minority Institutions, seeking approval for the appointment of Non-Teaching Staff, and such exercise is arbitrary and absolutely unwarranted.

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. Further, 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 this Court 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.

6. In fine, for the reasons stated above, the writ petitions are allowed by quashing the impugned orders. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

s/d-

Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

Svn

To

1. The Secretary,
State of Tamil Nadu,
Education Department,
Fort St. George,
Chennai-600 009.
2. The Director of School Education,
College Road,
Chennai-600 006.
3. The District Educational Officer,
Villupuram,
Villupuram District.
4. The Joint Director of School Education(Secondary)
DPI Campus, College Road,
Chennai 6.
5. The District Educational Officer
Kumbakonam, Thanjavur District.
6. The Principal Secretary to Tamil Nadu Government
School Education Department
Fort. St. George
Chennai.

7. The Chief Educational officer
Panagal Buildings, Saidapet
Chennai.
8. The District Educational Officer
Chennai North, Egmore, Chennai.
9. The District Educational Officer
Udayarpalayam, Ariyalur.
10. The District Educational officer
Chennai Central, Chennai 15.
11. The District Educational Officer
Pudukottai, Pudukottai District.
12. The Chief Educational Officer
Thanjavur, Thanjavur District.
13. The Chief Educational Officer
Collectorate Campus
Thiruvavur.
14. The District Educational officer
Collectorate Campus, Thiruvavur.
15. The Chief Educational Officer
District Collectorate Compound
Salem.
16. The District Educational officer
District Collectorate Compound
Salem.

+1 CC to Ms. Isaac Chambers, Advocates sr 58060.

+6 Ccs to Mr.G. Sankaran, Advocate sr 58112 and 58113.

+1 CC to Govt. Pleader sr 58191

WP Nos.21841, 32946,
33613, 34067, 34068,
34101 of 2015, 27398,
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43015 of 2016, 6211,
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SCD (CO)
sp(13/09/2017)