

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2017

CORAM

THE HONOURABLE MR. JUSTICE T. RAJA

W.P.No.27821 of 2017 and
WMP.No.29815 of 2017

Thiruvavaduthurai Adhinam Higher Secondary School,
Thiruvidaimaruthur-612 104,
Thanjavur District
rep. by its Correspondent
K.K.Subramanian

.. Petitioner

Vs.

1. The Director of School Education,
DPI Campus, College Road,
Chennai-6.
2. The Chief Educational Officer,
Thanjavur District,
Thanjavur.
3. The District Educational Officer,
Kumbakonam,
Thanjavur District.

.. Respondents

Writ Petition filed under Article 226 constitution of India for issuance of a Writ of Mandamus, directing the 1st respondent to approve the appointment of Tmt.Usha in the regular sanctioned post of Lab Assistant in the petitioner school from the date of appointment on 01.06.2017 and to make the payment of salary with interest and other service benefits, within a time framed to be fixed by this Court.

For Petitioner : Mr.G.Sankaran

For Respondents : Mr.P.Sanjay Gandhi,
Additional Government Pleader

O R D E R

The Writ Petition has been filed seeking to issue a Writ of Mandamus, directing the 1st respondent to approve the appointment of Tmt.Usha in the regular sanctioned post of Lab Assistant in

the petitioner school from the date of appointment on 01.06.2017 and to make the payment of salary with interest and other service benefits, within a stipulated time fixed by this Court.

2. The case of the petitioner is that the petitioner school, being a Religious Denominational Aided School, receiving grant-in-aid from the State Government to both the teaching and non-teaching staff working in their school, appointed one Tmt.Usha as Lab Assistant in a retirement vacancy left by one Mr.D.S.Sankaran, who retired from service on 31.05.2017. After appointing the said Usha as Lab Assistant, the petitioner school forwarded a proposal to the 3rd respondent on 08.06.2017 seeking approval of her appointment in the post of Lab Assistant w.e.f. 01.06.2017 by enclosing all the requisite documents. Whereas the proposal was returned by the 3rd respondent as per the proceedings dated 16.06.2017 by stating that the approval of appointment of Tmt.Usha in the post of Lab Assistant could be considered only after obtaining necessary order of permission from the 1st respondent herein. According to the petitioner, this approach of the 3rd respondent is wholly misconceived. Hence, the present Writ Petition.

3. While dealing with a similar issue as to whether a Religious Denominational Aided School, receiving grant-in-aid from State Government should obtain prior approval before filling up of the sanctioned vacancies, in W.P.No.29998/2014 etc. batch, this Court by order dated 17.03.2017, while setting aside the impugned orders, has specifically held as follows in paragraph Nos.3 and 4 :

''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, 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."

4. In view of the aforesaid settled legal position, the 1st respondent is directed to pass appropriate orders granting approval of the appointment of Tmt.Usha in the regular sanctioned post of Lab Assistant in the petitioner School w.e.f. 01.06.2017, within a period of four weeks from the date of receipt of a copy of this Order. It is needless to mention that the said Tmt.Usha should also be paid with salary from the date of his appointment.

5. The Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

सत्यमेव जयते Assistant Registrar (CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Director of School Education,
DPI Campus, College Road,
Chennai-6.

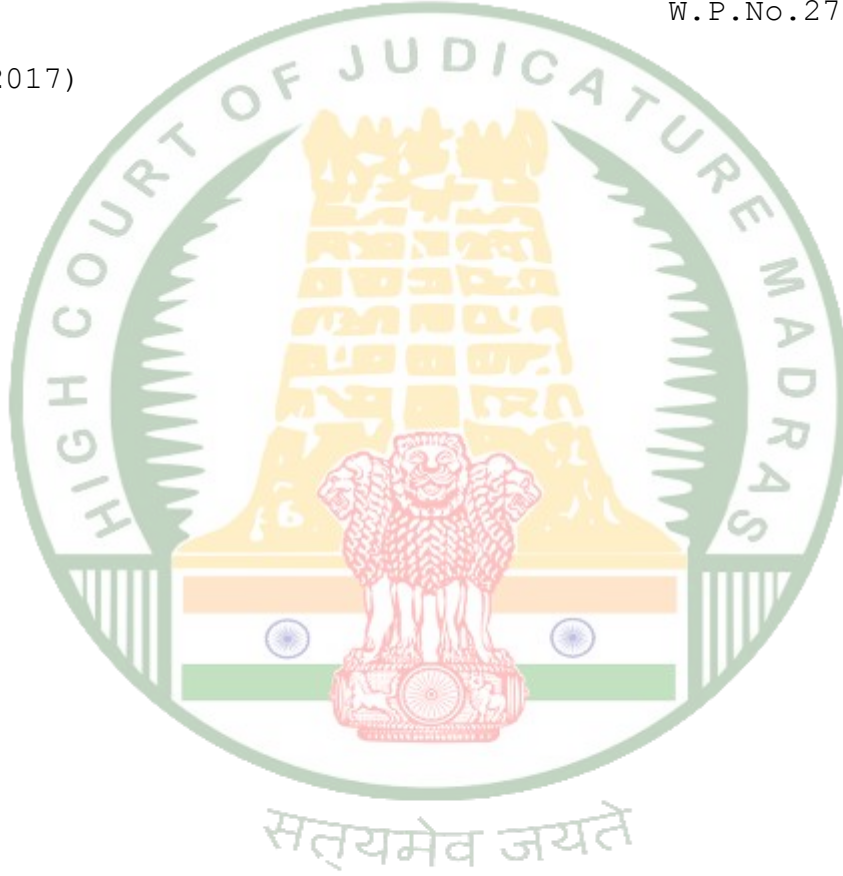
2. The Chief Educational Officer,
Thanjavur District,
Thanjavur.

3. The District Educational Officer,
Kumbakonam,
Thanjavur District.

+1cc to Mr.G.Sankaran, Advocate, S.R.No.77146
+1cc to the Government Pleader, S.R.No.77654

W.P.No.27821 of 2017

GN(16/11/2017)



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