

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2017

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.27917 of 2017

S.Valarmathi

.. Petitioner

-vs-

1. The Director of School Education
DPI Campus, College Road
Chennai 600 006
 2. The Chief Educational Officer
Thanjavur District
Thanjavur
 3. The District Educational Officer
Kumbakonam
Thanjavur District
 4. The Secretary
Oriental Higher Secondary School
No.10-A, Karanakollai Agraharam (Besant Road)
Kumbakonam 612 001
- .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the respondent no.1 to approve the appointment of petitioner in the regular sanctioned post of Record Clerk in the fourth respondent School from the date of appointment on 19.06.2017 and to make the payment of salary with all consequential and other service benefits, within a time frame to be fixed by this Hon'ble Court.

For Petitioner :: Mr.G.Sankaran

For Respondents :: Mr.R.A.S.Senthilvel
Additional Government Pleader
for R1 to 3

ORDER

This writ petition has been filed seeking issuance of a mandamus to the respondents 1 to 3 to grant approval of the petitioner's appointment as Record Clerk in the fourth respondent school with effect from the date of her appointment on 19.6.2017 with all consequential benefits.

2. Heard both sides.

3. The petitioner, having passed SSLC in the year 1999 and Diploma in Teacher Education in the year 2007, registered her qualification in the employment exchange. While so, the fourth respondent school, considering the qualification possessed by the petitioner, selected and appointed her in the retirement vacancy of one Mr.S.V.Raghavan with effect from 19.6.2017. Since the petitioner was appointed in a permanent sanctioned post, after the retirement of one Mr.S.V.Raghavan, the fourth respondent sent a proposal on 20.6.2017 to the District Educational Officer, Kumbakonam, the third respondent herein seeking approval. But the third respondent has returned the same stating that the post of non-teaching staff can be filled up only after obtaining permission from the Director of School Education, the first respondent herein. This issue has been settled once and for all by various judgments of this Court including the one 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:-

"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. 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 case on hand, admittedly, the writ petitioner has been appointed against a permanent sanctioned post of Record Clerk, caused due to the retirement of one Mr.S.V.Raghavan, with effect from 19.6.2017 and therefore, by following the above cited case laws, this Court hereby directs the third respondent to approve the appointment of the petitioner with effect from the date of her appointment and sanction the grant within a period of four weeks from the date of receipt of a copy of this order. The writ petition is disposed of accordingly. Consequently, W.M.P.No.29948 of 2017 is closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ss

To

1. The Director of School Education
DPI Campus, College Road
Chennai 600 006

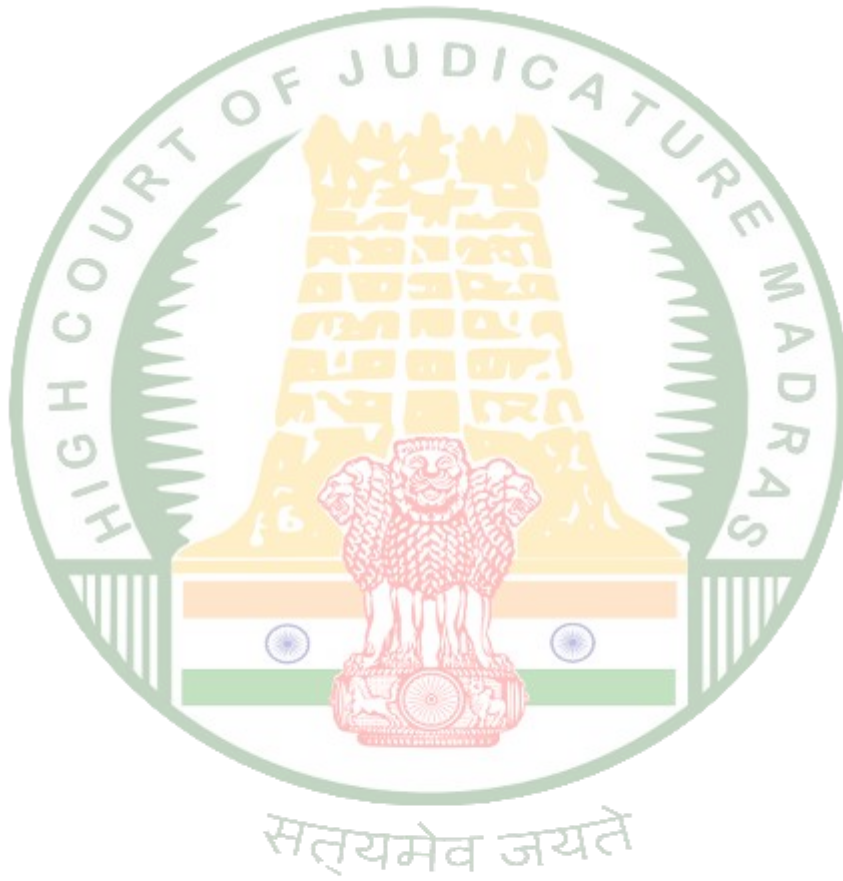
2. The Chief Educational Officer
Thanjavur District
Thanjavur

3. The District Educational Officer
Kumbakonam
Thanjavur District

+1 cc to M/s.G.Sankaran Advocate sr 77555
+1 cc to the Government pleader sr 77657

W.P.No.27917 of 2017

aa15/11/2017



WEB COPY