

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.11.2017

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THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.28030 of 2017

St.Joseph's Girls Higher Secondary School,
Kumbakonam District,
rep. by its Correspondent,
Sister A.Elizabeth Rani

...Petitioner

Versus

1. State rep. by its Principal Secretary to
Government, School Education Department,
Fort St. George, Chennai.
2. The Director of School Education,
DPI Campus, College Road,
Chennai-6.
3. The Chief Educational Officer,
Thanjavur District,
Thanjavur.
4. The District Educational Officer,
Kumbakonam,
Thanjavur District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents 1 and 2 herein to approve the appointment of Mr.S.Senthil Kumar, in the regular sanctioned post of Watchman in the school from the date of his appointment on 01.04.2014 and to make the payment of salary and all other consequential service benefits and monetary benefits, within a time frame fixed by this Court.

For Petitioner : Ms.Daisy
for M/s.G.Bala and Daisy

For Respondents : Mr.P.Sanjay Gandhi,
1 to 4 Additional Government Pleader

O R D E R

The present Writ Petition has been filed seeking to issue a Writ of Mandamus, directing the respondents 1 and 2 herein to approve the appointment of Mr.S.Senthil Kumar, in the regular sanctioned post of Watchman in the petitioner school from the date of his appointment on 01.04.2014 and to make the payment of salary and all other consequential service benefits and monetary benefits, within a time stipulated by this Court.

2. According to the petitioner school, namely, St.Joseph's Girls Higher Secondary School in Kumbakonam, the Correspondent of the School has appointed one Mr.S.Senthil Kumar as watchman on 01.04.2014 in a permanent sanctioned vacancy which arose on account of retirement of one Mr.A.Adikalasamy on attaining the age of superannuation on 31.03.2014. After filling up of the sanctioned vacancy, a proposal was sent on 08.12.2014 to the 4th respondent, namely, the District Educational Officer, Kumbakonam, Thanjavur District, seeking approval of the said appointment of Mr.S.Senthil Kumar. But the same was returned to the school on 02.09.2015 informing that the approval of the non-teaching staff would be considered only after obtaining sanction from the 2nd respondent. Therefore, the petitioner has approached this Court by way of filing this Writ Petition.

3. Learned Counsel appearing for the petitioner submitted that the petitioner school is an Aided Educational Institution. Only after the retirement of one Mr.A.Adikalasamy on 31.03.2014, who was serving as a Watchman, the post of Watchman became vacant from 01.04.2014 and in the said post only, one Mr.S.Senthilkumar, son of Chellappa was appointed as Watchman w.e.f. 1.4.2014. Thereafter, a proposal was sent to the 4th respondent for the approval of the same on 8.12.2014. The learned Counsel further submitted that the respondents, without appreciating the legal position that the petitioner school, being a Minority Aided Educational Institution, need not obtain prior approval from the Education Department for filling up of the sanctioned vacancy in the post of Watchman, wrongly rejected the same.

4. In support of her contention, the learned Counsel for the petitioner also relied on a Common Order passed in W.P.No.29998/2014 etc. batch, dated 17.03.2017. A perusal of the same shows 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 school, which has already been sanctioned for the academic year. The relevant portion is extracted here under :

''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.

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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. 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.

In fine, for the reasons stated above, the writ petitions are allowed by quashing the impugned orders. No Costs. Consequently, connected miscellaneous petitions are closed.''

5. In view of all the above, the Writ Petition is disposed of with a direction to the respondents 1 and 2 to approve the appointment of one Mr.S.Senthil Kumar in the regular sanctioned post of Watchman in the petitioner school from the date of his appointment dated 01.04.2014 and the respondents are also directed to pay the salary and all other monetary and service benefits from the date of his appointment. No costs.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1.Principal Secretary to Government,
School Education Department,
Fort St. George, Chennai.

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

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

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

+1 CC to Ms. G. Bala & Daisy, Advocate sr 77584.

+1 cC to Govt. Pleader sr 78305.

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W.P.No.28030/2017

GJ(CO)

SP(27/11/2017)