

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.11.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.28045 of 2017 and
WMP.Nos.30111 and 30112 of 2017

F.Mary Daisy Rani Chinthiya

..Petitioner

Versus

1. The Secretary to Government,
School Education Department,
Fort St. George, Chennai.
2. The Director of School Education,
DPI Campus, College Road,
Chennai-6.
3. The District Educational Officer,
Chengalpattu,
Kanchipuram District.
4. The Correspondent
St. Joseph Hr.Sec.School Kanchipuram High
Road Chengalpattu 603 002

.... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the 3rd respondent in his Proceedings Oo.Mu.No.1486/A2/2017 dated 23.06.2017 and quash the same and consequently, direct the respondents to approve the petitioner appointment in the post of Lab Assistant w.e.f. 21.04.2017 in the light of the orders passed in Writ Appeal (MD) No.308/2008 dated 04.08.2008, W.A.No.258/2009 etc. batch dated 12.7.2010 and W.A.Nos.727 to 729/2011 dated 11.11.2011 with all other service benefits.

For Petitioner

: Mr.K.H.Ravikumar

For Respondents
1 to 3

: Mr.V.Jayaprakash Narayanan,
Special Government Pleader

O R D E R

The present Writ Petition has been filed challenging the impugned order passed by the 3rd respondent in his Proceedings No.Oo.Mu.No.1486/A2/2017 dated 23.06.2017 and quash the same and seeking other consequential reliefs.

2. The case of the petitioner is that she was appointed as a Lab Assistant on 21.04.2017 in the 4th respondent School, namely, St.Jospeh Higher Secondary School, Kanchipuram High Road, Chengalpattu, which is a Minority Aided Educational Institution, receiving grant-in-aid from the State Government, due to the retirement of one Mrs.A.Josephine Mary on superannuation on 30.04.2016. Further, according to the petitioner, she has completed 10th Standard in the year 1999, Higher Secondary in March, 2002 and B.B.A. Degree from Madras University in April, 2005. The required qualification for the post of Lab Assistant is 10th Standard as per the norms fixed under the Private School Regulation Act, 1973. After her appointment on 21.04.2017, the Management of the school along with all necessary documents sent a proposal dated 04.05.2017 to the 3rd respondent for getting approval of her appointment. But the 3rd respondent by proceedings dated 23.06.2017 returned the same stating a peculiar reason that though several orders had been passed by this Court to fill up the regular sanctioned vacancies, the same cannot be filled up in the absence of any specific Government Orders and the order from the Director of School Education Department. Hence the present Writ Petition.

3. Learned Counsel appearing for the petitioner drawing the attention of this Court to a Common Order passed by this Court in W.P.No.29998/2014 etc. batch, dated 17.03.2017 submitted 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.

.....

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.'

4. In view of all the above, the Writ Petition stands allowed and the impugned order passed by the 3rd respondent in his Proceedings Oo.Mu.No.1486/A2/2017 dated 23.06.2017 is set aside and the respondents are directed to approve the petitioner appointment in the post of Lab Assistant w.e.f. 21.04.2017 in the light of the orders passed in Writ Appeal (MD) No.308/2008 dated 04.08.2008, W.A.No.258/2009 etc. batch dated 12.7.2010 and W.A.Nos.727 to 729/2011 dated 11.11.2011 with all other service benefits. No costs. Consequently, connected Miscellaneous Petitions are also closed.

-s/d-

Assistant Registrar(CS-II)

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Sub-Assistant Registrar

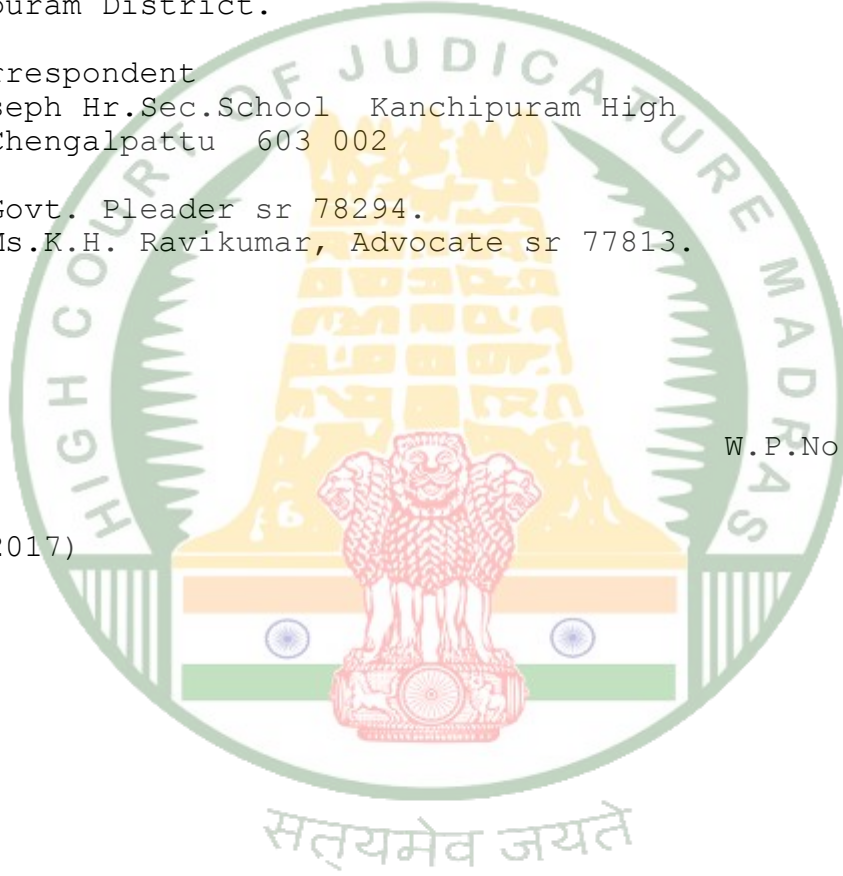
To

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+1 CC to Govt. Pleader sr 78294.
+1 CC to Ms.K.H. Ravikumar, Advocate sr 77813.

GMI (CO)
SP(24/11/2017)

W.P.No.28045/2017



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