

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2017

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.Nos.28369 to 28373 of 2017

N.Beaula Rani .. Petitioner in W.P.No.28369 of 2017
P.K.Amutha Veni .. Petitioner in W.P.No.28370 of 2017
D.Golda Mary Christy .. Petitioner in W.P.No.28371 of 2017
N.Shermila .. Petitioner in W.P.No.28372 of 2017
O.P.Bindhu Kala .. Petitioner in W.P.No.28373 of 2017

Vs

- 1.The Director of Collegiate Education
College Road, Chennai - 600 006
2. The Joint Director of Collegiate Education,
Thirunelveli Region, Thirunelveli - 627 007
3. The Correspondent / Secretary,
Scott Christian College,
Nagercoil - 629 003
Kanyakumari District .. Respondents in all the petitions

Prayer: Writ Petitions filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the 1st respondent herein to approve the petitioners appointment as Gardener, Sweeper, Sweeper, Sweeper and Scavenger respectively in the Scott Christian College, Nagercoil in the sanctioned vacancy caused by the promotion of S.A.Mercy Bai, S.Mahalingam, P.Vellan, M.Thangavel and P.Bhagavathiappan respectively with effect from 13.10.2016 with all attendant, monetary and service benefits.

For petitioners: Mr.P.Ganesan

For Respondents: Mr.R.A.S.Senthilvel, for R1 and R2
Additional Government Pleader

Mr.S.Bharathiraja for R3

C O M M O N O R D E R

Challenging the impugned action of the State in retuning the Proposal submitted by the Minority College, 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. The case of the petitioners is that S.A.Mercy Bai, S.Mahalingam, P.Vellan, M.Thangavel and P.Bhagavathiappan respectively who were working in the 3rd respondent's college, namely, Scott Christian College, Nagercoil, Kanyakumari were promoted as Laboratory Assistants / Retired from service / Library Assistant / Record clerk respectively, causing vacancies to the posts of Gardener / Sweeper / Scavenger respectively. Since the said vacancies have arisen on account of promotions given to various Gardener / Sweeper and retirement respectively, the 3rd respondent Society, Collegiate appointed the petitioners on 13.10.2016. The said appointment of the petitioners were duly approved by the collegiate committee and there upon a proposal was made on 31.10.2016 to the 2nd respondent, viz., the Joint Director of Collegiate Education, Tirunelveli along with necessary particulars. Since the petitioners were not paid with the salary, representations were made on 20.07.2017. Again, finding no response, further reminders were also made by the 3rd respondent's Collegiate to the 2nd respondent. In spite of the proposal made on 31.10.2016 and several reminders were submitted, the 2nd respondent has not come forward to consider the proposal to approve the appointment of gardener / sweeper, as a result, the petitioners were not paid the salary for the last one year. In view of the non payment of salary, the Sweeper / Gardener are not properly taking care of the work in the 3rd respondent / College. Therefore seeks for a direction mentioned supra.

4. It is submitted by the learned 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 colleges 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.

5. 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 Colleges. 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 college, 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 college 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 colleges 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. No costs.

Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

ssd
To

1. The Director of Collegiate Education
College Road, Chennai - 600 006
2. The Joint Director of Collegiate Education,
Thirunelveli Region, Thirunelveli - 627 007
3. The Correspondent / Secretary,
Scott Christian College,
Nagercoil - 629 003
Kanyakumari District

1 to cc Government Pleader Sr.79300, 79298, 79297, 79302, 79299
+ 5 ccs to Mr. S. Bharathi Rajan, Advocate Sr.78656 to 78660
+ 5 ccs to Mr. P. Ganesan, Advocate SR.78657 to 78655

W.P.Nos.28369 to 28373 of 2017

MN (CO)
EU (16/11/2017)

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