

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.2032, 30760 to 30762 of 2016;
23173, 23178 of 2017 and 24306 of 2017 &
connected M.Ps.

S.Arul ..Petitioner in W.P.2032/16
H.Divyaa ..Petitioner in W.P.30760/16
M.Ragavi ..Petitioner in W.P.30761/16
P.Vasirajan ..Petitioner in W.P.30762/16
The Correspondent,
Semangudi Higher
Sec. School, Sembangudi
Thiruvapur ..Petitioner in W.P.23173/17
M.Yobu Eniyaraj
Record Clerk ..Petitioner in W.P.23178/17
The Correspondent,
St.Mary's Girls Higher
Sec. School, Mettur dam,
Salem ..Petitioner in W.P.24306/17

Vs

- 1 The Director of School Education
DPI Campus,
College Road,
Chennai 600 06. ..1st Respondent in
WP.No.2032/16, 23178/17
..2nd Respondent in
WP.30760/16 to 30762/16 and
WP.24306/17
- 2 The Chief Educational Officer
Chennai. ..2nd Respondent in WP.2032/16

- 3 The District Educational Officer
North Chennai
Chennai 600 008. ..3rd Respondent in WP.2032/16
..4th Respondent in
WP.30760/16
- 4 Thiru-vi-ka Higher Secondary School
No.38/39, First Main Road (West)
Shenoy Nagar, Chennai 600 030
rep. By its Secretary. ..4th Respondent in WP.2032/16
- 5 THE STATE OF TAMIL NADU
REP. BY ITS PRINCIPAL SECRETARY TO
GOVERNMENT SCHOOL EDUCATION DEPARTMENT
SECRETARIAT FORT ST. GEORGE CHENNAI-9.
..1st Respondent in WP.30760/16,
30761,30762/16
- 6 THE CHIEF EDUCATIONAL OFFICER
PANAGAL BUILDING , SAIDAPET, CHENNAI
..3rd Respondent in WP.30760/16 to
30762/16
- 7 THE CORRESPONDENT
SRI.A.B.PAREKH GUJARATI VIDYA MANDIR HIGHER
SECONDARY SCHOOL NO.19A EKAMBARESWARAN
AGRAHARAM CHENNAI-3.
..5th Respondent in
WP.30760/16
8. THE DISTRICT EDUCATIONAL
OFFICER CHENNAI CENTRAL ,CHENNAI-15.
..4th Respondent in
WP.30761/16,30762/16
9. THE SECRETARY
RANI MEYYAMMAI GIRLS HIGHER SECONDARY SCHOOL
R.A.PURAM CHENNAI-28.
..5th Respondent in
WP.30761/16
10. THE SECRETARY
KUMARARAJAH MUTHIAH HIGHER SECONDARY SCHOOL
ADYAR CHENNAI-20. ..5th Respondent in
WP.30762/16

11. THE CHIEF EDUCATIONAL
OFFICER COLLECTORATE CAMPUS THIRUVARUR
THIRUVARUR DISTRICT 610 001

..1st Respondent in WP.23173/17

12. THE DISTRICT EDUCATIONAL
OFFICER COLLECTORATE CAMPUS THIRUVARUR
THIRUVARUR DISTRICT 610 001

..2nd Respondent in WP.23173/17

13. THE CHIEF EDUCATIONAL OFFICER
NAGAPATTINAM NAGAPATTINAM DISTRICT

..2nd Respondent in WP.23178/17

14. THE DISTRICT EDUCATIONAL
OFFICER MYLADUTHURAI NAGAPATTINAM DIST

..3rd Respondent in WP.23178/17

15 THE CORRESPONDENT
TELC BISHOPN JOHNSON MEMORIAL HIGHER
SECONDARY SCHOOL THARANGAMBADI 313
NAGAPATTINAM DIST

..4th Respondent in WP.23178/17

16 THE HEADMASTER
TELC BISHOPN JOHNSON MEMORIAL HIGHER
SECONDARY SCHOOL THARANGAMBADI 313
NAGAPATTINAM DIST

..5th Respondent in WP.23178/17

17 THE CHIEF EDUCATIONAL OFFICER
SALEM , SALEM DISTRICT.

..3rd Respondent in WP.24306/17

18 THE DISTRICT EDUCATIONAL
OFFICER , SANKARI,
SANKARI DISTRICT.

..4th Respondent in WP.24306/17

19 THE STATE OF TAMIL NADU
REP. BY ITS SECRETARY DEPARTMENT OF SCHOOL,
EDUCATION, FORT ST. GEORGE ,
CHENNAI - 600 009.

..1st Respondent in WP.24306/17

These Writ Petition filed under Article 226 of the Constitution of India, praying to issuance of a Writ of Mandamus

i. WP No.2032 of 2016

Calling for the records of the third respondent herein in O.Mu.No.4909/A12015, dated 24.11.2015 and quash the same and accordingly direct the respondents herein to approve the appointment of the petitioner to the post of Junior Assistant with effect from 25.06.2014 with all monetary and service benefits

ii. WP No.30760 of 2016

Directing the respondents 1 to 4 to approve the appointment of the petitioner in the Post of Record Clerk in the 5th respondent school from the date of initial appointment on 11.4.2016 and to make the payment of salary from the date of initial appointment with all consequential and other attendant benefits

iii.WP No.30761 of 2016

Directing the respondents 1 to 4 to approve the appointment of the petitioner in the Post of Record Clerk in the 5th respondent school from the date of initial appointment on 2.3.2016 and to make the payment of salary from the date of initial appointment with all consequential and other attendant benefits

iv. WP No.30762 of 2016

Directing the respondents 1 to 4 to approve the appointment of the petitioner in the Post of Junior Assistant in the 5th respondent school from the date of initial appointment on 3.12.2015 and to make the payment of salary from the date of initial appointment with all consequential and other attendant benefits

v. WP No.23173 of 2017

calling for the records relating to the impugned order issued by the 2nd respondent District Educational Officer vide proceedings in Na.Ka.NO.4758/ A3/2017 dated 21.7.2017 (as signed) quash the same and further direct the 2nd respondent District Educational Officer to approve forthwith the appointment of Mr.N.Balaji as Night Watchman in the petitioners school and disburse the grant in aid towards his salary and allowances with effect from the date of his appointment viz., 1.6.2017

vi.WP No.23178 of 2017

calling for the records relating to the impugned proceedings issued by the 3rd respondent District Educational Officer in A.

Thi. Mu .No.148/Aa2/17 dated 28.01.2017 quash the same and further Direct the 3rd respondent District Educational Officer to approve forthwith the appointment of petitioner as Record Clerk in the 4th respondent school namely TELC Bishop Johnshon Higher Secondary School, Tharangambadi w.e.f., 02.06.2014 with all attendant benefits including the arrears of salary and allowance

vii. WP No.24306 of 2017

calling for the records relating to the impugned proceeding issued by the 4th respondent district Educational officer in Na.Ka. No.3305/ 2017 A3, dated 31.07.2017 quash the same and further direct the 4th respondent to approve forthwith the appointment of A. Caroling Preethi as Lab Assistant in the petitioners school w.e.f the date of her appointment viz., 12.06.2017 with the attendant benefits including the arrears of salary and allowances

For Petitioners :Mrs.K.Dakshayani Reddy
(WP 2032/2016)

(WPs 30760 to Mr.G.Sankaran
30762/2017)

(WPs 23173 & Ms.H.Mary Sowmi Rexi
23178/2017) for M/s Isaac Chambers

(WP 24306/2017) Mr.K.Prabhu

For Respondents :Mr.K.DhananJayan R1 to R3
(WP2032/2016) Special Government Pleader

No appearance - R4

(WP 30760 to Mr.M.Perumal R1 to R4
30762/2017) Govt. Advocate
No appearance - R5

(WP 23173/17) Mr.S.Gunasekaran ,G.A.R1 & R2
Govt. Advocate

WP 23178/2017) Mr.R.S.Selvam R1 to R4
Govt. Advocate

(WP 24306/2017) Mr.C.C.Ranga Rajan R1 to R4
Govt. Advocate

* * * * *

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 respective Minority Schools, 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. 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 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, by holding 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 [(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 this Court 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.

6. 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.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

rpa

- 1 The Director of School Education
DPI Campus,
College Road,
Chennai 600 06.
- 2 The Chief Educational Officer
Chennai.
- 3 The District Educational Officer
North Chennai
Chennai 600 008.
- 4 THE PRINCIPAL SECRETARY TO
GOVERNMENT, SCHOOL EDUCATION DEPARTMENT,
SECRETARIAT, FORT ST. GEORGE , CHENNAI-9.
- 5 THE CHIEF EDUCATIONAL OFFICER
PANAGAL BUILDING , SAIDAPET, CHENNAI
6. THE DISTRICT EDUCATIONAL
OFFICER CHENNAI CENTRAL ,CHENNAI-15.
7. THE CHIEF EDUCATIONAL
OFFICER, COLLECTORATE CAMPUS, THIRUVARUR
THIRUVARUR DISTRICT 610 001

8. THE DISTRICT EDUCATIONAL
OFFICER COLLECTORATE CAMPUS THIRUVARUR

9. THE CHIEF EDUCATIONAL OFFICER
NAGAPATTINAM

10. THE DISTRICT EDUCATIONAL
OFFICER, MYLADUTHURAI, NAGAPATTINAM DIST

11 THE CHIEF EDUCATIONAL OFFICER
SALEM , SALEM DISTRICT.

12 THE DISTRICT EDUCATIONAL
OFFICER , SANKARI,

13 THE SECRETARY, DEPARTMENT OF SCHOOL
EDUCATION, FORT ST. GEORGE ,
CHENNAI.

+1cc to Ms.Dakshayani Reddy, Advocate sr.70286

+1cc to M/s.Isaac Chambers, Advocate sr.69677

+1cc to Government Pleader sr.69845

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scd(co)
ss(23/10/2017)

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