

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2017

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.Nos.29998 and 29999 of 2014, 21999 of 2016, 19112, 20556, 22713, 22816 and 22817 of 2013, 31851, 32059, 596 and 9993 of 2014, 4112, 4114 of 2015, 20181, 23469 and 20464 of 2013, 23750 of 2008, 19188 of 2013, 11153, 11154, 9376 to 9378 of 2014, 11888, 19098, 17573 and 17587 of 2015, 2734 of 2016, 17546, 19951, 19953, 23316, 23317, 27670 and 39284 of 2015, 24170 of 2014, 27672 to 27674 of 2015, 19083 to 19087, 21331 to 21336, 1671 to 1673 and 1642 of 2016, 30764 of 2015, 25025 to 25034 of 2016, 34113 to 34118 of 2015, 24808 and 24809 of 2009, 16223 and 16224 of 2015, 30978 to 30982 of 2016, 24102 of 2013, 6167 of 2016, 32581 and 22846 to 22849 of 2015, 29998 to 30008, 1240, 37534 to 37536, 38192, 38193, 30972 to 30977, 41097 to 41102, 37576, 17374 to 17376 and 10633 of 2016, 21244 of 2014, 19515, 19129 and 19130 of 2015, 832 to 835 of 2017, 36020 of 2016, 5104 of 2015, 1717 of 2017, 33024 and 26283 of 2016, 3703, 6234, 6311, 6312, 5634, 4588 to 4591 and 1424 to 1426 of 2017 and connected MPs

W.P.No.29998 of 2014

V.J.Manoj Kumar

... Petitioner

Vs

1. The Government of Tamil Nadu,
Rep. By its Secretary,
Department of School Education,
Fort St. George, Chennai - 9.
2. The Director of School Education,
DPI Campus,
College Road, Chennai - 6.
3. The Chief Educational Officer,
The Office of the Chief Educational Officer,
Manjakuppam, Cuddalore - 607 001.
4. District Educational Officer,
The Office of the District Educational Officer,
Manjakuppam, Cuddalore - 607 001.

5. The Correspondent,
Girls Christian Hr. Sec. School,
Melpattampakkam,
Cuddalore District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records pertaining to the impugned order dated 01.09.2014 in O.Mu.No.10387/AA2/2012, on the file of the fourth respondent and quash the same directing the respondents to accord approval to the appointment of the petitioner Mr.V.J.Manoj Kumar, as Junior Assistant in Girls Christian Hr. Sec. School, Melpattampakkam, Cuddalore District - 607 104, w.e.f 23.11.2012, with all monetary and other service benefits.

For petitioner : Dr.Fr.A.Xavier Arul Raj,
Senior Counsel
for M/s.A.Arul Mary

For R1 to R4 : Mr.K.Venkataramani,
(official respondents) Additional Advocate General
Assisted By Mr.V.Anandhamoorthy
Additional Government Pleader

For R5 : No Appearance

COMMON ORDER

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 Senior 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, and 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 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.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Department of School Education,
Fort St. George, Chennai - 9.
2. The Director of School Education,
DPI Campus,
College Road, Chennai - 6.
3. The Chief Educational Officer,
The Office of the Chief Educational Officer,
Manjakuppam,
Cuddalore - 607 001.
4. The District Educational Officer,
The Office of the District Educational Officer,
Manjakuppam, Cuddalore - 607 001.

+1cc to M/s.A.Arul Mary, Advocate, S.R.No.17281
+1cc to the Government Pleader, S.R.No.17065

GJ II(CO)
CA(28/07/2017)

W.P.No.29998 of 2014

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