

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.11.2017

Coram

The Hon'ble Mr.Justice T.Raja

Writ Petition No.28923 of 2017 and
W.M.P.No.31140 of 2017

Sannathi Higher Secondary School
represented by its Secretary,
J.Ranga Bashyam,
No.38B, Sannathi Street,
Vandavasi Taluk,
Tiruvannamalai District ...Petitioner

Vs.

- 1.State of Tamilnadu
Rep. By its Secretary
School Education Department,
Fort St. George, Chennai - 9
2. The Director of School Education
DPI Campus, College Road, Ch - 600 006
3. The Joint Director (Secondary Education)
DPI Campus, College Road,
Chennai - 600 006
4. The District Educational Officer,
Cheyyar Taluk,
Thiruvannamalai District ..Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus directing the respondents herein to approve the appointment of one Aroon Rashid in the post of Office Assistant to the petitioner school as per the proposal forwarded by the 4th respondent to the 3rd respondent in Na.Ka.No.2157/A4/217 dated 17.7.2017.

For Petitioner : Mrs.Dakshayani Reddy

For Respondents: Mr.R.A.S.Senthilvel
Additional Government Pleader

O R D E R

By consent the main writ petition itself is taken up for final disposal at the admission stage.

2. The brief case of the petitioner/School is as follows:-

The petitioner is an aided school aged about 130 years and receiving the aid from the respondents herein. It has also admitted 900 students and the school was also sanctioned by various teaching and non teaching staffs depending upon the students strength. While so, one of the office assistants, B.Jagadeesan, took voluntary retirement with effect from 04.12.2015. In the said vacancy, one M.Aroon Rashid was appointed with effect from 12.05.2017 and a proposal was also forwarded by the Correspondent of the petitioner's school to the District Educational Officer, Cheyyar on 12.05.2017 indicating therein that the District Elementary Officer, Cheyyar has done the staff fixation for the academic year 2016-2017 on 28.02.2017. As per the staff fixation order, the post of office assistant is a sanctioned post in the petitioner-school, but inspite of that, the respondents have not come forward to consider the proposal. Since the petitioner-School has filled up only the required vacancy, i.e, office assistant, which is a sanctioned post, the respondents cannot deny or delay the same. On account of delay in granting an order of approval on the appointment of Mr.Aroon Rashid, as Office Assistant, he is not even receiving the salary, as a result, the said Aroon Rashid had put to a grave problem. Hence this Writ Petition has been filed.

3. Learned counsel appearing for the petitioner by taking support of an order passed by me in Writ Petition No.25847 of 2017 dated 04.10.2017 submitted that in the said writ petition, it is held clearly by this Court on more than one occasion that to fill up 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 and the portion of the order is hereby extracted as follows and thereby prays for a direction mentioned supra.

"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 petitioner has 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.

4. Heard the learned counsel on either side and perused the documents available on record.

5. In view of the above, the petitioner is able to satisfy this Court that in the vacant sanctioned post of Office Assistant, which fell vacant on account of voluntary retirement obtained by B.Jagadeesan, the petitioner / School has filled up the said vacancy by appointing M.Aroon Rashid, as Office Assistant and hence the proposal forwarded by the 4th respondent to the 3rd respondent dated 17.07.2017 shall be accepted and an order of approval shall be granted within a period of four weeks from the date of receipt of a copy of this order. Needless to state that the respondents shall also sanction the arrears of salary to Aroon Rashid, Office Assistant, from the date of his appointment.

With the aforesaid observation, the Writ Petition is disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

ssd

To

- 1.State of Tamilnadu
Rep. By its Secretary
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+ 1 cc to Mr. Government Pleader SR.80516

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DR (CS)
EU (11/12/2017)