

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2017

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.29015 of 2017

Mrs.Siriya Pushpam

.. Petitioner

-vs-

1. The Government of Tamil Nadu
rep.by the Additional Chief Secretary
Department of School Education
Fort St.George
Chennai 600 009
2. The Director of School Education
DPI Campus
College Road
Chennai 600 006
3. The Chief Educational Officer
The office of the Chief Educational Officer
Chennai
4. The District Educational Officer
The office of the District Educational Officer
Chennai Central
Chennai 600 015
5. The Correspondent
St.Antony's Girls Higher Secondary School
Madha Church Road
Mandaveli
Chennai 600 028

.. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order dated 28.08.2017 in A.Di.Mu.No.2240/AA1/2017, on the file of the fourth respondent and quash the same, directing the respondents to accord approval to the appointment of the petitioner Mrs.J.Siriya Pushpam, working as Library Clerk in St.Antony's Girls Higher Secondary School, Madha Church Road, Mandaveli, Chennai 600 028 w.e.f. 01.08.2006, with all monetary and other service benefits.

For Petitioner:: Mr.Dr.Fr.A.Xavier Arulraj
Senior Counsel for Ms.A.Arul Mary

For Respondents:: Mr.ERA.Premnath
Government Advocate for R1 to 4

ORDER

This writ petition has been filed challenging the impugned order dated 28.8.2017 passed by the District Educational Officer, Chennai Central, Chennai, the fourth respondent herein returning the proposal made by the fifth respondent School seeking an order of approval of the appointment of the petitioner herein as Library Clerk, on the ground that as per G.O.Ms.No.115, School Education Department dated 30.5.2007 and G.O.Ms.No.203, School Education Department dated 23.7.2010, before filling up of the post of non-teaching staff, prior permission should have been obtained from the fourth respondent.

2. Learned senior counsel for the petitioner submitted that when the fifth respondent School, being a minority educational institution, was established in the year 1886 and administered by the Regular Tertiary Franciscan Sisters of Our Lady of Bon Secours, the petitioner was appointed as Library Clerk in the St.Antony's Girls Higher Secondary School, Chennai with effect from 1.8.2006 in the voluntary retirement vacancy caused by one Mrs.Punitha. Thereafter, the fifth respondent School forwarded the proposal of the petitioner herein along with the relevant documents to the fourth respondent on 15.6.2017 indicating therein that the staff fixation report for the academic year 2016-17 permits the appointment to the said post in the fifth respondent School. But the fourth respondent-District Educational Officer, Chennai Central, Chennai, who is a responsible officer, without even knowing the fact that the said G.O.Ms.No.115, School Education Department dated 30.5.2007 and another G.O.Ms.No.203, School Education Department dated 23.7.2010 and Government Letter No.8884/D1/2011-2 dated 9.7.2012 were quashed by this Court on 15.3.2016 in W.P.(MD) Nos.11481 of 2008 etc., batch, passed the impugned order returning the proposal made by the fifth respondent School on the ground that as per G.O.Ms.No.115, School Education Department dated 30.5.2007 and G.O.Ms.No.203, School Education Department dated 23.7.2010, the fifth respondent School cannot fill up the non-teaching staff vacancy without taking prior approval, which reflects the total non-application of mind. Therefore, the impugned order is liable to be set aside.

3. Heard the learned Government Advocate for the respondents 1 to 4 also.

4. At the outset, it must be mentioned that the proposal made by the fifth respondent School to grant approval of the appointment of the petitioner in the post of Library Clerk with effect from 1.8.2006 cannot be returned by the fourth respondent solely relying upon the G.O.Ms.No.115 dated 30.5.2007 and G.O.Ms.No.203 dated 23.7.2010, since the said Government Orders were already quashed by this Court in the judgment in Deva Asir v. The Secretary to Government and others, 2016-3-L.W.152. Moreover, this issue has been settled once and for all by various judgments of this Court including the one passed by me in a batch of writ petitions in W.P.Nos.29998 of 2014 etc., dated 17.3.2017 (V.J.Manoj Kumar & others v. State of Tamil Nadu represented by its Secretary, Department of School Education and others), wherein it has been held as follows:-

"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.

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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 crux of the issue settled by this Court shows that there is no requirement under the Tamil Nadu Private Colleges (Regulation) Act 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 competent authority. In the case on hand, admittedly, the writ petitioner has been appointed against the voluntary retirement vacancy caused in the sanctioned post of Library Clerk with effect from 1.8.2006. As

the said principle equally applies to the private school also, the impugned order passed without application of mind is set aside and the respondents 1 to 4 are hereby directed to approve the appointment of the petitioner with effect from the date of her appointment and sanction the grant within a period of four weeks from the date of receipt of a copy of this order. The writ petition is allowed. Consequently, W.M.P.No.31252 of 2017 is closed. No costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional Chief Secretary to Government
Department of School Education
Fort St.George
Chennai 600 009
2. The Director of School Education
DPI Campus
College Road
Chennai 600 006
3. The Chief Educational Officer
Office of the Chief Educational Officer
Chennai
4. The District Educational Officer
Office of the District Educational Officer
Chennai Central
Chennai 600 015

+1cc to Mr.A.ARUL MARY Advocate, S.R.No. 80707/17
+1cc to the Government Pleader, S.R.No. 80954

W.P.No.29015 of 2017

AD(CO)
TR(11/12/2017)