

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2017

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.29039 of 2017

S.Johnsy Rani

.. Petitioner

-vs-

1. The State of Tamil Nadu
rep.by its Principal Secretary to Government
School Education Department
Secretariat, Fort St.George
Chennai 600 009
 2. The Director of School Education
DPI Campus
College Road
Chennai 600 006
 3. The Chief Educational Officer
Thiruvarur District
Thiruvarur
 4. The District Educational Officer
Thiruvarur
Thiruvarur District
 5. The Secretary
Vadamattam High School
Vadamattam, Kudavasal Taluk
Thiruvarur District
- .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the respondents 1 to 4 to approve the appointment of petitioner in the regular sanctioned post of Record Clerk in the fifth respondent School from the date of appointment on 15.09.2017 and to make the payment of salary with all consequential and other service benefits, within a time frame to be fixed by this Hon'ble Court.

For Petitioner:: Mr.G.Sankaran

For Respondents:: Mr.R.A.S.Senthilvel
Additional Government Pleader
for R1 to 4

ORDER

The petitioner seeks for issuance of a writ of mandamus, directing the respondents 1 to 4 to approve the appointment of petitioner in the regular sanctioned post of Record Clerk in the fifth respondent School from the date of appointment on 15.09.2017 and to make the payment of salary with all consequential and other service benefits, within a time frame to be fixed by this Hon'ble Court.

2. Learned counsel for the petitioner submitted that the fifth respondent School is a recognized private aided school. While so, a vacancy in the post of Record Clerk arose due to the promotion of one Mr.S.Saminathan on 1.4.2014. Therefore, the petitioner was selected and appointed in the post of Record Clerk with effect from 15.9.2017. When the Secretary of Vadamattam High School, Vadamattam, Kudavasal Taluk, the fifth respondent herein sent a proposal on 10.10.2017 to the District Educational Officer, Thiruvavur, the fourth respondent herein to grant approval of the appointment of the petitioner herein, the fourth respondent herein, without application of mind, has rejected the proposal sent by the fifth respondent School, on the ground that before filling up of the said vacancy, prior permission has not been obtained from the educational authorities. The learned counsel also submitted that the issue with regard to the appointment of non-teaching staff in a sanctioned post in a private aided school has been settled once and for all by this Court holding that there is no requirement of obtaining prior permission from the educational authorities once the post was sanctioned to the school by the authorities.

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

4. The issue raised in this writ petition is no longer res integra, as the same 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.

.....

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 vacancy caused in the sanctioned post of Record Clerk with effect from 15.9.2017. As the said principle equally applies to the private aided school also, the respondents 1 to 4 are hereby directed to approve the appointment of the petitioner with effect from the date of her appointment and release the arrears of salary 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.31278 of 2017 is closed. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

SS

To

1. The Principal Secretary to Government
School Education Department
Secretariat, Fort St.George
Chennai 600 009

2. The Director of School Education
DPI Campus
College Road
Chennai 600 006

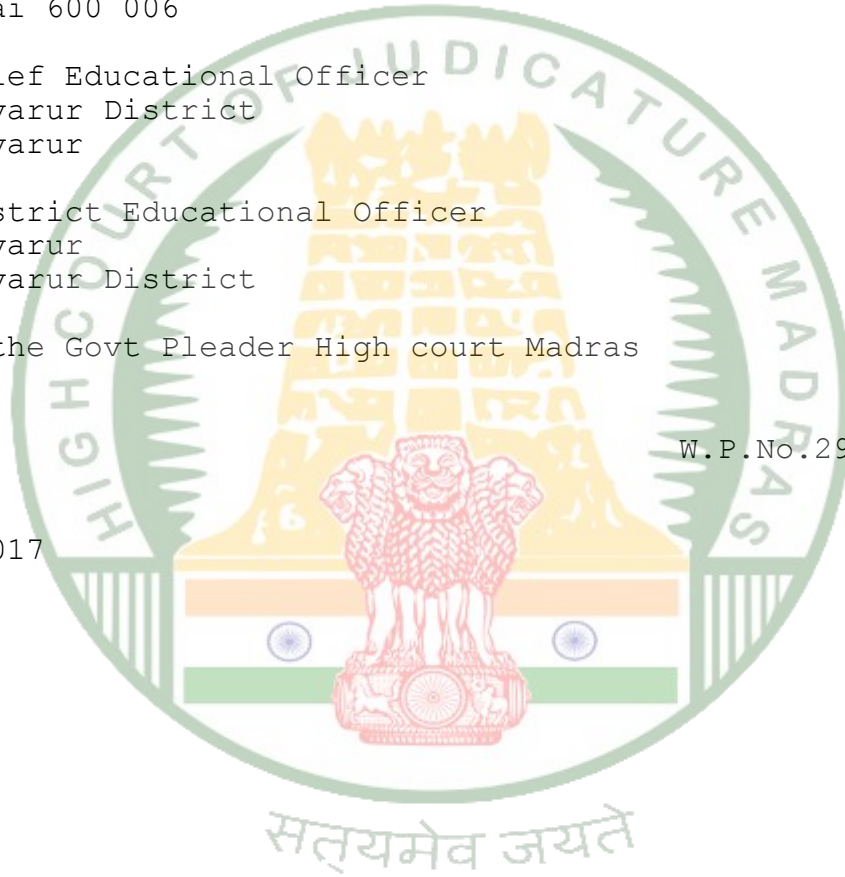
3. The Chief Educational Officer
Thiruvarur District
Thiruvarur

4. The District Educational Officer
Thiruvarur
Thiruvarur District

+1 cc to the Govt Pleader High court Madras
sr 81475

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