

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2017

CORAM :

THE HONOURABLE Mr.JUSTICE T.RAJA

W.P.No.29162 of 2017

and

W.M.P.No.31429 of 2017

S.Nesaraj

... Petitioner

Vs.

1.The State of Tamil Nadu

rep by its Secretary to Government,
Education Department, Chennai-9.

2.The Director of School Education,
D.P.I. Buildings, College Road,
Chennai-6.

3.The Chief Educational Officer,
Vellore, Vellore District.

4.The District Educational Officer,
Thirupattur, Vellore District.

5.The Correspondent,
Concordia Higher Secondary School,
Ambur-632 802.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the entire records connected with the impugned proceeding of the 4th respondent passed vide Na.Ka.No.5774/A4/2011 dated Nill 08.2012, signed on 13.02.2013 and to quash the same and to direct the respondents to approve the appointment of the petitioner as Gardner in the 5th respondent school w.e.f 20.06.2011, with all consequential benefits, in the light of the order passed in W.A.No.74/2016, dated 11.03.2016.

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mr.P.Sanjay Gandhi, AGP
(For R1 to R4)

ORDER

Mr.P.Sanjay Gandhi, learned Additional Government Pleader, took notice for the respondents 1 to 4.

2.This writ petition has been filed challenging the impugned order of refusal to grant approval for the appointment of the petitioner Nesaraj as Gardner in the 5th respondent school viz., Concordia Higher Secondary School, Ambur.

3.It is submitted by the learned counsel for the petitioner that the 5th respondent school is a religious minority educational institution governed by the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. As it is having more than 1700 students studying from 6th to 12th standards, 52 teaching staff and 9 non-teaching staff, it is also receiving grant in aid from the Government upto 12th standard. While so, when a vacancy for the post of Gardner had occurred on 01.06.2002 due to the voluntary retirement of one J.Selvaraj on 31.05.2002, the 5th respondent being a minority educational institution, considering the petitioner Nesaraj as an eligible candidate, appointed him as Gardner by an order dated 20.06.2011 and thereafter, sent a proposal on 10.09.2011 to the 4th respondent for approval of his appointment with effect from 20.06.2011. The learned counsel for the petitioner, referring the proceedings of the Chief Educational Officer, Vellore, dated 30.10.2011, relating to Fixation of Staff Strength, submitted that by order dated 30.10.2011, the post of Gardner was also sanctioned to the 5th respondent-School. A perusal of the said proceedings of the Chief Educational Officer, Vellore, dated 30.10.2011, shows that the 5th respondent-school is enjoying the post of Gardner, which is a permanent sanctioned post.

4.The crux of the issue whether the minority educational institution can fill up the sanctioned post which falls vacant on account of retirement, promotion, removal, dismissal etc., has already been settled in catena of decisions, one such decision has been passed by me also in a batch of writ petitions in W.P.(MD).No.14115 to 14119 of 2016 etc (batch cases), decided on 19.08.2016, ordering the official respondent therein to accord approval for filling up of the vacancies against the 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:-

"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 intergra, 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."

6. In the light of the above decision, the present writ petition is also allowed and the impugned order is set aside. The official respondents are hereby directed to approve the appointment of the petitioner, with all monetary and other service benefits, within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Deputy Registrar

//True Copy//

Sub Assistant Registrar

ssv

To

1. The Secretary to Government,
State of Tamil Nadu Education Department, Chennai-9.

2. The Director of School Education,
D.P.I. Buildings, College Road,
Chennai-6.

3. The Chief Educational Officer,
Vellore, Vellore District.

4. The District Educational Officer,
Thirupattur, Vellore District.

5. The Correspondent,
Concordia Higher Secondary School, Ambur-632 802.

+1cc to S.N.Ravichandran, Advocate SR.No.81070

+1cc to Government Pleader SR.No.81489

W.P.No.29162 of 2017
and

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sm:14.12.2017