

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :06.12.2017
CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.19644 of 2017
and
W.M.P.No.21216 of 2017

D.Kelitha

..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,
Panagal Building, Saidapet,
Chennai - 600 015.

4.The District Educational Officer,
Chennai North,
Chennai - 600 008.

5.The Correspondent,
Manilal M.Mehta Girls Higher Secondary School,
1, Ravanier Street, Park Town,
Chennai - 600 003.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the Respondents 1 to 4 to approve the appointment of the Petitioner in the regular sanctioned post of Laboratory Assistant in the 5th Respondent School from the date of appointment on 02.01.2008 and to make the payment of salary with interest and other service benefits, within a time frame to be fixed by this Hon'ble Court.

For Petitioner	: Mr.G.Sankaran
For Respondents	: Mr.A.Rajaperumal
	Additional Government Pleader
	for R1 to R4
	No appearance for R5

O R D E R

The relief sought for in this writ petition is for a direction to the Respondents 1 to 4 to approve the appointment of the Petitioner in the regular sanctioned post of Laboratory Assistant in the 5th Respondent School from the date of appointment on 02.01.2008 and to make the payment of salary with interest and other service benefits, within a time frame to be fixed by this Court.

2.The learned counsel for the petitioner states that the writ petitioner was appointed as Laboratory Assistant in a retirement vacancy aroused on account of the superannuation of Tmt.Kusam Nemichand on 31.12.2007. The petitioner was selected and appointed by the 5th respondent in order dated 02.01.2008 and she joined in the post on the same day and continuously working as Laboratory Assistant without any break in service. The 5th respondent sent the proposal, seeking approval of the appointment of the writ petitioner in the sanctioned post of Laboratory Assistant with effect from 02.01.2008. However, the proposal was returned and the same is pending for further consideration. The learned counsel for the petitioner states that the issue involved in this writ petition is similar to that all the batch of writ petitions decided by this Hon'ble Court on 02.08.2017 in W.P.Nos.13413 to 13416 of 2016 and etc batch., and the relevant paragraphs are extracted hereunder:

"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 this Court 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.

6. 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."

3. Accordingly, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1.The Principal Secretary to Government,
The State of Tamil Nadu,
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,
Panagal Building, Saidapet,
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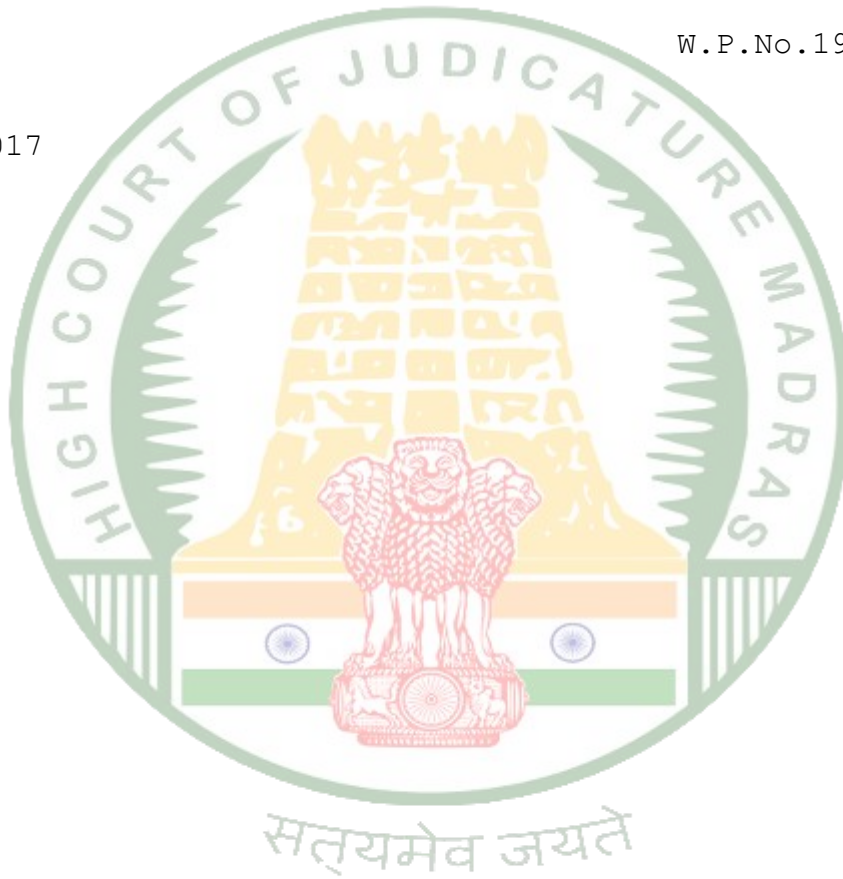
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1, Ravanier Street, Park Town,
Chennai - 600 003.

+1 cc to M/s.G.Sankaran Advocate sr 86743
+1 cc to Govt Pleader sr 86863

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