



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.06.2017

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P. (MD) No.3804 of 2017

and

W.M.P. (MD) Nos.3017 and 3016 of 2017

WEB COPY

The Secretary,
St.Xavier's College (Autonomous),
Palayamkottai - 627 002,
Tirunelveli District.

... Petitioner

Vs.

1. The Director of Collegiate Education,
College Road, Chennai - 600 006.

2. The Joint Director of Collegiate Education,
Tirunelveli, Tirunelveli District.

3. Manonmaniam Sundaranar University,
Rep. by its Registrar,
Abishekapatti,
Tirunelveli District - 627 012.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issue of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceeding issued by 2nd respondent Joint Director in O.Mu.No.001392/U2/2017 dated 21.02.2017, quash the same, and further direct the 2nd respondent Joint Director to approve forthwith the appointment of 37 teaching staff (Name list annexed) in the petitioner's college and disburse the grant-in-aid towards their salary and allowances w.e.f. the respective dates of their appointments.

For Petitioner : Mr.T.Cibichakraborty,
For R1 and R2 : Mr.N.S.Karthikeyan,
Additional Government Pleader.
For R3 : Mrs.Agalya
for M/s.Ajmal Associates

ORDER

This Writ Petition has been filed by the petitioner for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceeding issued by second respondent Joint Director, dated 21.02.2017, quash the same and further direct the second respondent / Joint Director of



Collegiate Education to approve forthwith the appointment of 37 teaching staff in the petitioner college and disburse the grant-in-aid towards their salary and allowances w.e.f. the respective dates of their appointments.

2. The petitioner in this Writ Petition is a Minority Educational Institution owned and administered by the Society of St. Francis Xavier, a body registered under Societies Registration Act (Registration No. 3 of 1920-21). The case of the petitioner is that out of 95 teaching posts, available in the aided institution, 37 posts fell vacant in the recent years and that the college filled them up all the vacant posts on various days. The particulars of appointees, their qualification, the date of appointment and the vacancy in which the fresh appointments were made as given in the affidavit filed in support of the Writ Petition is extracted below:

S.No.	Name Qualification	Qualification	Date of Appointment	Vacancy Details
DEPARTMENT OF BOTANY				
1	Rev. Dr. L. John Peter Arulanandam, S.J	M.Sc, Ph.D.	18.06.2012 F.N.	Retirement of Fr.M. Charles, S.J. Associate Professor on 30.06.2009
2	Dr.T.Leon Stephan Raj	M.Sc, Ph.D.	18.06.2012 F.N	Retirement of Dr.K. Natarajan, Associate Professor on 31.05.2010
DEPARTMENT OF CHEMISTRY				
3	Mr.Y.Jaya Vince Ruban	M.Sc., M.Phil., Ph.D., SLET	18.06.2012 F.N	Retirement of Mr.S. Thirutuva raj, Associate Professor on 31.05.2010
4	Dr.M.Baby Mariyatra	M.Sc., Ph.D., NET	01.07.2013 F.N	Retirement of Dr.S. Augustin Thomas, Associate Professor on 31.05.2012
5	Dr.C. Christopher	M.Sc., M.Phil, Ph.D.	18.06.2014 F.N	Retirement of Dr.S.Jesu Antony Diraviam, Associate Professor on 31.05.2014



DEPARTMENT OF COMMERCE

6	Dr.C.Mahimai Arul Ignatius	M.Com, M.Phil., M.B.A, Ph.D.,	18.06.2012 F.N.	Retirement of Mr.Thomas Puthan vedan, Associate Professor on 31.05.2009
7	Ms.J.Jeya Ani	M.Com, M.Phil., NET	18.06.2012 F.N	Retirement of Mr. T.S.A. Bernard Chandra, Associate Professor on 31.05.2011
8	Dr.S.Prince Jebaraj	M.Com, M.Phil., Ph.D., NET	21.07.2015 F.N	Retirement of Rev.Dr.D. Selva nayagam S.J., Associate Professor on 31.10.2014

DEPARTMENT OF ECONOMICS

9	Dr. D.Antonysamy	M.A., M.Phil., SET	18.06.2015 F.N	Retirement of Fr.A.G. Lenonard, S.J. Associate Professor in Economics on 31.10.2006
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DEPARTMENT OF ENGLISH

10	Mrs.B.Soundary	M.A., M.Phil., SET, NET	20.06.2013 F.N	Retirement of Dr.A. Achariyam, Associate Professor on 31.05.2010
11	Mr.Twin Antony Edward	M.A., M.Phil., SLET	01.07.2013 F.N	Retirement of Dr.A. Calisthus, Associate Professor in English on 31.05.2013
12	Dr.D.Jockim	M.A., M.Phil., Ph.D.	08.08.2014 F.N	Retirement of Dr.V.S. Joseph Albert, Associate Professor on 31.05.2014



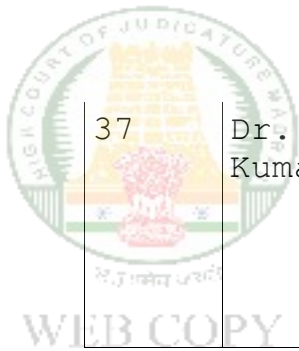
13	M.Adeline Udhaya Theresa	M.A., NET	16.06.2016 F.N.	Retirement of Dr.V.John, Associate Professor on 31.05.2016.
14	S.Subadhra	M.A., M.Phil., SET	16.06.2016 F.N.	Retirement of Rev.Dr.V. Gilbert Camillus SJ, Associate Professor on 31.05.2016.
DEPARTMENT OF FOLKLORE				
15	MR.M.Peter Arockiaraj	M.A., NET	18.06.2012 F.N	Resignation of Dr.A. Chella perumal, Associate Professor on 27.09.2006
16	Dr.J. Joseph Antony Raj	MA., M.Phil., Ph.D.	18.06.2012 F.N	Resignation of Dr.T. Dharmaraj, Assistant Professor on 04.02.2011
17	Dr.S. Karmegam	M.A., M.Phil., NET	01.07.2015 F.N	Retirement of N.Rama chandran Nair Associate Professor on 31.05.2015
DEPARTMENT OF MATHEMATICS				
18	Dr.Y.Therese Sunitha Mary	M.Sc., M.Phil., Ph.D.	20.06.2013 F.N	Retirement of Fr.A. Antonysamy, S.J., Principal on 06.06.2007
19	Ms.S.Nithya	M.Sc., M.Phil., SLET	20.06.2013 F.N	Retirement of Mr.Liberty v. Rayan, Associate Professor on 31.05.2008
20	Mr.S.Sujith	M.Sc., M.Phil., NET	20.06.2013 F.N	Retirement of Mr.S.Mathu Gnaniah, Associate Professor on 30.04.2011



21	Dr.S. Balamurugan	M.Sc., M.Phil., NET	01.07.2013 F.N	Retirement of Dr.A.P. Santha kumaran, Associate Professor on 31.05.2012
DEPARTMENT OF PHYSICS				
22	Dr.V. Shivashankar	M.sc., Ph.D	18.06.2012 F.N	Retirement of Mr. I. Sebasdiyar, Associate Professor on 31.05.2012
23	Dr.G.David Rathinavelu	M.Sc., Ph.D	18.06.2012 F.N	Retirement of Mr.Y.M. Tharsius, Associate Professor on 31.05.2012
24	Dr.B.Helina	M.Sc., M.Phil., Ph.D	01.07.2014 F.N	Death of Dr.J. Benet Charles, Associate Professor on 04.05.2014
DEPARATMENT OF TAMIL				
25	Mr.S.Ravi Jesu Raj	M.A., M.Phil., NET	18.06.2012 F.N	Retirement of Mr.N. Sivasubramanian, Associate Professor on 30.06.2016
26	Dr.V.Rilbert Janarthanan	M.A., M.Phil., Ph.D.	18.06.2012 F.N	Death of Dr. V. Kesavaraj Associate Professor on 31.05.2007
27	Dr.M.Kavitha	M.A., Phil., Ph.d., NET	20.06.2013 F.N	Retirement of Dr. M. Joseph Irudaya Xavier, Associate Professor on 31.05.2012
28	Mr.R.Antonyraj	M.A.,M.Phil., NET	20.06.2013 F.N	Retirement of Fr. A. Joseph, S.J., Principal on 31.05.2013



29	Dr.A.Murugan	M.A., M.Phil., Ph.,D., NET	16.06.2016 F.N	Retirement of A. Mony, Associate Professor on 31.05.2016
DEPARTMENT OF HISTORY				
30	Dr. S. Alphonsa	M.A., M.Phil., Ph.D.	01.09.2015 F.N	Retirement of Rev. Dr. M. Alphonse, Associate Professor on 31.05.2016
DEPARTMENT OF ZOOLOGY				
31	Mrs. J. Babila Jasmine	M.Sc., M.Phil., SET.	18.06.2012 F.N	Retirement of Dr. B. Victor, Associate Professor on 31.03.2008
32	Dr. T. Pushpanathan	M.Sc., M.Phil., PhD.	18.06.2012 F.N	Retirement of Mr. M.Thomas Punithan, Associate Professor on 30.04.2008
33	Dr. S. Mabel Parimala	M.Sc., Ph.D, SLET	18.06.2015 F.N	Retirement of T.A. Sethuramalingam, Associate Professor on 31.05.2015
34	Dr. P. Raja	M.Sc., PhD.	18.06.2012 F.N	Retirement of Dr. M. Narayanan, Associate Professor on 31.05.2010
35	Dr. P. Selvaraj	M.Sc., M.Phil., PhD.	18.06.2012 F.N	Retirement of Dr. M.A.Haniffa, Associate Professor on 30.04.2008
36	Dr. T. Elizabeth Thangamani Sunitha	M.Sc., M.Phil., PhD.	16.06.2016 F.N	Retirement of Dr.Dunston P. Ambrose, Associate Professor on 31.05.2012



37	Dr. R. Santha Kumari	M.Sc., M.Phil., PhD.	01.08.2016 F.N	Retirement of Dr. B. Xavier Innocent, Associate Professor on 31.07.2016
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3. It is the specific case of the petitioner that the above said posts were filled up due to the vacancy arose_in the sanctioned posts. All the appointments, which are well within the staff strength, fixed by the first respondent / Director of Collegiate Education, by proceedings dated 28.10.1999. It is also the positive case of the petitioner that fully qualified candidates were appointed for the posts and that the University, in which the petitioner college was affiliated, granted qualification approval to all the 37 teaching staff by proceedings dated 28.11.2016. Thereafter, the petitioner has submitted a proposal, dated 06.01.2017, to the second respondent seeking approval for the appointment of all the 37 teaching staff in the petitioner College.

4. It is also the specific case of the petitioner that the petitioner college submitted the proposal along with the necessary and required documents for considering the proposal. Therefore, the posts sanctioned order issued by the Director of Collegiate Education, the relevant particulars of previous incumbents, educational and technical qualification, certificates for all the newly appointed candidates, appointment orders of all the teachers, joining reports and qualification approval granted by the University etc., were annexed with the proposal submitted by the petitioner College before the second respondent. The petitioner has also submitted the agreement under Form-VII.

5. However by the impugned proceedings of the second respondent, the proposal submitted to the second respondent was returned on the ground that the Form-VII and other information regarding submission of Form-VII to the Director of Technical Education is not furnished and that prior permission granted by the Director of Collegiate Education to fill up the vacant posts are not annexed with the proposal. It is this order passed by the second respondent returning the proposal for appointment of 37 teaching staff is challenged in the present Writ Petition.

6. The main contention of the learned counsel for the petitioner is that the order of the second respondent impugned in the Writ Petition is illegal in as much as the second respondent has returned the proposal without an application of mind with regard to the documents furnished by the petitioner along with the proposal. However later, when it was brought to the notice of the second respondent about the Form-VII submitted with reference to

all the teaching staffs, the impugned order dated 21.02.2017, was passed by returning the proposal only on the ground of want of prior approval from the Director of Collegiate Education.

7. The learned counsel for the petitioner relied upon the judgment of the Honourable Division Bench of this Court in the case of **P.Ravichandran v. State of Tamil Nadu rep. by Secretary to Government, Department of Higher Education, Chennai and others** reported in **(2013) 7 MLJ 641**. The Honourable Division Bench of this Court has categorically held that the provisions of Tamil Nadu Private Colleges (Regulation) Act, 1976 and the rules framed thereunder are complete code and insofar as establishment, administration, sanction of post, appointment of staff, grant-in-aid, withholding of aid etc., and that any circulars or administrative instruction insisting private aided colleges to get prior permission to fill up the vacant posts available in sanctioned posts are in valid. Hence the learned counsel for the petitioner submitted that the order of the second respondent returning the proposal is illegal.

7.1. In the above referred judgment rendered by the Honourable Division Bench of this Court, paragraph 20 is extracted hereunder for convenience:

".....20. In the light of the above findings as well as the decisions, we conclude this Judgement in the following manner:

(1) There is no requirement under the TamilNadu 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 college 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."

8. The same judgment of the Honourable Division Bench of this Court was followed by a learned Single Judge of this Court in the case of **The Secretary, Holy Cross College v. The State of Tamil Nadu and others** in **W.P. (MD) No.3315 of 2015**, by a judgment dated 10.03.2015, and the relevant portion is extracted as follows :

"...4. The issue involved in this case as to whether such prior approval is necessary for filling up the vacant posts in a private aided college is no more res integra, in view of the fact that the issue has already been considered and decided by the various decisions of this Court holding that no such permission to fill up the vacancy arising out of sanctioned posts is required. The decisions of Division Bench of this Court made in a case of **P.Ravichandra -vs-State of Tamil Nadu rep. by Secretary to Government, Department of Higher Education, Chennai and others** reported in (2013) 7 MLJ 641 and the earlier decision by the learned Single Judge of this Court (as he then was) in **Dr.S.Sukumaran -vs- State of Tamil Nadu rep. by its Secretary, Higher Education, Fort St.George, Chennai and others** reported in (2012) 5 MLJ 670 would show that no such permission is required.

5. This Court considered the very same issue in **W.P. (MD) NO.3193 of 2015** dated 09.03.2015, and held that such condition seeking prior permission from the Directorate of Collegiate Education is not necessary.

6. Mr.V.Muruganandam, learned Additional Government Pleader, appearing for the respondents 1 to 3 fairly conceded to the said position.

7. Accordingly, by following the above said orders, this Writ Petition is allowed and the impugned order is set aside. Accordingly, the petitioner- college is directed to re-submit their proposal to the third respondent within a period of one week from the date of receipt of a copy of this order. On receipt of such proposal the third respondent shall consider and pass appropriate orders on the same on merits and in accordance with law within a period of eight weeks thereafter. No costs. Consequently, the connected Miscellaneous Petition is closed".

9. A Honourable Division Bench of this Court in **W.A.No.474 of 2013**, by judgment dated 03.04.2013, has held as follows:

".....7. It is relevant to point out that this Court, while delivering the judgment in **W.A.No.2345 of 2011**, disposed on 05.03.2012, (wherein myself was a member), in respect of one **Dr.C.Selvaraj** of the very same Management, observed that once appointment of a person in a sanctioned post is made in accordance with law, no prior



permission from the Directorate of Collegiate Education is required and that he is eligible to get salary and accordingly, directed the authorities to approve his appointment. In such view of the matter, we see no reason to take a different view from that of the learned single Judge".....

10. The facts stated in the affidavit are not disputed. In view of the law settled by this Court in the above Judgments and the candidate view expressed by this Court in several individual cases, no prior permission or prior approval is required for filling up the post in private aided colleges, when the post is sanctioned and the vacancy is filled by a qualified person, this Court has no other option except to allow the Writ Petition.

11. This Writ petition is allowed and the impugned order passed by the second respondent dated 21.02.2017, returning the proposal submitted by the petitioner seeking approval for the appointment of the 37 teaching staff in the petitioner college is set aside. The petitioner is directed to submit the proposal afresh within a period of two weeks from the date of receipt of a copy of this order. The second respondent is directed to grant approval to all the teaching staffs appointed by the petitioner college in various departments with effect from the date of appointments as per the applications within a period of six weeks from the date of receipt of the fresh proposal from the petitioner and disburse the salary and other allowances as applicable. No Costs. Consequently, the connected W.M.P.(MD) Nos. 3017 and 3016 of 2017 are closed.

Sd/-

Assistant Registrar(Crl Side)

/True Copy/

Sub Assistant Registrar

To

1. The Director of Collegiate Education,
College Road, Chennai - 600 006.
2. The Joint Director of Collegiate Education,
Tirunelveli, Tirunelveli District.

+1cc to Mr.T.Cibichakraborty, Advocate Sr.No.58391

+1cc to Spl.Government Pleader Sr.No.58326

CMR/TA

VB/GT/SAR4/05.07.2017/10P/5C

**W.P. (MD) No.3804 of 2017
and**

**W.M.P. (MD) Nos.3017 and 3016 of 2017
02.06.2017**