



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.06.2017

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P. (MD) No.6634 of 2017

and

W.M.P. (MD) Nos.5219 and 5220 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 Na.Ka.No.2610/U2/2017 dated 10.03.2017, quash the same and further direct the 2nd respondent Joint Director to approve forthwith the appointment of A.Vinoth as Assistant Professor (Mathematics) in the petitioner's college and disburse the grant-in-aid towards his salary and allowances w.e.f. the respective date of his appointment viz., 01.02.2017.

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 is filed challenging the order of the second respondent dated 10.03.2017, rejecting and returning the proposal sent by the petitioner for approving the appointment of a teacher in the college on the ground that the no prior permission from the Directorate of Collegiate Education for filling up the teaching post.



2.The brief facts that are necessary for the disposal of this Writ Petition are as follows:

2.1. The petitioner is a Minority Educational Institution, owned and administrated by the Society of St.Franicis Xavier, a body registered under Societies Registration Act (Registration No. 3 of 1920-21). It is not in dispute that the college was established in the year 1923 and it is a recognized Minority Educational Institution in terms of Article 30 of Constitution of India. The fact that the third respondent approved the qualification of a teacher for appointment as Assistant Professor in Mathematics Department is admitted.

2.2. The learned counsel for the petitioner submitted that the post of Assistant Professor in the Department of Mathematics fell vacant on 01.06.2016, due to the retirement of an Associate Professor in Mathematics, namely, Dr.A.Anto Kinsley,. In that vacancy, the petitioner appointed one A.Vinoth as Assistant Professor in Mathematics.

2.3. It is further stated that the University has granted qualification approval after finding that Mr.A.Vinoth is fully qualified to the post by proceedings dated 24.02.2017. When the proposal for approval of the appointment was submitted to the second respondent on 24.02.2017 along with all the relevant papers, it is submitted that the second respondent, by the impugned order, returned the proposal only on the ground that no prior permission was obtained from the Director of Collegiate Education to fill up the vacancy. It is in these circumstances, the learned counsel for the petitioner submitted that the proposal submitted by the petitioner for the approval of appointment of the Assistant Professor in the petitioner college ought not to have been returned as no prior permission/approval to fill up the vacancy is required either under the provisions of Tamil Nadu Private Colleges (Regulation) Act, 1976 or by any executive orders which was passed in accordance with any statutory provisions.

3.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 instructions insisting private aided colleges to get prior permission to fill up the vacant posts available in sanctioned posts are invalid. Hence the learned counsel for the



petitioner submitted that the order of the second respondent returning the proposal is illegal.

3.1. 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.

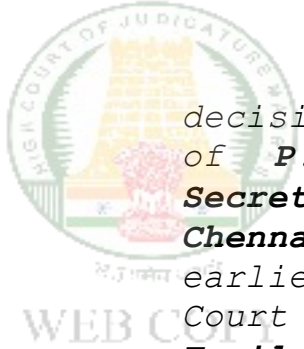
(4) The College Committee while filling up the vacant post, should follow the procedures stated in Rule 11(1A) to 11(4) (ii).

(5) If there is no rival candidate for any post, the 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."

4. 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**, 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".

5. The learned Counsel for the petitioner further relied upon the judgment of the Honourable Division Bench of this Court in W.A.No.474 of 2013, by judgment dated 03.04.2013, wherein it has been 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, also 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".....



6. In view of the law settled by this Court in the above judgments and other judgments the consistent view taken by this Court that no prior permission or prior approval is required for filling up the post in private aided colleges, where the post is sanctioned and there is vacancy, this Court has no other option, but to allow the Writ Petition.

7. The Writ Petition is allowed and the impugned order issued by the second respondent dated 10.03.2017, is quashed. 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. On submission of such proposal the second respondent is directed to approve the appointment of Mr.A.Vinoth, as Assistant Professor, Mathematics in the petitioner college with effect from the date of his appointment i.e., 01.02.2017 and disburse the salary and other allowances applicable within a period of six weeks from the date of receipt of the proposal from the petitioner. No Costs. Consequently, the connected W.M.P.(MD) Nos. 5219 and 5220 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.

CMR/TA

VB/GT/SAR4/04.07.2017/5P/3C

**W.P. (MD) No.6634 of 2017
and
W.M.P. (MD) Nos.5219 and 5220 of 2017**

02.06.2017