

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.03.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

W.P. Nos.3086 and 3087 of 2018
and W.M.P.Nos.3775 to 3780 of 2018

J.Micah Roosevelt,
CSI Gooldet Higher Secondary School,
Sholinghur.

... Petitioner
[in W.P.No.3086 of 2018]

P.Anbalagan,
CSI Gooldet Higher Secondary School,
Sholinghur.

.. Petitioner
[in W.P.No.3087 of 2018]

Vs.

1.The Government of Tamilnadu,
Rep. by its Secretary to Government,
School Education Department,
Fort St.George, Chennai - 600 009.

2.The Director of School Education,
College Road, Chennai - 600 006.

3.The District Educational Officer,
Vellore District.

4.The Correspondent,
CSI Goodlet Higher Secondary School,
Sholinghur.

... Respondents
[in both W.Ps.]

PRAYER in W.P.No.3086 of 2018 : Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order of the third respondent in his proceedings in A.D.M.No.2096/A4/2016 dated 04.05.2016 quash the same and consequently direct the respondents to approve the appointment of the petitioner as record clerk with salary and other benefits from 28.08.2014.

PRAYER in W.P.No.3087 of 2018 : Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order of the third respondent in his proceedings in A.D.M.No.2095/A4/2016 dated 04.05.2016 quash the same and consequently direct the respondents to approve the appointment of the petitioner as Office Assistant with salary and other benefits from 01.10.2015.

For Petitioner : M/s.P.Mahalakshmi
[in both W.Ps.]
For Respondents 1 to 3 : Mr.V.Jayaprakash Narayanan
[in both W.Ps.] Special Government Pleader

C O M M O N O R D E R

These Writ Petitions have been filed challenging the impugned proceedings in A.D.M.Nos.2095 and 2096/A4/2016 dated 04.05.2016 issued by the District Educational Officer, Vellore, seeking to approve the appointments of the petitioners as Record Clerk and Office Assistant against the sanctioned vacancies in the Non-Teaching Posts.

2. The learned counsel appearing for the petitioners assailing the impugned order submitted that when there is no ban order issued by the Government, restricting or prohibiting the appointment of either Teaching or Non-Teaching Staff in the Schools, more particularly, the petitioners' School, the third respondent falsely citing the reason that there has been a ban order in not to appoint or approve any Non-Teaching Staff erroneously passed the impugned order driven the petitioners from pillar to post. Adding further, the learned counsel for the petitioner submitted that when the Staff Fixation order was already passed on 12.09.2014 by the same District Educational Officer, Vellore, sanctioning both the teaching and non-teaching staff in the petitioners' School, without referring the said Staff Fixation Order, the impugned order has been passed deliberately to drag on the matter and consequently both the students and the teaching staff were all put to great problem.

3. A perusal of the Staff Fixation Order dated 12.09.2014 clearly shows that the two posts, namely, Record Clerk and Office Assistant have already been sanctioned and if any post of non-teaching staff sanctioned by the competent educational authorities, it has been well settled by this Court that no prior approval is required to be obtained either by the Minority Educational Institutions or by the non-minority Educational

Institutions before filling up the Non-Teaching Post. A Division Bench of this Court, 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 me 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."

4. 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 third respondent to approve the appointment of the petitioners / Non-teaching staff by the Private Aided School and to sanction the grant within a period of four weeks from the date of receipt of a copy of this order.

5. This Court also considering the fact that the petitioners' School was already sanctioned with one post of Record Clerk and another post of Office Assistant in the Staff Fixation Order dated 12.09.2014 directed the third respondent to be present to show cause as to why an exemplary costs of Rs.25,000/- should not be imposed against her. Pursuant to the said order, she appeared and pleaded ignorance of the orders passed by this Court settling the issue that no prior approval is required before filling up of any sanctioned vacancy in the post of non-teaching post. But when law is well settled and the respondents 2 and 3 in other Districts were all made as parties, the third respondent / District Educational Officer, Vellore is also expected to know the settled legal position, as she is holding the post of District Educational Officer in Vellore. Therefore, this Court is inclined to impose costs of Rs.10,000/- each payable by the third respondent to the Tamil Nadu State Legal Services Authority, Chennai, within a period of four weeks from the date of receipt of a copy of this order as they have wrongly wasted the valuable time of this Court and also their own department and accordingly, it is ordered.

6. In fine, for the reasons stated above, the Writ Petitions are allowed by quashing the impugned order. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

sri

To

1.The Secretary,
Government of Tamilnadu,
School Education Department,
Fort St.George, Chennai - 600 009.

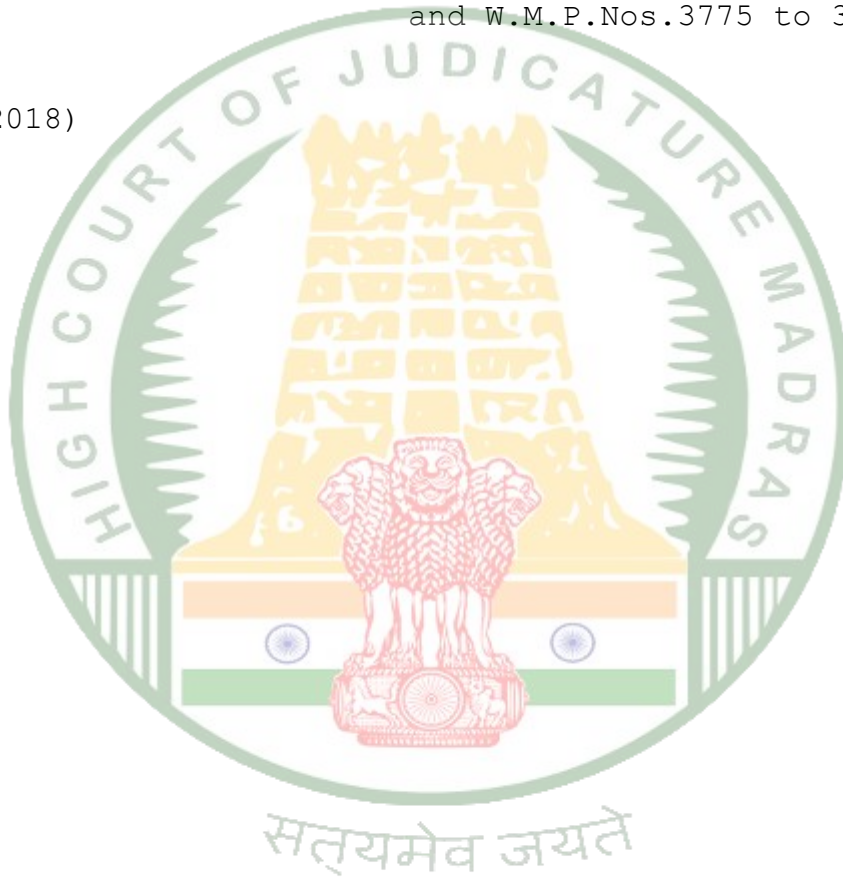
2.The Director of School Education,
College Road, Chennai - 600 006.

3.The District Educational Officer,
Vellore District.

+2cc to Mr.P.Mahalakshmi, Advocate SR.No.17002
+1cc to Government Pleader SR.No.17767

W.P. Nos.3086 and 3087 of 2018
and W.M.P.Nos.3775 to 3780 of 2018

SJ(CO)
GN(08/05/2018)



WEB COPY