

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2018

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.9252 of 2017

and

WMP.No.10207 of 2017

E.jeba Bella Mercily,
Steno-Typist,
Scott Christian College (Autonomous),
Nagercoil - 629 003. ... Petitioner

-vs-

- 1.The State of Tamil Nadu
Rep. by its Secretary to Government,
Higher Education Department,
Fort St. George,
Chennai - 600 007.
- 2.The Director of College Education,
College Road,
Chennai - 600 006.
- 3.The Joint Director of Collegiate Education,
Thirunelveli - 2.
- 4.Correspondent,
Scott Christian College,
Nagercoil - 629 003. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the respondents to approve the appointment of the petitioner as Steno-Typist with salary and other benefits from 24.02.2016.

For Petitioner:: Ms.P.Mahalakshmi
For R1 to R3 :: Mr.C.Munusamy
Special Government Pleader

For R4 :: Mr.S.Bharathi Rajan

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O R D E R

The relief sought for in this writ petition is to direct the respondents to approve the appointment of the petitioner as Steno-typist with salary and other benefits from 24.02.2016.

2.The writ petitioner was appointed as Management staff in the fourth respondent, College on 24.02.2016. The fourth respondent, College is an aided Minority College and established and administered by the Educational Agency of Kanyakumari. The said college is imparting higher education for more than 3000 students. The writ petitioner was appointed as Steno-typist in a sanctioned post aroused on account of the promotion of one Mr.Arul Kumar to the post of Assistant. Thus, the writ petitioner is entitled for approval in accordance with the provisions of the Act and Rules. The proposals were also submitted by the Management seeking approval of appointment and the same has not been considered.

3.However, the learned counsel appearing for the writ petitioner made a submission that the ground was considered by this Court in a writ petition in W.P.No.28038 of 2017 dated 02.11.2017 and the relevant paragraphs are extracted hereunder:

"3.The learned counsel for the petitioner submitted that the issue in dispute is covered by a decision of this Court passed in W.P.No.29998 of 2014 etc. batch, dated 17.03.2017. A perusal of the same shows that there is no requirement under the Tamil Nadu Private Colleges (Regulation) Act, 1976 and Tamil Nadu Private College (Regulation) Act, 1976 and Tamil Nadu Priivate 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. The relevant portion is 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 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 other 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 dated 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, 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 41, 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 afore mentioned 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 irrespective 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 college, 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 college 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 Colleges and to sanction the grant within a period of four weeks from the date of receipt of a copy of this order.

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."

4. In view of the above orders passed by this Court, the respondents 1 and 2 are directed to consider the proposal submitted by the College Management and pass orders in respect of grant of approval of the appointment of the writ petitioner by verifying his service records and in accordance with the provisions of the Act and Rules, within a period of twelve weeks from the date of receipt of a copy of this order.

5. Accordingly, the writ petition stands disposed of. Consequently, the connected Miscellaneous Petition is closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
The State of Tamil Nadu,
Higher Education Department,
Fort St. George,
Chennai - 600 007.
2. The Director of College Education,
College Road,
Chennai - 600 006.
3. The Joint Director of Collegiate Education,
Thirunelveli - 2.
4. The Correspondent,
Scott Christian College,
Nagercoil - 629 003.

+1cc to Mr.S.Bharathi Rajan, Advocate sr.no.25796
+1cc to M/s.P.Mahalakshmi, Advocate sr.no.25824

W.P.No.9252 of 2017

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