

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2018

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.6940 of 2018

T.Soundarrajan

.. Petitioner

Vs

1.The Government of Tamil Nadu,
Rep. By its Secretary to Govt.,
School Education Department,
Fort St. George, Chennai - 9.

2.The Director of School Education,
College Road, Chennai - 6.

3.The District Educational officer,
Thiruvallur District.

4.The Correspondent,
CSI Goudie Higher Secondary School,
Thiruvallur.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records relating to the order of the third respondent in his proceedings in O.Mu.No.2616/A4/2017, dated 06.12.2017, and quash the same and consequently to direct the respondents to approve the appointment of the petitioner as Watchman with salary and other benefits from 15.12.2015.

For petitioner : Ms.P.Mahalakshmi

For Respondents : Mr.C.Munusamy, Spl.GP

O R D E R

This writ petition is directed against the impugned proceedings dated 06.12.2017 passed by the third respondent / the District Educational Officer, Thiruvallur District, rejecting the request of the fourth respondent School to accord approval of appointment of the petitioner.

2. Heard Ms.P.Mahalakshmi, learned counsel for the petitioner and Mr.C.Munusamy, learned Special Government Pleader, who accepts notice for the respondents 1 to 3.

3. It is seen that in view of promotion of one Mr.E.Selvam, Watchman, as Office Assistant, the petitioner was appointed in the said post on 15.12.2015 in the permanent sanctioned vacancy. After his appointment, the fourth respondent School submitted its proposal to the third respondent seeking approval of his appointment. However, third respondent has returned the said proposal, vide his proceedings dated 06.12.2017, which is impugned herein, on the ground of imposition of ban in G.O.Ms.No.212, dated 29.11.2001, and G.O.Ms.No.115, dated 30.05.2017, with regard to appointment of non-teaching staffs.

4. The said reason given in the impugned proceedings cannot be sustained, for, the issue of filling up of vacancy against the sanctioned strength of Non-teaching staff by the Minority Institutions is no longer res integra, since the Hon'ble 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 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. In view of the above, it is clear 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 petitioner has been appointed against sanctioned vacancy, which has occurred on account of promotion given to one Mr.E.Selvam as Office Assistant. Therefore, by following the above cited case laws, this Court hereby directs the respondents 1 to 3 to approve the appointments of the petitioner as Watchman and release the salary and other benefits with effect from 15.12.2015. The said exercise shall be done within a period of four weeks from the date of receipt of a copy of this order.

6. In fine, the writ petition is allowed, by quashing the impugned proceedings dated 06.12.2017 passed by the third respondent. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Govt.,
School Education Department,
Fort St. George, Chennai - 9.

2.The Director of School Education,
College Road, Chennai - 6.

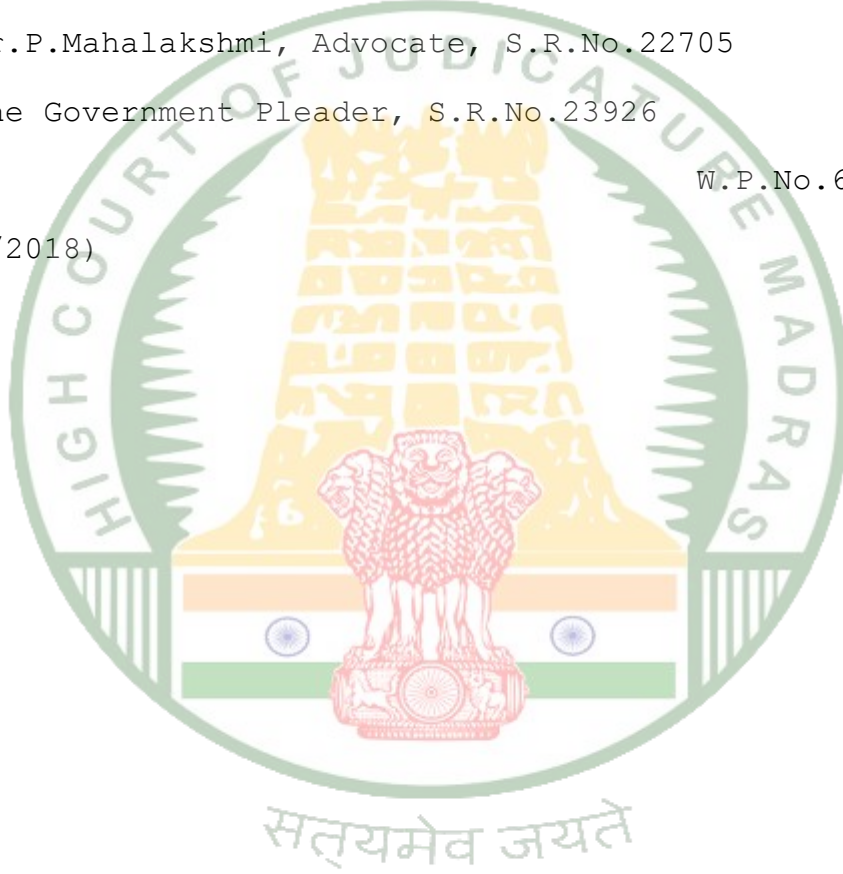
3.The District Educational officer,
Thiruvallur District.

+1cc to Mr.P.Mahalakshmi, Advocate, S.R.No.22705

+1cc to the Government Pleader, S.R.No.23926

W.P.No.6940 of 2018

RRK(19/04/2018)



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