

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2018

CORAM

THE HON'BLE MR.JUSTICE T.RAJA

W.P.No.34244 of 2017
and WMP.Nos.38127 and 38128 of 2017

Tmt.J.Revathi

... Petitione

Vs.

1. The Director of Elementary Education,
College Road, Chennai-6.
2. The District Elementary Education Officer,
College Road, Chennai.
3. The Assistant Elementary Education Officer,
Royapuram Union,
No.11 Davidson Street, Chennai-1.
4. The Secretary,
B.Subbrayan Middle School,
Moolakothalam Basin Bridge,
Chennai-21.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the entire records connected with the impugned order passed by the 2nd responden,t vide O.Mu.No.782/Aa2/2015 dated 22.05.2015 and consequential order of the 3rd respondent in Na.Ka.No.25/2016 dated 29.02.2016 and quash the same and consequently direct the respondents to approve the appointment of the petitioner as Secondary Grade Teacher in the 4th respondent school w.e.f. 09.02.2015, with all consequential monetary benefits.

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mr.R.S.Selvam,
Government Advocate

O R D E R

This Writ Petition has been filed challenging the impugned order dated 22.05.2015 passed by the District Elementary Education Officer, Chennai, refusing to accord approval for appointment of the petitioner as Secondary Grade Teacher in the fourth respondent School.

2. The learned counsel for the petitioner submitted that the fourth respondent school was started in the year 1898 as Primary School and after upgradation as Middle School, two vacancies arose for the post of Secondary Grade Teacher due to superannuation of Tmt.Kousalya and Thiru.Boopathi on 31.05.2006 and 30.11.2008 respectively and subsequently, in the 2014, the District Elementary Education Officer, Chennai, has issued Staff Fixation Order, by which the fourth respondent school is entitled to have five Secondary Grade Teachers. The learned counsel for the petitioner further submitted that when vacancy arose on account of the retirement of Thiru. Boopathi, the fourth respondent school appointed one Tmt.Sumathy on 02.12.2011 and a proposal was also sent by the fourth respondent to the second respondent seeking approval of such appointment. However, the second respondent, rejected the said proposal on the ground that Tmt.Sumathy did not possess the requisite educational qualification of pass in Teacher Eligibility Test and subsequently, she tendered her resignation on 18.10.2014, which was also accepted by the fourth respondent school. Since the petitioner possessed the requisite qualification including pass in Teacher Eligibility Test, she applied for the said post and she was called for interview and she was selected and appointed as Secondary Grade Teacher, vide order dated 09.02.2015 and she also joined in the said post. Pursuant to appointment of the petitioner as Secondary Grade Teacher, the fourth respondent school sent a proposal dated 30.03.2015 to the second respondent, through the third respondent, seeking approval of the petitioner's appointment as Secondary Grade Teacher, but yet another impugned order has been passed by the second respondent dated 22.05.2015 on the ground that the fourth respondent did not obtain prior permission from the Department.

3. 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. 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.

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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. In the case on hand, admittedly, the writ petitioner has been appointed against vacancy relating to sanctioned post and since the fourth respondent school is entitled to have 5 Secondary Grade Teachers, this Court finds no impediment to set aside the impugned order, by following the above cited decision.

5. Accordingly, this Writ Petition is allowed and the impugned order of the second respondent vide O.Mu.No.782/Aa2/2015 dated 22.05.2015 and the consequential order of the third respondent in Na.Ka.No.25/2016 dated 29.02.2016 are set aside and the second respondent is directed to accord approval for appointment of the petitioner as Secondary Grade Teacher and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order and also confer her with all consequential monetary benefits. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Deputy Registrar

True Copy

Sub-Assistant Registrar

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To

- 1.The Director of Elementary Education,
College Road, Chennai-6.
- 2.The District Elementary Education Officer,
College Road, Chennai.
- 3.The Assistant Elementary Education Officer,
Royapuram Union, No.11 Davidson Street, Chennai-1.

+1 CC to Mr.S.N. Ravichandran, Advocate sr 379.

+1 CC to Govt. Pleader sr 675.

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W.P.No.34244 of 2017

SP(19/01/2018)