

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 11.06.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.549 of 2019

Paul Stephenson

... Petitioner

Versus

1. The State of Tamil Nadu,
rep. by Secretary,
Department of Higher Education,
Fort St.George, Chennai.

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

3. The Joint Director of Collegiate Education,
Thirunelveli Region,
Thirunelveli-627 007

4. The Correspondent/Secretary,
Nesamony Memorial Christian College,
Marthandam-629 165,
Kanyakumari District.

.. Respondents

Prayer: The Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Mandamus, to direct the 2nd and 3rd respondents herein to approve the appointment of the petitioner as Office Assistant in Nesamony Memorial Christian College, Marthandam in the sanctioned vacancy caused by the promotion of one Mr.R.Rajssingh with effect from 24.2.2012 with all attendant, monetary and service benefits.

For petitioner : Mr.R.Natrtamil

For respondents: Mr.V.Kathirvelu, Spl.GP-R1toR3
Mr.E.Martinjayakumar -R4

ORDER

This Writ Petition has been filed, praying for the issuance of a Writ of Mandamus, to direct the 2nd and 3rd respondents herein to approve the appointment of the petitioner as Office Assistant in Nesamony Memorial Christian College, Marthandam in

the sanctioned vacancy caused by the promotion of one Mr.R.Rajssingh with effect from 24.2.2012 with all attendant, monetary and service benefits.

2. According to the petitioner, he was selected and appointed as Office Assistant in 4th respondent College, Marthandam vide appointment order dated 16.08.2017 in the vacancy which was already sanctioned and approved by the 2nd respondent vide proceedings dated 08.01.1980. The vacancy arose on account of promotion of one R.Rajasingh. It appears that the 4th respondent also forwarded a proposal for approval of the appointment of the petitioner on 11.01.2018. However, despite the proposal and subsequent representations by the petitioner and 4th respondent, there was no response forthcoming from the respondents 1 to 3, which prompted the petitioner to approach this Court by present Writ Petition.

3. The learned counsel appearing for the petitioner would submit that the petitioner was appointed as Office Assistant in the vacancy arose on account of promotion of one Rajasingh, which was already sanctioned and approved by the 2nd respondent and therefore, the respondents ought to have approved the appointment of the petitioner. The learned counsel for the petitioner would rely on a decision of this Court rendered in a batch of Writ Petitions in W.P.Nos.28369 to 28373 of 2017, wherein, in similar circumstances, this Court has held in paragraphs 5 and 6 as under:

"5. 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 Colleges. 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 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.

6. 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. No costs.?"

4. Therefore, the learned counsel sought for a similar order in this writ petition as well, for which, the learned Government Advocate appearing for the respondents 1 to 3 has no serious objection.

3. Considering the facts and circumstances of the case and having regard to the submissions made by the learned counsel and also following the aforesaid orders, this writ petition is disposed of, by directing the respondents 1 to 3 to consider the claim of the petitioner, with regard to approval of his appointment as Office Assistants and pass appropriate orders on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS-II)

//True copy//

Sub Assistant Registrar

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To

1. The Secretary,
The State of Tamil Nadu,
Department of Higher Education,
Fort St.George, Chennai.

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

3. The Joint Director of Collegiate Education,
Thirunelveli Region,
Thirunelveli-627 007.

+2cc to Mr.R.Natrtamil, Advocate SR.No.46747

W.P.NO.549 OF 2019

VG II(CO)
GMY(22/07/2019)