

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.551, 552 and 555 of 2019

G.Lazer ... Petitioner
(in W.P.No.551 of
2019)

G.Jeyasekhar ... Petitioner
(in W.P.No.552 of
2019)

J.Robinson ... Petitioner
(in W.P.No.555 of
2019)

Vs

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
(in all W.Ps)

Prayer in W.P.No.551 of 2019: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of mandamus, directing the 2nd and 3rd respondent to approve his appointment as Office Assistant in the Nesamony Memorial Christian College, Marthandam, in the sanctioned vacancy caused by the promotion of Mrs.H.Prema Latha with effect from 01.03.2012 with all attended, monetary and service benefits.

Prayer in W.P.No.552 of 2019: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of mandamus, directing the 2nd and 3rd respondent to approve his appointment as Office Assistant in the Nesamony Memorial Christian College, Marthandam, in the sanctioned vacancy caused by the promotion of Mr.S.Jayadhas, with effect from 24.02.2012 with all attended, monetary and service benefits.

Prayer in W.P.No.555 of 2019: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of mandamus, directing the 2nd and 3rd respondent to approve his appointment as Office Assistant in the Nesamony Memorial Christian College, Marthandam, in the sanctioned vacancy caused by the promotion of Mr.A.Ramayyan, with effect from 01.06.2009 with all attended, monetary and service benefits.

For Petitioners : Mr.A.Rajesh
(in all W.Ps)

For Respondents : Mrs.Thangavadhana Balakrishnan
Government Advocate for R1 to R3
(in all W.Ps)
Mr.E.Martin Jeyakumar
for R4 (in all W.Ps)

COMMON ORDER

The petitioners have come up with these writ petitions seeking a

direction to the respondents 2 and 3 to approve their appointment as Office Assistants in Nesamony Memorial Christian College, Marthandam, with effect from 01.03.2012, 24.02.2012 and 01.06.2009, respectively, with all attendant, monetary and service benefits.

2. According to the learned counsel for the petitioners, the petitioners were appointed as Office Assistants in the vacancies arising on account of promotion of one H.Prema Latha, S.Jayadhas and A.Ramayyan, respectively, which were the sanctioned posts already approved by the Educational Authorities. The learned counsel further submitted that in similar circumstances, in a batch of writ petitions in W.P.Nos.28369 to 28373 of 2017, this Court, on 07.11.2017, passed the following order :

“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-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.

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.”

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

3. Considering the facts and circumstances of the case and having regard to the submissions made by the learned counsel on either side and also following the aforesaid order, these writ petitions are disposed of, by directing the respondents to consider the claim of the petitioners, with regard to approve their appointments 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.

01.02.2019

Internet: Yes/No
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To

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

WEB COPY

- 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,
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Marthandam - 629 165,
Kanyakumari District.



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R.MAHADEVAN, J.

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01.02.2019

W.P.Nos.551, 552 and 555 of 2019

R.MAHADEVAN, J.,

These matters are listed today under the caption "For Being Mentioned" at the instance of the learned counsel appearing for the petitioners.

2. It is submitted by the learned counsel appearing for the petitioners that in the order dated 01.02.2019 passed in the above writ petitions, in paragraph 3, 5th line, instead of typing "Typist, Office Assistant and Gardner", the words "Office Assistants" have been typed. This typographical / inadvertent mistake is sought to be corrected by the learned counsel appearing for the petitioners.

3. In view of the above submission, in the order dated 01.02.2019, in paragraph 3, 5th line, the words "Office Assistants" shall be read as "Typist, Office Assistant and Gardner, respectively". It is made clear that, excepting the said correction in the name of the posts, in all other respects, the order dated 01.02.2019 shall remain unaltered.

srk

27.06.2019

Note to office.: Office to carryout the said corrections and issue fresh / amended copy of the order to all the concerned, at the cost of the petitioner.