

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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| Reserved on:<br>02.08.2019 | Delivered on:<br>22.08.2019 |
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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

WP.No. 6604 of 2018  
& WMP No.8200 of 2018

The Principal & Secretary,  
St.Christopher's College of Education,  
Vepery, Chennai-600 007. .... Petitioner

versus

1. The State of Tamil Nadu,  
rep. by its Secretary,  
Department of Higher Education,  
Fort St.George,  
Chennai-600 009.
2. The Director of Collegiate Education,  
College Road, Chennai-600 006.
3. The Regional Joint Director of Collegiate Education,  
Chennai Region,  
Chennai-600 015. .... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned Government Order issued by the 3<sup>rd</sup> respondent Joint Director of Collegiate Education in O.Mu.No.02337/A3/2007 dated 19.01.2018, quash the same and further direct the 3<sup>rd</sup> respondent Joint Director to approve forthwith the appointment of two non-teaching staff, namely, Mr.A.Mahendran and Mr.M.Somasundaram as Office Assistants in the petitioner's college and disburse the grant-in-aid towards their salary and allowances with effect from their appointments, viz., 01.07.2008 and 21.07.2008 respectively.

For Petitioner : Mr.Isaac Mohanlal, SC for  
M/s.Isaac Chambers

For Respondents : Mr.V.Kathirvelu, Spl.G.P.

## ORDER

This Writ Petition has been filed by the petitioner, praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned Government Order issued by the 3<sup>rd</sup> respondent Joint Director of Collegiate Education in O.Mu.No.02337/A3/2007 dated 19.01.2018, quash the same and further direct the 3<sup>rd</sup> respondent Joint Director to approve forthwith the appointment of two non-teaching staff, namely, Mr.A.Mahendran and Mr.M.Somasundaram as Office Assistants in the petitioner's college and disburse the grant-in-aid towards their salary and allowances with effect from their appointments, viz., 01.07.2008 and 21.07.2008 respectively.

2. The petitioner college is a private institution recognized by the National Council for Teacher Education and affiliated to the Tamil Nadu Teachers Education University. It was established in the year 1923 and attained autonomous status in 1988. The petitioner institution is a recognized religious minority institution in terms of Article 30(1) of the Constitution of India.

3. According to the petitioner, there are over 300 students studying in the aided sections of the petitioner institution. There are 14 aided teaching posts in the aided sections of the college for which, salary has been disbursed by the 3<sup>rd</sup> respondent. There are 19 non-teaching posts in the college, out of which, salary has been disbursed by the 3<sup>rd</sup> respondent only to 10 posts. From out of sanctioned strength of non-teaching staff/posts, two posts fell vacant against the category of Office Assistants due to retirement and death of the then incumbents respectively. Therefore, the petitioner college appointed two persons, namely, A.Mahendran and M.Somasundaram as Office Assistants on 01.07.2008 and 21.07.2008.

4. According to the petitioner college, the above appointments have been made against the vacancies arising in the sanctioned posts. The present incumbents are also fully qualified for such appointment. According to the petitioner college, A.Mahendran was already working as Sanitary worker in the college and another person, M.Somasundaram was working as Night Watchman. As regards the appointment of A.Mahendran as Office Assistant, the college submitted a proposal on 12.08.2009 to the 3<sup>rd</sup> respondent. However, the 3<sup>rd</sup> respondent vide proceedings dated 09.09.2009 returned the proposal stating that no orders were obtained by the petitioner college from the Director of Collegiate Education to fill up the posts. As regards the appointment of M.Somasundaram as Office Assistant,

the petitioner College submitted a proposal on 12.08.2009. However, the 3<sup>rd</sup> respondent vide proceedings dated 09.09.2009 returned the proposal for the same reason. Thereafter, the petitioner college vide its letter dated 27.3.2017, resubmitted the proposals along with another appointment of non-teaching staff in respect of Marker category. However, the 3<sup>rd</sup> respondent by proceedings dated 19.1.2018 refused to grant approval for the appointments of three non-teaching staff, stating that in relation to two Office Assistants, since already two Office Assistants were there in the college, as per G.O.No.128, Finance Department, dated 21.02.2006, transfer of posts cannot be accepted. In regard to appointment of Marker, different reason was stated and this Writ Petition is not concerned with that appointment. The proceedings of the 3<sup>rd</sup> respondent dated 19.01.2018 is put to challenge in the present Writ Petition.

5. Mr.Issaac Mohanlal, learned Senior Counsel appearing for the petitioner would submit that the issue of obtaining prior approval for appointment of non-teaching staff is no more res integra as repeatedly this Court held that such requirement is either not found in the Tamil Nadu Private Colleges (Regulation) Act, 1976 or in the Rules framed thereunder and such requirement cannot be insisted upon in respect of appointment in minority institution which enjoys special protection under Article 30(1) of the Constitution of India.

6. On behalf of the respondents, Mr.V.Kathirvelu, learned Special Government Pleader appeared and made his submissions in line with the reasons set forth by the 3<sup>rd</sup> respondent in rejecting the proposals submitted by the petitioner college.

7. The learned Senior Counsel appearing for the petitioner would rely on the following decisions to demonstrate that the prior approval cannot be insisted upon by the educational authority since such requirement is not found either in the Act or in the Rules in respect of appointment of non-teaching staff and particularly in respect of appointment in minority institution.

In "2014 (1) CWC 162 (P.Ravichandran versus State of TN, rep. by Secretary to Government, Department of Higher Education and others)", wherein, the learned Senior Counsel would draw the attention of this Court to paragraphs 13 and 14, which are extracted hereunder:

"13. From the narration of above statutory provisions, it is evident that the Tamil Nadu Private Colleges (Regulation) Act, 1976 and the Rules framed thereunder are complete code insofar as establishment, administration, sanction of post, appointment of staff, grant-in-aid, withholding of

aid, code of conduct to staff, closure of the course or college, etc.

"14. In the light of the above statutory provisions, the Director of Collegiate Education cannot insist Private Aided College managements to get prior permission to fill up the vacant posts available in sanctioned posts, by issuing circulars/administrative instructions."

8. He also drawn the attention of this Court to number of decisions rendered by this Court as mentioned in para 17 of the above decision, which is also extracted hereunder:

"17. A Division Bench of Madurai Bench of this Court in W.A.(MD)No.462 of 2006, judgment dated 1.12.2006, considered the scope of Rule 11(1) of the Tamil Nadu Private Colleges (Regulation) Rules, 1976 relying upon the earlier order passed on 13.8.2006, 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 in the following orders of this Court:

- (i) W.P.No.30618 of 2005, order dated 21.9.2005;
- (ii) W.P.No.28396 of 2004, order dated 29.3.2006;
- (iii) W.A.Nos.92 & 93 of 2008, judgment dated 6.1.2010;
- (iv) W.P.(MD)No.174 of 2009, order dated 27.4.2010;
- (v) W.A.Nos.140, 811/2006 & 805/2007, judgment dt.21.10.2010;
- (vi) W.A.No.2858 of 2010, judgment dated 21.3.2011;
- (vii) W.A.(MD)No.1088 of 2011, judgment dated 19.10.2011;
- (viii) W.A.No.2345 of 2011, judgment dated 5.3.2012;
- (ix) (2012) 5 MLJ 670 (Dr.S.Sukumaran v. State of Tamilnadu) rendered by one of us (NPVJ); and
- (x) W.A.No.474 of 2013, judgment dated 3.4.2013.

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."

9. The learned Senior Counsel would further draw the attention of this Court to paragraph 20(1) of the above decision, which is relevant for the purpose of the present case, which is also extracted hereunder:

"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 28 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) to (5) ... .."

From the above, it is very clear that the issue does no more call for any adjudication and the same is settled in favour of the Institution. The learned Senior counsel would also rely on a decision of this Court rendered by a learned single Judge in W.P.Nos.6679 & 6680 of 2016, dated 24.11.2017, wherein, after adverting to various decision, the learned Judge has concluded as under in paragraph 3:

"3. Thus, 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 competent authorities. In the cases on hand, admittedly, the non-teaching employees had been appointed against the vacancies in relation to the sanctioned posts as Non-teaching staff in various cadres and therefore, by following the above cited case laws, this Court inclined to direct 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 twelve weeks from the date of receipt of a copy of this order."

10. The learned Senior Counsel would also rely on a recent decision of this Court rendered in W.P.No.23950 of 2018 dated

25.06.2019, wherein, he would draw the attention of this Court to the conclusion as found in paragraphs 10 to 14, which are extracted hereunder:

"10. This Court has considered the submissions made on behalf of the petitioner as well as the learned Government Advocate for respondents 1 to 4.

11. From the facts as mentioned above and also the legal principle as relied on by the learned counsel for the petitioner, it becomes very clear that as far as the appointment of the non-teaching staff is concerned, either the Tamil Nadu Recognised Private Schools (Regulation) Act or Rules provide for any such requirement and therefore, the rejection order stating that the School has not obtained prior permission, would be per se illegal and cannot be sustained in law.

12. Moreover, as far as the facts of this case are concerned, the original proposal was forwarded by the School on 26.02.2018 itself i.e., much prior to the coming into force of the G.O.Ms.No.101 dated 18.05.2018. Therefore, even assuming for the sake of argument that the requirement is mandatory, such requirement cannot be pressed into service as far as the present appointment of the petitioner is concerned. Therefore, on facts, this Court is of the view that the appointment of the petitioner prior to coming into force of G.O.Ms.No.101 dated 18.05.2018 cannot be unsettled only on the basis of requirement which is made mandatory subsequent to the proposal. This Court when enquired with the Government Advocate as to what was the prevailing situation before 18.05.2018 that whether any such requirement was there in any Government Orders, there was no specific answer or material produced except stating that there was such requirement prior to 18.05.2018.

13. Even otherwise, as far as the above cited decisions are concerned, the ratio laid down thereon and the observations made by the Division Bench of this Court as well as the learned Single Judge, it emerges that unless the Act or Rules are amended correspondingly in line with the Government Orders, the same cannot be insisted upon by the authorities. In fact, the learned Judge of this Court, in one of the aforesaid decisions, has held that such requirement cannot be insisted upon for appointment of the non-teaching staff, since nothing has been provided in

the Act or Rules for complying with such requirement. Therefore, in all fours, the petitioner has made out a clear case for grant of relief. The objection of the official respondents has no legs to stand and the same has to be rejected as without any merits or substance.

14. For the above said reasons, this Court is of the considered view that the impugned proceeding is liable to be quashed and therefore, the order of the 4th respondent in Na.Ka.No.3469/A2/ 2018 dated 24.07.2018 is hereby set aside. The 4th respondent is directed to grant approval to the appointment of the petitioner as Lab Assistant in the 5th respondent School and disburse the grant-in-aid towards salary and allowances with effect from the date of his appointment i.e. 26.02.2018. The consequential order is to be passed by the authorities within a period of four weeks from the date of receipt of a copy of this order."

11. The learned Senior counsel would therefore submit that the impugned order passed by the 3<sup>rd</sup> respondent cannot stand the test of judicial scrutiny and therefore, the same is liable to be set aside. In fact, on behalf of the respondents, it was submitted that as against the orders passed in some of the writ petitions, Writ Appeals have been filed and a learned Division Bench of this Court has granted interim stay. However, the learned Senior Counsel for the petitioner would submit that recently, the said Writ Appeals came to be dismissed judgment order dated 14.11.2018 in W.A.Nos.1703 to 1707 of 2018. These appeals were filed by the Director of Collegiate Education and Joint Director of Collegiate Education against the decision of the learned Judge, allowing the colleges to appoint its staff. As against the judgment of the learned Division Bench in Writ Appeals, an SLP has been filed before the Hon'ble Supreme Court and the same also came to be dismissed.

12. From the above, it could be seen that the issue as to whether prior approval is required from the education authority or not, is no more res integra. The issue has been settled by number of decisions both by the learned single Judge and also by the learned Division Bench of this Court. Unfortunately, despite the settled legal principles, this Court finds that repeatedly the action being taken by the educational authority in refusing to grant the approval on the specious ground that prior approval is not obtained by the minority institution in respect of appointment of its staff. This Court is unable to see how such refusal orders could be repeatedly passed by the Educational authority in the face of this Court settling the

issue in favour of the recognized minority institutions. If only the authorities have applied their minds correctly to the settled legal principles, the issue as such need not travel to this Court, for this Court to take a call on the claim of the recognized institution like the petitioner college. Unfortunately the authority who passed the order, has not applied his mind correctly and has mechanically disposed of the approval petitions with no objectivity in dealing with such applications. The State authorities are expected to follow and apply the legal principles laid down by this Court and by the Hon'ble Supreme Court of India when they deal with such claims of the educational institutions, but they cannot routinely pass orders without due regard to such settled legal principles and drive the educational institutions to seek relief from this Court.

14. This Court is therefore of the view that the petitioner's claim is covered in all fours and hence, the same is entitled to be allowed. In the circumstances, the impugned order passed by the 3<sup>rd</sup> respondent/Joint Director in O.Mu.No.02337/A3/2007 dated 19.01.2018 is hereby quashed and the 3<sup>rd</sup> respondent Joint Director is directed to grant approval to the appointment of two non-teaching staff, namely, Mr.A.Mahendran and Mr.M.Somasundaram as Office Assistants in the petitioner's college and disburse the grant-in-aid towards their salary and allowances with effect from the date of their appointments, viz., 01.07.2008 and 21.07.2008 respectively. The 3<sup>rd</sup> respondent is directed to pass appropriate orders in this regard within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected WMP is closed.

Sd/-  
Assistant Registrar(CS VIII)

//True Copy//

सत्यमेव जयते  
Sub Assistant Registrar

Suk  
To

1. The State of Tamil Nadu,  
rep. by its Secretary,  
Department of Higher Education,  
Fort St.George,  
Chennai-600 009.

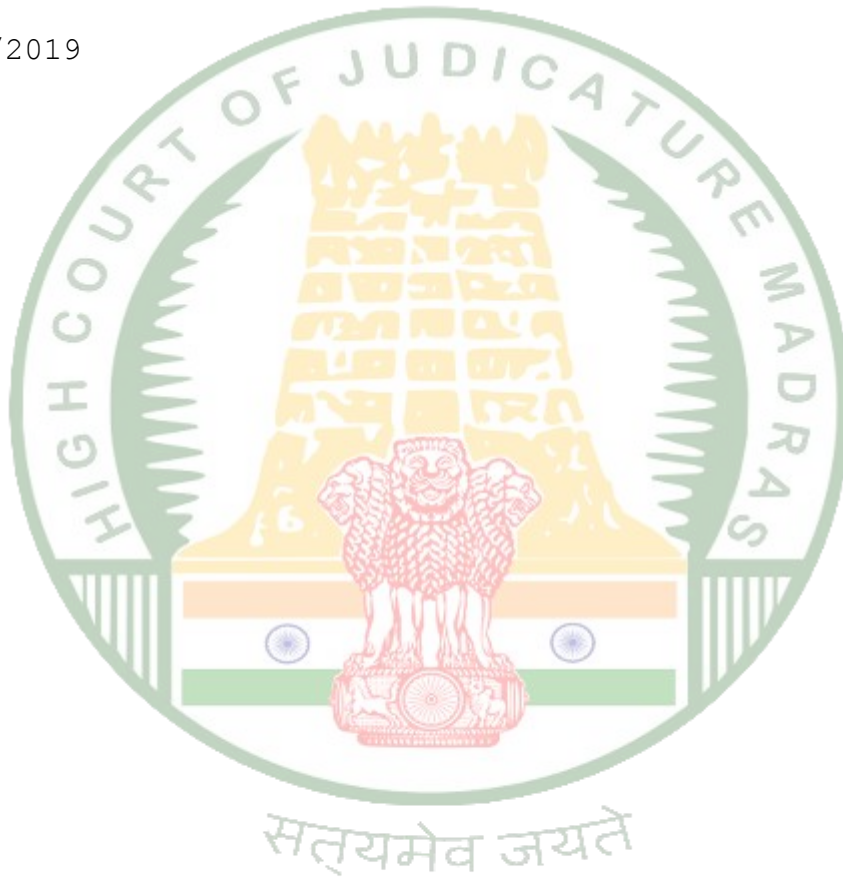
2. The Director of Collegiate Education,  
College Road, Chennai-600 006.

3. The Regional Joint Director of Collegiate Education,  
Chennai Region,  
Chennai-600 015.

+1cc to M/s.Isaac Chamber, Advocate Sr.71907  
+1cc to the Government Pleader Sr.72729

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srg 20/09/2019



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