

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 02.08.2019	Delivered on: 22.08.2019
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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

WP.No. 2258 of 2018 &
W.M.P.No.2751 of 2018

The Secretary,
Nirmala College for Women (Autonomous),
Red Fields, Coimbatore,
Coimbatore District-641 018. 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 Joint Director of Collegiate Education,
Coimbatore Region,
Coimbatore District-641 018.
4. The Bharathiar University,
rep. by its Registrar,
Maruthamalai Road,
Coimbatore District. ... 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 proceedings issued by 3rd respondent Joint Director in O.Mu.No.0666/A3/2016 dated 19.01.2017, quash the same and further direct the 3rd respondent Joint Director to approve forthwith the appointment of Dr.S.Leema Rosaline as Assistant Professor in Commerce in the petitioner college and disburse the grant-in-aid towards her salary and allowances with effect from the date of her appointment viz., 10.12.2015.

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

For Respondents : Mr.V.Kathirvelu, Spl.G.P.
for R1 to R3
Mr.L.P.Shanmughasundaram, SC
for R4

ORDER

This Writ Petition has been filed by the petitioner, praying for issuance of Writ of Mandamus, to call for the records relating to the impugned proceedings issued by 3rd respondent Joint Director in O.Mu.No.0666/A3/2016 dated 19.01.2017, quash the same and further direct the 3rd respondent Joint Director to approve forthwith the appointment of Dr.S.Leema Rosaline as Assistant Professor in Commerce in the petitioner college and disburse the grant-in-aid towards her salary and allowances with effect from the date of her appointment viz., 10.12.2015.

2. The petitioner college is a recognized institution founded and administered by the Governing Body of the Nirmala College for Women Coimbatore, which is a registered society under the Tamil Nadu Societies Registration Act. Later, the name of the society was changed as Nirmala Education Society, Coimbatore. The society was formed by the Roman Catholic Congregation of the Franciscan Sisters of the Presentation of the Blessed Virgin Mary, Coimbatore. The congregation has been recognized as a Minority under Article 30(1) of the Constitution of India vide orders of this Court in W.P.No.655 of 1975 dated 24.09.1976. The Government also recognized the congregation as Minority vide proceedings of the Director of School Education in Rc.No.24541-G3/76 dated 20.11.1976. The College was established in 1948 with the aim of providing general and secular education in Graduate and Post Graduate levels. The college was initially affiliated to the Madras University and from 1982 onwards, it was affiliated to Bharathiyar University, Coimbatore. The college has been conferred with autonomous status by the University Grants Commission. In the college, as on date, there are 1300 students studying and 69+1 teaching staff and 44 non-teaching staff are working, being the sanctioned staff of the college. Out of the sanctioned strength of teaching staff, one post of Assistant Professor in the Department of Commerce fell vacant on 01.12.2015 due to retirement of previous incumbent Dr.Mrs.D.C.Uma. In the resultant vacancy, one Dr.S.Leema Rosaline was appointed with effect from 10.12.2015 and she joined duty on 10.12.2015. According to the petitioner institution, the new appointee Dr.S.Leema Rosaline was fully qualified for appointment as Assistant Professor in the

Department of Commerce. The appointment of the said person is also against the sanctioned vacancy. In fact, the 4th respondent University has also, vide proceedings dated 4.2.2016, granted qualification approval to the appointed staff, namely, Dr.Leema Rosaline as Assistant Professor in Commerce in the petitioner college.

3. After obtaining the qualification approval, the petitioner college submitted a proposal to the 3rd respondent Joint Director of Collegiate Education on 05.02.2016 for approval and appointment and disbursement of grant-in-aid towards her salary. As there was no action forthcoming for some time, the Office of the 3rd respondent was approached periodically. Finally, 3rd respondent, by proceedings dated 19.01.2017 returned the proposal insisting that the college should obtain the approval order from the Director of Collegiate Education for filling up the vacant post. The order passed by the 3rd respondent dated 19.01.2017 is put to challenge in the present Writ Petition, as being illegal and unconstitutional.

4. Mr.Issaac Mohanlal, learned Senior Counsel appearing for the petitioner, at the outset, would submit that the refusal to grant approval to the subject appointment by the 3rd respondent is per se unconstitutional and illegal. He would submit that there is no requirement for seeking prior approval from the Director of Collegiate Education or from any authority under the scheme of Tamil Nadu Private Colleges (Regulation) Act, 1976 and Rules framed thereunder since either the Act or the Rules does not mandate any such requirement at all. According to the learned Senior Counsel, the petitioner college being a minority institution, enjoys constitutional protection under Article 30 (1) of the Constitution of India. He would submit that once the University has given qualification approval for the appointee, the approval becomes automatic as far as minority institution is concerned and the issue as such, i.e. whether the minority institution requires prior approval from the authority before filling up either teaching or non-teaching post is no more res integra since number of decisions have been rendered by this Court, stating that there is no such requirement which is contemplated either in the Act or in the Rules. Even otherwise, according to him, once the College being the minority institution protected under Article 30 (1) of the Constitution, such insistence cannot stand the test of constitutionality and therefore, the impugned order passed by the 3rd respondent is liable to be interfered with.

5. On behalf of the Education Department, Mr.V.Kathirvelu, learned Special Government Pleader appeared and he would submit that unless prior approval from the competent authority is obtained, the petitioner college on its own, cannot fill up the

vacancy. The learned Special Government Pleader would reiterate the reasons as contained in the impugned order passed by the third respondent.

6. Mr. Isaac Mohanlal, learned Senior Counsel appearing for the petitioner would submit that a Division Bench of this Court had an occasion to deal with similar issue and held that there is no requirement for the minority institution under the Tamil Nadu Private College (Regulation) Act or Rules to seek prior permission. The learned Senior Counsel would rely upon a decision reported 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."

7. He has 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."

8. 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 and hence, it 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)"

9. From the above, it is very clear that the issue involved in the writ petition 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 advertng to various decisions, 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 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 3rd 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 by this Court vide judgment 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 educational 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 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 as to 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 have travel to this Court and 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 Court.

13. 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 3rd respondent/Joint Director in O.Mu.No.0666/A3/2016 dated 19.01.2017 is hereby set aside and the 3rd respondent is directed to grant approval to the appointment of Dr.S.Leema Rosaline as Assistant Professor in Commerce in the petitioner college and disburse grant-in-aid towards her salary and allowances from the date of her appointment, i.e. 10.12.2015. The 3rd 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)

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Sub Assistant Registrar

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To

1. The Secretary,
The State of Tamil Nadu,
Department of Higher Education,
Fort St.George,
Chennai-600 009.
2. The Director of Collegiate Education,
College Road, Chennai-600 006.
3. The Joint Director of Collegiate Education,
Coimbatore Region,
Coimbatore District-641 018.
4. The Bharathiar University,
rep. by its Registrar,
Maruthamalai Road,
Coimbatore District.

+1cc to M/s.Isaac Chambers, Advocate Sr.71906
+1cc to the Government Pleader Sr.72667, 72726

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