



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

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W.P. (MD)No.8187 of 2020

and

W.M.P. (MD) No.7608 of 2020

The Secretary,
Holy Cross College (Autonomous)
Nagercoil - 629 004
Kanyakumari District.

... Petitioner

Vs.

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,
Tirunelveli Region, Tirunelveli - 627 002. ... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the 3rd respondent Joint Director to approve forthwith the appointment of 8 Assistant Professors in the petitioner's college and disburse the grant-in-aid towards their salary and all other allowances with effect from the date of their appointments viz., 18.06.2018.

For Petitioner : Mr.K.Ragatheesh Kumar for
for M/s.Isaac Chambers

For Respondents : Mr.M.Jeyakumar, AGP

ORDER

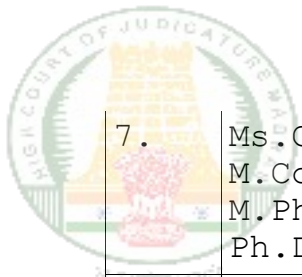
The prayer sought for in this writ petition is for a writ of mandamus, directing the 3rd respondent Joint Director of Collegiate Education to approve the appointment of 8 Assistant Professors, whose names have been annexed, in the petitioner's college and disburse the grant-in-aid towards their salary and all other allowances with effect from the date of their appointments viz.,



2.Short facts leading to file this writ petition are as follows:

(i)The petitioner College is a religious minority institution and it is an approved institution and affiliated to Manonmaniam Sundarnar University, Tirunelveli. In the petitioner College, there were 8 posts of Assistant Professors which became vacant and in those vacant posts, after due process of selection, 8 new Assistant Professors in various departments have been appointed on 18.06.2018. The details of those 8 Assistant Professors appointed are given in the following table:

Sl. No.	Name & Qualification	Designation	Date of Appointment	Vacancy Details
1.	Ms.P.Sathya M.A., M.Phil., SET	Assistant Professor in English	18.06.2018	Due to the retirement of Tmt.Leema Rose, M. on 30.04.2015
2.	Ms.K.Jeya Daisy M.Sc., M.Phil., Ph.D.	Assistant Professor in Mathematics	18.06.2018	Due to the retirement of Tmt.Inigo Mary Janet, V on 30.06.2017
3.	Ms.K.Deva Vijila, M.Sc., M.Phil., SET	Assistant Professor in Chemistry	18.06.2018	Due to the retirement of Tmt.Mary Saroja, P. on 30.11.2017
4.	Dr.Sheeba Daniel M.Sc., M.Phil., SET	Assistant Professor in Chemistry	18.06.2018	Due to the retirement of Tmt.Alankara Vasanthi, A. on 31.05.2018
5.	X.Venci Candida M.Sc., M.Phil., SET	Assistant Professor in Zoology	18.06.2018	Due to the dispensed of Tmt.Alice Prema, J. on 31.07.2017
6.	Dr.Prakash Shoba, S M.Sc., M.Phil., Ph.D.,	Assistant Professor in Zoology	18.06.2018	Due to the retirement of Tmt.Mary Saroja, Y on 31.07.2017



7.	Ms.C.Brabha M.Com., M.Phil., Ph.D.,	Assistant Professor in Commerce	18.06.2018	Due to the retirement of Tmt.Jesi Isabella S. on 31.05.2018
8.	R.Abilasha M.A., M.Phil., Ph.D.,	Assistant Professor in English	18.06.2018	Due to the retirement of Tmt.Nirmala, P. on 31.03.2018

(ii)It is the further grievance of the petitioner that, insofar as the qualification of these Assistant Professors, who were appointed in the petitioner's college, is concerned, their qualifications having been perused and considered by the affiliating University i.e., Manonmaniam Sundaranar University were individually approved vide communication dated 11.10.2018 for all the eight Assistant Professors. In order to appreciate the same, one such order of the Manonmaniam Sundaranar University dated 11.10.2018 is extracted hereunder:

"Sir,

Sub: Holy Cross College, Nagercoil -
Qualification approval of Assistant Professor in English -
intimated - reg.

Ref.Your letter No.598, dated 17.07.2018.

With reference to the above, I am, by direction, to inform that the Educational Qualification of the following individual has been verified and approved subject to Verification of genuineness of SET certificate as per the U.G.C. Regulations.

Name of incumbent with Department	Educational Qualification with % of marks and year of passing	Date of approval of qualification
P.Sathya, Assistant Professor in English permanent vacancy	M.A., English I Class, Apr. 2009, University of Madras, Chennai M.Phil., English, I Class, Oct. 2011, University of Madras, Chennai. SET in English, 08.09.2017 Mother Teresa Women's University, Kodaikanal.	18.06.2018 F.N.

However, the appointment procedure and other terms have to be verified by the Director of Collegiate Education, Chennai / Regional Joint Director of Collegiate Education, Tirunelveli/Competent authority of Government.

Yours faithfully,



(iii)With these backgrounds, those appointment proposals were sent by the petitioner College to the Director of Collegiate Education i.e., the 2nd respondent for approval individually on 16.11.2018 and in order to appreciate the same, one such communication seeking approval of the appointment dated 16.11.2018 of the petitioner college addressed to the 2nd respondent is extracted hereunder:

“எமது கல்லூரியில் பணி ஓய்வினால் ஏற்பட்ட நிரந்தர காலிப் பணியிடத்தில் கீழ்காணும் ஆசிரியர் 18.06.2018 அன்று முற்பகல் முதல் நேரடி நியமனம் செய்யப்பட்டார். எமது கல்லூரி சிறுபான்மை கல்லூரி என்பதால் அரசால் ஒப்பளிக்கப்பட்ட பணியிடத்தில் காலியாக உள்ள பணியிடமானது தகுதிவாய்ந்த ஆசிரியரால் நிரப்பப்பட்டது.

அன்னாரின் நியமன கருத்துருக்கள் உரிய ஆவணங்களுடன் தங்கள் ஒப்புதலுக்காக அனுப்பப்படுகிறது. தயைசூர்ந்து பணிநியமன ஒப்புதல் வழங்குமாறு தாழ்மையுடன் கேட்டுக் கொள்கிறேன்.

நன்றி

இவண்

ஓம்:- செயலர் ”

(iv)Thereafter, since the said request for approval has not been considered by the respondents, reminder letters also have been sent by the petitioner institution on 06.05.2019 and 29.06.2019. Despite these efforts taken by the petitioner institution with latest reminders, the said proposals for approval of appointment dated 16.11.2018 are not so far considered by the respondents and no orders have been passed. Therefore, the petitioner institution has filed this writ petition with the aforesaid prayer.

3.The learned counsel appearing for the petitioner institution would submit that, no reason whatsoever for keeping the proposals pending for all along has been given by the respondents. In an earlier occasion, against the very same petitioner college, when such proposals for approval of appointment were sent to the respondents, they took a stand that, the petitioner college should have obtained a prior approval to fill up the teacher's post. Challenging the same, writ petition was filed, which was allowed by this Court, as against which, intra Court appeal was filed by the respondents, that was also dismissed, as against which, SLP was filed by the respondents before the Hon'ble Supreme Court, where in SLP (Civil Diary) No.22766 of 2017, the Hon'ble Supreme Court rejected the SLP with the following order on 12.10.2018:



"Delay condoned.

The special leave petition is dismissed."

4. Therefore, if at all prior approval issue is the reason for keeping the proposals pending, even that issue also has been considered and decided conclusively by a hierarchy of Courts, where the petitioner institution and the respondents are parties, therefore, the judgment, since is a judgment-in-rem that would bind both the parties. Therefore, according to the learned counsel appearing for the petitioner, there could be no further impediment for the respondents to consider the approval proposals sent by the petitioner institution dated 16.11.2018. Hence, the petitioner is entitled to seek for a writ of mandamus.

5. Per contra, Mr.M.Jeyakumar, learned Additional Government Pleader appearing for the respondents would submit that, the proposals though have been sent on 16.11.2018, it has been under consideration with the respondents and in this context, every teacher, who has been appointed at the petitioner institution, whose appointment approvals are sought for, now have to be verified whether those teachers are qualified teachers and only thereafter, a decision has to be taken whether the approval can be granted to the appointments. Therefore, it cannot be said that the respondents have kept the proposals without any reason and therefore, if at all the proposals have been pending from 16.11.2018, certainly, those proposals in the light of the settled legal position would be considered and decided by the respondents at the earliest.

6. I have considered the said submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

7. As has been rightly pointed out by the learned counsel appearing for the petitioner, the petitioner institution being a minority institution, after making appointment of Assistant Professors in various departments in the sanctioned vacancies and after the qualification of the teachers also having been verified and certified by the University concerned in October 2018, sent the proposals on 16.11.2018 to the respondents. Thereafter, two reminders also have been sent, However, the same has so far not been considered. If at all any specific reason is available for the respondents for not approving the appointment, that could have been stated by this time, but, no such attempt since has been taken by the respondents, this Court feels that, for more than a year since the proposals have been kept pending without showing any progress, the petitioner is entitled to seek for a writ of mandamus.

8. In this regard, whether a prior approval for minority institution is required or not is no more an issue to be agitated before the Court of law, in other words, the said issue is no more



res-integra. In this context, it is to be noted that, I had an occasion to consider the same issue in respect of yet another institution in the case of "The Secretary, Arul Anandar College Autonomous), Karumathur, Madurai Vs. The State of Tamil Nadu represented by the Secretary, Department of Higher Education, Fort St. George, Chennai" in W.P.(MD) Nos.15601 and 15602 of 2018 by order dated 18.07.2018, where, having considered all these aspects, especially, in the context of the issue with regard to the prior approval, I had passed the following order:

"12.As has been rightly pointed out by the learned counsel appearing for the petitioner, there is no need for getting prior approval from the authorities concerned for making appointment in private aided colleges in this State as the law governing the private colleges, the Tamil Nadu Private Colleges Regulations Act, 1976 and the Rules called Tamil Nadu Private College Regulation Rules, 1976 and both in the Act or in the Rules, no such requirement is contemplated. This issue has been settled long ago by a number of decisions of this Court and one such decision of a Division Bench of this Court as cited supra in P.Ravichandran case is a complete answer to the question raised before this Court in these writ petitions.

13.In the said judgment, Division Bench after having exhaustively discussed the issue has affirmed that the Director of Collegiate Education cannot insist the private aided college management to get prior permission to fill up the vacant post for any sanctioned vacancies. The relevant portion of the Division Bench decision is extracted herein for easy reference:

"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 sanctions posts, by issuing circulars/administrative instructions.

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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."



14. In view of the rule position as well as categorical pronouncement of this Court in the afore cited Division Bench judgment, the same reason of prior permission as has been cited in the impugned order, no doubt is unsustainable and therefore, for that reason, the impugned order ought not have been passed.

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17. In view of the above, the impugned orders are quashed and the matter is remitted back to the respondents for reconsideration. While making reconsideration, the respondents shall not insist upon the college management to get prior permission for making appointment in a sanctioned vacancy as there is no such procedure contemplated either in the Tamil Nadu Private Colleges Regulation Act or in the Rules made thereunder and accordingly, pass necessary orders for the approval of the said appointments made by the petitioner college in the sanctioned vacancies and the needful shall be done by the respondents, within a period of six weeks from the date of receipt of a copy of this order."

9. Moreover, in respect of the petitioner institution itself, the issue of prior approval have already been raised and it has been decided by a series of judgments, which ultimately concluded by the dismissal of SLP filed by the department before the Hon'ble Supreme Court in SLP No.22766 of 2017 dated 12.10.20189.

10. Therefore, absolutely, there could be no further impediment for the respondents to consider the proposals dated 16.11.2018 sent by the petitioner institution for approval of the 8 Assistant Professors at the petitioner institution and in that view of the matter, this Court is inclined to dispose of this writ petition with the following order:

"The respondents, especially, the 2nd and 3rd respondents are directed to consider the proposals dated 16.11.2018 submitted by the petitioner institution for approval of appointment of 8 Assistant Professors at the petitioner institution, who were appointed from 18.06.2018 and consider the said proposals and pass orders thereon, on merits and in accordance with law by passing necessary orders for granting approval of such appointments, if the appointments are otherwise in order and such exercise shall be undertaken by the respondents 2 and 3 within a period of 8 weeks from the date of receipt of a copy of this order.



11. With above direction, this writ petition is disposed of.
No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Deputy Registrar (Accounts)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Secretary,
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,
Tirunelveli Region, Tirunelveli - 627 002.

W.P. (MD) No. 8187 of 2020

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29.07.2020

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SDS (12.08.2020) 9P-4C