



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD)No.12995 of 2020

(Through Video Conferencing)

WEB COPY

The Principal & Secretary
Lady Doak College
Madurai, Madurai District.

... Petitioner

Vs.

1.The State of Tamilnadu
Rep. by its Secretary
Department of Higher Education,
Fort St. George, Chennai.

2.The Director of Collegiate Education,
College Road, Chennai.

3.The Joint Director of Collegiate Education,
Madurai Region, Madurai District.

... Respondents

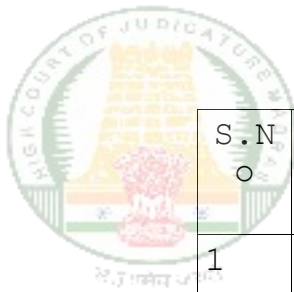
PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the 3rd respondent Joint Director to approve forthwith the appointment of 6 Assistant Professors (Name list annexed) in the petitioner's college and disburse the grant-in-aid towards their salary and all other allowances w.e.f. the respective dates of their appointment.

For Petitioner	:Mr.K.Ragatheeshkumar for M/s.Isaac Chambers
For Respondents	:Mr.M.Thilagar Government Advocate

ORDER

The prayer sought for in this writ petition is for a Writ of Mandamus to direct the 3rd respondent Joint Director to approve forthwith the appointment of six Assistant Professors in the petitioner's college and disburse the grant-in-aid towards their salary and all other allowances with effect from the respective dates of their appointment.

2. In the petitioner's College, in sanctioned vacancy, in the department of English, Social Science, Mathematics, Chemistry and Botany, appointments were made as Assistant Professors as per the details given as under:



S.No	Name & Qualification	Designation	Date of Appointment	Vacancy Details
1	P.Hillela M.A., NET., SET	Assistant Professor in English	12.06.2019	Due to the retirement of Mrs.Felcia Vasanthakumari on 31.05.2019
2	Dr.Anita Christine Tiphagne, M.A., M.S.W., NET., Ph.D.	Assistant Professor in Social Science	12.06.2019	Due to the retirement of Dr.Caroline Nesabai on 31.05.2019
3	M.Subathra M.Sc., SET	Assistant Professor in Mathematics	12.06.2019	Due to the retirement of Dr.Mary Sunithi Vijayan on 31.05.2019
4	D.Evangelina Christina Lily, M.Sc., M.Phil, SET	Assistant Professor in Mathematics	13.06.2019	Due to the retirement of Dr.Esther Daniel on 31.05.2019
5	Dr.K.Rajam M.Sc., M.Phil, Ph.D	Assistant Professor in Chemistry	12.06.2019	Due to the retirement of Dr.S.Vasantha on 31.05.2019
6	Dr.D.Reena Nava Roja M.Sc., M.Phil, Ph.D	Assistant Professor in Botany	12.06.2019	Due to the retirement of Dr.Rachel Regi Daniel on 31.05.2019

3. After the said appointments, the qualification of those appointees were also approved by the concerned affiliating University, ie., Madurai Kamaraj University by proceedings dated 26.11.2019. Thereafter, on 18.02.2020, the petitioner College sent a proposal to the third respondent, ie., the Joint Director of Collegiate Education, Madurai for approval of such appointments. Since the said proposal yet to be decided, the petitioner College has filed the present writ petition with the aforesaid prayer.

4. The learned counsel for the petitioner would submit that, the very same College, in respect of similar appointment proposal sent for approval, which was not considered, has approached this Court already in W.P. (MD) Nos.9058 and 9065/2020, where this Court



passed a detailed order giving directions to the respondents and these appointments also were similarly placed, therefore, a suitable direction to that effect as that of the directions given in the aforesaid writ petitions also may be given in this case also.

5. Heard the learned Government Advocate appearing for the respondents, who, while making an objection that has already been made in the aforesaid writ petition, which has been recorded in the earlier writ petition, has made further objection that, whether these appointments have been made or claimed to have been made in sanctioned vacancies and in that vacancies, whether the vacancies are still required to be sanctioned for appointment of new incumbents as compared with the pupil-Teacher ratio, as per the extant rules and also whether each of the appointees has got qualification for consideration of the appointment as Assistant Professors and whether the approval to such qualification claimed to have been given by the affiliating University are properly done or not, all have to be gone into and after verifying those aspects only, the respondents can consider the request of the College with regard to the approval of the appointments.

6. Therefore, the learned Government Advocate would submit that, it is not an automatic one, that merely because some appointments have been made by the petitioner College, who is getting aid from the Government as a teaching grant and therefore, the respondents have to make the approval then and there or forthwith, without even verifying both aspects. Therefore, the learned Government Advocate would submit that, the petitioner College is not entitled to get any mandamus as claimed herein, as the proposal sent by the College is under consideration before the respondents, which would be decided on merits.

7. I have considered the said submissions made by the learned counsel for both sides, especially, the objections raised by the learned Government Advocate for the respondents.

8. As has been rightly pointed out by the learned counsel for the petitioner, the plea raised herein is not a new one, as the very same College already approached this Court in the aforesaid writ petitions, where I have shown my indulgence by order dated 12.08.2020 in W.P.(MD) No.9058 and 9065/2020 the relevant portion of which are usefully extracted hereunder:

"11. I have considered the said submissions made by both sides and perused the materials placed before this Court.

12. As has been rightly pointed out by the learned counsel for the petitioner, the issue of getting prior permission, from the authorities before making appointment in the minority institution, for appointment



of teaching staff is concerned, is no more an issue to be decided and in other words, it is no more res-integra. Number of orders have been passed by this Court and I had some occasion to consider the similar issue and the order quoted above in W.P(MD)No.15601 and 15602 of 2018, dated 18.07.2018 is one of such order. It is further to be noted that, very recently the same issue has come up again, where also in W.P(MD)No.8187 of 2020 in the matter of **The Secretary, Holy Cross College (Autonomous), Nagercoil vs. The State of Tamil Nadu rep. by its Secretary and two others**, I had considered the earlier orders passed in this regard and found the very same reason of requiring the prior permission from the authorities is a bad one or unlawful and therefore, in this context, I allowed the said writ petition.

13. In order to appreciate the same, the relevant portion of the order, dated 29.07.2020 in W.P(MD)No.8187 of 2020 can be usefully referred to hereunder:-

"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 detail order.

14. Insofar as the second writ petition i.e., in W.P (MD)No.9065 of 2020 the learned Government Advocate would submit that the reasons cited in the impugned order is a different one and it is not related to prior permission.

15. However, on perusal of the impugned order, it has been specifically stated that the order granted in W.P.(MD)No.13667 of 2017 etc., batch dated 26.03.2018 would be applicable only in that case and therefore, the same cannot be made applicable to the present case and accordingly, the proposal has been rejected. However, in W.P(MD)No.13667 of 2017 etc., batch, the learned Judge of this Court by order dated 26.03.2018 exactly dealt with the same issue and in order to appreciate the



same, the relevant portion of the said order is extracted hereunder:-

"2.In all these writ petitions, the writ petitioners are one and the same. It is admitted that when sanctioned teaching vacancies arose, eligible candidates were appointed. In all these cases, Madurai Kamaraj University which is the affiliating University, accorded qualification approvals. But the Joint Director of Collegiate Education, Madurai Region, declined to grant approval on the sole ground that prior permission was not obtained by the respective educational institutions before filling up the said sanctioned vacancies. According to the said authority prior permission must have been obtained from the Director of Collegiate Education. This is the only ground for passing the orders of rejection.

3.As rightly contended by the learned counsel appearing for the petitioner the issue is no longer *res integra*. The Division Bench of this Court in the decision reported in **(2013) 7 MLJ 641 (P.Ravichandran Vs State of Tamil Nadu)** held that the Director of Collegiate Education cannot insist that Private Aided College Management should get prior permission to fill up the vacancies available in sanctioned posts.

4.Following the said decision, this Court quashes all the orders impugned in these Writ Petitions. The respondents 2 and 3 are directed to approve forthwith the appointments that are subject matter of these Writ Petitions and also disburse the grant-in-aid toward their salaries and allowances with effect from their respective dates of their appointment."

16. Therefore, it has become quite clear that in both the cases the only issue is that the petitioner's institution has to get a prior permission from the authorities, especially, the respondents herein before making an appointment in the sanctioned vacancy. In both the impugned orders, there is no other reason given with regard to the qualification of the teachers. More over, insofar as the qualification of the teachers are concerned, the same having been approved by the affiliating university that cannot be put against the petitioner or teachers concerned.



17. Time and again, this Court has given orders reiterating the said legal position, if it is a minority institution the prior approval for making appointment or to fill up the vacancies which is already sanctioned, would not arise at all and therefore, such insistent cannot be said to be legally sustainable one. In that view of the matter, this Court has no hesitation to interfere with the impugned order.

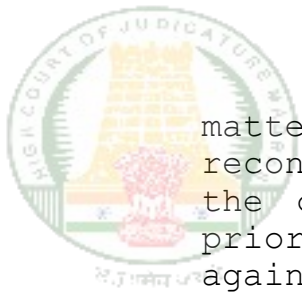
18. This Court wants to make a note of caution that whenever such kind of issue come up before the authorities concerned, especially, respondents herein, that too, particularly the second respondent, who is the competent authority, to give approval of the teachers appointment at collegiate level in the region concerned, such authorities shall apply their mind and after perusal of the file thoroughly, if they decide to reject the approval, they must give reason cogently with clarity and then, can pass the rejection order.

19. If the authorities, especially, the respondents herein, despite several orders having been passed by this Court on the similar issue, still chosen to give the very same reason once again, as if a valid reason, for rejecting the proposal for approval of appointment made in the minority institution, that can very well be construed as a flagrant violation of the direction issued by this Court and the law settled by this Court and can go to the extend of construing such action on the part of the respondents herein as an act of contempt of Court. Therefore, hereafter the respondents shall be cautious in dealing with the files, like this, for approval of appointment of teachers, where the reason which has been already decided by this Court cannot be quoted as the only reason for rejecting such approval proposal.

20. Despite this caution note given by this Court in this order if the respondents continue to adopt the same method by citing the very same reason of prior approval, certainly that kind of approach would not only be deprecated but also would be dealt with severely as indicated above as a flagrant violation of the orders of this Court and accordingly, *suo motu* proceedings can be initiated against erring officials under the relevant provisions of the contempt of Court Act.

21. With these observations, this Court is inclined to dispose of these writ petitions with the following orders:-

"(i) that the impugned orders are quashed and the



matter is remitted back to the respondents for reconsideration. While reconsidering the same, since the only reason cited in the impugned order that the prior permission is required, cannot be shown once again, accordingly, necessary orders for giving approval of such teaching staffs can be made, provided, if the teachers so appointed are otherwise eligible to hold the post, where they have been appointed. The needful as indicated above shall be undertaken, within a period of eight weeks from the date of receipt of a copy of this order."

22. With these directions and observations, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed."

9. The reasons stated in the above order dated 12.08.2020 would equally be applicable to the present case also. Therefore, this Court has no hesitation to hold that, the petitioner is entitled to seek a direction from this Court as that of the direction already given in the aforesaid two writ petitions.

10. In view of the same, this writ petition is disposed of with the following direction:

"That the respondents are hereby directed to consider the proposal sent by the petitioner College dated 18.02.2020 with regard to the appointment of six Assistant Professors as per the list mentioned in this order and accordingly, decide the same on merits and in accordance with law with regard to the approval of such appointments. In this regard, it is open to the respondents to verify the qualification of each of the appointee and also verify and satisfy that the appointment has been made in the sanctioned vacancy, which are still required for the purpose of imparting education in the College concerned, based on the pupil-teacher ratio. The needful, as indicated above, shall be undertaken by the respondents within a period of eight weeks from the date of receipt of a copy of this order."

11. With the above direction, the writ petition is disposed of. No costs. Consequently connected Miscellaneous Petition is closed.

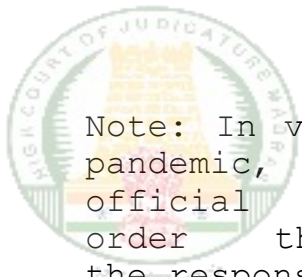
Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

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.

WEB COPY

To

- 1.The Secretary
State of Tamilnadu
Department of Higher Education,
Fort St. George, Chennai.
- 2.The Director of Collegiate Education,
College Road, Chennai.
- 3.The Joint Director of Collegiate Education,
Madurai Region, Madurai District.

+1CC to M/s.SPL GP,SR.No.18502 dated 30/09/2020

+1CC to M/s.Issac Chambers,SR.No.18440 dated 30/09/2020

W.P. (MD)No.12995 of 2020
29.09.2020

MA (CO)
KB(18.01.2021) 8P 6C