

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
01.04.2021	30.04.2021

CORAM

THE HON'BLE MR. JUSTICE R.MAHADEVAN

W.P.Nos.23366 to 23369 of 2015

A.Punitha Kala Mary [Petitioner in W.P.No.23366/2015]
V.Latha [Petitioner in W.P.No.23367/2015]
Johnson Premkumar [Petitioner in W.P.No.23368/2015]
J.Glory Darling Margaret [Petitioner in W.P.No.23369/2015]

Vs

1. The Secretary to Government,
Higher Education Department,
Fort St. George, Chennai-9.
2. The Joint Director,
Director of Collegiate Education,
Saidapet, Chennai-15.
3. The Correspondent/Secretary,
YMCA College of Physical Education,
Nandanam, Chennai-15. [Respondents in all the W.Ps.]

Writ Petition Nos.23366 and 23367 of 2015 filed under Article 226 of The Constitution of India praying to issue a writ of Certiorarified Mandamus, calling for the proceedings of the 2nd respondent in Na.Ka.No.8344/E2/2010-2 & 8344/E2/2010-1 dated 27.09.2012 and quash the same and direct the 2nd respondent to grant sanction to the appointment of the petitioner with effect from 30.06.2000 and direct to pay the salary and other benefits from 30.06.2000 to 30.05.2007.

Writ Petition Nos.23368 and 23369 of 2015 filed under Article 226 of The Constitution of India praying to issue a writ of Certiorarified Mandamus, calling for the proceedings of the 2nd respondent in Na.Ka.No.8429/E2/2011 dated 16.03.2011 and quash the same and direct the 2nd respondent to grant sanction to

the appointment of the petitioner with effect from 04.08.2000 and direct to pay the salary and other benefits from 04.08.2000 to 26.10.2007.

For Petitioners in .. Mr.K.Balaji
W.P.Nos.23366 and 23367 of 2015

For Petitioner in
W.P.No.23368/2015 ... Mr.N.G.R.Prasad,
for M/s.Row & Reddy

For Petitioner in ... Mr.D.Vijayakumar
W.P.No.23369/2015

For Respondents .. Mr.S.Karthikai Balan,
1 and 2 in all W.Ps. Government Advocate

For 3rd Respondent ... Mr.A.Saravanan

COMMON ORDER

Since the issues involved in all the four writ petitions are common, the same have been heard together and are being disposed of by this single order for the sake of convenience.

2.These Writ Petitions have been filed for issuance of a writ of Certiorarified Mandamus, challenging the two proceedings of the 2nd respondent in Na.Ka.No.8344/E2/2010-2 dated 27.09.2012 and Na.Ka.No.8429/E2/2011 dated 16.03.2011 respectively and quash the same. A consequential direction has also been sought to the 2nd respondent to grant sanction to the appointment of the petitioners from the date of their initial appointment and accordingly, pay difference in salary and other benefits to them.

3.The necessary facts leading to filing of these writ petitions are as follows:

The petitioners were appointed as Junior Assistant / Typist / Assistant Professors on 30.06.2000, 30.06.2000, 04.08.2000 and 04.08.2000 respectively in the sanctioned vacant posts caused due to retirement / promotion of the incumbents in the 3rd respondent Minority Institution subject to the approval by the 2nd respondent. Subsequently, the 3rd respondent sent proposals on 08.09.2000 and 05.03.2001 to the 2nd respondent, requesting to grant approval for the said appointments. By communications dated 27.09.2002 and 16.03.2001, the 2nd respondent granted approval for the same with effect from 01.06.2007 instead of 30.06.2000 in respect of the petitioners in W.P.Nos.23366 and 23367 of 2015 and from 26.10.2007 instead of 04.08.2000 in respect of the petitioners in W.P.Nos.23368 and 23369 of 2015.

Feeling aggrieved, all the petitioners jointly sent a legal notice dated 14.02.2015 to modify the date of approval i.e., from the date of their initial appointment on 30.06.2000 and 04.08.2000 respectively and also pay difference in salary during the said period. On receipt of the said legal notice, by letter dated 27.03.2015, the 2nd respondent called for certain particulars from the 3rd respondent Institution, which also duly furnished the same to the second respondent on 15.05.2015. However, till date, no action was taken by the second respondent. Therefore, the present writ petitions.

4. Upon notice, the second respondent filed a detailed counter affidavit, wherein, it is inter alia stated that the third respondent Institution was granted minority status for a period of five years from 2010-2011 vide G.O.Ms.No.309, Higher Education (G.1) Department, dated 21.09.2010 and they received grant-in-aid as per the guidelines issued by the Government and the Director of Collegiate Education, Chennai from time to time taking into overall considerations. It is also stated that as per Rule 11(1) of the Tamil Nadu Private Colleges (Regulation) Rules, 1976, the number of teachers employed in a college shall not exceed the number of posts fixed by the Director, from time to time, with reference to the academic requirements and norms of workload prescribed by the respective Universities and overall financial considerations; and pursuant to the same, the Government, Director of Collegiate Education and Joint Director of Collegiate Education have liberty to fix the date on which the salary grant can be admitted. According to this respondent, the proposals seeking approval for appointment of the petitioners were returned for want of permission of the Director of Collegiate Education and Minority Status orders, but after analysing various rules, Government orders and the proceedings of the Director of Collegiate Education, this respondent approved the appointment of the petitioners with effect from 01.06.2007 and 26.10.2007 and therefore, the same do not call for any interference at the hands of this Court.

5. The third respondent Institution also filed a counter affidavit, inter alia, stating that it has been recognised as a religious minority educational institution from the date of its establishment and in lieu of interim orders of this Court in CS.No.345 of 1998 to maintain status quo; subsequently the first respondent by G.O.Ms.No.309, Higher Education Department, dated 21.09.2010 having affirmed its minority status, there cannot be any dispute as to its minority status on the date of appointment of the petitioners; since the petitioners had the prescribed qualifications and their appointment was made in the sanctioned vacant posts, the second respondent should have granted the approval from the date of their initial appointment, but, the second respondent granted

approval for appointment of the petitioners only from 01.06.2007 and 26.10.2007; and thus, by an arbitrary exercise of the authority, the rights of the petitioners to avail the Government salary and pension as on the date of their appointment, are denied, according to this respondent.

6.Mr.N.G.R.Prasad, learned counsel for the petitioner in WP.No.23368 of 2015 submitted that the third respondent has been enjoying the minority status, as per the order of this Court in O.A.No.230 of 1998 in CS.No.345 of 1998 and while the said order was in force, they were conferred with the said right by G.O.Ms.No.309 Higher Education Department dated 21.09.2010 for a period of five years from 2010-11; and the petitioners were appointed in the vacancies caused due to retirement / promotion against the sanctioned posts. According to the learned counsel, the minority institution is entitled to select and appoint persons with the prescribed qualifications in the sanctioned vacant posts without the prior permission of the second respondent and accordingly, the third respondent appointed the petitioners in the vacancies acquired on account of promotion / retirement against the regular and sanctioned posts and sent proposals for approval to the second respondent, which were considered and approval was granted not from the date of initial appointment of the petitioners, but only from 01.06.2007 and 26.10.2007; and such approval is arbitrary, illegal and against the well settled principles of law and hence, the same is liable to be quashed and appropriate direction may be issued to the second respondent in this regard. In support of his contention, he placed reliance on the decisions of a Division Bench of this Court in (i)P.Ravichandran v. State of Tamil Nadu and others [(2013) 7 MLJ 641] and (ii)the Correspondent, De Britto Higher Secondary School, Sivagangai v. State of Tamil Nadu [WP(MD) Nos.14115 to 14119 of 2016 etc (batch cases) decided on 19.08.2016].

7.Adopting the aforesaid submissions, the learned counsel appearing for the petitioners in other writ petitions submitted that the petitioners are now, inclined not to claim interest for the arrears of difference in salary for the disputed period, in the event of getting approval from the date of their initial appointment. To that effect, they filed affidavits of Undertaking dated 30.03.2021 before this Court.

8.The learned Government Advocate appearing for the respondents 1 and 2 reiterated the averments made in the counter affidavit and submitted that the proceedings issued by the second respondent with respect to the grant of approval to the petitioners are perfectly right and hence, the same need not be interfered with by this Court.

9. Heard the learned counsel for the third respondent Institution, who fairly made his submission supporting the claim of the petitioners.

10. This Court considered the submissions made on either side and perused the materials available on record.

11. The main grievance of the petitioners as borne out from the writ petitions is with respect to the date of approval of their appointment. According to them, the second respondent should have granted the approval from the date of initial appointment of the petitioners.

12. It is seen from the documents enclosed in the typed set of papers filed by the petitioners that initially, the third respondent was enjoying the status of minority in view of the interim order granted by this Court in CS.No.345 of 1998 and when the said order was in force, they were granted the minority status by G.O.Ms.No.309 dated 21.09.2010 for a period of five years from 2010-11 and therefore, at the time of initial appointment of the petitioners, i.e., on 30.06.2000 and 04.08.2000, the third respondent was in the minority status. Also, it is relevant to refer to decision of the Supreme Court in *N.Ammad vs. Manager, Emjay High School and others* [(1998) 6 SCC 674], wherein, it was held that "a school which is otherwise a minority school, would continue to be so whether the Government declared it as such or not. When the Government declared the school as a minority school, it has recognised a factual position that the School was established and is being administered by a minority community". Paragraphs 12 and 13 of the judgement are usefully, extracted hereunder:

"12. Counsel for both sides conceded that there is no provision in the Act which enables the Government to declare a school as a minority school, if so, a school which is otherwise a minority school would continue to be so whether the Government declared it as such or not. Declaration by the Government is best only a recognition of an existing fact. Article 30(1) of the Constitution reads thus:

"30(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice"

13. When the Government declared the School as a minority school it has recognised a factual position that the school was established and is being administered by a minority community. The declaration is only an open acceptance of a legal character which

should necessarily have existed antecedent to such declaration. Therefore, we are unable to agree with the contention that the School can claim protection only after the Government declared it as a minority school on 2.8.1994."

Further, it is to be noted that though the second respondent returned the proposals seeking approval for appointment of the petitioners, for want of minority status of the third respondent Institution, they subsequently granted approval. Hence, there is no dispute with regard to the minority status of the third respondent Institution.

13.Next comes to the main issue relating to the approval for the appointment of the petitioners. On going through the materials placed before this Court, it is revealed that by the proceedings of the Director of Collegiate Education, Chennai in D.DisNo.19999/S2/75 dated 27.05.1977 and Rc.No.72291/S2/77 dated 09.08.1977, the third respondent Institution was sanctioned with 4 non-teaching staff from 1977-78; by the proceedings of the Director of Collegiate Education, Chennai in Rc.no.27564/ S3/77 dated 01.08.1978, the third respondent Institution was sanctioned with the following teaching posts:

Principal	-	1
Professors	-	2 - one (supernumerary post)
Assistant Professors	-	6
Medical officer	-	1
Physiotherapist	-	1

In addition of the above, one Librarian post was also sanctioned from 1977-78. Subsequently, by proceedings in Rc.No.54984/G4/99 dated 28.09.1999, one more post of Assistant Professor was granted to the third respondent Institution. It is further revealed that the petitioner in WP.No.23366 of 2015 was appointed as Junior Assistant with effect from 30.06.2000 in a vacancy arisen due to the promotion of Vincent Jeyakumar; the petitioner in WP.No.23367 of 2015 was appointed as Typist with effect from 30.06.2000 in a vacancy acquired due to the retirement of K.Rajagopal; the petitioner in WP.No.23368 of 2015 was appointed as Assistant Professor with effect from 04.08.2000 in a vacancy acquired due to the retirement of S.Davidson; and the petitioner in WP.No.23369 of 2015 was appointed as Assistant Professor with effect from 04.08.2000 in a vacancy acquired due to the promotion of Rajaseeli John; and all these appointments were made against the sanctioned posts by the third respondent;

since the petitioners were appointed in the sanctioned vacant posts, prior permission from the authority concerned is not necessary and in this connection, the decisions in P.Ravichandran case, followed in De Britto Higher Secondary School, Sivagangai case (cited supra) referred to by the learned counsel, do come to the aid of the petitioners. For better appreciation, the relevant portions of the common order passed in W.P.(MD)Nos.14115 to 14119 of 2016 etc. batch are reproduced 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.

.....

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."

In such circumstances, the second respondent ought to have granted approval for the appointment of the petitioners from the date of their initial appointment i.e., on 30.06.2000, 30.06.2000, 04.08.2000 and 04.08.2000 respectively, but they granted approval from 01.06.2007, 01.06.2007, 26.10.2007 and 26.10.2007 by the impugned proceedings dated 27.09.2012 and 16.03.2011 respectively.

14.The proceedings dated 16.03.2011 impugned in WP.Nos.23368 and 23369 of 2015 would disclose that the second respondent granted approval with effect from 26.10.2007 as if

the petitioners were appointed only against the posts additionally granted vide the proceedings of the Collegiate Education, Chennai in No.26627/G3/07 dated 26.07.2007, whereas the appointment orders dated 04.08.2000 and the proposals submitted by the third respondent dated 05.03.2001 would clearly demonstrate that the petitioners were appointed on 04.08.2000 in the vacancies arisen due to promotion / retirement against the originally sanctioned posts. Similarly, the proceedings dated 27.09.2012 impugned in WP.Nos.23366 and 23367 of 2015, would indicate that the petitioners were appointed in the vacancies against the posts sanctioned by proceedings in Na.Ka.No.17258/G1/2007 dated 31.05.2007 and hence, approval was granted to them with effect from 01.06.2007. On the other hand, the appointment orders dated 30.06.2000 and the proposals sent by the third respondent dated 05.03.2001 would show that the petitioners were appointed on 30.06.2000 in the vacancies arisen due to promotion / retirement against the originally sanctioned posts. It is nobody's case that the originally sanctioned strength of the teaching and non teaching staff in the third respondent Institution was subsequently, reduced. Further, there is no specific averment nor produced any material denying the claim of the petitioners and the counter affidavit filed by the second respondent lacks material particulars. Such being the factual position, this Court is of the opinion that there is no justification on the part of the second respondent in approving the appointment of the petitioners from 01.06.2007 and 27.10.2007, thereby denying their rights to get service and monetary benefits from the date of their initial appointment and hence, the impugned orders are arbitrary, illegal and unsustainable in law.

15. In such view of the matter, this Court deems it fit and appropriate to direct the second respondent to modify the date of grant of approval to the date of initial appointment of the petitioners. Accordingly, the second respondent is directed to grant approval for the appointment of the petitioners from the date of their initial appointment and consequently, pay the difference in salary and other benefits for the disputed period to them, within a period of six weeks from the date of receipt of a copy of this order. Such payment shall not bear any interest, as the petitioners have filed their respective affidavits dated 31.03.2021 to the effect that they will not claim interest for the difference in salary and other benefits for the disputed period. The impugned proceedings / orders passed by the second respondent are set aside and the matter is remanded back to the second respondent for passing fresh orders, to that extent alone.

16.All the writ petitions stand allowed in the terms as indicated above. No costs.

Sd/-
Assistant Registrar (CS-IV)

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Sub Assitant Registrar

tsi/rk

To

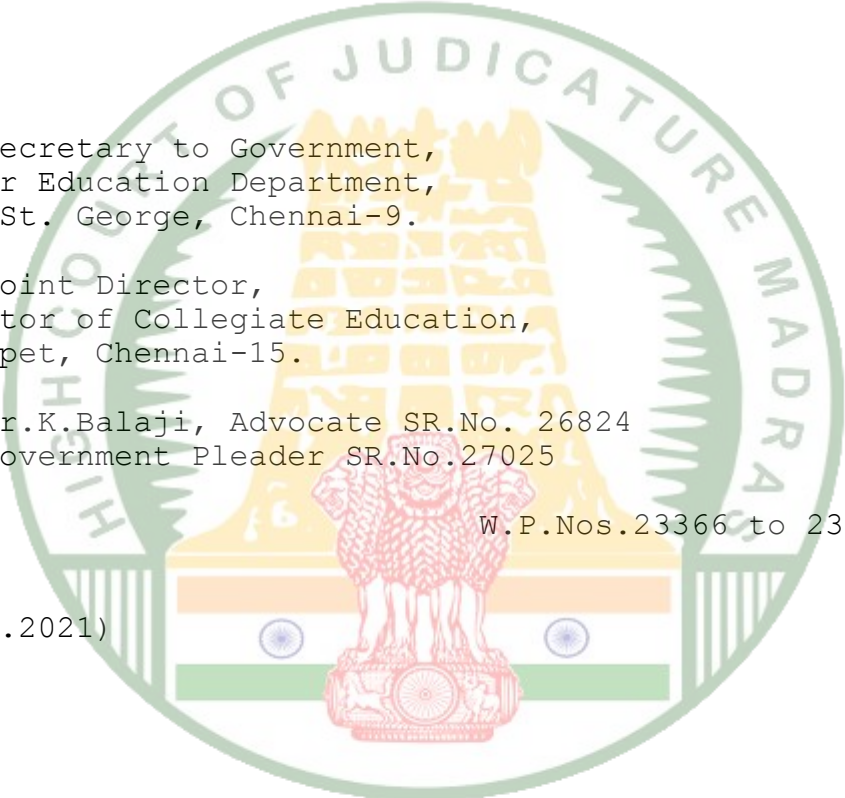
1. The Secretary to Government,
Higher Education Department,
Fort St. George, Chennai-9.
2. The Joint Director,
Director of Collegiate Education,
Saidapet, Chennai-15.

+1 CC to Mr.K.Balaji, Advocate SR.No. 26824

+1 CC to Government Pleader SR.No.27025

W.P.Nos.23366 to 23369 of 2015

UM (CO)
RLP (12.07.2021)



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