



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.04.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD) No.8550 of 2021

and

W.M.P (MD) No.6432 of 2021

WEB COPY

The Secretary
St. Mary's College (Autonomous)
Thoothukudi-628 001
Thoothukudi 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 District-628 001.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the third respondent Joint Director to approve forthwith the appointment of Dr.S.Bulomine Regi as Assistant Professor (Commerce) in the petitioner's College and disburse the grant-in-aid towards her salary and all other allowances with effect from the date of her appointment on 02.01.2020.

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

For Respondents : Mr.R.Murugaraj
Government Advocate

ORDER

This Writ Petition is filed to direct the third respondent, Joint Director of Collegiate Education to approve the appointment of Dr.S.Bulomine Regi as Assistant Professor (Commerce) in the petitioner's College and disburse the grant-in-aid towards her salary and all other allowances with effect from the date of her appointment on 02.01.2020.

2. Mr.R.Murugaraj, learned Government Advocate takes notice on behalf of the respondents. By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.



3. The petitioner's College was established in the year 1948. It is a recognised Religious Minority Educational Institution run and administered by the Society known as "The Tuticorin St. Mary's College Education Society". The College attained Autonomous status during the academic year 1987-1988. In the college, admissions are made strictly in accordance with the Norms & Guidelines prescribed by the University Grands Commission (UGC) and the University. The College is aided by the Government of Tamil Nadu. There are 1640 students now studying in the aided sections of the College. There are 92 teaching staffs and 57 non-teaching staffs in the aided sections. Out of 92 sanctioned posts, one post of Assistant Professor in the Department of Commerce fell vacant on 01.07.2019, due to the retirement of one Tmt.Elizabeth James, Associate Professor (Commerce), on 30.06.2019. In the said vacancy, the college appointed one fully eligible candidate namely Dr.S.Bulomine Regi, as Assistant Professor (Commerce) by appointment Order in Ref.No.A.O/02/Commerce/2020, dated 31.12.2019. She possessed M.Com., M.Phil., SET., Ph.D., qualifications. All the appointments are well within the staff strength fixed by the second respondent Director of Collegiate Education, vide Pa.Mu.No.45165/F3/99, dated 28.10.1999. Immediately, after the appointment of Dr.S.Bulomine Regi, the College submitted necessary proposal to the Manonmanium Sundaranar University, Tirunelveli, for grant of qualification approval. The University considering her eligibility, had granted qualification approval to Dr.S.Bulomine Regi for the post of Assistant Professor on 11.11.2020. Thereafter, for the purpose of disbursement of grant-in-aid towards her salary, the petitioner submitted proposal to the third respondent Joint Director vide proceedings Letter No.K.K.E.E/104/2020, dated 30.11.2020. The third respondent has not passed any orders on the same. The Officials of Joint Director of Collegiate Education informed the petitioner that orders are not passed, since the appointment was made without prior permission. In such circumstances, the petitioner has come out with present writ petition.

4. The learned counsel appearing for the petitioner submitted that the petitioner's College is a Minority Institution and there is no provision or necessity to obtain prior permission before filling up the vacancy in the sanctioned posts. He relied on the Common Order passed by this Court, ***dated 18.09.2020*** made in ***W.P (MD) Nos.12012 of 2020 etc., batch (The Secretary vs. The Director of Collegiate Education, Chennai and another)*** filed by the petitioner's College to approve the appointment of 12 Assistant Professors made earlier and prayed for allowing the writ petition. The relevant portion of the order is extracted hereunder:-

"14. It is further made clear that, since the issue of getting prior permission from the official respondents



before filling up the posts has already been decided in number of cases and in this regard, I had an occasion to consider the same issue in W.P.(MD) No.8187/2020 in the matter of Secretary, Holy Cross College, Nagercoil v. The State of Tamil Nadu, rep. by its Secretary and others, dated 29.07.2020, where I have passed the following order:

"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

<https://hcservices.ecourts.gov.in/hcservices> 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 12.10.2018.

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 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."

15. In view of the settled legal position, the respondents shall not insist for any prior permission for making such appointments."

5. Heard the learned counsel appearing for the petitioner and the learned Special Government Advocate appearing for the respondents.

6. From the materials on record, it is seen that the petitioner sent proposal for approval of appointment of Dr.S.Bulomine Regi as Assistant Professor to the third respondent. The third respondent has not passed any orders. According to the petitioner, the officials of the third respondent orally informed that no order has been passed, since the petitioner's College has not obtained prior permission from the third respondent, for appointment of said Dr.S.Bulomine Regi, but there is no order in writing to that effect. In any event, the proposals sent by the petitioner's College is pending with the third respondent.

7. In view of the above facts, the third respondent is directed to consider the proposal of the petitioner dated 30.11.2020, taking into consideration the earlier order dated 18.09.2020 passed by this Court in W.P(MD)Nos.12012 of 2020 etc., batch referred to above and approve the appointment of Dr.S.Bulomine Regi as Assistant Professor (Commerce) in the petitioner's College and disburse the grant-in-aid towards her salary and all other allowances with effect from the date of her appointment on 02.01.2020.

8. In the result, the writ petition is allowed. No Costs. Consequently, connected miscellaneous petition is closed.

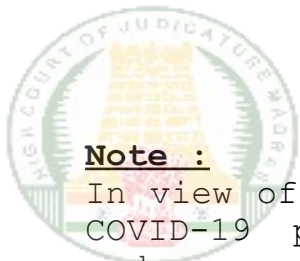
Sd/-

Assistant Registrar (AE)

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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.
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To

- 1.The 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 District-628 001.

+1 CC to M/s.SPL GP (SR-18073[F] dated 29/04/2021)

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-17973[F] dated 29/04/2021)

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GS (16.06.2021) 7P 6C