



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)No.18504 of 2019

and W.M.P. (MD)No.14907 of 2019

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The Secretary,
Sadakathullah Appa College (Autonomous)
Rahmath Nagar,
Tirunelveli - 627 006,
Tirunelveli 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,
18, Tiruchendur Road,
Murugan Kurichy, Tirunelveli - 627 002.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the third respondent Joint Director to approve forthwith the appointment of 9 non-teaching staff (name list annexed) in the petitioner -college and disburse the grant-in-aid towards their salary and allowances with effect from the date of their appointment i.e, 25.04.2019.

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

For Respondents : Mr.P.Subbaraj,
Government Advocate.

ORDER

The petitioner has filed this Writ Petition, seeking a direction to the third respondent to approve forthwith the appointment of 9 non-teaching staff in the petitioner college and disburse the grant-in-aid towards their salary and allowances with effect from the date of their appointment i.e., 25.04.2019.

2. According to the petitioner, the petitioner college is a recognized Religious Minority Educational Institution. There are 3842 students studying in the college. The college is partly aided



by the Government. Totally there are 60 teaching staff and 19 non-teaching staff are working under the aided scheme. That apart, 99 teaching staff and 58 non-teaching staff are working under the self-financed sections. The second respondent has sanctioned various non-teaching posts to the petitioner college under aided scheme. While so, the various sanctioned non-teaching posts in the petitioner college fell vacant. Though it is not required to get any permission from the second respondent to fill up the sanctioned vacancy, the college has submitted proposals to the second respondent on 12.12.2017 and 26.06.2018, seeking permission to fill up 9 non-teaching posts viz., 1 Typist, 1 Store Keeper, 1 Laboratory Assistant, 2 Record Clerk, 4 Office Assistant. The second respondent has not passed any order on the proposal. The petitioner college considering the need of non-teaching staff, by following due process of law, appointed 9 non-teaching posts. All the 9 appointments have been made against the sanctioned vacancy fixed by the second respondent, by his proceedings dated 11.10.1973 and 23.02.1987. The incumbents appointed are fully qualified for their respective posts. Immediately, after the appointment of the 9 non-teaching staff, the petitioner college submitted proposal to third respondent on 22.07.2019, requesting to approve those appointments for the purpose of disbursement of grant-in-aid towards their salary. The third respondent has not passed any order. According to the petitioner, on enquiry, the third respondent informed the petitioner that approval will not be granted, as second respondent has not given prior permission for filling up the said posts. Hence, the petitioner has come out with the present Writ Petition.

3. The learned counsel appearing for the petitioner relied on the following judgments, in support of his submissions:

(i) **2012 (4) MLJ 918 [C.Manikandan Vs. State of Tamil Nadu, Rep. By Secretary to Government, Department of Higher Education]**, wherein this Court has held as follows:-

"19.Insofar as the other point with regard to the requirement of prior permission before filling up the vacancy is concerned, it is seen that the post of Waterman was sanctioned by the second respondent through his proceedings dated 27.05.1977 and the said post was not resumed are withdrawn later. Therefore, when the petitioner was appointed in the year 1996 by the 5th respondent-college to the post of Waterman, the said post was very much available with 5th respondent-college as a sanctioned post and consequently, when the petitioner was appointed in a sanctioned post by the 5th respondent- college there need not be any prior permission from the respondents 1 to 3 before filling up the said post. The same issue as to whether any prior permission is required before filling up the post in a sanctioned vacancy was considered by a learned Single



Judge of this Court in W.P.No.4960 and 14450 of 1997 dated 10.07.2007 (cited supra) and the learned single Judge has held that once the appointment of the person in a sanctioned post is made in accordance with law no prior permission from the Directorate of Collegiate Education is required. The said order of the learned Single Judge was appealed against in W.A.No.92 and 93 of 2008 and the Hon'ble Division Bench dismissed the Writ Appeals on 06.01.2010 by observing as follows at paragraphs 3 and 4:-

"3.The learned single Judge has dealt with both the above said Writ Petitions together and by following the decision of this Court rendered in W.P.No.28396, dated 29.03.2006, the learned Judge has categorically held that once appointment of a person in a sanctioned post is made in accordance with law, no prior permission from the Director or Collegiate Education is required. While holding so, the learned Judge has quashed the impugned proceedings, dated 28.02.1997 and directed the appellants to approve the writ petitioner's (C.Karunakaran) appointment from 2.7.1990 with all consequential service benefits.

4.In view of the such a categoric conclusion of the learned single Judge which was arrived by him by following the earlier decision of this Court rendered in W.P.No.28396, dated 29.03.2006, we do not find any scope to interfere with the said order, except to confirm the same."

(ii) 2013 (5) LW 514 [P.Ravichandran Vs. State of Tamil Nadu, Rep. By Secretary to Government, Department of Higher Education], wherein this Court has held as follows:-

"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.

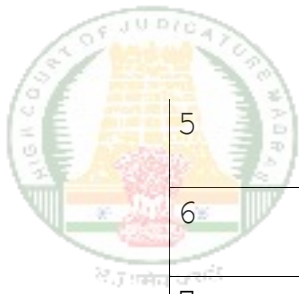
The writ appeal is disposed of with the above directions. No costs."

4. The learned Government Advocate appearing for the respondents submitted that the petitioner has sought prior permission to fill up the non-teaching posts. The second respondent has not passed any order. When there is no prior permission to fill up the posts, the petitioner has appointed 9 non-teaching staff without prior permission of the authorities. In view of the same, the petitioner is not entitled for approval and prayed for dismissal of this Writ Petition.

5. Heard the learned counsel appearing for the petitioner, learned Government Advocate appearing for the respondents and perused the materials available on record carefully.

6. From the above materials available on record, it is seen that the petitioner college is a Private Minority Aided college. 9 vacancies arose against the sanctioned non-teaching posts due to retirement / promotion of previous incumbents. Even though, it is not necessary to obtain prior permission to fill up the said sanctioned vacancy, the petitioner sought for prior permission from the second respondent. The second respondent has not passed any order. Therefore, due to the need of the college for non-teaching staff, the petitioner appointed the following persons:

S.No.	NAME	POST	DATE OF APPOINTMENT
1	A.Ameer Masthan Bathusha	Typist	25.04.2019
2	S.Mohamed Froskhan	Store Keeper	25.04.2019
3	A.Ameenal	Laboratory Assistant	25.04.2019
4	M.Kadar Hussian	Record Clerk	25.04.2019



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5	S.Fathimuthu Joharah	Record Clerk	25.04.2019
6	S.Jaffer Ali	Office Assistant	25.04.2019
7	T.K.Asan Mydeen	Office Assistant	25.04.2019
8	M.Kadar Mohideen	Office Assistant	25.04.2019
9	S.Fathima Safrin	Office Assistant	25.04.2019

After such appointments, the petitioner submitted proposal for approval of said appointment to the third respondent. But, the third respondent has not passed any order on the proposal submitted for approval of appointment of 9 non-teaching staff. According to the learned counsel for the petitioner, on verification, the petitioner was informed in the office of the third respondent that proposal for approval is kept pending, as second respondent has not granted prior permission for the appointments of non-teaching staff. The two judgments relied on by the learned counsel for the petitioner referred to above, makes it clear that no prior permission is necessary for appointment made in a sanctioned vacancy by the Private Aided Minority college.

7. In view of the above judgments, the third respondent is directed to consider the proposal sent by the petitioner without insisting on prior permission for such appointments and approve the appointments of the persons appointed, if they are otherwise qualified to be appointed in the said posts, within a period of four weeks from the date of receipt of a copy of this order.

8. With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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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

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State of Tamil Nadu,
Department of Higher Education,
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2.The Director of Collegiate Education,
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3.The Joint Director of Collegiate Education,
18, Tiruchendur Road,
Murugan Kurichy, Tirunelveli - 627 002.

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-23962[F] dated 27/07/2021)

+1 CC to M/s.SPL GP (SR-24004[F] dated 27/07/2021)

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RK (23.08.2021) 6P 6C