



W.P.(MD)No.5345 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.5345 of 2018

and

W.M.P(MD)No.5282 of 2018

Sr.S.Sagaya Mary Alice
St.Theresa's Girls Higher Secondary School,
Karur - 639 004,
Karur District.

... Petitioner

Vs.

1.The Government of Tamil Nadu

Rep. by its Secretary,
Department of School Education,
Fort St.George,
Chennai - 9.

2.The Director of School Education,

DPI Campus,
College Road,
Chennai - 6.



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3.The Chief Educational Officer

Office of the Chief Educational Officer,
Karur District.

4.The District Educational Officer

Office of the District Educational Officer,
Karur,
Karur District.

5.The Correspondent

St.Theresa's Girls Higher Secondary School,
Karur - 639 004,
Karur District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order, dated 17.01.2018 in O.Mu.No. 7004/A4/2017 on the file of the fourth respondent and quash the same, directing the respondents to accord approval to the appointment of the petitioner Sr.S.Sagaya Mary Alice, working as Junior Assistant in St. Theresa's Girls Higher Secondary School, Karur - 639 004, Karur District, w.e.f. 01.08.2017, with all monetary and other service benefits.



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For Petitioner : Mr.V.John Kennedy,
for M/s.Father Xavier Associates

For Respondents : Mr.J.Ashok - for R1 to R4
Additional Government Pleader

ORDER

This writ petition has been filed to quash the impugned order, dated 17.01.2018 in O.Mu.No.7004/A4/2017 on the file of the fourth respondent and to direct the respondents to accord approval to the appointment of the petitioner Sr.S.Sagaya Mary Alice, working as Junior Assistant in St. Theresa's Girls Higher Secondary School, Karur - 639 004, Karur District, w.e.f. 01.08.2017, with all monetary and other service benefits.

2. The case of the petitioner is that the fifth respondent school is a Christian aided minority school and it was established in the year 1947. In that School, the petitioner was appointed as Junior Assistant in the regular sanctioned post. The staff fixation report for the academic year 2016-2017



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clearly reveals the eligibility of said post for the fifth respondent School. In the sanctioned vacancy, the petitioner was appointed. After appointment, the fifth respondent school forwarded the proposal of the said appointment of the petitioner for approval on 07.11.2017. However, the same was returned on the ground that the fifth respondent school not obtained prior approval for filling up the said post. Challenging the same, the present writ petition is filed.

3. The learned counsel for the petitioner submitted that the issue arises in this writ petition is no longer *res integra* as already the Division Bench of this Court in W.A.(MD) No.462 of 2016, dated 01.12.2016 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 be approved by the Department and at that point of time, Department would have opportunity to consider the availability of such post and rejection of approval, on the ground that no prior approval was obtained before the appointment was set aside. Accordingly, he prayed for allowing the writ petition.



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4. The learned Additional Government Pleader appearing for the respondents 1 to 4 did not dispute the fact submitted by the learned counsel for the petitioner.

5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. The facts in the present case are not in dispute. The issue arises in the writ petition is whether it is necessary for the fifth respondent minority school to get prior approval for appointment of a non-teaching post. The learned Single Judge has elaborately discussed the same issue in W.P.No.29998 of 2014 etc., batch and the relevant portion is extracted as follows :

"4. The issue involved in these writ petitions for filling up of vacancies against the sanctioned strength of Non-teaching staff by the Minority Institutions is no longer res integra, for, a Division Bench of this Court, even three years



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ago, in P.Ravichandran v. State of Tamil Nadu and others reported in [(2013) 7 MLJ 641], has settled that issue and, following the said judgment, I have also, in a batch of writ petitions, i.e., in W.P.(MD)Nos.14115 to 14119 of 2016 etc. (batch cases), (decided on 19.08.2016), ordered the official respondents therein to accord approval for filling up of the vacancies against sanctioned posts of non-teaching Staff by the Private Aided Schools. For better appreciation, relevant portions of the order passed by me are extracted 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 vs. 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



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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;



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(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



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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.



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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



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period of four weeks from the date of receipt of a copy of this order."

5. Thus, the issue is well settled now that any school, either minority/private/aided or unaided, is entitled to fill up the vacancy arising on account of promotion, retirement, removal, dismissal etc., against a sanctioned post already approved by the school authorities, without even obtaining prior permission from the Government. In the cases on hand, admittedly, the writ petitioners have been appointed against vacancies relating to sanctioned posts as Non-teaching staff in various cadres and therefore, by following the above cited case laws, this Court hereby directs the respective respondents to approve the appointments of the Non-teaching staff by the Private Aided Schools and to sanction the grant within a period of four weeks from the date of receipt of a copy of this order.

In fine, for the reasons stated above, the writ petitions are allowed by quashing the impugned orders. No Costs. Consequently, connected miscellaneous petitions are closed. "



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7. In view of the above said decision, the impugned order passed by the official respondent is set aside and the respondents are directed to approve the appointment of the petitioner within a period of six weeks from the date of receipt of a copy of this order.

8. With the above directions, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

09.02.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No

RM



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To
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M.DHANDAPANI, J.

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