



W.A.No.1452 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
20.06.2024	08.08.2024

CORAM:
THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR,
ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.A.No.1452 of 2022
and CMP.No.9362 of 2022

1.Secretary to the Government of Tamil Nadu,
Department of Higher Education,
Fort St.George, Chennai-9.

2.The Director,
State Council of Educational Research and Training,
Chennai-6.

3.Principal,
DIET, Kaliyampoondi,
Kanchipuram District.

... Appellants

-VS-

1.Mr.D.Isravel
Gnanodhaya Teacher Training Institute,
1/60m Polwels Road,
St.Thomas Mount,
Chennai-600 016.

2.The Correspondent,
Gnanodhaya Teacher Training Institute,
1/60, Polwels Road,
St.Thomas Mount, Chennai-600 016.

... Respondents



W.A.No.14... of 2022

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 03.01.2022 made in W.P.No.1823 of 2021.

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For Appellant : Mr.J.C.Durairaj,
Additional Government Pleader

For Respondents : Dr.Father Xavier Arulraj,
for Ms.A.Arul Maru for R1
Mr. FR.S.Savarimuthu for R2

JUDGMENT

D.KRISHNAKUMAR, ACJ.

This Intra Court appeal has been filed as against the order of the Writ Court dated 03.01.2022 made in W.P.No.1823 of 2021, allowing the challenge made by the first respondent /writ petitioner to the order of the second respondent dated 20.11.2015 and directing the official respondents to grant approval to the writ petitioner as Office Assistant in the second respondent Institute from the date of his initial appointment.

2. The case of the first respondent / writ petitioner is that he was appointed as Office Assistant in the second respondent Training Institute in a sanctioned regular upgraded post. The second respondent is an aided institution and the first respondent was appointed in the vacancy that arose due to the retirement of one E.Selvaraj on 29.02.2008. According to the writ petitioner/first respondent, he has been regularly working from the date of his initial appointment and affixing his signature in the



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Attendance Register from the date of his original appointment on 09.07.2008. The second respondent, being a minority aided institution, submitted a proposal for approval of the appointment of the first respondent/writ petitioner to the educational authority on 05.11.2008. The said proposal was returned by the authorities on 29.09.2009 stating that the writ petitioner cannot be appointed without obtaining proper approval from them.

3. While that being so, the second respondent institute sent a representation to the third appellant, seeking accord of approval based on G.O.(Ms.)No.40 dated 14.03.2023 and the subsequent proceedings of the second appellant dated 22.04.13. The third appellant, vide impugned proceedings dated 20.11.2015, accorded approval to the appointment of the writ petitioner, but the grant of service benefits were confined only from 14.03.2013 and not from the date of his initial appointment dated 09.07.2008. The action of the appellants 1 to 3, in not according approval from 09.07.2008 is the subject matter of challenge in the writ petition. The Writ Court allowed the claim of the writ petitioner/first respondent, against which the instant writ appeal has been filed by the official respondents therein.



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4. Mr. J.C.Durairaj, learned Additional Government Pleader for the appellant has submitted that when the Government's order banning not to fill up vacant non-teaching post in Aided High and Higher Secondary Schools and as a consequence, the first respondent/writ petitioner's appointment as Office Assistant in the second respondent Institute rightly has not been approved from the year 2008. It is further that since there was no Government order issued to fill up the vacancies, the grants to be paid to the first respondent/writ petitioner which is recognized under Rule 11 of the Tamil Nadu Private schools (Regulation) Acts 1973 and Rules 1974, cannot be approved as these payments shall be subject to the Government orders and instructions that are issued from time to time. The learned Additional Government Pleader for the appellant also points out that the Management of the Institute is the appointing authority, who should have followed the Government order to appoint the first respondent/petitioner to the Post of Office Assistant from 14.03.2013 and not from 09.07.2008, which is against the orders of the Government, which makes the appointment unapproved from 09.07.2008 to 13.03.2013 and therefore, prayed for interference.

5. Dr.Father Xavier Arulraj, learned counsel for the first respondent/writ petitioner contended that the first respondent was appointed against the vacancy that arose due to the retirement of one E.Selvaraj on 29.02.2008 and the first respondent has been



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working regularly from the date of his initial appointment till date and at this distant point of time, refusal to grant approval from the date of his initial appointment on the ground that no prior approval has been obtained from the authorities is legally unsustainable. It is further contended that the issue raised in the instant writ appeal is no longer *res integra* as umpteen number of decisions have been rendered favouring the claim of similarly placed persons as that of the first respondent/writ petitioner and therefore, prays for dismissal of this writ appeal. The learned Senior Counsel for the first respondent/writ petitioner has relied upon the following orders / decisions of this Court as well as the Hon'ble Supreme Court:

- (i) Order dated 04.08.2008 made in W.A(MD)No.456 of 2008
- (ii) Order dated 16.09.2008 made in W.A.No.558 of 2008
- (iii) Order dated 12.07.2010 made in W.A.No.258 of 2009
- (iv) Order dated 12.07.2010 made in W.A.No.276 of 2009
- (v) Order dated 31.08.2010 made in W.A.No.83 of 2010
- (vi) Order dated 18.10.2010 made in W.A.No.1121 of 2009
- (vii) Order dated 25.01.2011 made in W.A.No.1077 of 2009
- (viii) Order dated 04.03.2011 made in W.A.No.306 of 2011
- (ix) Order dated 06.07.2011 made in W.A.No.1042 of 2011
- (x) Order dated 19.09.2011 made in W.A.No.1916 of 2009
- (xi) Director of College Education v. N.Beaula Rani and Others reported in [2018 SCC Online 9025 : (2019) 1 LLJ 278]
- (xii) Order dated 19.07.2019 in W.A.No.2096 of 2019.
- (xiii) Order dated 11.02.2020 in W.A.No.4011 of 2019



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(xiv) Thiruvalluvar Higher Secondary School v. The Government of Tamil Nadu [2008 (5) CTC 648]

(xv) Deva Asir v. The Secretary to Government, School Education Department and Others [2016-3-L.W.152]

(xvi) Order dated 02.08.2017 made in W.P.No.13413 of 2016

(xvii) Order dated 06.09.2017 made in W.P.(MD)No.16767 of 2017

(xviii) Order dated 15.03.2019 made in W.P.No.4071 of 2014

(xix) Order dated 07.02.2020 made in W.P.No.28893 of 2019

(xx) Order dated 28.10.2010 made in W.P.No.11017 of 2020.

6. This Court has considered the rival submissions and also perused the materials on record.

7. The issue involved in the writ appeal for filling of vacancies against the sanctioned post of Non-Teaching staff by the minority institutions is no longer res integra.

8. In *S.Christy V. The Chief Educational Officer, Kanyakumari District and others*, reported in 2011 (5) CTC 532, the petitioner in that case was appointed as Post Graduate Assistant in an Aided Minority School. The appointment was not approved of on the ground that no prior permission was obtained before making the appointment



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from the educational authorities. This Court categorically held that no prior approval is required to appoint the teacher in the sanctioned post. It is useful to extract paragraph 5 of the said order in this regard :

"5. In view of the settled law by this Court, the stand taken by the respondent in not considering the case of the petitioner for granting approval of the petitioner is not sustainable in law, as on true interpretation of rule 15, only conclusion which can be drawn is, that for appointment to sanctioned post, no prior approval is necessary, nor it can be a ground to deny the approval to appointment of a qualified person."

In the aforesaid decision, this Court categorically held that no prior approval is necessary for the appointment of a teacher in a sanctioned posts. Curiously, against the said order, a Writ Appeal was preferred by the Private Aided School. The appeal was dismissed, confirming the order of the learned Single Judge, by a Division Bench of this Court in ***The Manager, Concordia High and Higher Secondary Schools V. Tmt.S.Christy and Others, reported in 2013 Writ L.R. 691***. It is relevant to extract paragraph 4 and the following passage in paragraph 6 of the said Division Bench Judgment in 2013 Writ L.R. 691 as hereunder:

"4. In considering the contentions as put forth in the writ petition, learned single Judge pointed out to the judgment passed by this Court in W.A.Nos.93 and 94 of 2009 decided on 06.01.2010 that for any sanctioned post, no prior approval is necessary. In respect of proceedings noting the availability of posts, the learned single Judge



pointed out that there is no necessity for prior approval. In any event, the appointment without getting approval could not be a ground for not considering the writ petitioner's plea. Accordingly, this Court allowed the writ petition directing the respondents therein to forthwith grant approval for appointment, within a period of two months from the date of receipt of certified copy of the order of the writ Court.

6. We fail to understand the logic of the Management in challenging the order, particularly when the Management does not dispute the appointment of the first respondent in the place of the retired teacher and there is a specific direction to the respondents in the writ petition to approve the appointment of the writ petitioner for granting further service benefits including the salary.."

9. In ***Dr.S.Sukumaran V. State of Tamil Nadu rep. by its Secretary, Higher Education, Fort St. George, Chennai and Others, reported in (2012) 5 MLJ 670***, a similar question arose for consideration as to whether the Private Aided Minority College has to get prior permission from the Education Department before filling up of the sanctioned posts. This Court held in categorical terms held that the Private Aided Minority College need not seek prior approval for appointment in a sanctioned post. Paragraph 9 of the said judgment is extracted in this regard :

"9.The point arises for consideration in this writ petition is as to whether the petitioner is entitled to get his appointment approved from the second respondent as he is appointed in a sanctioned post in the fourth respondent aided minority college, in a retirement vacancy. The retirement vacancy arose on 31.5.2008. The fact about the availability of



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the post in the fourth respondent-college as per the staff fixation order is not in dispute and the same is also not the contention raised by the second respondent in the reply to the RTI query. The petitioner having been appointed in a sanctioned post of the fourth respondent-college and the fourth respondent-college being a minority college, there is no necessity to get prior permission from the department and the said issue was considered by me in detail in W.P.No.19715 of 2009, dated 31.3.2011 and a direction was issued to approve the appointment of the petitioner following the Division Bench judgments. In the recent Division Bench judgment in W.A.No.2345 of 2011, dated 5.3.2012 also, same view is taken."

10. In ***S.Rasheetha Banu V. State of Tamil Nadu, rep. by its Secretary to Government, Chennai and others, reported in (2012) 4 MLJ 198***, similar question arose for consideration in that judgment also. It is categorically held by this Court that if a person is appointed in a sanctioned post in the Private Aided Minority School, the approval cannot be rejected for the purpose of grant on the ground that no prior permission was obtained before appointment. It is useful to extract paragraph 7 of the said order in this regard :

"7. The issue involved in this Writ Petition was already considered by a Division Bench of this Court in W.A.No.1263 of 2001, dated 22.1.2004. In the said Judgment, it is held that if a person is appointed in a sanctioned post, the approval of appointment cannot be rejected and if there is fall in strength and the post become surplus, after granting approval of the post, the said teacher along with post could be transferred/deployed to a needy school. The said Judgment of the Division Bench was followed in W.P.(MD)No.11353 of 2008, dated



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11.9.2009. As against the said order dated 11.9.2009, the department preferred W.A.(MD)No.703 of 2009. A Division Bench of this Court, by Judgment dated 1.2.2011, dismissed the said Writ Appeal."

11. In ***C.Manikandan V. State of Tamil Nadu rep. by its Secretary, Department of Higher Education, Chennai and others, reported in (2012) 4 MLJ 918***, the issue came up for consideration before this Court in that case is as to whether the Private Aided Minority College has to seek prior permission to fill up the sanctioned non-teaching post of Waterman. This Court held that it is not necessary. It is useful to extract paragraph 19 of the said order as hereunder :

"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."

12. In ***P.Ravichandran V. State of Tamil Nadu rep. by Secretary to Government, Department of Higher Education, Chennai and others, reported in (2013) 7 MLJ 641***, a Division Bench of this Court held that the Director of Collegiate Education cannot insist Private Aided College managements to get prior permission to fill up the vacancies in the sanctioned posts, by issuing circulars/administrative instructions. It is relevant to reproduce paragraphs 14 and 17 of that judgment hereunder :



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"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.

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.

13. In the light of the decisions cited supra, it is not open to the respondents to again and again contend that only after getting prior permission from the Education Department, vacant sanctioned posts can be filled up by the management of private minority institutions.

14. Admittedly in the case on hand, the first respondent/writ petitioner was appointed as Office Assistant in the second respondent Insititute in a regular sanctioned vacancy that arose due to the retirement of one E.Selvaraj on 29.02.2008. The first respondent has been continuously working from the date of his initial appointment on 09.07.2008 till date and the denial of approval of appointment by the authorities from



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the date of his initial appointment is legally unsustainable in the light of the above settled legal propositions. The Writ Court has considered these aspects and rightly directed the authorities to grant approval to the first respondent / writ petitioner as Office Assistant in the second respondent institute from the date of his initial appointment i.e., 09.07.2008 with all monetary and service benefits. The appellants have not made out a case warranting interference and this court finds no merit in this writ appeal.

15. In the light of the above discussions and the decisions cited supra, this Writ Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

[D.K.K., ACJ.,] [K.B., J]
08.08.2024

Index: Yes / No
Internet: Yes / No
Speaking Order/Non Speaking Order
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AND
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JUDGMENT IN
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