

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2015

CORAM:

THE HONOURABLE MR. SANJAY KISHAN KAUL, CHIEF JUSTICE
AND
THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

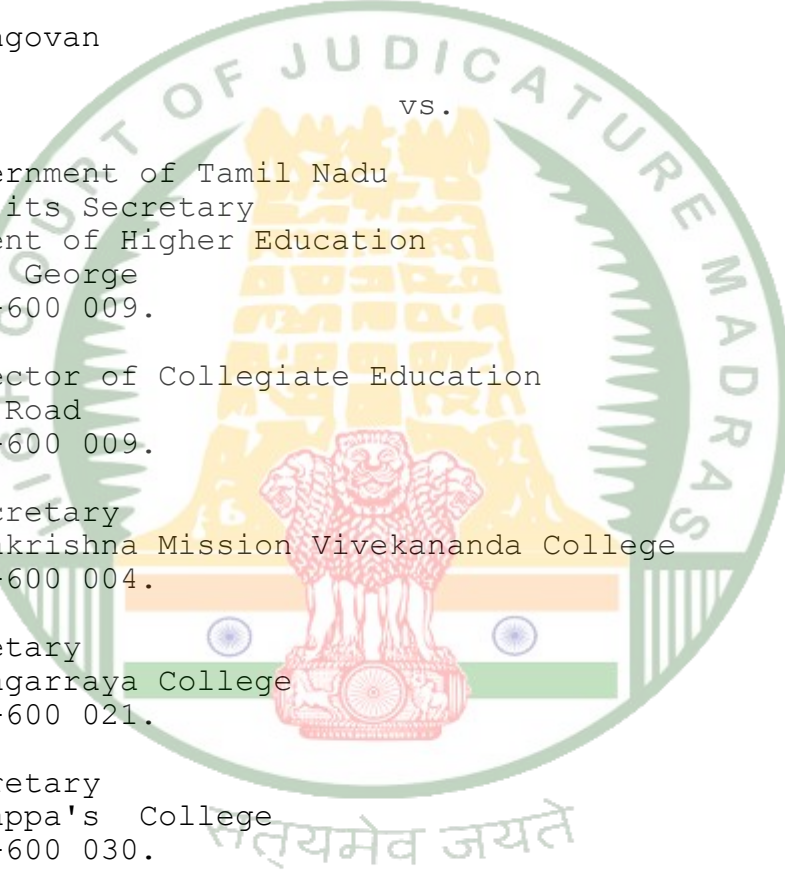
Writ Petition No. 26832 of 2008

Prof. I. Elangovan

...Petitioner

vs.

1. The Government 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-600 009.
3. The Secretary
Sri Ramakrishna Mission Vivekananda College
Chennai-600 004.
4. The Secretary
Sir Theagaraya College
Chennai-600 021.
5. The Secretary
Pachaiyappa's College
Chennai-600 030.
6. The Secretary
Gurunanak College
Chennai-600 042.
7. The Secretary
C. Kandasamy Naidu College for Men
Chennai-600 102.



8. The Secretary
D.R.B.C.C.C. Hindu College
Chennai-600 072.
9. The Secretary
S.I.V.E.T. College
Chennai-601 302.
10. The Secretary
Pachaiyappa's College for Men
Kancheepuram-631 503.
11. The Secretary
Salem Sowdeswari College
Salem-636 010.
12. The Secretary
Gopi Arts Rural and Science College
Gobichettipalayam-638 453.
13. The Secretary
Chikkaiah Naickar College
Erode - 638 004.
14. The Secretary
Erode Arts College
Erode -608 009.
15. The Secretary
Sri Vasavi College
Erode - 638 316.
16. The Secretary
P.S.G. College of Arts and Science
Coimbatore - 641 014.
17. The Secretary
Kongunadu College of Arts and Science
Coimbatore -641 029.
18. The Secretary
C.B.M. College
Coimbatore - 641 042.

19. The Secretary
Sri Ramakrishna Mission Vidyalaya
College of Arts and Science
Coimbatore-641 020.
20. The Secretary
Nallamuthu Gownder Mahalingam College
Pollachi-642 001.
21. The Secretary
A.V.V.M. Sri Pushpam College
Poondi-613 503.
22. The Secretary
A.V.C. College
Mayiladuthurai-609 305.
23. The Secretary
Poompuhar College
Melaiyur-609 107.
24. The Secretary
National College
Tiruchirappalli-320 001.
25. The Secretary
Nehru Memorial College
Puthanampatti-621 007.
26. The Secretary
Madura College
Madurai - 625 001.
27. The Secretary
Thiagarajar College
Madurai- 625 009.
28. The Secretary
Saraswathi Narayanan College
Madurai- 625 022.
29. The Secretary
Yadava College
Madurai -625 014.

30. The Secretary
S.Vellaichamy Nadar College
Madurai - 625 001.
31. The Secretary
Senthamil College
Madurai - 625 001.
32. The Secretary
Sri Satguru Sangeetha Vidyalayam
Madurai - 625 002.
33. The Secretary
Vivekananda College
Sholavandan Rly. Stn. - 624 617.
34. The Secretary
Pasumpon Muthurmalinga Thevar College
Usilampatti - 625 532.
35. The Secretary
Cardamom Planters Association College
Bodinayakanur - 626 513.
36. The Secretary
Arulmigu Palani Andavar College
of Arts and Science
Palani - 624 004.
37. The Secretary
G.T.N. Arts College
Dindigul - 624 004.
38. The Secretary
Pasumpon Muthuramalinga Thevar
Memorial College
Kamuthi - 623 604.
39. The Secretary
VHNSN College
Virudhunagar - 626 001.
40. The Secretary
Saiva Banu Kshatriya College
Aruppukottai - 626 101.

41. The Secretary
Rajapalayam Raju's College
Rajapalayam - 626 117.
42. The Secretary
Sri Ramasamy Naidu Memorial College
Sattur - 626 203.
43. The Secretary
Ayya Nadar Janaki Ammal College
Sivakasi - 626 123.
44. The Secretary
Arumugam Pillai Seethaiyammal College
Tirupattur - 623 211.
45. The Secretary
Sree Sevugan Annamalai College
Devakottai - 630 303.
46. The Secretary
The M.D.T. Hindu College
Tirunelveli - 627 010.
47. The Secretary
Tirunelveli Dakshinamara Nadar
Sangam College
T. Kallikulam - 627 113.
48. The Secretary
Pasumpon Muthuramalingam Thevar College
Melaneelithanallur - 627 953.
49. The Secretary
Thiruvalluvar College
Papanasam - 627 425.
50. The Secretary
Ambai Arts College
Ambasamudram - 627 401.
51. The Secretary
Sri Paramakalyani College
Alwarkurichi - 627 412.

52. The Secretary
Aditanar College of Arts and Science
Tiruchendur - 628 216.
53. The Secretary
Kamaraj College
Tuticorin - 628 003.
54. The Secretary
V.O.C. College
Tuticorin - 628 008.
55. The Secretary
G.V.N. College
Kovilpatti - 628 502.
56. The Secretary
S.T. Hindu College
Nagercoil - 629 002.
57. The Secretary
Vivekananda College
Agasteeswaram 629 701.
58. The Secretary
Pioneer Kumaraswamy College
Nagercoil - 629 003.
59. The Secretary
Arignar Anna College
Aralvaikmoli - 629 301.
60. The Secretary
Lakshmipuram College of Arts and Science
Neyyoor - 629 802.
61. The Secretary
Ethiraj College for Women
Chennai - 600 105.
62. The Secretary
Chellammal Women's College
Chennai - 600 032.

63. The Secretary
Meenakshi College for Women
Chennai - 600 024.
64. The Secretary
S.D.N. B. Vaishvan College for Women
Chennai - 600 044.
65. The Secretary
Pachaiappa's College for Women
Kancheepuram - 631 503.
66. The Secretary
D.K.M. College for Women
Vellore - 632 001.
67. The Secretary
C. Kandaswami Naidu College for Women
Cuddalore - 607 001.
68. The Secretary
Sri Sarada College for Women
Salem 636 016.
69. The Secretary
Alamelu Angappan College for Women
Komarapalayam - 638 183.
70. The Secretary
Vellalar College for Women
Erode - 638 009.
71. The Secretary
P.S.G. R. Krishnammal College for Women
Coimbatore - 641 004.
72. The Secretary
G.V.G. Vaisalakshi College for Women
Udumalpet - 642 128.
73. The Secretary
Emerald Heights College for Women
Udhagamandalam - 643 006.

74. The Secretary
A.D.M. College for Women
Nagapattinam 611 001.
75. The Secretary
S.R College of Women
Tiruchy - 620 002.
76. The Secretary
E.M.G. Kone
Yadava Women's College
Madurai - 625 014.
77. The Secretary
Arulmigu Palani Andavar Arts College for Women
Palani - 624 615.
78. The Secretary
V.V. Vanniaperumal College for Women
Virudhunagar - 626 001.
79. The Secretary
The S.F.R. Women's College for women
Sivakasi - 626 123.
80. The Secretary
Seethalakshmi Achi College for Women
Pallathur-630 107.
81. The Secretary
Sri Parasakthi College for Women
Coutalam - 627 802.
82. The Secretary
A.P.C. Mahalakshmi College for Women
Tuticorin - 628 002.
83. The Secretary
R.M.V. College of Education
Coimbatore - 641 020.
84. The Secretary
Thiagarajar College of Preceptors
Madurai 625 009.

85. The Secretary
Lakshmi College of Education
Gandhigram - 624 302.
86. The Secretary
N.V.K S.D. College of Education
Tiruvattur - 629 191.
87. The Secretary
V.O.C. College of Education
Tuticorin - 628 008.
88. The Secretary
N.K.T. National College of Education
Chennai - 600 005.
89. The Secretary
Sri Saradha College of Education
Salem 636 016.
90. The Secretary
Srimathi Sivaghana Baala Swamigal Tamil College
Mailam - 604 303.
91. The Secretary
Thavathiru Santhalinga Adigalar Arts,
Science & Tamil College
Coimbatore - 641 010.
92. The Secretary
Rajah's College
Thiruvaiyaru - 613 204.
93. The Secretary
Dharmapuram Adinam Arts College
Mayiladuthurai - 609 001.
94. The Secretary
Ganesar Senthamil College
Pudukottai - 622 403.
95. The Secretary
Ramasamy Tamil College
Karaikudi - 623 001.

96. The Secretary
Sri R.M.V.M College of physical Education
Coimbatore - 641 020.
97. The Secretary
Sri Sarada College of Physical Education
Salem - 630 016.
98. The Secretary
Madras School of Social Work
Chennai 600 008.
99. The Secretary
Madurai Institute of Social Sciences
Madurai - 625 002.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of a Writ of Mandamus directing respondents 3 to 99 to appoint SC/ST candidates as Teachers and Non-Teaching Staff in accordance with Rule 11(1-A) of the Tamilnadu Private Colleges (Regulation) Rules, 1976.

For Petitioner : Mr. V. Ajoy Khose

For Respondents : Mr. K. Karthikeyan
Government Advocate (Edn.) -R1 & R2
Mr. M. Sriram for R3, 19 & 77
Mr. S. Sadasivam for R5
Mr. T.S. Baskaran for R90
Mr. Krishna Ravindran for R37 & R42
Mr. M. Ravi for R46
No Appearance for others.

O R D E R

(Made by The Hon'ble The Chief Justice)

The petitioner, through this public interest litigation, seeks a writ in the nature of Mandamus against respondents 3 to 99 being Private, Aided & Non-minority Educational Institutions to appoint SC/ST candidates as Teachers and Non-teaching Staff in accordance with Rule 11 (1-A) of the Tamilnadu Private Colleges (Regulation) Rules, 1976.

2. The petition is general in character and there is no specifics as to whether a candidate, who is entitled, has not been recruited. This is so, as the petitioner is a retired Professor. It is trite to say that in service matters, public interest litigations would not be maintainable, in view of the judgment of the Honourable Supreme Court in Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra, reported in (1998) 7 SCC 273, which has been followed in Bholanath Mukherjee and Others vs. Ramakrishna Mission Vivekananda Centenary College & Others, reported in (2011) 5 SCC 464.

3. Be that as it may, counter affidavit has been filed by the Government, affirming that the Regional Joint Director of the respective regions is the competent authority to verify the appointments made in the respondents Colleges in accordance with the roster system. The current position which emerges from the counter affidavit affirmed in June, 2015 is as under:

"6. It is submitted that in the respondents colleges there is a short fall of SC/ST vacancies i.e. 213 teaching and 111 non-teaching posts arisen due to non-filling up of vacant posts. There are 1478 teaching and 1673 non-teaching posts are vacant as on date. In this connection, it is submitted that the Government have constituted a Committee vide their order issued in G.O.(Ms.) No.79, Higher Education (E2) Department, dated 28.05.2012 to verify the vacancy position to fill up 1379 vacant teaching post in Government and Aided Arts and Science Colleges and Aided Colleges of education arising during the period from 01.06.2011 to 31.05.2015. Based on the above Government Order, the respective Regional Joint Directors have submitted their report before the Director of Collegiate Education, the same is forwarded to Government. As and when the orders received, action will be taken to fill up the existing vacancies. While filling up the vacancies and necessary instruction will be given to the respective colleges to fill up the SC/ST vacancies in the first instance.

It is also submitted that the Government have accorded permission to the Director of Collegiate Education to fill up 243 non-teaching vacancies. It is further submitted that permission is granted for the 1006 Non-teaching posts to fill up by outsourcing method. While sanctioning the posts the respondents college will be instructed to fill unfilled 111 SC/ST vacancies. It is further submitted that the

respondents college were already instructed to follow the Rule of reservation scrupulously. It is also instructed that, if any deviation made in the roaster system, action will be initiated under Tamil Nadu Private Colleges (Regulation) Act and Rules, 1976 on the erring colleges.

7. It is submitted that whenever the post falls vacant, the educational agency / the College Committee of the Aided Colleges other than Minority Educational Institutions should follow the Rule of reservation prescribed by the Government from time to time and call for a list from Employment Exchange according to the turn in roaster and appointment should be made only from among the list of candidates send by the Employment Exchange. However, it is submitted that the Educational agency / the Secretaries can made advertise in dailies for recruitment only after obtaining a non-availability certificate from the concerned Employment Exchange. Further, the Government have issued instructions to the appointing authorities / Educational agency / Secretaries of Aided Colleges should follow the rule of reservation, while making appointments. Further, it is submitted that the Director of Collegiate Education, the second respondent herein, while sanctioning posts to the Government Aided Colleges has clearly indicated in condition no.5 of the conditions that the appointments should be made in accordance with the Rules of reservation."

4. We may add that the non-filling of posts for teaching faculty is in issue, which has arisen even in other proceedings not only qua the SC/ST category, but also the other categories and the feasibility of having adequate number of teachers can hardly be denied. In fact, in this behalf, learned counsel for the petitioner submits that a separate education cess is levied, which is required to be utilised for the purpose of education. Not only that, he submits that 90% of such fund comes through the UGC and only 10% is provided by the State.

5. In view of the legal position aforesaid, though the public interest litigation may not be strictly maintainable, we consider it appropriate to observe that every endeavour should be made to fill both backlog and current vacancies of ST & SC category, as also the other categories to facilitate the education system. The endeavour should be at least to conclude this process during the on-going academic year.

6. The writ petition accordingly stands disposed of. No costs.

Sd/-
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

ATR

Copies to;

1. The Secretary
Government of Tamil Nadu
Department of Higher Education
Fort St. George
Chennai-600 009.
2. The Director of Collegiate Education
College Road
Chennai-600 009.

- 1 CC to Mr. Krishna Ravindran, Advocate SR.No. 31658
1 CC to Mr. V. Ajoy Khose, Advocate SR.No. 31548
1 CC to Mr. T.S. Baskaran, Advocate SR.No. 31299
1 CC to Mr. S. Sadasivam, Advocate SR.No. 31211
1 CC to Mr. M. Ravi, Advocate SR.No. 31174

LRS (CO)
PSI (08.07.2015)

W.P. No. 26832 of 2008

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