



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders Reserved On : 14.11.2017

Orders Pronounced On : 20.12.2017

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THE HON'BLE MR.JUSTICE M.VENUGOPAL
and
THE HON'BLE MR.JUSTICE ABDUL OUDDHOSE

W.P.(MD) Nos.13026 and 13461 of 2017
and
WMP (MD) Nos.10093, 10094, 10817,
10528 and 13448 of 2017

W.P. (MD) No.13026 of 2017:

V.Rajesh Kannan

.. Petitioner

Vs.

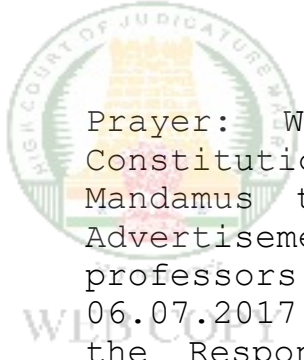
- 1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of Collegiate Education,
Fort St.George, Chennai -9.
- 2.The Director of Collegiate Education,
O/o.The Director of Collegiate Education,
EVK Sambath Building,
College Road, Chennai.
- 3.The Joint Director of Collegiate Education,
O/o.The Joint Director of Collegiate Education,
EVK Sambath Building,
College Road, Chennai.
- 4.Pasumpon Muthuramalinga Thevar College,
Rep. by its Secretary,
P.Pandian, Usilamapatti,
Madurai District - 625 532.
- 5.The Inspector of Police,
Office of the Vigilance and Anti
Corruption Wing,
Madurai.

6.P.Pandian

<https://hcservices.hccourts.gov.in/madurai> ~~is~~ added vide Court order

dated 23.10.2017 in WMP(MD)No.10532/17)

... Respondents



Prayer: Writ Petition is filed Under Article 226 of the Constitution of India, for issuance of a writ of Certiorarified Mandamus to call for the records pertaining to the Impugned Advertisement pertaining to the Appointment of Assistant professors and Principal published in vernacular daily, dated 06.07.2017 and quash the same as illegal and consequently forbear the Respondents from making any appointments to the post of Assistant professor and principal in the Pasumpon Muthuramalinga Thevar College till the completion of criminal charges in Cr.No.2 of 2017 under sections 167, 409, 420, 465, 468, 477-A r/w 120-B of IPC and under Section 13(2) r/w Section 13(1) (d) of the Prevention of Corruption Act, 1988 on the file of the Respondent No.5.

For Petitioner	: Mr.T.Lajapathi Roy
For R1 to R3 and R5	: Mr.M.Govindan Special Government Pleader
For R4 & R6	: Mr.E.V.N.Siva

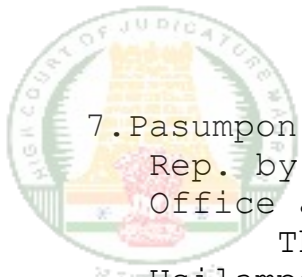
W.P.(MD) No.13461 of 2017:

S.R.Vanaraja

.. Petitioner

Vs.

- 1.The Secretary to Government
Commercial Tax & Registration Department,
Government of Tamil Nadu,
Fort St.George, Chennai 9.
- 2.The Inspector General of Registration,
No.100, Santhome High Road,
Chennai - 600 028.
- 3.The Director of Collegiate Education,
College Road, Chennai.
- 4.The Joint Director of Collegiate Education,
College Road, Madurai.
- 5.The Inspector of Police,
Vigilance and Anti
Corruption Wing,
Madurai.
- 6.The Kallar Kalvi Kazhagam,
Regn No.138/1967
Esoluruppalai, Madurai District,
Rep. by its Secretary.



7. Pasumpon Muthuramalinga Thevar College,
Rep. by its Secretary and Correspondent,
Office at Pasumpon Muthuramalinga
Thevar College,
Usilampatti, Madurai District.

(R7 is impleaded vide Court order
dated 06.11.2017 in WMP(MD)no.16607/17)

... Respondents

Prayer: Writ Petition is filed Under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the 3rd Respondent in Na.Ka.No.9886/G3/2017-11, dated 25.05.2017 and the consequential impugned notification of 7th Respondent (prayer amended vide Court order dated 06.11.2017 in WMP(MD) No.16607 of 2017) published in Indian Express dated 6.7.2017 Madurai Edition quash the same and consequently direct the Respondents 1 & 2 herein for appointment of Special Officer to the 6th Respondent Society to continue the day today administration of 6th Respondent and Pasumpon Muthuramalinga Thevar College (Aided), including recruitment process therein.

For Petitioner : Mr.Veerakathiravan
Senior Counsel for
M/s.Veera Associates

For R1 to R5 : Mr.M.Govindan
Special Government Pleader

For R6 & R7 : Mr.E.V.N.Siva

C O M M O N O R D E R

[Order of the Court was made by M.VENUGOPAL, J.]

W.P.(MD) No.13026 of 2017:

PREAMBLE:

The Petitioner has preferred the instant Writ Petitioner seeking to call for the records relating to the impugned Advertisement pertaining to the Appointment of Assistant professors and Principal published in vernacular daily, dated 06.07.2017 and to quash the same, as illegal one. Also, the Petitioner sought for passing of an order by this Court in forbearing the Respondents from making any appointments to the post of Assistant Professor and Principal in the Pasumpon Muthuramalinga Thevar College till the completion of criminal charges in Cr.No.2 of 2017 under sections 167, 409, 420, 465, 468, 477-A r/w 120-B of IPC and under Section 13(2) r/w Section 13(1) (d) of the Prevention of Corruption Act, 1988 on the file of the

(2).The Resume of Writ Facts:-

2.1. According to the Petitioner, the Fourth Respondent/Pasumpon Muthuramalinga Thevar College was founded on 05.07.1968 at Usilampatti under the auspices of Kallar Kalvi Kazhagam, successor of Kallar Common Fund, a private and non profit organization registered under Tamil Nadu Society Laws on 12.12.1967. As a matter of fact, the premises of College was bought off from the Kallar farmers of vadugapatti and the adjoining villages for a sum of Rs.92,376/- and the seed money for the purchase came from the savings of the Kallar Common Fund (KCF, 1936-67), the successor of Kallar Trust Fund (KTF 1919-36) established by the British imperial rulers and the money collected exclusively from Piramalai Kallar as fine and penalty for various kinds of 'Law Breaking' by the Piramalai Kallar was thus the source of the KTF money, that turned out to be the seed money for the founding of the College.

2.2. The College for the past four decades is catering of the poor and the needy in the region. The College started out as all male and then in 1982 it became co-educational one recognising the imperative of female higher education due to growing, if not more female high school graduates than that of males, a statewide, national, or even a global trend.

2.3. The emergence of the Fourth Respondent College as premier institution of learning for the Kallar as well as non-Kallar in the region, was meant for those under class and the underprivileged sections of Usilampatti region bringing opportunity for them. The College gained a solid reputation for educating the poor children and the working people and has a strength of about 3000 students.

2.4. Since the features of the College and the standard of education is on peril, the Petitioner has filed the present Writ Petition. The newly elected College Committee, under the Head of the Fourth Respondent assumed office on 30.11.2015. From the first day onwards, there were several mismanagements and malpractices in the administration of the institution. Earlier, in respect of appointments of non-teaching staff, the Fourth Respondent had committed serious illegalities and to oppose the same, the President and the Treasurer of the College Committee resigned from their respective posts. Based on the advertisement dated 13.09.2016, the selection Committee was comprising of five members headed by the Fourth Respondent viz., (1) Mr.P.Pandian; (2) Dr.M.Rajendran, the Principal; (3) Mr.M.Jeyakumar, Head of Department and Associate Professor Department of Botany; (4) Dr.K.Kani, Head of Department and Associate Professor, Department of Commerce and (5) Mrs.M.Prema, Superintendent of the College had ~~been~~ called for filling up the posts pertaining to the non-teaching staff members by a news paper advertisement for 16 non-teaching posts though only 10 posts, were approved by the



Director of Collegiate education. The 10 posts include 3-Junior Assistants; 2-Typists; 1-Lab Assistant; 1-Library Assistant; 1-Store Keeper and 2-Office Assistants and the Respondent No.4, but 14 non-teaching staff appointments were made without following the communal roster, who do not even possess a basic qualification.

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2.5.Under the afore stated circumstances, there were serious charges of corruption in regard to the appointment of non-teaching staff members and that a complaint was lodged by one Vanaraja on 01.12.2016 before the Inspector of Police, Vigilance and Anti Corruption and upon the complaint, a preliminary enquiry was conducted and the preliminary enquiry revealed that the Respondent No.4 and other members of the selection Committee had abused their position and public servants and have made appointments for the post of non-teaching staff for some illegal consideration and upon oral and documentary evidence, a case was registered in Crime No.2 of 2017 under Sections 167, 409, 420, 465, 468, 477-A r/w 120-B of IPC and under Section 13(2) r/w Section 13(1) (d) of the Prevention of Corruption Act, 1988 against the Respondent No.4 and others and the investigation is pending.

2.6.The Second Respondent had issued the impugned paper advertisement for filling up the post of Assistant Professor and Principal in a local vernacular daily and is now proceeding with appointments in a hurried manner since their term is about to expire in the year 2018. It is learnt that the Fourth Respondent had received a huge amount from one Easwaran for the post of Assistant Professor in Political Science Department through one Rajendran and Manikandan and from one Mona Visalakshi, D/o.Ganesan, for the post of Assistant Professor in Commerce Department, unless the appointments are made by some independent fair Committee, the same would give rise to misappropriation and the speculation, which leads to fall in the Educational standard.

(3).The Gist of Third Respondent's Counter:-

3.1.The Fourth Respondent College is an Aided College receiving 100% Grant from the Government of Tamil Nadu. The Second Respondent/Director of Collegiate Education through his letter, dated 06.03.2017, had intimated the Regional Joint Directors of Collegiate Education to send the details of vacant teaching posts in the Government Aided Colleges from 01.06.2014 to 31.05.2016 and that the Regional Joint Director of Collegiate Education, Madurai had submitted a report regarding the vacancy of teaching posts in the Fourth Respondent's College for the period from 01.06.2014 to 31.05.2016 as Six. The Second Respondent/Director of Collegiate Education had permitted the College to fill up the following teaching posts with the conditions specified therein:-



Sl.No.	Department	Sanctioned Posts to be filled
1	Chemistry	1
2	Rural Development	1
3	Zoology	1
4	Political Science	1
5	Commerce	2
	Total	6

It was also stated that rule of reservation and roaster had to be followed and other conditions pertaining to educational qualifications and other selection criteria are to be followed. The Fourth Respondent had issued advertisement for recruitment to the post of teaching staff.

3.2.The calling for applications and the selection process solely rest with the Fourth Respondent/College and the first and Second Respondent have no role to play in the selection process of teaching staff. After the selection, the Fourth Respondent/College should submit the proposal along with all particulars including the marks obtained in the interview conducted to the Regional Joint Director to the Collegiate Education for appointment approval of the posts. In the instant case, the Regional Joint Director of Collegiate Education, Madurai Region is the competent authority to grant appointment approval to the teaching staff.

3.3. As a matter of fact, the appointment approval for the said non teaching staff was not issued to the said College. The Fourth Respondent/College, is the authority dealing with the selection process of its teaching staff. The Director of Collegiate Education, Chennai or the Regional Joint Director of Collegiate Education, Madurai is the competent authority to accord appointment approval to the teaching staff. During the process of appointment approval, all factors relating to sanctioned strength, rule of reservation, educational qualification and other selection criteria will be examined at the appropriate stage. Moreover, the Fourth Respondent/College, is to follow the provisions contained in the Tamil Nadu Private Colleges (Regulation) Act, 1976 and the Rules framed thereunder, while selecting the candidates for the teaching posts. Apart from that, this Court in W.M.P.(MD)No.10528 of 2017 in W.P.(MD)No.13461 of 2017 had passed an interim order of granting stay on 02.07.2017.

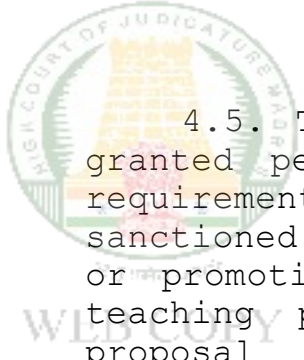
(4).The Salient Features of the Counter of Respondents No.4 and 6:-

4.1.The Secretary of the Kallar Kalvi Kazhagam is entitled to hold the office for the period of three years from 30.11.2015, as per certificate of election issued to him in this regard. He took efforts to increase atleast of student strength from 2200 to 3400, after the establishment of the Fourth Respondent/College in the year 1968, the Society has not started any new Institution so far. With great difficulty, the present management had started the new College viz., 'Posumpon Muthuramalinga Thevar Physical Education College' by obtaining necessary recognition and affiliation. The rival group/defeated party in the election annoyed by the development of the College and Society started to raise frivolous and baseless allegations in the name of numerous persons and endeavors to stall the administration of the College and Society.

4.2. The Second Respondent/Director of Collegiate Education, Chennai, through proceedings dated 25.05.2017, accorded permission to the Fourth Respondent/College to fill up six posts of Assistant Professors with several other conditions, as mentioned thereunder. Likewise, 'post of principal' is also vacant, in view of the superannuation of the previous incumbent. Therefore, the College had issued two separate notification calling for applications from eligible candidates for the post of Principal on 05.07.2017 and for the Assistant Professors on 06.07.2017. Since there was a printing error in the newspaper publication in regard to the Principal post, the same was corrected by publication of notification on 06.07.2017 by the concerned newspaper.

4.3. The Regional Director of Collegiate Education, Madurai on the scrutiny of proposals submitted by the College, verified the same and thereafter, the aid was sanctioned and there is no 'Public Interest' involved in the present Writ Petition. Since the recruitment process is not yet over, the Writ Petitioner can very well approach the Regional Joint Director of Collegiate Education, Madurai to redress his grievance if any, but the Writ Petitioner has not resorted to such a procedure. After the introduction of the University Grants Commission Regulation, 2010, the selection of candidates for appointment can be made only by the selection Committee constituted by the Madurai Kamaraj University in accordance with the UGC Regulations and these Respondents or the Office Bearers cannot chose any candidate of their choice.

4.4. The averments that the Secretary and Correspondent of the Fourth Respondent College had received huge amount from one Easwaran for the post of Assistant Professor in political science through one Rajendran and Manikandan and from one Mona Visalakshi for the post of Assistant Professor in Commerce Department are denied as false and without any basis. The employment in a private aided College is not a public employment under Article 16 of the Constitution of India and therefore, the Writ Petitioner cannot <https://hcrs.ecoos.gov.in/hcrs/ecos> The employment is purely a contract between an individual and the College Committee under Form-7A and the same has nothing to do with the Constitution of India.



4.5. The Second Respondent/Director of Collegiate Education, granted permission to fill up only 10 posts as there was no requirement for obtaining any prior permission for filling up the sanctioned non-teaching posts, which arose due to the retirement or promotion, the College management filled 16 sanctioned non-teaching posts as per the existing norms and submitted the proposal before the Regional Joint Director of Collegiate Education, Madurai Region for approval and the same is pending. Even before the competent authority rejected the approval, the rival groups in the Society had influenced the Fifth Respondent/Inspector of Police, Vigilance and Anti Corruption, Madurai and the First Information Report was registered in Crime No.2 of 2017 for the alleged offences under Sections 167, 409, 420, 465, 468, 477-A r/w 120-B of IPC and under Section 13(2) r/w Section 13(1) (d) of the Prevention of Corruption Act, 1988.

4.6. A mere perusal of the First Information Report would point out that the Secretary and the Correspondent of the Fourth Respondent College is not a public servant receiving any salary from the Government or from the College or from the Society and as such, the Fifth Respondent/police had abused their official position and registered the First Information Report. Moreover, the allegations set out in the First Information Report do not constitute any of the ingredients for the purported offences under the relevant Sections of Indian Penal Code and the Prevention of Corruption Act. The reservation prescribed under Rule 11 of the Tamil Nadu Private Colleges (Regulation) Rules, 1976 is applicable to the Private College and that the Fifth Respondent/Inspector of Police, cannot insist for 200 point roster, which are applicable only in respect of Government appointments. The teaching and non-teaching staff members figuring as accused had approached this Court for quashing the First Information Report and the same is pending.

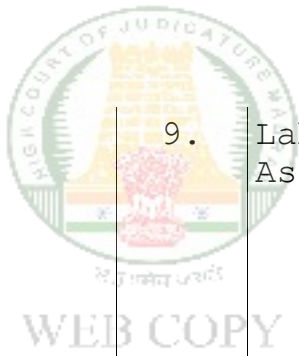
4.7. Before sanctioning of 'Aid' by the 'Competent Authority' the Writ Petitioner cannot stall all the appointments made in the private College by filing Public Interest Litigation and the same is not maintainable. Mere pendency of the 'First Information Report' cannot be taken as a reason to stall the appointments in a private College. The Writ Petitioner being a non-member cannot make any comments in regard to 'Kallar Kalvli Kazhagam'. The posts are filled up by following the selection procedure contemplated by 'UGC' from time to time. If posts are not filled with immediate effect, as directed by the Second Respondent/Director of Collegiate Education, the posts lapses automatically lapses causing burden of the College to appoint staffs from their own funds.

<https://hcservices.ecs.madurai.judic.gov.in/> (5) Points Debit/Services Petitioner's Contentions:-

5.1. The Learned Counsel for the Petitioner submits that before appointing persons on a regular/permanent basis, there must

be existing Rules or specific eligibility criteria prescribed for the appointments, there must be sanctioned posts, there must be vacancies in the sanctioned posts, and finally there must be issued advertisements for filling the posts; not as temporary or contractual posts, but as permanent posts; so that they are ought to be a level playing field of competition in regard to the prospective appointees. However, it is represented on behalf of the Petitioner that the afore stated procedures were not adhered to by the Fourth Respondent and all the appointments made by the Fourth Respondent are arbitrary one and comes within the definition of 'Nepotism', which is exhibited as under:-

SI.No .	Post	Person Appointed	Related to
1.	Library Assistant	Mr.Naveen	Brother in law of the 4 th Respondent.
2.	Laboratory Assistant	Mr.K.Naveen Prakash	Son of the one of the Director of 4 th Respondent College.
3.	Record Clerk	Mrs.Prema Priya	Sister of Mr.Mahendran Ex-MLA's wife who is holding the post of Director of High Level Committee of the 4 th Respondent College.
4.	Marker	Mrs.Jeyameena	Wife of Mr.Baskara Pandian, who is the Director cum Treasurer of 4 th Respondent College.
5.	Junior Assistant	Mrs.Anitha	Wife of one of the Director of 4 th Respondent College namely Mr.Jeyaveeranan.
6.	Junior Assistant	Mr.Ramkumar	Son of one of the Director of 4 th Respondent College namely Mr.Parthiban.
7.	Office Assistant	Mr.Arivanantha Pandian	Son of the 4 th Respondent's personal assistant.
8.	Lab Assistant	Mr.Jeyabala Murugan	Son of Former Director of 4 th Respondent College namely Mr.Jeyaprakasam.



9.	Lab Assistant	Mrs.Karthika devi	Wife of Mr.Thirumoorthy, who is the manager of Mr.Mahendran, who is holding the post of Director of High Level Committee of the 4 th Respondent College.
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5.2.The Learned Counsel for the Petitioner projects an argument that in 'Public Employment', 'equality of opportunity' is the hallmark and appointments are to be made as per the provisions of the Constitution and the Laws made there under. The Learned Counsel for the Petitioner proceeds to point out that the Fourth Respondent had appointed the present principal (Rajendran) by violating the seniority and norms of the Government. Further, the fourth Respondent is constructing one building for physical education department without obtaining 'Town Planning Approval' and without following tender procedure. The Fourth Respondent had not conducted the General Body properly and his aim is only to earn money and not the welfare of the institution. Further, it is the stand of the petitioner that the appointments are to be made by some independent 'Fair Committee'.

(6).The Petitioner's Citations:-

6.1. The Learned Counsel for the Petitioner relies on the decision of Hon'ble Supreme Court in INDERPREET SINGH KAHLON AND OTHERS V. STATE OF PUNJAB reported in in (2006) 11 SCC 356, at special page 402, wherein at paragraph No.102, it is observed as under:-

"This unfortunate episode teaches us an important lesson that before appointing the constitutional authorities, there should be a thorough and meticulous inquiry and scrutiny regarding their antecedents. Integrity and merit have to be properly considered and evaluated in the appointments to such high positions. It is an urgent need of the hour that in such appointments absolute transparency is required to be maintained and demonstrated. The impact of the deeds and misdeeds of the constitutional authorities (who are highly placed), after a very large number of people for a very long time, therefore, it is absolutely imperative that only people of high integrity, merit, rectitude and honesty are appointed to these constitutional positions."

6.2. The Learned Counsel for the Petitioner cites the decision of Hon'ble Supreme Court in CENTRE FOR PIL AND ANOTHER V. UNION OF INDIA reported in (2011) 4 SCC 1, at special page 24, wherein at paragraph No.47, it is held as follows:-



"47. We may reiterate that the institution is more important than an individual. This is the test laid down in SCC para 93 of N.Kannadasan Case [(2009) 7 SCC 1]. In the present case, the HPC has failed to take this test into consideration. The recommendation dated 03.09.2010 of the HPC is entirely premised on the blanket clearance given by the CVC on 06.10.2008 and on the fact of Respondent 2 being appointed as the Chief Secretary of Kerala on 18.09.2007, this appointment as the Secretary, of Parliamentary Affairs and his subsequent appointment as the Secretary, Telecom. In the process, the HPC, for whatever reasons, has failed to take into consideration the pendency of the Palmolein case before the Special Judge, Thiruvananthapuram being case CC.No.6 of 2003; the sanction accorded by the Government of Kerala on 30.11.1999 under Section 197 Cr.P.C. for prosecuting inter alia Shri P.J.Thomas for having committed the alleged offence under Section 120-B IPC read with Section 13(1) (d) of the Prevention of Corruption Act; the judgment of the Supreme Court dated 29.03.2000 in K.Karunakaran v. State of Kerala in which this Court observed that : (SCC p.767, para 8)

"8. the registration of the FIR against [Shri Karunakaran] and others cannot be held to be the result of mala fides or actuated by extraneous considerations. The menace of corruption cannot be permitted to be hidden under the carpet of legal technicalities [and in such case] probes conducted are required to be determined on facts and in accordance with law."

(7).The Submissions of the Respondents No.1 to 3 and 5:-

The Learned Special Government Pleader for the Respondents No.1 to 3 and 5, contends that calling for application and selection process purely rests with the Fourth Respondent and that the Respondents No.1 and 2 have no role to play in the selection process of teaching staff. In this connection, the Learned Special Government Pleader points out that the Fourth Respondent/College after the selection must submit a proposal together with all particulars (including the marks obtained in the interview conducted) to the Regional Director of Collegiate Education for appointment approval of the posts and added further, the criminal case registered in Crime No.2 of 2017 against the Secretary of the Fourth Respondent/College and others under various Sections of Indian Penal Code coupled with the relevant provisions of the Prevention of Corruption Act, 1988, is pending investigation. The Learned Special Government Pleader takes a plea that the Fourth Respondent/College is to follow the provisions mentioned in the Central Board of Secondary Education (Regulation) Act, 1976 and the Rules framed thereunder while selecting the candidates for the teaching posts.

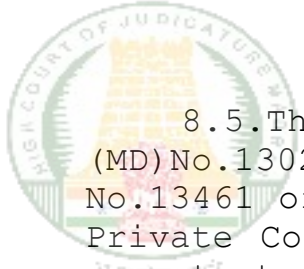
(8).The Contentions of R4 and R6 in W.P.(MD)No.13026 of 2017 and R6 and R7 in W.P.(MD)No.13461 of 2017:-

8.1. The Learned Counsel for the Respondents No.4 and 6 in W.P.(MD)No.13026 of 2017 and Respondents No.6 and 7 in W.P.(MD)No.13461 of 2017 submits that the Writ Petitions filed under the caption 'Public Interest Litigation' are not maintainable against the Private aided College in respect of service matter. Furthermore, in a private aided College, the employment is not a public employment. The Learned Counsel for the Respondents No.4 and 6 in W.P.(MD)No.13026 of 2017 and Respondents No.6 and 7 in W.P.(MD)No.13461 of 2017 projects an argument that an employment in a private aided College is a contract between the two parties viz., the College Committee and the concerned person in Form-7-A as per Rule 11(2)(i) of the Tamil Nadu Private Colleges (Regulation) Rules, 1976 and the same is not a public employment even though the State Government grants aid and therefore, these Writ Petitions are not maintainable.

8.2. The Learned Counsel for the Respondents No.4 and 6 in W.P.(MD)No.13026 of 2017 and Respondents No.6 and 7 in W.P.(MD)No.13461 of 2017 comes out with a strenuous plea that 'prior permission' is not required either from the State Government or from the Second Respondent/Director of Collegiate Education for filling up of sanctioned posts in private aided College/school and therefore, these Writ Petitioner cannot allege the violation for appointments of non-teaching and stall the present recruitment. The Learned Counsel for the Respondents No.4 and 6 points out that the 'Employment Exchange Seniority' is not the only mode of recruitment in private aided College/schools and as such, the present recruitment cannot be stifled, because of the purported violation of any appointments of non-teaching staffs. Furthermore, it is represented on behalf of the Respondents No.4 and 6 that the Act or Rules will prevail that over the Government Orders/Administrative Instructions and the same cannot be automatically applied to 'Private Aided College'.

8.3. The Learned Counsel for the Respondents No.4 and 6 in W.P.(MD)No.13026 of 2017 and Respondents No.6 and 7 in W.P.(MD)No.13461 of 2017 submits that there is neither any demand nor acceptance of bribe in the First Information Report in Crime No.2 of 2017 on the file of the Fifth Respondent and that the Fourth Respondent is not a public servant receiving any salary from the Government or from the College or from the Society and the Fifth Respondent/Inspector of Police had abused his position in registering the First Information Report and therefore, the said First Information Report cannot be relied on by the Petitioner.

8.4. The Learned Counsel for the Respondents No.4 and 6 in W.P.(MD)No.13026 of 2017 and Respondents No.6 and 7 in W.P.(MD)No.13461 of 2017, contends that unless a person is convicted by the trial Court, the presumption of innocence is always in favour of an accused.



8.5. The Learned Counsel for the Respondents No.4 and 6 in W.P. (MD) No.13026 of 2017 and Respondents No.6 and 7 in W.P. (MD) No.13461 of 2017, submits that as per Section 14 of the Tamil Nadu Private Colleges (Regulation) Act, the College Committee alone is competent to make appointments. Further, it is projected on the side of the Respondents No.4 and 6 that an appointment in a private aided College is not a public employment and that the Petitioner/stranger to the College cannot question the appointments made in a private College alleging it as a public employment.

8.6. The Learned Counsel for the Respondents No.4 and 6 in W.P. (MD) No.13026 of 2017 and Respondents No.6 and 7 in W.P. (MD) No.13461 of 2017, submits that even although the College Committee has power to appoint, the right to selection has been taken away by the UGC Regulations on Minimum Qualifications for appointment of teachers and other academic staff in Universities and Colleges and measures for the maintenance and standards in Higher Education norms 2010 and only the selection Committee, constituted as per Rule 5.1.4 of the afore stated UGC norms 2010, is going to select candidates as per the qualifications (request letter of the Secretary and Correspondent, dated 10.07.2017 seeking to constitute the Committee) and as such, the allegations are huge money was received towards appointments is without any materials. Apart from that, no materials are placed before this Court to support such allegations.

8.7. The Learned Counsel for the Respondents No.4 and 6 emphatically takes a stand that the allegations that relatives of the Committee members are appointed as non-teaching staff are not supported by any material documents and it is the burden on the person who alleges such allegation of mala fides to prove the same.

8.8. In summing up, the Learned Counsel for the Respondents No.4 and 6 in W.P. (MD) No.13026 of 2017 and Respondents No.6 and 7 in W.P. (MD) No.13461 of 2017 contends that the appointments of private Colleges are done as per the provisions of the Tamil Nadu Private Colleges (Regulation) Act and Rules and there is no violation as alleged and that the 'Presumption of Innocence' is always in favour of an accused in a criminal case.

(9). The Citations of R4 and R6 in W.P. (MD) No.13026 of 2017 and R6 and R7 in W.P. (MD) No.13461 of 2017:-

9.1. The Learned Counsel for the Respondent Nos.4 and 6 in W.P. (MD) No.13026 of 2017 and Respondent Nos.6 and 7 in W.P. (MD) No.13461 of 2017, cites the decision of Hon'ble Supreme Court in DATTARAJ NATHUJI THAWARE v. STATE OF MAHARASHTRA reported in (2005) 3 SCC 590, at special page Nos.595 to 597, whereby and where under at paragraph Nos.12 and 16, it is observed as under:-



"12. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique considerations. The Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

16. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that Courts are flooded with large number of so called public interest litigations where even a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in large number of cases, yet unmindful of the real intentions and objectives, Courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in *Dr. Duryodhan Sahu and Ors. v. Jitendra Kumar Mishra*, (1998) 7 SCC, this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the Courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the Petitioner came to possess them. In the case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity

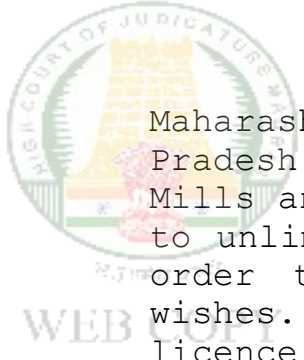


the Petitioner opened it, he found copies of the official documents. Apart from the sinister manner, if any, of getting such copies, the real brain or force behind such cases would get exposed to find out the truth and motive behind the petition. Whenever such frivolous pleas, as noted, are taken to explain possession, the Court should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the Courts to filter out the frivolous petitions and dismiss them with costs as afore-stated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts."

9.2. The Learned Counsel for the Respondent Nos.4 and 6 in W.P.(MD)No.13026 of 2017 and Respondent Nos.6 and 7 in W.P.(MD) No.13461 of 2017, relies on the decision of Hon'ble Supreme Court in SURPAL SINGH v. STATE OF PUNJAB reported in (2005) 5 SCC 136, at special page Nos.139 to 140, wherein at paragraph Nos.5 to 7, 9 and 10, it is observed as follows:-

"5.The scope of entertaining a petition styled as a public interest litigation, locus standi of the Petitioner particularly in matters involving service of an employee has been examined by this court in various cases. The Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busy bodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect.

6.Courts must do justice by promotion of good faith, and prevent law from crafty invasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good. (See State of



Maharashtra vs. Prabhu, (1994 (2) SCC 481), and Andhra Pradesh State Financial Corporation vs. M/s GAR Re-Rolling Mills and Anr., (AIR 1994 SC 2151). No litigant has a right to unlimited draught on the Court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions. (See Dr. B.K. Subbarao vs. Mr. K. Parasaran, (1996 (7) JT 265). Today people rush to Courts to file cases in profusion under this attractive name of public interest. They must inspire confidence in Courts and among the public.

7. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that Courts are flooded with large number of so called public interest litigations where even a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in large number of cases, yet unmindful of the real intentions and objectives, High Courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in Dr. Duryodhan Sahu and Ors. v. Jitendra Kumar Mishra and Ors. (AIR 1999 SC 114), this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the Courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the Petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the Petitioner opened it, he found copies of the official documents. Whenever such frivolous pleas are taken to explain possession, the Court should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the Courts to filter out the frivolous petitions and dismiss them with costs as afore-stated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts.

9. It is depressing to note that on account of such trumpery proceedings initiated before the Courts, enormous valuable days are wasted, which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we spare no efforts in fostering and



developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievance go unnoticed, un-represented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and substantial rights and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters - government or private, persons awaiting the disposal of tax cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenu expecting their release from the detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the Courts and having their grievances redressed, the busy bodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no real public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffing their faces by wearing the mask of public interest litigation and get into the Courts by filing vexatious and frivolous petitions of luxury litigants who have nothing to loose but trying to gain for nothing and thus criminally waste the valuable time of the Courts and as a result of which the queue standing outside the doors of the court never moves, which piquant situation creates frustration in the minds of the genuine litigants.

10. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be allowed to be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or extraneous motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from



behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs."

9.3. The Learned Counsel for the Respondent Nos.4 and 6 in W.P.(MD)No.13026 of 2017 and Respondent Nos.6 and 7 in W.P.(MD) No.13461 of 2017, cites the decision of Hon'ble Supreme Court in GIRJESH SHRIVASTAVA v. STATE OF MADHYA PRADESH reported in (2010) 10 SCC 707, at special page Nos.711 and 712, whereby and where under at paragraph Nos.14 to 19, it is mentioned as under:-

"14. However, the main argument by the appellants against entertaining WP (C) 1520/2001 and WP (C) 63/2002 is on the ground that a PIL in a service matter is not maintainable. This Court is of the opinion that there is considerable merit in that contention. It is common ground that dispute in this case is over selection and appointment which is a service matter.

15. In Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra and others [(1998) 7 SCC 273], a three judge Bench of this Court held a PIL is not maintainable in service matters. This Court, speaking through Srinivasan, J. explained the purpose of administrative tribunals created under Article 323-A in the backdrop of extraordinary jurisdiction of the High Courts under Articles 226 and 227. This Court held : (SCC p.281, para 18)

"18. ... if public interest litigations at the instance of strangers are allowed to be entertained by the (Administrative) Tribunal, the very object of speedy disposal of service matters would get defeated" (para 18).

Same reasoning applies here as a Public Interest Litigation has been filed when the entire dispute relates to selection and appointment.

16. In B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Association and others, reported in (2006) 11 SCC 731 (II), this Court held that in service matters only the non-appointees can assail the legality of the appointment procedure (See para 61, page 755 of the report).

17. This view was very strongly expressed by this Court in Dattaraj Nathuji Thaware v. State of Maharashtra and <https://hcservices.products.gov.in/hcservices/> reported in (2005) 1 SCC 590, by pointing out that despite the decision in Duryodhan Sahu (supra), PILs in



service matters 'continue unabated'. This Court opined that High Courts should 'throw out' such petitions in view of the decision in Duryodhan Sahu (supra) (Para 16, page 596).

18. Same principles have been reiterated in Ashok Kumar Pandey v. State of W.B., reported in (2004) 3 SCC 349, at page 358 (Para 16).

19. In a recent decision of this Court delivered on 30.8.2010, in Hari Bansh Lal v. Sahodar Prasad Mahto and others, (MANU/SC/9654/2010), it has been held that except in a case for a writ of 'Quo Warranto', PIL in a service matter is not maintainable (See SCC para 15)".

9.4. The Learned Counsel for the Respondent Nos.4 and 6 in W.P.(MD)No.13026 of 2017 and Respondent Nos.6 and 7 in W.P.(MD) No.13461 of 2017, seeks in aid of the decision of this Court in S.M.SYED IQBAL v. REGISTRAR, UNIVERSITY OF MADRAS, CHENNAI reported in (2008) 4 MLJ 518, at special page No.520, wherein at paragraph Nos.6 to 8, it is observed as under:-

"6. Now it is settled law that no public interest litigation is maintainable with regard to service matter. This was brought to the notice of the counsel for the Petitioner to show that the petition is not maintainable, but the counsel for the Petitioner insisted to place detailed background of reservation policy in favour of one or other community.

In the case of Dr. Duryodhan Sahu v. Jitendra Kumar Mishrai, the Supreme Court held that in service matters PIL should not be entertained.

Similar was the observation made by Supreme Court in Gurpal Singh v. State of Punjab, wherein the Supreme Court held that in service matters public interest litigation cannot be filed.

In a recent case of Seema Dhamdhare v. State of Maharashtra reported in 2008 (1) MLJ 489 (SC), while reiterating earlier decision, the Supreme Court observed that it would be desirable for the Courts to filter out the frivolous petitions and dismiss them with costs so that the message goes in the right direction that petitions filed with oblique motives do not have the approval of the Court.

7. At the time of hearing and discussion, this was observed by the Court orally, but the counsel for the Petitioner continued to highlight the reservation policy in favour of a community, as stated above. From the submissions as made and the newspaper publication, it appears that the case was filed not in public interest, but with a view to get some publicity, though the present Writ



Petition is not maintainable under the caption "Public Interest Litigation" as it relates to appointment in the service of Madras University.

8. For the reason aforesaid, while we dismiss the Writ Petition, also impose a cost of Rs. 10,000/= (Rupees Ten Thousand only) on the Petitioner for payment in favour of the Tamil Nadu State Legal Services Authority, Chennai, to be paid within six weeks. In case of non-payment, it will be open to the State authorities and the Tamil Nadu State Legal Services Authority to recover the amount from the Petitioner. Consequently, connected miscellaneous petition is also dismissed. Let a copy of this order be also communicated to the Chief Secretary of the State and the Member Secretary, Tamil Nadu State Legal Services Authority for their information.

9.5. The Learned Counsel for the Respondent Nos.4 and 6 in W.P.(MD)No.13026 of 2017 and Respondent Nos.6 and 7 in W.P.(MD) No.13461 of 2017, relies the decision of this Court in P.RAVICHANDRAN v. STATE OF TAMIL NADU reported in (2013) 7 MLJ 641, at special page Nos.645, 649, 650, 652 and 653, wherein at paragraph Nos.8, 14, 15 and 20, it is observed as follows:-

"8. The point arises for consideration in this writ appeal is as to whether prior permission is required to be obtained by the management of the Private Aided Colleges to fill up the vacancies of teaching and non-teaching staff arising in a sanctioned post during middle of the academic year, in the absence of any prohibitory order issued by the Government for filling up the vacancies.

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.

15. The Learned Advocate General heavily relied on the judgment reported in (2010) 1 SCC 133 (Kolawana Gram Vikas Kendra v. State of Gujarat). In the said judgment, the Government of Gujarat issued circular to seek prior approval of the State Government or the competent authority to verify whether there was vacancy as per the workload and whether the candidate possess minimum prescribed qualification. When the District Elementary Officer refused permission, the same was put to challenge, which was upheld by the Hon'ble Supreme Court holding that 'No Objection Certificate' is required only to verify as to whether any vacancy of a teacher of a particular subject as per the workload fixed by the Board and whether a person is possessing minimum required qualification for the post in



which he is appointed. Further, in the said circular one of the condition was that if any prior approval is requested within seven days, reply should be given by the Department. Considering the said factual aspects, that is to find out whether there is sufficient workload available and whether the candidate possesses minimum prescribed qualification, the Hon'ble Supreme Court upheld the said circular on facts.

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."

9.6. The Learned Counsel for the Respondent Nos.4 and 6 in W.P.(MD)No.13026 of 2017 and Respondent Nos.6 and 7 in W.P.(MD) No.13461 of 2017, refers to the decision of this Court in DEVA ASIR V. SECRETARY TO GOVERNMENT reported in (2016) III LLJ 49 (Mad), at special page Nos.70 to 74 & 85, wherein at paragraph No.24.1, 24.2 and 38, it is observed as under:-

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

"24.1. The learned counsels for the petitioners submitted that once the posts are sanctioned by the



Director under Rule 15(1) of the Rules, the DEOs/DEEOs are bound to sanction grant as per Rule 11(2) of the Rules and there is no need to get prior permission from any authority to fill the vacancies that would arise in those sanctioned posts. Unless the State Government suitably amends the provisions of the Act and the Rules making it mandatory to obtain prior permission for filling up of those sanctioned non-teaching posts, the Government could not issue impugned Government Orders. I am in entire agreement with the said submission. Since there is no such provision in the Act and the Rules to seek prior permission, the official Respondents in these writ petitions, DEOs/DEEOs, could not rely on the impugned Government Orders/Government Letters to seek permission of the State Government or the Director or any authority to fill up the sanctioned posts for approving of the same for the purpose of grant and therefore, the impugned Government Orders and the consequential proceedings refusing to approve of the non-teaching posts for the purpose of grant are issued in gross violation of the provisions of Sections 19 and 20 of the Act read with Rule 15 of the Rules.

24.2. The judgments relied on by the learned counsels for the petitioners to substantiate this submission are discussed hereunder :

(a) S.Christy V. The Chief Educational Officer, Kanyakumari District and others, reported in 2011 (5) CTC 532 :

(i). 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 from the educational authorities.

(ii). 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.?

<https://hcservices.ecourts.gov.in/hcservices/> Thus, this Court categorically held that no prior approval is necessary for the appointment of a teacher in a sanctioned posts.



(iv). 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.

(b) *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 :

In that case, 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 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 availability of 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.

(c) S.Rasheetha Banu V. State of Tamil Nadu, rep. by its Secretary to Government, Chennai and others, reported in (2012) 4 MLJ 198 :

A 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 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.?

(d) 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 and was 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."

(e) 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 in that judgment 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, 17 and the following passage in paragraph 20 of that judgment hereunder :



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 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 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



(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.? In my considered view, all these judgments are squarely applicable to these cases and the DEOs/DEEOs shall not insist prior permission from the Government or any authority to fill up the vacancies in non-teaching sanctioned posts. The DEOs/DEEOs are bound to sanction grant as per Rule 11(2) of the Rules.

38. In the result, for the details reasons mentioned above,

(i) All these writ petitions are allowed.

(ii) Impugned G.Os., namely, G.O.Ms.No.115, School Education Department, dated 30.05.2007 and G.O.Ms.No.203, School Education Department, dated 23.07.2010 and Government Letter No.8884/D1/2011-2, dated 09.07.2012, are quashed.

(iii) The impugned orders of the DEOs/DEEOs refusing to approve of the appointments of various non-teaching posts in these writ petitions are set aside and the official Respondents are directed to approve of those appointments of the non-teaching staff in the Private Aided Schools concerned in these writ petitions and to sanction grant.

(iv) Wherever writ of Mandamus is sought for, a direction is issued to the Respondents to approve of the appointments of the non-teaching staff in the Private Aided Schools and to sanction grant.

(v) The official Respondents are directed to comply with the aforesaid directions within a period of six weeks from the date of receipt of a copy of this order.

However, there will be no order as to costs. Consequently, connected miscellaneous petitions are closed."

9.7. The Learned Counsel for the Respondent Nos.4 and 6 in W.P.(MD)No.13026 of 2017 and Respondent Nos.6 and 7 in W.P.(MD) No.13461 of 2017, refers the order of this Court in W.P.(MD) No.21746 of 2016, dated 15.11.2016 between C.RENGA BAI v. THE STATE OF TAMIL NADU, REP. BY ITS SECRETRAY AND FOUR OTHERS, wherein this Court, at paragraph Nos.6.1, 6.2, 6.3, and 7, has observed as follows:-



"6.1. This Court is in entire agreement with the said submission. Since there is no such provision in the Act and the Rules to seek prior permission, the 4th Respondent could not rely on the impugned Government Orders/Government Letters imposing condition seeking permission of the State Government or the Director or any authority to fill up the sanctioned posts for approving of the same for the purpose of grant and therefore, the impugned Government Orders and the consequential proceedings refusing to approve of the non-teaching posts for the purposes of grant are issued in gross violation of the provisions of Sections 19 and 20 of the aCt read with Rule 15 of the Rules.

6.2. The Hon'ble Division Bench of this Court in The Manager, concord High and Higher Secondary Schools V. Tmt.S.Christy and Others, reported in 2013 Writ L.R. 691 held as under:

"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."

6.3. A similar question arose for consideration in the case of S.Rasheetha Banu v. State of Tamil Nadu, rep. By its Secretary to Government, Chennai and others, reported in (2012) 4 MLJ 198 wherein this Court has categorically held 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 22.01.2004. 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 11.09.2009. As against the said order, dated 11.09.2009, the department preferred W.A.(MD)



No.703 of 2009. A Division Bench of this Court, by Judgment, dated 01.02.2011, dismissed the said Writ Appeal."

7. The question of approval to the appointment of non-teaching staff in the sanctioned post after the introduction of G.O.Ms.No.115 and G.O.203 came to be considered by this Court and the Madurai Bench of Madras High Court quashed G.O.Ms.No.115, dated 30.06.2007 and G.O.203, dated 23.07.2010 vide order dated 15.03.2016 passed in W.P.(MD) Nos.11481 of 2008, etc. batch. It will be appropriate to extract the operative portion of the order as under:

"38. In the result, for the details reasons mentioned above,

(I) All these writ petitions are allowed.

(ii) Impugned G.Os., namely G.O.Ms.No.115, School Education Department, dated 30.05.2007 and G.O.Ms.No.203, School Education Department, dated 23.07.2010 and Government Letter No.8884/D1/2011-2, dated 09.07.2012, are quashed.

(iii) The impugned orders of the DEOs/DEEOs refusing to approve of the appointments of various non-teaching posts in these writ petitions are set aside and the official Respondents are directed to approve of those appointments of the non-teaching staff in the Private Aided Schools concerned in these writ petitions and to sanction grant."

9.8. The Learned Counsel for the Respondent Nos.4 and 6 in W.P.(MD)No.13026 of 2017 and Respondent Nos.6 and 7 in W.P.(MD) No.13461 of 2017, refers the order of this Court in W.P.(MD) No.21664 of 2017, dated 22.09.2017 between EZHILARASU V. THE STATE OF TAMIL NADU, REP. BY ITS SECRETARY AND THREE OTHERS, wherein, this Court, at paragraph Nos.4, 3A and 5, has observed as under:-

"4.The issue involved in the writ petition for filling up of vacancies against the sanctioned strength of Non-teaching staff by the Minority/Non-Minority Institutions is no longer res integra, for, a Division Bench of this Court, even three years ago, in P.Ravinchandra 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 case), (decided on 19.08.2016), ordered the official Respondents therein to accord approval for filling up of vacancies against sanctioned posts of non-teaching Staff by the Private Aided Schools.

<https://hcservices.ecourts.gov.in/hcservices>
A perusal 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.

5. Thus, the issue is well settled now that any school, either minority/Non-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 petitioner has 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.

9.9. The Learned Counsel for the Respondent Nos.4 and 6 in W.P.(MD)No.13026 of 2017 and Respondent Nos.6 and 7 in W.P.(MD) No.13461 of 2017, relies the order of this Court in W.A.(MD)No.390 of 2017 and etc batch, dated 22.09.2017 between THE SECRETARY TO GOVERNMENT, EDUCATION DEPARTMENT, CHENNAI v. G.MAHENDRAN DAVID, wherein this Court, at paragraph Nos.4, to 7, has observed as follows:-

"4. In our considered view, the distinction which is sought to be made by the appellant Government is not tenable for more than one reason. Firstly, the problem arose on account of earlier decision taken by the Government in banning recruitment for several categories of posts throughout the State by order dated 29.11.2001. The order was in force till 07.02.2006. Though, it was lifted, the Government vide order dated 26.05.2006, reiterated the ban orders, which related to appointment of Non-teaching Staff such as Junior Assistants, Record Clerks, Office Assistants, Sweeper, Gardener, Waterman, Watchman etc,. This was put to challenge by aggrieved persons and the Government Order was quashed. Thereafter, the Government passed various Government Orders one of that being G.O.Ms.No.203 dated 23.07.2010, wherein, the Government took a decision that certain category of posts such as Watchman, Gardener cum Sweeper, Scavenger etc., are



required to be out-sourced. These orders were put to challenge along with similar Government Orders and all orders were set aside.

5.Ultimately, the Division Bench in the case of A.Maria Selvam (supra), considered the batch of cases, wherein, review petitions were also tagged along, which arose due to orders passed in various writ petitions pertaining to approval of appointments in Non-teaching posts by Minority and Non-minority Aided Institutions and the Government Appeal has been dismissed by judgment dated 21.07.2015.

6.Consequently, when we perused the Government Order in G.O.Ms.No.40, School Education (U2) Department, dated 14.03.2013, we find that it pertains to Teacher Education Institutions. The learned Special Government pleader would strenuously contend that this is the Government Order which has been passed specifically for Teacher Education Institutions and therefore, the decision rendered by the Division Bench in the case of A.Maria Selvam (supra), cannot be made applicable. However, on a perusal of the said Government order it is seen that it reiterates the proposal made by the Government in respect of schools in G.O.Ms.No.203 dated 23.07.2010. The said Government order has been held to be un-enforceable and the sanctioned posts have been permitted to be filled up.

7.Therefore, the decision rendered by the Division Bench in the case of A.Maria Selvam (supra), would equally apply to Teacher Education Institutions as all the educational institutions fall under the very same Education Department and all the institutions were commonly imposed with ban of recruitment and similar directions issued to the schools to fill up the relevant posts by out-sourcing was held to be untenable. And in such circumstances, merely because the Respondents are Teacher Education Institutions, or persons employed by them, there can be no distinction between both set of employees. Therefore, the present issue is clearly covered by the decision of the Division Bench in the case of A.Maria Selvam (supra), and it was dismissed."

9.10. In the full bench decision of this Court in STATE OF TAMIL NADU v. S.S.SOMASUNDRAM reported in (2008) 2 CTC 337, at special page Nos.340 to 342 & 344, wherein at paragraph Nos.5, 7, 8, 14 and 15, this Court, has observed as follows:-

"5. Subsequently, the very same G.O.Ms.No.1138, dated 27.11.1998 came up for consideration before another Division Bench and in the decision reported in Nehru Memorial College



v. The State of Tamil Nadu and others, 2003 WLR 31, the subsequent Division Bench of relying upon the decision of the Honourable Supreme Court reported in Excise Superintendent Malkapatnam, Krishna District, A.P. v. K.B.N.Vishweshwara Rao and others, 1996 (6) SCC 216, as well as Rule 15(4) (i) of the rules framed under the Tamil Nadu Recognised Private Schools (Regulations) Act, 1974, took the view that the said G.O. Cannot be implemented. Though the earlier Division Bench decision reported in 1999 MLR 499 was noted by the subsequent Division Bench, in the light of the decision of the Honourable Supreme Court reported in Excise Superintendent Malkapatnam, Krishna District, A.P. v. K.B.N. Vishweswara Rao and others, 1996 (6) SCC 216, the subsequent Division Bench by relying upon the decision of the Honourable Supreme Court took a diametrically opposite view and held that Rule 15(4) (i) of the School rules alone will prevail and G.O.Ms.No.1138, dated 25.09.1998 need not be followed. The Division Bench however, held that it is mandatory on the part of the education institutions who are in receipt of grants to notify the vacancies to the respective employment exchanges and that such institutions are also empowered to call for Applications from other modes like newspaper publication, advertisement, media and by calling for Applications by notifying the same in the notice board, consider all the Applications and select the best candidate without there being any preference to candidate from the employment exchanges. Having regard to such a conflict noted in the above referred to decisions, the reference came to be made to this Larger Bench.

7. The said Rule does not contemplate of notifying any vacancy to any employment exchange. However, having regard to the consistent ruling of the Honourable Supreme Court notifying the vacancies and calling for the sponsorship from the Employment Exchange as directed by the concerned State Government cannot be held to be impermissible in law. In fact the provision of direct recruitment as provided as part of Rule 15(4) (I) (c) would enable the State Government to issue appropriate Government Order directing the Private Schools who are in receipt of grant in aid to notify such vacancies to the respective employment exchange for sponsorship of qualified candidates. As held by the Division Bench in the decision reported in Nehru Memorial College v. The State of Tamil Nadu and others, 2003 WLR 31, such candidates sponsored by the employment exchange will have to stand in the queue along with other candidates who stake their claim pursuant to other modes such as publication of vacancies in the newspaper, media, Notice Board, etc. After the primary concern for whom the presence of the best teacher would be more preferable, the scope of selection

of s

14. In the light of the overwhelming decisions referred to above and for the reasons mentioned earlier, we hold that the subsequent Division Bench decision reported in *Nehru Memorial College v. The State of Tamil Nadu & Others*, 2003 WLR 31, alone will hold good and the earlier decision reported in 1995 WLR 499 need not be followed.

9.11. In the decision of this Court in DIRECTOR OF ELEMENTARY EDUCATION v. G.VIJAYALAKSHMI reported in (2015) 6 MLJ 315, at serials Nos.329 to 331, wherein at paragraph Nos.35 to 40, it observed as under:-



"35. Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, have been framed, in exercise of the powers, under Section 56 of the Act. Both the Act and the Rules do not speak about the powers of the Director of Elementary Education, to make any Government Order, ipso facto, applicable to both the teaching and non-teaching staff, in the schools, recognised and governed by the Tamil Nadu Recognised Private Schools (Regulation) Act. As stated supra, Government Orders, referred to in the earlier paragraphs, were issued by the Government, while dealing with Rule 24-A of the Tamil Nadu Government Servants' conduct Rules, 1973, which is applicable only to government servants. Code of conduct, as prescribed in Annexure-II, in terms of Section 21 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, read with Rule 16 of the Rules framed thereunder, alone can be made applicable to teaching and non-teaching staff, working in recognised schools. No doubt, by addition or deletion or substitution, an amendment can be made to the statutory provisions dealing with the code of conduct for the staff in a recognised private school, by the Government and consequently, modify the code of conduct prescribed in Annexure-II. But the Director of Elementary Education, Chennai, cannot import rule 24A of the Tamil Nadu Government Servants Rules into the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the rules made thereunder. Incorporation of Section 24A directly into the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, is beyond the legislative competence of the Director of Elementary Education and such a course is impermissible under the statutory provisions. The School Committee has the powers to appoint and dismiss a teaching staff. Such committee also has the powers to grant leave to any staff.

36. As discussed in the foregoing paragraphs, School Committee is the authority to deal with service conditions of the staff. Materials available on record, do not indicate as to whether, the Government have issued any orders, in exercise of the powers, conferred under Sections 51 and 51-A of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, by which a teaching and non-teaching staff, working in a recognised schools, have to obtain sanction of leave, from the Director of Elementary/School Education, as the case may be. The contention of the appellants that the staff works in a recognised private school, has to obtain a 'No objection certificate' from the Head of Department, viz., the Director of Elementary Education, on the ground that he is the appointing authority, cannot be countenanced, as he is



not the appointing authority under the Tamil Nadu Recognised Private Schools (Regulations) Act, 1973.

37. Unless and until, the Government issues any order, within the frame work of the statute, which governs the recognised and aided schools, the Director of the Elementary Education, Chennai, cannot assume jurisdiction, extending the abovesaid Government Orders, which are intended mainly for to the government servants, where there are Heads of the Department. Though recognised private aided institutions, perform a public duty and receive salary for the staff, through State Aid, yet in so far as grant of leave is concerned, it is sanctioned only by the School Committee, in exercise of their powers, under Section 18 of the Act.

38. Offices of a Department may be located at different places, for which, there may be a Head of the Department. But a recognised aided private school, cannot be said to be a unit of the Department of School Education. On the other hand, it is an independent unit, governed by the statutory provisions of the Act and the rules framed thereunder. The Director has the powers to issue directions, only within the frame work of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Rules framed there under.

39. Merely because, the petitioner has not obtained sanction of leave from the Director of Elementary Education, Chennai, it cannot be said that there is a violation of the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act and the Rules framed thereunder and in particular, the Code of Conduct framed in Annexure-II, in terms of Section 21 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, read with Rule 16 of the Rules framed thereunder. Conditions imposed in the order, dated 30.05.2014, of the Director of Elementary Education, Chennai, can at best be made applicable, only to the extent, within the statutory provisions, to which, the recognised aided schools and the staff therein, are bound to follow. At the risk of repetition, Government orders issued are amendments to rule 24A of the Government Servant Conduct Rules, and not to Tamil Nadu Recognised Private Schools (Regulation) Act. 1973.



40. Amendment to Rule 24-A of the Tamil Nadu Government Servant's Conduct Rules, cannot ipso facto be applied to recognised private schools, by the Director of Elementary Education, by issuing proceedings, on his own, and violation of which, cannot entail disciplinary action, as contemplated in the proceedings of the Assistant Director of Elementary Education, Paramakudi, dated 29.09.2014. As both the orders, dated 29.09.2014 and 24.10.2014, impugned in W.P.(MD)No.18040 of 2014, are based on the proceedings of the Director of Elementary Education, Chennai, rightly they have been set aside by the Writ Court."

9.12. The Learned Counsel for the Respondent Nos.4 and 6 in W.P.(MD)No.13026 of 2017 and Respondent Nos.6 and 7 in W.P.(MD) No.13461 of 2017, seeks in aid of the decision of this Court in DIRECTOR OF SCHOOL EDUCATION, CHENNAI v. GELDON WIFRED VIOLA reported in (2009) 2 TNLJ 101 (Civil), at special page Nos.103 and 104, wherein at paragraph No.5, it is observed as follows:-

"5.Mr.S.Rajasekar, learned Additional Government Pleader would however submit that inasmuch as G.O.Ms.No.720, Education Department, dated 28.04.1981 and G.O.Ms.No.361, Education Department, dated 31.12.1999 prescribe a minimum qualification for the said post viz., Bachelor's Degree as well as Post Graduate Degree in the subject, the teacher is not eligible, as she does not possess a Bachelor's Degree in History. In our opinion, the said submission of course is made on the basis of the impugned order in the writ petition which is totally a misconception. A careful reading of those Government Orders would indicate that the qualifications prescribed thereunder are primarily intended for the appointment of teachers in the Government Schools. Nevertheless Government Order contemplates that the said qualifications are also applicable in respect of aided schools as well pending amendment to the relevant rules. It is well settled in law that the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and rules made thereunder are along made applicable to the second Respondent-School and the qualifications are prescribed under the rules framed in exercise of the powers conferred under Section 56 of the Act. Any prescription of the qualification by way of the Government Order without amendment to the rules cannot be given effect to bind the private schools and the appointments, conditions of service, qualification are all governed by the provisions of the act and the rules made thereunder. The Government Order G.O.Ms.No.361, Education Department, dated 31.12.1999 which is questioned though has been issued in exercise of the power under Article 309 of the Constitution of India, in our opinion, that would be made applicable only to the



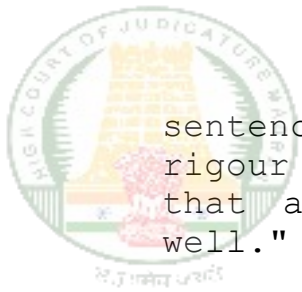
Government Servants viz., the teachers who are employed in the Government Schools and not to the teachers in private schools, as those teachers are governed only by the provisions of the Act and the rules made thereunder. In the given case, as the rules contemplate only a Master's Degree in the subject for appointment of a Junior Grade Post Graduate Assistant and does not mandate a Bachelor's Degree as well in the same subject. A teacher who has secured a Master's Degree in the subject would be entitled and is eligible for appointment to the post. The rejection of the request for approval to the said post is therefore erroneous, as it was done by following the Government Order G.O.Ms.No.361, Education Department, dated 31.12.2009."

9.13. In the decision of this Court in VALLIAPAN, K.M. v. JOINT DIRECTOR OF SCHOOL EDUCATION reported in (2006) 4 CTC 471, at special page No.477, wherein at paragraph No.8, it is observed as under:-

"8. In spite of the aforesaid Division Bench decision relating to Tamil Nadu Private Colleges (Regulation) Rules, 1976, which is pari materia with Tamil Nadu Recognised Private School (Regulation) Rules, 1974, subsequently, the controversy continued."

9.14. In the decision of Hon'ble Supreme Court in B.R.KAPUR v. STATE OF TAMIL NADU reported in AIR 2001 Supreme Court 3435, at special page No.3452, whereby and where under, at paragraph No.40, it is observed as follows:-

"40. In much the same vein, it was submitted that the presumption of innocence continued until the final judgment affirming the conviction and sentence was passed and, therefore, no disqualification operated as of now against the second Respondent. Before we advert to the four judgments relied upon in support of this submission, let us clear the air. When a lower court convicts an accused and sentences him, the presumption that the accused is innocent comes to an end. The conviction operates and the accused has to undergo the sentence. The execution of the sentence can be stayed by an appellate court and the accused released on bail. In many cases, the accused is released on bail so that the appeal is not rendered infructuous, at least in part, because the accused has already undergone imprisonment. If the appeal of the accused succeeds the conviction is wiped out as cleanly as if it had never existed and the sentence is set aside. A successful appeal means that the stigma of the offence is altogether erased. But that is not to say that the presumption of innocence continues after the conviction by the trial court. That conviction and the



sentence it carries operate against the accused in all their rigour until set aside in appeal, and a disqualification that attaches to the conviction and sentence applies as well."

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9.15. The Learned Counsel for the Respondent Nos.4 and 6 in W.P.(MD)No.13026 of 2017 and Respondent Nos.6 and 7 in W.P.(MD) No.13461 of 2017, relies the decision of Hon'ble Supreme Court in STATE OF RAJASTAN v. VISHNU DUTTA reported in Criminal Appeal No.1502 of 2005 dated 01.12.2011, wherein at paragraph Nos.10, 11 (13) and 11(14), it is observed as under:-

"10. The penal laws in India are primarily based upon certain fundamental procedural values, which are right to fair trial and presumption of innocence. A person is presumed to be innocent till proven guilty and once held to be not guilty of a criminal charge, he enjoys the benefit of such presumption which could be interfered with only for valid and proper reasons. An appeal against acquittal has always been differentiated from a normal appeal against conviction. Wherever there is perversity of facts and/or law appearing in the judgment, the appellate court would be within its jurisdiction to interfere with the judgment of acquittal, but otherwise such interference is not called for. We may refer to a recent judgment of this Court in the case of State of Rajasthan, Through Secretary, Home Department v. Abdul Mannan[(2011) 8 SCC 65], wherein this Court discussed the limitation upon the powers of the appellate court to interfere with the judgment of acquittal and reverse the same.

11. This Court referred to its various judgments and held as under:-

"12.

13. When an accused is acquitted of a criminal charge, a right vests in him to be a free citizen and this Court is very cautious in taking away that right. The presumption of innocence of the accused is further strengthened by the fact of acquittal of the accused under our criminal jurisprudence. The courts have held that if two views are possible on the evidence adduced in the case, then the one favourable to the accused, may be adopted by the court. However, this principle must be applied keeping in view the facts and circumstances of a case and the thumb rule is that whether the prosecution has proved its case beyond reasonable doubt. If the prosecution has succeeded in discharging its onus, and the



error in appreciation of evidence is apparent on the face of the record then the court can interfere in the judgment of acquittal to ensure that the ends of justice are met. This is the linchpin around which the administration of criminal justice revolves.

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14. It is a settled principle of criminal jurisprudence that the burden of proof lies on the prosecution and it has to prove a charge beyond reasonable doubt. The presumption of innocence and the right to fair trial are twin safeguards available to the accused under our criminal justice system but once the prosecution has proved its case and the evidence led by the prosecution, in conjunction with the chain of events as are stated to have occurred, if, points irresistibly to the conclusion that the accused is guilty then the court can interfere even with the judgment of acquittal. The judgment of acquittal might be based upon misappreciation of evidence or apparent violation of settled canons of criminal jurisprudence."

9.16. In the decision of this Court in THE MANAGEMENT OF PAPANASAM LABOUR WELFARE ASSOCIATION HIGHER SECONDARY SCHOOL v. THE CHIEF EDUCATIONAL OFFICER, reported in 1998 (III) CTC 753, at special page No.760, wherein at paragraph No.14, it is observed as follows:-

"14. While considering the scope of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, it is clear that the Government has got only a controlling power over the Institution and the Act regulates the power that has to be exercised. From the very heading of the enactment, it is clear that it is the Management that has established the school, and has also appointed the staff according to their qualification. It takes disciplinary proceedings and also pays the salary. The activities of the Management and also the smooth functioning of the school are regulated by the provisions of the Act. The Government is not the Master, nor the Employer. The Employer is the School of Management, who pays the salary to the staff. The Employer has the duty to pay salary, though the amount is paid by the Government. It is an action on the part of the employer to have a control over his employee/employees. It is the School Committee which is reasonable for the smooth functioning of the school. Under Section 18 of the Act, the School Committee is having the power to carry on the general administration of the private school. It has the power to appoint teachers and other employees of the private school, fix their pay and allowances and define their duties and the conditions of their service, and to take disciplinary action against



teachers and other employees of the private school. Even if the Management gets a grant, that is also on the basis of the statement of the Secretary of the School Committee. The Government is only extending financial assistance; the actual control is only with the Management, when we go by the Rules, the right of the Management is recognised and that it is said that the statement must be prepared by the Secretary and signed both by the Secretary and the Headmaster, and the Bill is also handed over to the Secretary, who encashes the same for payment to the teachers. If that is the ordinary procedure contemplated under the Act and Rules, it only means that the Management has got the absolute control over the teachers. It cannot be disputed that the payment of salary is one of the acts of management and general administration. The Management may not have any right to get a grant, but the right to pay the salary is only with the Management, unless special circumstances are made out."

9.17. In the decision of this Court in R.SIVAKUMARI v. RAMANATHAPURAM MAVATTA PAYICHIPETRA EDAINILAI ASIRIYARGAL SANGAM, reported in 2007 (5) CTC 561, at special page No.577, wherein at paragraph No.38, it is observed as under:-

"38. (e). Though the Teachers employed in Private Aided Schools are in receipt of the same scales of pay and similar terms and conditions of service, the employment in a Private Aided School cannot always be treated on par with the employment in a Government School. By virtue of the provisions of the Tamil Nadu Recognised Private Schools Regulation Act, the disciplinary control over the teacher of a Private Aided School vests with the School Committee and certain safeguards are provided under the Acts and Rules. But the service conditions of teachers under the Provisio to Article 309 of the Constitution and the employment in Government School is actually one of Status. When a teacher is rendered surplus in a Private Aided School, he has to be rehabilitated by the method of redeployment. But, insofar as a teacher employed in a Government School is concerned, such rehabilitation takes place by an instant transfer. Therefore, the security of employment is much more in promotional prospects in a Private Aided School are very bleak when compared to the promotional prospects in a Government School, since the field of promotion and the zone of consideration in Government Service is very huge compared to that in a Private Aided School. Therefore, there are many number of reasons for a person to seek a switch over from Private Aided Schools to Government Schools. The denial of such an



opportunity to teachers employed in Private Aided Schools, to switch over to Government Schools, would violate their fundamental right to be considered for appointment to Government Service."

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9.18. In the decision of Hon'ble Supreme Court in DHAMPUR SUGAR (KASHIPUR) LTD v. STATE OF UTTARANCHAL AND OTHERS, reported in (2007) 8 SCC, 418, at special page No.448, wherein at paragraph No.83, it is observed as follows:-

"Allegations of mala fide are serious in nature and they essentially raise a question of fact. It is, therefore, necessary for the person making such allegations to supply full particulars in the petition. If sufficient averments and requisite materials are not on record, the court would not make fishing or roving inquiry. Mere assertion, vague averment or bald statement is not enough to hold the action to be mala fide. It must be demonstrated by facts. Moreover, the burden of proving mala fide is on the person levelling such allegations and the burden is very heavy [vide E.P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 4 : (1974) 2 SCR 348]. The charge of mala fide is more easily made than made out. As stated by Krishna Iyer, J. in Gulam Mustafa v. State of Maharashtra, (1976) 1 SCC 800 : AIR 1977 SC 448], it is the last refuge of a losing litigant [see also Ajit Kumar v. Indian Oil Corporation, (2005) 7 SCC 764]. In the case on hand, except alleging that the policy was altered by the Government, to extend the benefit to Respondent No. 4, no material whatsoever has been placed on record by the appellant. We are, therefore, unable to uphold the contention of the learned counsel that the impugned action is mala fide or malicious."

W.P.(MD)No.13461 of 2017:

(10).The Writ Facts:-

10.1. The Petitioner is a member of the Sixth Respondent/Society, which is registered under the Societies Registration Act. After knowing that there were irregularities in filling up of vacancies after conducting thorough informations from several sources, the Petitioner finds that the Sixth Respondent/Society is having close associateship with the officials serving under the Respondents No.3 and 4 and having a camouflage and conspiracy to fill up vacancies for an illegal gratification and the entire selection process made to non-teaching staffs was made by illegal methods adopted by the Board of Directors. In fact, the Management Committee had not even appointed an 'Interim Committee', but the same members sat as 'Interview Committee' and later allegations were made and sought for an approval beyond the cadre strength and the permission was also granted.



10.2. There were several irregularities and illegalities and by involving in corrupt activities, the selection was conducted by the Sixth Respondent. A detailed complaint was addressed to the Fifth Respondent/Inspector of Police, Vigilance and Anti Corruption Wing, Madurai and a criminal case was registered against the Secretary of the College/Secretary of the Society in Crime No.2 of 2017 in respect of the offence under Sections 167, 409, 420, 465, 468, 477-A r/w 120-B of IPC and under Section 13(2) r/w Section 13(1) (d) of the Prevention of Corruption Act, 1988.

10.3. The Petitioner addressed a detailed Representation on 08.07.2017 seeking an appointment of Special Officer under Section 34-A of the Societies Registration Act, 1975. Till date, no action is taken on his Representation so made. The Respondents No.1 to 5, who are public and Law enforcing authorities, are refusing to take action in the matter. The Third Respondent recently had permitted the Sixth Respondent to continue the selection process. Hence, the Petitioner has filed the present Writ Petition assailing the impugned order of the Third Respondent passed in proceedings Na.Ka.No.9886/G3/2017-11, dated 25.05.2017 and the consequential notification of the Sixth Respondent published in English Daily Indian Express dated 06.07.2017, Madurai edition and for an appointment of Special Officer to the Society.

(11).The Contents of Counter of R1 and R2:-

On the basis of Petitioner's Representation dated 08.07.2017, seeking for appointment of an Special Officer under Section 34-A of the Societies Registration Act, 1975, the District Registrar submitted his report through letter, dated 22.09.2017 and stated that there is no situation warranting to apply Section 34-A of the Societies Registration Act. There is an allegation against the Office Bearers of the Society in the previous tenure, for that, no specific finding is there about the malpractices. The Petitioner is to establish that he is a member of the Sixth Respondent/Society and he is entitled to file this Writ Petition against the Society as per its Bye-Laws.

(12).The Counter Averments of Seventh Respondent:-

12.1. The Writ Petitioner has no right whatsoever to question the notification issued by the Secretary of the Seventh Respondent/College, dated 06.07.2017. The Writ Petitioner, who is not qualified to the post of Assistant Professor cannot assail the notification issued by the College for filling up the post. As a matter of fact, the Writ Petitioner does not have any legal enforceable right or much less an individual right to question the notification issued by the College for filling up the post of Assistant Professor. Likewise, he is neither affected nor aggrieved over the proceedings issued by the Director of Collegiate Education, dated 25.05.2017. Moreover, the Registrar of Societies had approved the Form-7 submitted by the Society and the Director of Collegiate Education. Therefore, the Writ Petitioner



cannot prevent the validly approved Committee from discharging their duties under the Tamil Nadu Private Colleges (Regulation) Act, 1976 and Rules.

12.2. When there is no violation of any of the provisions of Tamil Nadu Private Colleges (Regulation) Act, 1976 and Rules, the Writ Petitioner cannot seek appointment of Special Officer. The Writ Petitioner, as a single person, cannot even seek to convene any meeting in the Society in his individual capacity and cannot file a Writ Petition seeking appointment of Special Officer to the Society. After the enactment of the Tamil Nadu Private Colleges (Regulation) Act, 1976 and Rules, the College Committee constituted under the Act alone is entitled to make appointments. However, after the introduction of University Grants Commission Regulation, 2010, the selection of candidates for appointment can be made only by the selection Committee constituted by Madurai Kamaraj University in accordance with UGC Regulations and the seventh Respondent or the present Office Bearers cannot choose any candidates of their choice.

12.3. The Director of Collegiate Education granted permission to fill up only 10 posts. As there was no requirement for obtaining any prior permission for filling up the sanctioned non-teaching posts, which arose due to retirement or promotion, the College management filled 16 sanctioned non-teaching posts as per the existing norms and submitted the proposal before the Regional Joint Director of Collegiate Education, Madurai Region for approval and the same is pending. Even before the competent authority rejected the approval, the rival groups in the Society (including the Writ Petitioner), influenced the Fifth Respondent/Inspector of Police, Vigilance and Anti Corruption, Madurai and registered the First Information Report.

12.4. The allegations in the First Information Report do not constitute any of the ingredients for the alleged offences under the relevant provisions of Indian Penal Code and under the Prevention of Corruption Act. The Fifth Respondent without advertng to the provisions of Tamil Nadu Private Colleges (Regulation) Act, 1976 and Rules, has interfered in the appointments of non-teaching staff in a private aided College.

12.5. The Registration of First Information Report against the seventh Respondent is an abuse of process of Law. The present College Committee had filled the 16 sanctioned posts of non-teaching staffs as per the provisions of Tamil Nadu Private Colleges (Regulation) Act and Rules. The Writ Petitioner, who is selling liquor in black market had arrested by the police on various occasions, pursuant to the First Information Report No.131 of 2006; First Information Report No.81 of 2010; First Information Report No.590 of 2011 and First Information Report No.320 of 2012, on the file of Town Police Station, Usilampatti,

is making of endeavors to stall the administration of the Society and College. Unless a person is convicted by the trial Court, the presumption of innocence is always in favour of an accused and as such, the Writ Petition is misconceived one. There is collusion between the present Writ Petitioner (W.P.(MD)No.13461 of 2017) and the Petitioner in W.).(MD)No.13026 of 2017.

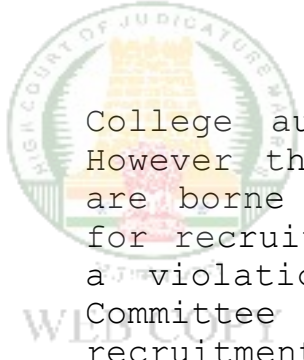
12.6. When the ingredients of Section 34-A of Tamil Nadu Societies Act, are not attracted, the Writ Petitioner cannot seek for appointment of an officer, as per his whims and fancies. The UGC being the funding agent periodically verifies the accounts of UGC sanctioned funds. The College submitted audit utilisation certificate with statement of accounts to UGC periodically. The posts are filled up by following the selection procedures contemplated by UGC from time to time. The Writ Petition has been filed with an oblique motive and as such it is not maintainable, because, it is an abuse of process of this court.

(13).The Contents of Status Report of R5:-

13.1. The prayer in the Writ Petition has nothing to do with the Fifth Respondent. Section 2(c) of the Prevention of Corruption Act, 1988 defines the term 'Public Servant' and Clause (xii) of Section 2(c) of the Prevention of Corruption Act, enjoins that 'any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatsoever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority.'

13.2. In the present case, the Sixth Respondent/Kalvi Kazhagam is a Society registered under the Societies Act. As a matter of fact, the Management is a Committee consisting of elected Office Bearers, teaching staff, University nominee and an Educational Agency, as a recognised agency by the Government and is receiving 100% aid from the Government. Therefore, the Management Committee is coming within the definition of public servant under Section 2 (c) of the Prevention of Corruption Act, 1988. Inasmuch as the College is receiving 100% financial aid, from the public funds, they are public servants under the Prevention of Corruption Act. There is commission of an offence under the provisions of the Prevention of Corruption Act. Therefore, the accused in the criminal case are liable to be prosecuted under the Prevention of Corruption Act, 1988.

13.3. The Investigating Officer in the Criminal case had so far examined 76 witnesses and gathered 128 documents. Before the selection process, there was a sanction of appointment by the Third Respondent/Director of Collegiate Education on 25.01.2016 and 27.01.2016 authorising and approving 10 posts of Non-teaching staff to be filled up by the an 'Educational Agency'. Subsequently, without any prior permission from the Educational Authorities, a notification was issued for 16 posts, which is clinching to show that the recruitment process can commence only after prior permission from the Educational Authorities. The



College authorities had granted permission only for 10 posts. However the selection process had commenced for 16 posts, which are borne by documentary evidence. There is no valid permission for recruitment of six more posts and in this connection there is a violation and serious misconduct committed by the College Committee in the 'Recruitment Process'. While going for direct recruitment, the list would be called for from the Employment Exchange. That apart, for the category of SCA (DW) persons were sponsored by the Employment Exchange and they attended interview but not selected. It is pertinent to note that SCA (W) was appointed instead of SCA(DW).

13.4. There is no approval either from the Educational Agency or College Committee that the management Committee can call for applications for 16 posts and not even interview board was approved either by the Educational Agency or by the College Committee. Four members of the management Committee are the beneficiary in the appointees because of the reason that sons, wife and 'Close Blood Relatives' of the Management Committee members and the Brother-in-law of the Secretary of the Educational Agency/College Management Committee, the Chairman of the interview board was appointed in the selection process.

13.5. The First Accused Pandian is the main accused against whom all the materials were available. He appointed his own brother-in-law viz., wife's brother as a staff of the College, where he is functioning as Secretary of the Educational Agency and Secretary of the College management Committee and he also happened to be the Chairman of the interview board and subsequently, appointments were approved by the College Committee and apart from that four members of the Management Committee were appointed as College staff.

13.6. The entire selection process to the public posts which receives 100% grant from the Government is filled up by illegal means, abuse of power and also conspiracy with each other misusing their official position. The College authorities receiving grant/aid from the Government or public servants and prima facie materials are available on record to proceed further against them. There are electronic records available with the Investigating officer, which are authenticated by scientific experts to show that there were previous conspiracy among the accused before filling up of the posts and there were transactions of illegal gratifications for the purpose of selecting candidates.

(14).The Contentions of the Petitioner in W.P.(MD)No.13461 of 2017:-

14.1. The Learned Senior Counsel for the Petitioner contends that the Writ Petitioner is a Member of the Sixth Respondent/Society and the Sixth Respondent/Society is an Educational Agency under the Tamil Nadu Private College (Regulation) Act, 1976. In this connection, the Learned Senior



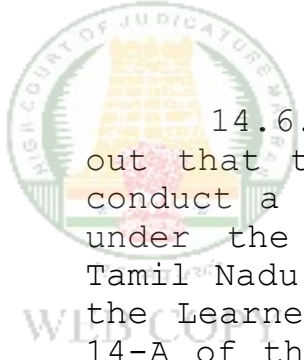
Counsel for the Petitioner points out that the Third Respondent/Director of Collegiate Education had permitted the seventh Respondent/College to fill up 10 non-teaching posts by proceedings dated 25.01.2016 and 27.01.2016.

14.2. Furthermore, it is represented on behalf of the Writ Petitioner that the seventh Respondent by means of proceedings dated 04.02.2016, had called for application from the public through a newspaper advertisement, dated 04.12.2016 and in fact, the interview was not conducted. However, another notification came to be published by the seventh Respondent through proceedings dated 13.09.2016. The Learned Senior Counsel for the Petitioner proceeds to point out that while granting permission for filling up the post, the Third Respondent/Director of Collegiate Education, through proceedings, dated 25.01.2016 and 27.01.2016, specified a condition that the appointment can be made only through an Employment Exchange and also by calling for an application from the general public. However, the Learned Senior Counsel for the Petitioner vehemently contends that the seventh Respondent/College had not chosen to call for applications from the Employment Exchange or sponsor from the Employment Exchange. Therefore, the second notification calling for applications without requisition for sponsor of candidates from the Employment Exchange as per grant of approval from the Third Respondent/Director of Collegiate Education, is an illegal one.

14.3. The Learned Senior Counsel for the Petitioner comes out with a plea that there is no 'Resolution' from the seventh Respondent/College for increasing the number of posts from 10 to 16 and therefore, the second notification calling for applications for 16 posts is an illegal one, besides conflicting to the orders of approval and orders issued by the Government in G.O.Ms.No.44, Labour and Employment Department, dated 11.03.2015.

14.4. The Learned Senior Counsel for the Petitioner brings it to the notice of this Court that as per G.O.Ms.No.44, Labour and Employment Department, dated 11.03.2015, the post can be filled only by calling for candidates both from the Employment Exchange and paper notification. Therefore, it is the version of the Petitioner that the commencement of selection process without sponsorship from the Employment Exchange is not only against Law but against the Government Order itself.

14.5. The Learned Senior Counsel for the Petitioner projects an argument that the status report of the Fifth Respondent, dated 09.11.2017 is explicitly clear in regard to the illegality and commission of crime by the officials of the seventh Respondent/College and the seventh Respondent by taking advantage of his position as Secretary of the College Committee and Educational Agency had committed a serious crime.



14.6. The Learned Senior Counsel for the Petitioner points out that the Respondents No.1 and 2 do have a statutory duty to conduct a detail enquiry based on the complaint of the Petitioner under the Tamil Nadu Societies Registration Act, 1975 and the Tamil Nadu Private College (Regulation) Act, 1976. In this regard, the Learned Senior Counsel for the Petitioner adverts to Section 14-A of the Tamil Nadu Private College (Regulation) Act, 1976 and contends that it is the duty of the Government and the Third Respondent to conduct a detail inspection pertaining to the affairs of the aided College and in case of mismanagement, malfeasance and mis-feasance, is the statutory duty of the First Respondent/Secretary to Government, Commercial Tax and Registration Department, Government of Tamil Nadu, Chennai - 9 to take action for appointment of a Special Officer for the Society itself. As a matter of fact, the Representations of the Petitioner are pending, besides that it is the stand of the Petitioner that the report of the Vigilance authority/Fifth Respondent was not even called for before permitting the seventh Respondent in filling up the vacancies. The Learned Senior Counsel for the Petitioner submits that the aided posts are sought to be filled up by illegally by abuse and misuse of administrative power which is proved by clinching evidence and impeccable report from the Vigilance Authority.

(15).The Petitioner's Case Laws:-

The Learned Senior Counsel for the Petitioner cites the decision of Hon'ble Supreme Court in RENU v. DISTRICT AND SESSIONS JUDGE, TIS HAZARI reported in 2014 (2) Scale 262, at special page Nos.263 and 264, wherein it is observed as under:-

"A. Our basic concern is that the appointments in judicial institutions must be made on the touchstone of equality of opportunity enshrined in Article 14 read with Article 16 of the Constitution of India, 1950 (hereinafter referred to as the 'Constitution') and under no circumstances any appointment which is illegal should be saved for the reason that the grievance of the people at large is that complete darkness in the light house has to be remove. The judiciary which raises a finger towards actions of every other wing of the Society cannot afford to have this kind of accusations against itself.

B. Rule of law is the basic feature of the Constitution. There was a time when REX was LEX. We now seek to say LEX is REX. It is axiomatic that no authority is above law and no man is above law. Article 13 (2) of the Constitution provides that no law can be enacted which is inconsistent with the fundamental rights guaranteed under Part III of the Constitution. The object of such a provision is to ensure that instruments emanating from any



source of law, permanent or temporary, legislative or judicial or any other source, pay homage to the constitutional provisions relating to fundamental rights. Thus, the main objective of Article 13 to secure the paramountcy of the Constitution especially with regard to fundamental rights.

C. The aforesaid provision is in consonance with the legal principle of "Rule of Law" and they remind us of the famous words of the English jurist, Henry de Bracton - "The King is under no man but under God and the Law". No one is above law. The dictum - "Be you ever so high, the law is above you" is applicable to all, irrespective of his status, religion, caste, creed, sex or culture. The Constitution is the supreme law. All the institutions, be it legislature, executive or judiciary, being created under the Constitution, cannot ignore it.

D. The exercise of powers by an authority cannot be unguided or unbridled as the Constitution prescribes the limitations for each and every authority and therefore, no one, howsoever high he may be, has a right to exercise the power beyond the purpose for which the same has been conferred on him. Thus, the powers have to be exercised within the framework of the Constitution and legislative provisions, otherwise it would be an exercise of power in violation of the basic features of the Constitution i.e. Part III dealing with the fundamental rights which also prescribes the limitations.

E. As Article 14 an integral part of our system, each and every state action is to be tested on the touchstone of equality. Any appointment made in violation of mandate of Articles 14 and 16 of the Constitution is not only irregular but also illegal and cannot be sustained.

F. Where any such appointments are made, they can be challenged in the court of law. The quo warranto proceeding affords a judicial remedy by which any person, who holds an independent substantive public office or franchise or liberty, is called upon to show by what right he holds the said office, franchise or liberty, so that his title to it may be duly determined, and in case the finding is that the holder of the office has no title, he would be ousted from that office by judicial order. In other words, the procedure of quo warranto gives the Judiciary a weapon to control the Executive from making appointment to public office against law and to protect a citizen from being deprived of public office to which he has a right. These proceedings also tend to protect the public from usurpers of public office who might be allowed to continue either with the connivance of the Executive or by reason of its apathy. It will, thus, be seen that



before a person can effectively claim a writ of quo warranto, he has to satisfy the Court that the office in question is a public office and is held by a usurper without legal authority, and that inevitably would lead to an enquiry as to whether the appointment of the alleged usurper has been made in accordance with law or not. For issuance of writ of quo warranto, the Court has to satisfy that the appointment is contrary to the statutory rules and the person holding the post has no right to hold it.

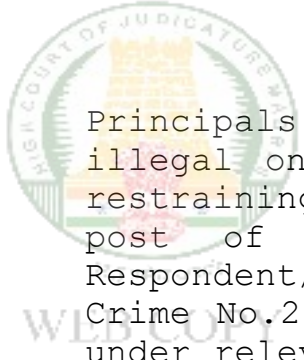
G. Another important requirement of public appointment is that of transparency. Therefore, the advertisement must specify the number of posts available for selection and recruitment. The qualifications and other eligibility criteria for such posts should be explicitly provided and the schedule of recruitment process should be published with certainty and clarity. The advertisement should also specify the rules under which the selection is to be made and in absence of the rules, the procedure under which the selection is likely to be undertaken. This is necessary to prevent arbitrariness and to avoid change of criteria of selection after the selection process is commenced, thereby unjustly benefiting someone at the cost of others."

(16).The Contentions of Respondent Nos.1 to 5:-

The Learned Special Government Pleader for the Respondent Nos.1 to 5 submits that the Petitioner (in W.P.(MD)No.13461 of 2017) is to establish that he is a member of the Sixth Respondent/Society and he is entitled to file this Writ Petition against the Society in terms of Bye-Laws of the Society and it is true that as against the Office Bearers of the Society, during previous tenure, there were allegations and no specific finding was given about the malpractices. Furthermore, for the Petitioner's Representation on 08.07.2017, praying for appointment of a Special Officer under Section 34-A of the Societies Registration Act, 1975, a report was called for and the District Registrar gave his report dated 22.09.2017 stating that no situation had arisen to invoke Section 34-A of the Societies Registration Act. There is no just cause to invoke the jurisdiction of this Court under Article 226 of the Constitution of India.

(17).Discussions:-

17.1. At the outset this Court pertinently points out that the Petitioner has filed the present W.P.(MD)No.13026 of 2017, under the caption 'Public Interest Litigation' before this Court seeking to call for the records relating to the impugned advertisement pertaining to the appointment of Assistant Professors and



Principals published in vernacular daily dated 06.07.2017, as an illegal one. Further, he has sought for passing of an order in restraining the Respondents from making any appointments to the post of Assistant Professor and Principal in the Fourth Respondent/College till the completion of Criminal charges in Crime No.2 of 107 under various sections of Indian Penal Code and under relevant sections of the Prevention of Corruption Act.

17.2. The Petitioner in W.P.(MD)No.13461 of 2017 has filed the instant Writ Petition under the caption 'Public Interest Litigation' in calling for the records relating to the impugned advertisement pertaining to the appointment of Assistant Professors and Principals published in vernacular daily, dated 06.07.2017 and to quash the same, as illegal etc.

17.3. It is to be aptly pointed out that a 'Public Interest Litigation' may be filed by any individual to secure the rights of members of the public at large or any weaker section of the Society, who are not in a position to espouse their cause. When a case for an infringement of right is made out in a given case, then a Court of Law will intervene to restore such right, notwithstanding the 'Locus Standi' of the petitioner. As a matter of fact, the Public Interest Litigation does not enable a Court of Law to traverse beyond the ambit of Law. If there are breach of constitutional or human rights or on statutory provisions, then a Court of Law is entitled to intervene to set the matters right, in the considered opinion of this Court.

17.4. It is not in dispute that the Fourth Respondent/College (In W.P.(MD)No.13026 of 2017) being an 'Aided College' receives 100% grant from the State Government. As a matter of fact, the Petitioner in W.P.(MD)No.13026 of 2017, had averred in his Writ Petition that the Fourth Respondent/Secretary of the College had received a huge amount from one Easwaran for the post of Assistant Professor in political science department through one Rajendran and Manikandan and from one Mona Visalakshi, D/o.Ganesan, for the post of Assistant Professor in Commerce Department. The Writ Petitioner (In W.P.(MD)No.13026 of 2017) has taken a plea that if the Secretary of the Fourth Respondent/College is permitted to make appointments for the post of Assistant Professor and Principal, it would again result in misappropriation that will be the detriment to the welfare of the institution. Further, the Petitioner in the first Writ Petition had averred that the Second Respondent/Director of Collegiate Education, Chennai had issued an impugned paper advertisement for filling up the posts of Assistant Professor and Principal in a local vernacular daily and is now proceeding with, in a hurried manner, since their term is about to end in 2018.

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

17.5. Insofar as the Writ Petitioner in W.P.(MD)No.13461 of 2017 is concerned, he has filed the same under the caption 'Public



Interest Litigation' stating that there were several irregularities and illegalities and by involving in corrupt practices, the selection was conducted by the Sixth Respondent/Kallar Kavli Kazhagam and that based on his detailed complaint made to the Fifth Respondent/Inspector of Police, Vigilance and Anti Corruption, Madurai, a case in Crime No.2 of 2017 was registered against the Secretary of Posumpon Muthuramalinga Thevar College in respect of the offences under Sections 167, 409, 420, 465, 468, 477-A r/w 120-B of IPC and under Section 13(2) r/w Section 13(1) (d) of the Prevention of Corruption Act, 1988.

17.6. In the status report, the Fifth Respondent (in both the Writ Petitions) had mentioned that the management Committee comprises of elected Office Bearers, teaching staff, University nominee and the Educational Agency/Sixth Respondent/Kallar Kalvi Kazhagam, is receiving 100% aid from the Government and therefore, the said Committee is coming within the definition of public servant under Section 2(c) of the Prevention of Corruption Act, 1988. Nearly 76 witnesses were examined and 128 documents were collected during investigation by the Fifth Respondent/Police and that the investigation according to the Fifth Respondent/Police is almost over. The stand of the Fifth Respondent is that he is subjectively satisfied that the offences under Indian Penal Code as well as under Prevention of Corruption Act, were committed by the accused and there are clinching evidence to establish the commission of offences committed by the named accused.

17.7. In the case on hand before us, before the selection process, there was a sanction of appointment by the Third Respondent/Director of Collegiate Education, Chennai (In W.P.(MD) No.13461 of 2017) on 25.1.2016 and 21.07.2016 authorising and approving 10 posts of non-teaching staff to be filled up by the Educational Agency. Later, without prior permission from the Educational Authorities, a notification was issued for 16 posts and in fact, the Committee had knowledge that the College authorities were granted permission only for 10 posts, but the selection process had commenced for 16 posts unauthorisedly, for which, there are documentary evidence before the Fifth Respondent. In short, there is no valid permission for recruitment of six more posts and according to the Fifth Respondent/Police, the entire selection process suffers from severe illegalities and misconduct and further, the materials collected during investigation that the appointments are made for extraneous consideration. Apart from that, the Fourth Respondent in W.P.(MD) No.13026 of 2017 (Secretary of the College) is the main accused, who had appointed his own brother-in-law viz., wife's brother as a staff of the College and subsequently the appointments were approved by the College management Committee and four members of the management Committee were appointed as College staff members.

17.8. It is to be relevantly pointed out that Rule 11-Conditions of Service, etc., of teachers and other persons in college, (2) (i), of the Tamil Nadu Private Colleges (Regulation) Rules, 1976, speaks of 'The Committee of every college shall enter into an agreement with the teachers in Form 7-A and with the employees other than teachers in Form 7-C. If the appointment is for a period not exceeding three months, the agreement shall be made in Form 7-B in the case of teachers and in Form 7-D in the case of employees other than teachers.'

17.9. As a matter of fact, Section 28 of the Tamil Nadu Societies Registration Act, 1975, deals with 'Extraordinary General Meeting'. Section 35 of the Tamil Nadu Societies Registration Act, 1975, speaks of 'Inspection of Books'. Section 36 of the Act, 1975, enjoins 'Power of Registrar to enquire into the affairs of registered society'. The power of the Registrar to make an enquiry into the affairs of Society under the Act is only to conduct a summary enquiry for his subjective satisfaction. Undoubtedly, as per Section 36 of the Tamil Nadu Societies Registration Act, 1975, the Registrar of Societies on his own motion is empowered to hold an enquiry into the constitution, working and financial condition of a registered society and can pass necessary orders on such enquiry.

17.10. It is to be remembered that the Provisions of the Tamil Nadu Societies Registration Act, 1975, does not clothe the Registrar of Societies with any power of enquiry nor determine the rights of parties. Any information or explanation, which the Registrar may call upon under Section 34(1) is only for maintaining correct records/documents for the purpose of annexing the same to the original files maintained as regards each of the Registered Society. As such, the power of Registration under Section 34 of the Tamil Nadu Societies Registration Act, 1975, to call for an information or explanation is only an ancillary one for maintaining the correct records. Moreover, the power to conduct an enquiry is only limited with a view to ascertain whether the Constitution of members are valid, the enquiry is limited only for the purpose of making entries in the Register.

17.11. Rule-9 of the Tamil Nadu Societies Registration Rules, 1978, refers to 'Register of Societies' and the same is as under:-

"(1) The register specified in subsection (2) of section 10 shall be in Form No.III.

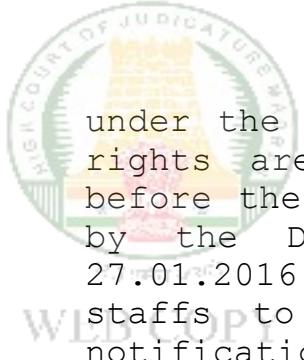
(2) The Registrar shall cause an alphabetical index to be maintained in respect of the societies registered in each calendar year. The entries in the alphabetical index shall be made then and there. It shall be in Form No.IV."

<https://hcservices.courts.gov.in/hcservices> 17.12. It is to be pointed out that Rule 18 of the Tamil Nadu Societies Registration Rule, 1978, speaks of 'Accounts to be maintained by the Society'. Rule 19 enjoins 'Accounts to be

written up promptly'. Rule 20 of the Tamil Nadu Societies Registration Rule, 1978, pertains to 'verification of accounts, returns and registers'. Rule 21 relates to 'qualification of person to audit the accounts of Societies'. Rule 24 of the Tamil Nadu Societies Registration Rule, 1978, refers to 'Investment of Funds'.

17.13. Since the Petitioner in W.P.(MD)No.13026 of 2017 has come out with an allegation that there were serious charge(s) of corruption in regard to the appointment of non-teaching staff were concerned and that the Petitioner in W.P.(MD)No.13461 of 2017 (Vanaraja) had lodged a complaint before the Fifth Respondent/Inspector of Police, Vigilance and Anti Corruption, Madurai and upon the said complaint a case was registered in Crime No.2 of 2017 under Sections 167, 409, 420, 465, 468, 477-A r/w 120-B of IPC and under Section 13(2) r/w Section 13(1) (d) of the Prevention of Corruption Act, 1988, on 27.02.2017 against the Fourth Respondent/P.Pandian, Secretary of the College, the Writ Petition No.13026 of 2017 filed by the Petitioner is maintainable before this Court, because of the reason the allegations of corruption required to be probed into and the conduct of enquiry must unravel necessary facts. Also that the alleged irregularities committed by the concerned persons, goes to the root of the matter, then the same required an in-depth enquiry being conducted by the concerned authorities. No wonder, purity of administration is required to be maintained and a corruption in a selection process cannot be tolerated. Moreover, if fraud in the selection process is proved, the concerned authority is to take note of the same and to take further action in the matter, as per Rules and Regulations. The integrity, merit and ability are to be relevantly considered and utmost transparency, ofcourse without any opaqueness, cloud or shroud or mist surroundings the appointments are to be maintained without any deviation. There is no two opinion of a primordial fact that appropriate candidate(s) with proven merit, ability, integrity and honesty are to be selected for the respective posts. In filling up the posts/recruitments/making appointments in public appointment, there is no place for Nepotism or favouritism.

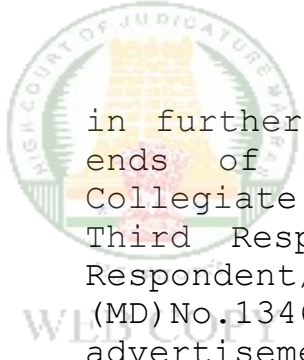
17.14. As far as the Writ Petition (MD)No.13026 of 2017 filed by the Petitioner under the caption 'Public Interest Litigation' is concerned, it cannot be thrown out over board, and the same is maintainable in Law, because of the reason that the members of appointing/selection Committee of educational institutions are to be fair, reasonable, impartial and honest with a view not to give room for any malpractices like corruption etc. Likewise, the plea that the Petitioner in W.P.(MD)No.13461 of 2017 is involved in First Information Report Nos.131 of 2009; 81 of 2010; 590 of 2011 and 320 of 2012 on the file of Town Police Station, Usilampatti and is said to be a person selling liquor in black <https://hmcasescourts.gov.in/hcscases/> the same reflects his antecedents, however, that does not stifle him to file the present Writ Petition in W.P.(MD) No.13461 of 2017 (notwithstanding the aspect of locus standi)



under the caption 'Public Interest Litigation', when violation of rights are alleged. One cannot ignore an important fact that before the selection process, there was a sanction of appointment by the Director of Collegiate Education on 25.01.2016 and 27.01.2016 authorising and approving 10 posts on non-teaching staffs to be filled up by the Educational Agency. Later, a notification came to be issued for 16 posts without obtaining any prior permission from the concerned Educational Authorities. In reality, the recruitment process can be started only after securing a prior permission from the Educational Authorities and there cannot be any post-facto ratification in this regard. When there is no valid permission for recruitment of 6 more posts, then the violation so alleged is not to be treated in a lighter fashion. It cannot be brushed aside that based on his detailed complaint made to the Fifth Respondent and after the intervention of this Court, the Fifth Respondent/Inspector of Police, Vigilance and Anti Corruption, Madurai had registered a criminal case in Crime No.2 of 2017 in respect of the offences under Sections 167, 409, 420, 465, 468, 477-A r/w 120-B of IPC and under Section 13(2) r/w Section 13(1) (d) of the Prevention of Corruption Act, 1988.

17.15. Moreover, the Petitioner in W.P.(MD)No.13461 of 2017 had purportedly collected materials about the mismanagement, misappropriation as well as fraudulent activities of the Board of Directors of the Sixth Respondent/Society had addressed a detailed Representation, dated 08.07.2017 seeking an appointment of a Special Officer under Section 34-A of the Societies Registration Act, 1975. Therefore, the filing of the W.P.(MD)No.13461 of 2017 by the Writ Petitioner (S.R.Vanaraja) is maintainable in Law.

17.16. Be that as it may, in view of the fact that the W.P. (MD)Nos.13026 of 2017 and W.P.(MD)No.13461 of 2017 filed by the respective Petitioners are held to be maintainable by this Court and also this Court, taking note of the fact that a case in Crime No.2 of 2017 was registered against the concerned, under various sections of Indian Penal Code and relevant provisions of the Prevention of Corruption Act, 1988; that the investigation in a criminal case is pending and also the Fourth Respondent/College is an aided one; that the Second Respondent/Director of Collegiate Education in W.P.(MD)No.13026 of 2017, although granted permission to fill up vacant sanctioned posts to the College subject to the conditions enumerated therein; that the College is the authority dealing with the selection process of the teaching staff of the College; that the Second Respondent/Director of Collegiate Education, Chennai or the Joint Director of Collegiate Education, Madurai is the competent authority to accord appointment approval to the teaching staff by taking into account the factors like sanctioned strength, Rule of Reservation, Educational Qualifications and other selection criteria and besides the above, the College is also to adhere to the relevant ingredients of Tamil Nadu Private Colleges (Regulation) Act, 1976 and Rules framed thereunder while selecting the candidates for the teaching posts,



in furtherance of substantial cause of justice and to secure the ends of justice, directs the Second Respondent/Director of Collegiate Education, Chennai in W.P.(MD)No.13026 of 2017 (The Third Respondent in W.P.(MD)No.13461 of 2017) and the Fourth Respondent/Joint Director of Collegiate Education, Madurai in W.P.(MD)No.13461 of 2017, to look into the issue of impugned advertisement relating to the appointments of Assistant Professor and Principal published in the vernacular daily, dated 06.07.2017 and to pass appropriate orders by issuing necessary directions to the concerned Respondents, and if there is substance to conduct an enquiry, to proceed further strictly in accordance with Law and under the Tamil Nadu Private Colleges (Regulation) Act, 1976 and the Rules framed there under, within a period of six weeks from the date of receipt of a copy of this order. While passing necessary orders, the Second Respondent/Director of Collegiate Education, Chennai in W.P.(MD)No.13026 of 2017 (The Third Respondent in W.P.(MD)No.13461 of 2017) and the Fourth Respondent/Joint Director of Collegiate Education, Madurai in W.P.(MD)No.13461 of 2017, shall take into account of the pending criminal case registered in Crime No.2 of 2017 under various sections of Indian Penal Code and relevant sections of the Prevention of Corruption Act, 1988 against the concerned, because of the simple reason that the Posumpon Muthuramalinga Thevar College (Fourth Respondent in W.P.(MD)No.13461 of 2017) is an 100% aided College.

17.17. If for any reason, the Second Respondent/Director of Collegiate Education, Chennai in W.P.(MD)No.13026 of 2017 (The Third Respondent in W.P.(MD)No.13461 of 2017) and the Fourth Respondent/Joint Director of Collegiate Education, Madurai in W.P.(MD)No.13461 of 2017, comes to the conclusion that if any enquiry needs to be conducted in respect of the affairs of the Sixth Respondent/Society, pertaining to the Fourth Respondent/College in W.P.(MD)No.13461 of 2017, concerning the alleged mismanagement, misappropriation as well as the activities of the Board (dehors the report sent by the District Registrar through letter No.3045/A2/2017, dated 22.09.2017), in this regard, necessary directions/orders shall be passed, within the time adumbrated by this Court.

18. With the aforesaid Direction(s) and Observation(s), these Writ Petitions stand disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CO)

/True Copy/



To:

1. The Secretary,
Department of Collegiate Education,
Fort St. George, Chennai -9.
2. The Director of Collegiate Education,
O/o. The Director of Collegiate Education,
EVK Sambath Building, College Road, Chennai.
3. The Joint Director of Collegiate Education,
O/o. The Joint Director of Collegiate Education,
EVK Sambath Building, College Road, Chennai.
4. The Secretary to Government
Commercial Tax & Registration Department,
Government of Tamil Nadu,
Fort St. George, Chennai 9.
5. The Inspector General of Registration,
No.100, Santhome High Road,
Chennai - 600 028.
6. The Inspector of Police,
Vigilance and Anti Corruption Wing,
Madurai.

+1cc to M/S.Veera Associates, Advocate SR.No. 93760
+2cc to M/S.E.V.N.Siva, Advocate SR.No. 94130
+1cc to M/S.T.Lajapathi Roy, Advocate SR.No. 94111
+1cc to Special Government Pleader, SR.No. 94331

Order made in
W.P. (MD) Nos.13026 and 13461 of 2017
and
WMP (MD) Nos.10093, 10094, 10817,
10528 and 13448 of 2017
20.12.2017

RJ2

JM/SKN RSK/SAR 3/10.01.2018/56P/12C