

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2018

CORAM

THE HON'BLE MR.JUSTICE SATRUGHANA PUJAHARI

WRIT PETITION NO.21353 OF 2013

W.P.NO.14856 OF 2015

AND

M.P.NO.3 OF 2015

1. Madurai Kamaraj University Teachers Association,
rep. by its General Secretary,
S.Subburaj, No.6, Kaka Thoppu Street,
Madurai.Petitioner in
W.P.No.21353 of 2013
2. C.B.M. College,
Kovaipudur, Coimbatore - 641 042,
rep. by its Secretary,
C.M. Ramraj, S/o Muthusamy Chettiyar (Late)Petitioner in
W.P.No.14856 of 2015
- Vs.
1. The Government of Tamil Nadu,
rep. by its Principal Secretary,
Department of Higher Education,
Secretariat, Fort St. George, Chennai - 9. .. R-1 in both W.Ps.
2. The Director of Collegiate Education,
EVK Sampath Maligai College Road,
Chennai - 9. ..R-2 in W.P.No.21353 of 2013
2. The Director of Collegiate Education (M.Koo.Po)
DPI Campus, College Road,
Chennai - 600 006 9. ..R-2 in W.P.No.14856 of 2015
3. Association of Private College Managements,
rep. by its President,
Kongunadu Arts and Science College Campus,
G.N. Mills Post, Coimbatore - 641 029. ..R-3 in W.P.No.21353 of 2013

3 The Regional Joint Director of College,
Race Course Road, Coimbatore Region,
Coimbatore.

..R-3 in W.P.No.14856 of 2015

4. The Association of University Teachers (AUT)
rep. by its Secretary, CBM College Unit,
CBM College, Coimbatore - 641 042.

(R-4 impleaded as per order dated 09.06.2015
in M.P.No.2 of 2015 of W.P.No.14856 of 2015)

..R-4 in W.P.No.14856 of 2015

Prayer in W.P.No.21353 of 2013 :-

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus directing the second respondent to issue appropriate proceedings pursuant to G.O.Ms. No.79, dated 28.05.2012, and to permit the aided Colleges to fill up all the vacancies mentioned therein and all subsequent vacancies of Assistant Professors as on 31.05.2013 in the aided Colleges in accordance with various statutes.

Prayer in W.P.No.14856 of 2015 :-

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for the records relating to the operation of the impugned proceedings issued by the second respondent in Na.Ka.No.17311/F1/2015, dated 07.05.2015 and to quash the same and to direct the respondents to grant permission to fill up the large number of vacancies to the sanctioned post of Assistant Professor in the petitioner/College as permitted as per G.O.Ms.No.79, Higher Education Department, dated 28.05.2012 and subsequent Government Order in G.O.(D) No.229 Higher Education (E2) Department, dated 03.12.2014 and based on the inspection already conducted by considering the representation submitted by the petitioner, dated 23.04.2015 and consequently, to issue appropriate clarification as per the representation submitted by the petitioner, dated 02.05.2015, within a time frame as fixed by this Court.

Appearances of the counsel in
W.P.No.21353 of 2013

For Petitioner	:	Mr.R.Subramanian
For Respondents 1 and 2	:	Mrs. P.Kavitha Government Advocate
For Respondent -3	:	No appearance

Appearances of the counsel in
W.P.No.14856 of 2015

For Petitioner	:	Mr.G.Sankaran
For Respondents 1 - 3	:	Mrs. P.Kavitha Government Advocate
For Respondent -4	:	Mr.R.Subramanian

COMMON ORDER

Heard the learned counsel appearing for the parties. Since the relief sought for in both the Writ Petitions are inter-connected, they have been taken up together and disposed of vide this common order.

2. The grievance of the petitioners in these cases is that, though number of post are lying vacant in different private Colleges along with sanctioned vacancies, but, the Government being not permitting the College Committee to give appointment, hence, these Writ Petitions.

3. The learned counsel appearing for the petitioners placing reliance on a decision of the Hon'ble Division Bench of this Court, in the case of P. Ravichandran Vs. State of Tamil Nadu, rep.by Secretary to Government, Department of Higher Education and others) in W.A.No.2318 of 2011, dated 11.10.2013, submits that, the procedure adopted by the respondents is contrary to the law laid down by the Division Bench in the above referred case, wherein, in Para Nos. 9 and 10 it is held as hereunder:-

" 9. The appellant is a 'Private College' as defined under Section 2(8) of the Tamil Nadu Private Colleges (Regulation) Act, 1976, which reads as follows:

"2(8) "private College" means a college maintained by an educational agency and approved by, or affiliated to, a University but does not include a college-

(a) established or administered or maintained by the Central Government or the Government or any local authority or any University; or

(b) giving, providing or imparting religious instruction alone, but not any other instructions."

For Administering the private college, a

College Committee is to be constituted in terms of Section 11 of the Act, which section reads as follows:

"11. Constitution of college committee.- Every private college, not being a minority college, shall have a college committee which shall include the following persons employed in the private college, namely:-

- (a) the Principal;
- (b) the senior-most Selection Grade Lecturer or Reader;
- (c) one other Selection Grade Lecturer; and
- (d) the senior-most Superintendent;

Provided that if there is no Selection Grade Lecturer in the private college, the senior-most Lecturer and one other Lecturer shall be included in the college committee:

Provided further that if the senior-most Selection Grade Lecturer or the senior-most Lecturer, as the case may be, or the senior-most Superintendent is not willing to be included in the advisory committee as a member, the next senior person in the respective category who is willing to be included as a member shall be included in the college committee:

Provided also that if there is only one post in the category of Superintendent and the person holding the post is not willing to be included in the college committee as a member, the senior-most Assistant shall be included as a member in the college committee."

Payment of grant to a private aided college is stated in Section 10 of the Act, which reads as follows:

"10. Payment of grant.- (1) Subject to such rules as may be prescribed, the Government may pay to the private college grant at such rate and for such purposes as may be prescribed.

(2) The Government may withhold permanently or for any specified period the whole or part of any grant referred to in sub-section (1) in respect of any private college-

(i) which does not comply with any of the provisions of this Act or any rules made or directions issued thereunder in so far as such provisions, rules or directions are applicable to such private college, or
(ii) in respect of which the pay and allowances payable to any teacher or other person employed in such private college are not paid to such teacher or other person in accordance with the provisions of this Act or the rules made thereunder, or
(iii) which contravenes or fails to comply with any such conditions as may be prescribed.

(3) Before withholding the grant under sub-section (2), the Government shall give the educational agency an opportunity of making its representations." If any excess grant was sanctioned and paid, recovery of excess grant can be ordered as per Section 10-A, which reads thus:

"10-A. Recovery of excess grant.- If the competent authority is satisfied that the grant referred to in sub-section (1) of section 10 has been paid on misrepresentation or otherwise to any private college or has been utilised by the private college in contravention of the provisions of the Act or any rules made or directions or orders issued thereunder, the grant so paid or utilised shall be treated as excess grant and such excess grant shall, without prejudice to any other mode of recovery, be recovered as arrears of land revenue."

Rule 11(1) of the 1976 Rules contemplates fixing of staff strength in private aided colleges. Rule 11(1) reads thus,

"11(1) The number of teachers employed in a college shall not exceed the number of posts fixed by the Director, from time to time, with reference to the academic requirements and norms of work load prescribed by the respective Universities and overall financial considerations."

Rule 11(3) states that in case of regular vacancies, fully qualified candidates can be appointed only on regular basis. However, in temporary vacancy, arising on account of leave, deputation/training or suspension,

etc., qualified candidate may be appointed temporarily for a specified period, provided such teachers' services shall not be terminated before expiry of the said period. Rule 11(4) contemplates the mode of filling up of post by promotion or by direct recruitment. Rule 15 states about pay and allowances of teachers and other persons employed in college to be paid in the prescribed format. Rule 15 reads thus,

"15. Pay and allowances of teachers and other persons employed in college to be paid in the prescribed form.- Every teacher and other person employed in a college shall be paid his pay and allowances for each month on the first working day of the succeeding month. Such payments shall be made, by cheque or by demand draft and not by cash, by the Secretary of the committee or in his absence, for any reason whatsoever, by the person duly authorised by the educational agency."

From the above referred statutory provisions it is clear that the number of teachers employed in a college shall not exceed the number of posts fixed from time to time by the Director of Collegiate Education with reference to the academic requirements and norms of workload prescribed by the respective Universities and overall financial consideration.

10. It is an admitted fact that academic requirements, that is number of students admitted in a course based on which the availability of workload will be fixed by applying the norms fixed by the University and the financial consideration, that is the budgetary allocation of each financial year, are all based on a particular academic year. 'Academic year' is defined under Section 2(1) of the Act thus,

" "academic year" means the year commencing on the first day of June."

The Aided College teachers as well as the Government College teachers, who are attaining the age of superannuation during the middle of the academic year are allowed

to continue up to the end of the academic year, i.e, upto the end of May, if their conduct is good and they are physically fit. The same is made clear, insofar as colleges are concerned, in G.O.Ms.No.281 Education Department, dated 13.2.1981. The underlying idea behind the said Government Order, which is still in force is, to ensure continuity of the benefit of teaching to students by the teachers, who attain the age of superannuation during middle of the year, for rest of the academic year. Re-employment of a retiring teacher and filling up of a sanctioned vacant post with some other teacher during the middle of the academic year, if not granted, continuity of benefit of teaching to the students will definitely be affected. Thus, the importance of continuity of teaching was recognised by the Government/first respondent herein in the year 1981 itself, in respect of aided colleges. Wherever the management was not adhering to the said direction issued by giving re-employment of teachers attaining the age of superannuation during the middle of the academic year after satisfying with the requirements mentioned therein viz., physical fitness and good conduct and character, this Court ordered re-employment to such teachers. Some of the decisions to that effect are,
(i) 1996 WLR 259 (C.Davidthampi Dhas v. The Governing Body of N.M.Christian College, etc.)

(ii) (1995) 1 MLJ 25 (A.Karunanidhi v. The Secretary and Correspondent, Poompuhar College, Melaiyur)

(iii) W.A.No.1179 of 1993, etc., dated 6.9.1994 (S.Sundaram v. Secretary, C.S.I.Diocese of Madras)

Thus, it is clear that the Director of Collegiate Education is bound to fix staff strength as required under Rule 11(1) of the Rules every year, and once the staff strength of a particular academic year is assessed and informed to the college, giving

further direction to get prior permission to fill up any vacant post arising within the academic year due to death, resignation, etc., is not contemplated under the said Rule viz. Rule 11(1)."

4. It is further submitted by the learned counsel appearing for the petitioners that as against the judgement passed in the Writ Appeal, a Special Leave Petition vide SLP (Civil) 887/2015 before the Apex Court was preferred by the Department of Higher Education and others official respondents, wherein, the Hon'ble Apex Court, while condoning the delay and issuing notice, gave liberty to the respondent/College to fill-up the post, but the same shall be subject to the outcome of the SLP.

" Delay condoned.

.....
However, the respondent/ Institution would be at liberty to fill up the post subject to the result of the Special Leave Petition."

5. Thus, the learned counsel appearing for the petitioners prays that in view of the aforesaid order of the Apex Court, liberty may be granted to different College Committee to fill-up the posts in accordance with law.

6. However, the learned counsel for the respondents submits that the matter been subjudice before the Hon'ble Apex Court and as such, it cannot be said that the case of the petitioners is covered by the order in W.A.No.2318 of 2011. But, it being not disputed that the order of this Court passed in the Writ Appeal being not stayed, both the Writ Petitions as such stand disposed of with a direction to the respondents to allow the College Committee to fill-up the sanctioned posts in accordance law without the prior approval. However, such filling of the post shall be subject to the outcome of the order to be passed in the Special Leave Petition filed before the Hon'ble Apex Court against the order passed in W.A.No.2318 of 2011. Consequently, connected Writ Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

sd

To

1. The Principal Secretary,
The Government of Tamil Nadu,
Department of Higher Education,
Secretariat, Fort St. George, Chennai - 9.
2. The Director of Collegiate Education,
EVK Sampath Maligai College Road,
Chennai - 9.
3. The Director of Collegiate Education (M.Koo.Po)
DPI Campus, College Road,
Chennai - 600 006.
4. The President,
Association of Private College Managements,
Kongunadu Arts and Science College Campus,
G.N. Mills Post, Coimbatore - 641 029.
5. The Regional Joint Director of College,
Race Course Road, Coimbatore Region,
Coimbatore.
6. The Association of University Teachers (AUT)
rep. by its Secretary, CBM College Unit,
CBM College, Coimbatore - 641 042.

+1cc to Mr.G.Sankaran, Advocate, S.R.No.38495

+2cc to Mr.R.Subramanian, Advocate, S.R.No.38946 & 38951

+1cc to the Government Pleader, S.R.No.38697

Writ Petition No.21353 of 2013

W.P.No.14856 of 2015

BR(CO)
CS/11/08/18

सत्यमेव जयते

WEB COPY