

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE Ms.JUSTICE P.T.ASHA

Writ Appeal Nos.2096 and 2124 of 2019
and CMP.Nos.14332 and 14659 of 2019

- 1.The State of Tamil Nadu
Rep. by its Secretary
Department of Higher Education
Fort St.George, Chennai-600 009
- 2.The Director of Collegiate Education
College Road, Chennai-6
- 3.The Joint Director of Collegiate Education
Coimbatore Region
Coimbatore District-641 018 ...Appellants in both WAs.

-Vs-

The Secretary
Nirmala College for Women
(Autonomous)
Red Fields, Coimbatore
Coimbatore District ..Respondent in both Was.

Prayer:- Writ Appeals filed Under Clause 15 of Letters Patent,
against the order passed in W.P.No.6680/2016& W.P.No.6679/2016
dated 24.11.2017.

W.P.No.6679 & 6680 of 2016:

Writ Petition praying to calling for the records relating to the impugned Government order issued by the 1st Respondent in G.O.Ms.No.219 Higher Education(D1) Department dated 24.10.2013 and the consequential proceedings issued by the 3rd Respondent Joint Director in O.Mu.No.1888 - U1-2014 dated 14.5.2014 and Thi.Mu.No. 04829/21/2014 dated 15.07.2014 quash the same and further direct the 3rd respondent Joint Director to approve forthwith the appointment of 12 non-teaching staffs and 4 Non Teaching Staffs in the petitioners college and disburse the grant in aid towards their salary and allowances viz. 17.3.2014 & 01.07.2014.

For Appellants : Mr.C.Munusamy
Spl.G.P.(Education)

For Respondents: Mr.Issac Mohanlal
Senior counsel for Ms.M.Mary Sowmi Rext.

COMMON JUDGMENT

(Judgment of the Court was made by K.K.SASIDHARAN,J.)

The learned Single Judge, after quashing the order passed by the Joint Director of College Education, issued a mandamus to the appellants to approve the appointment of the non-teaching staff appointed by the Management against the sanctioned post. Feeling aggrieved, the State has come up with the intra court appeals.

2. We have heard the learned Special Government Pleader (Education) on behalf of the appellants and the learned Senior counsel for the respondent.

3. The respondent is an aided Educational Institution in the private sector. The Government sanctioned 44 posts of Non teaching staff to the College. There were four posts of Non teaching staff, vacant. The Management therefore, appointed Thiru.G.Vivek Thomas as Gardener, Thiru.D.Christopher as Watchman, Miss.J.Helen Saranya as Sweeper and Tmt.S.Daisy as Waterwoman. The proposal was sent to the Government for approval for appointment. The Joint Director of Education rejected the proposal by order dated 15.07.2014. The respondents therefore challenged the very Government Order dated 24.10.2013 directing the Director of Collegiate Education to fill up the post of Sweeper, Cleaner, Watchman, Waterman and Gardener through outsourcing and on contract basis and the consequential order dated 15.07.2014, rejecting the request for approval of appointment.

4. The learned Single Judge allowed the writ petitions on the basis of string of judgments rendered by the Division Bench.

5. The Government issued an order in G.O.Ms.No.219, Higher Education, dated 24.10.2013 directing the Management for outsourcing the vacancies in Group D categories like Sweeper, Scavenger, Cleaner and Gardner. The proposals submitted by the Management was rejected only on the basis of the order in G.O.Ms.No.219 dated 24.10.2013.

6. Rule 11 (1) of the Tamil Nadu Private Colleges (Regulation) Rules, 1976, contain a legislative mandate to fix the staff strength every year. Rule 11 (3) provides that in case

of regular vacancy, it is open to the Management to fill up the post on regular basis, the only requirement being that the candidate should be qualified.

7. There is no dispute that the Management was entitled to make appointments taking into account four vacancies in the post of Non-teaching staff. The denial of approval was only on account of the order in G.O.Ms.No.219 dated 24.10.2013. There is no question of issuing a Government Order for outsourcing, even in respect of the sanctioned post. When it is made out that the post is sanctioned, the Management is having every right to fill up the post. The Government has no right to say that the post should be filled up only by outsourcing.

8. The posts were sanctioned only in accordance with the Tamil Nadu Private Schools Regulation Act, 1976 and the Rules made thereunder. The staff strength fixed as per the Rules cannot be taken away by issuing a Government Order directing or permitting outsourcing. We are therefore of the view that the learned Single Judge was justified in allowing the Writ Petition.

9. The intra court appeal is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Secretary
Department of Higher Education
Fort St.George
Chennai-600 009

2.The Director of Collegiate Education
College Road
Chennai-6

3.The Joint Director of Collegiate Education
Coimbatore Region
Coimbatore District-641 018

+1 CC to M/s. Isaac Chambers, sr 62629.

+1 CC to Govt. Pleader sr 62344 & 62345.

W.A.Nos.2096 and 2124 of 2019

MG(CO)
SP(06/09/2019)