

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 02.08.2019	Delivered on: 22.08.2019
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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

WP.No. 27140 of 2018 &
W.M.P.Nos.31566 & 31568 of 2018

The Principal & Secretary,
St.Christopher's College of Education,
Vepery, Chennai-600 007.

.... Petitioner

versus

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-600 006.

3. The Joint Director of Collegiate Education,
Chennai Region,
Chennai-600 015.

.... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call 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 insofar as it directs the petitioner college to fill up the posts of non-teaching staff through outsourcing and on contract basis and the consequential proceedings of the 3rd respondent Joint Director in Na.Ka.No.2311/U2/2018 dated 09.05.2018, quash the same and further direct the 3rd respondent Joint Director to approve forthwith the appointment of 5 non-teaching staff (Name List annexed) in the petitioner's college and disburse the grant-in-aid towards their salary and allowances with effect from the respective dates of their appointments.

For Petitioner : Mr.Isaac Mohanlal, SC for
M/s.Isaac Chambers

For Respondents : Mr.V.Kathirvelu, Spl.G.P.
for R1 to R3

ORDER

This Writ Petition has been filed by the petitioner, praying for issuance of Writ of Certiorarified Mandamus, to call 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 insofar as it directs the petitioner college to fill up the posts of non-teaching staff through outsourcing and on contract basis and the consequential proceedings of the 3rd respondent Joint Director in Na.Ka.No.2311/U2/2018 dated 09.05.2018, quash the same and further direct the 3rd respondent Joint Director to approve forthwith the appointment of 5 non-teaching staff (Name List annexed) in the petitioner's college and disburse the grant-in-aid towards their salary and allowances with effect from the respective dates of their appointments.

2. The petitioner college is a private institution recognized by the National Council for Teacher Education and affiliated to the Tamil Nadu Teachers Education University. It was established in the year 1923 and attained autonomous status in 1988. The petitioner institution is a recognized religious minority institution in terms of Article 30(1) of the Constitution of India.

3. According to the petitioner, there are over 300 students studying in the aided sections of the petitioner institution. There are 14 aided teaching posts in the aided sections of the college for which, salary has been disbursed by the 3rd respondent. There are 18 non-teaching posts in the college, out of which, salary has been disbursed by the 3rd respondent only to 10 posts. In the petitioner institution, the following non-teaching posts fell vacant for over a period of time, for which, the institution has taken steps to fill up the same and accordingly, five persons came to be appointed on 12.4.2017 as under:

S.No	Name	Post	Date of appointment	Vacancy details
1.	G.Harikrishnan	Waterman	12.04.2017	In the retirement vacancy of Mr.P.Nandagopal on 31.05.2015
2.	M.Rajesh	Day Watchman	12.04.2017	In the retirement vacancy of Mr.D.Kamalakanan on 01.06.2003
3.	B.Muthu	Night Watchman	12.04.2017	In the retirement vacancy of Mr.M.Somasundaram on 21.07.2008
4.	P.Rajathi	Sweeper	12.04.2017	In the retirement vacancy of Mr.M.Irudayaraj on 31.08.2015
5.	K.Vijaya	Sweeper	12.04.2017	In the retirement vacancy of Mr.Gopinathan on 01.06.2004

4. According to the petitioner college, the above five appointments have been made against the vacancies arising in the sanctioned posts. After the appointment, the college submitted five separate proposals on 11.4.2018 to the 3rd respondent. However, the 3rd respondent returned the proposals on 09.05.2018, stating that it was instructed by the 2nd respondent that as per G.O.Ms.No.49 Personnel and Administrative Reforms Department dated 14.05.2002 and G.O.Ms.No.219 Higher Education (D1) Department dated 24.10.2013, the posts, namely, Sweeper, Scavenger, Gardner, Marker, Watchman, Waterman in the Government Aided colleges should be filled up only through out-sourcing. The said refusal to grant approval on the stated ground dated

09.05.2018 and the Government Order in G.O.Ms.No.219 dated 24.10.2013 issued on the subject matter, are put to challenge in the present Writ Petition.

5. Mr. Isaac Mohanlal, learned Senior Counsel appearing for the petitioner institution would submit that the Government Order referred to by the 3rd respondent is ultra vires the Tamil Nadu Private Colleges (Regulation) Act, 1976 and Rules framed thereunder. According to him, the said Act and Rules form a composite and wholesome code governing the private colleges and by the impugned order, the 3rd respondent violated the Act and the Rules by passing an executive order which was not permissible in law. According to the learned Senior Counsel, there are clear sanctioned posts in the category against which, the present appointments have been made for which, proposals were sent to the third respondent for approval. The insistence by the authority that such posts need to be filled up by outsourcing is without authority of law. Moreover, according to the learned Senior counsel, the authorities cannot insist prior permission since prior permission/approval is not required for filling up of both teaching and non-teaching staff as per the Act/Rules and as held by this Court in number of decisions. It is well within domain and power of the minority institution to appoint its own staff of its choice yet within the sanctioned strength and such appointment can only be regulated in terms of their qualifications without insisting prior approval which requirement insisted by the educational authority is not found either in the Act or in the Rules. Moreover, the petitioner college is protected by the constitutional guarantee under Article 30(1) of the Constitution, such insistence is a needless interference with the powers of the minority institution and such insistence is therefore, ultra vires the constitutional protection given to the minority institutions.

6. According to the learned Senior Counsel, appointment of 5 non-teaching staff is against the sanctioned vacancies and therefore, the 3rd respondent is bound to grant approval for the same. He would therefore implore this Court to grant the relief as sought for.

7. On behalf of the respondents, Mr. V. Kathirvelu, learned Special Government Pleader appeared and made his submissions in line with the reasons set forth by the 3rd respondent in rejecting the proposals submitted by the petitioner college.

8. The learned Senior Counsel appearing for the petitioner would rely upon a decision of a Division Bench of this Court rendered in W.A.Nos.2096 and 2124 of 2019 dated 19.07.2019, wherein, the learned Division Bench, has upheld the order of the learned single Judge, who quashed the very same G.O.No.219,

dated 24.10.2013 which insists the institutions to make appointments through outsourcing. In paragraphs 5 to 8, the learned Division Bench has held as under:

"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 Gardener. 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 learned Senior Counsel appearing for the petitioner would also rely on the following decisions to demonstrate that the prior approval cannot be insisted upon by the educational authority since such requirement is not found either in the Act or in the Rules in respect of appointment of non-teaching staff and particularly in respect of appointment of staff by minority institution.

In "2014 (1) CWC 162 (P.Ravichandran versus State of TN, rep. by Secretary to Government, Department of Higher Education and others)", this Court has held in paragraphs 13 and 14, as under:

"13. From the narration of above statutory provisions, it is evident that the Tamil Nadu Private Colleges (Regulation) Act, 1976 and the Rules framed thereunder are complete code insofar as establishment, administration, sanction of post, appointment of staff, grant-in-aid, withholding of aid, code of conduct to staff, closure of the course or college, etc.

"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 sanctioned posts, by issuing circulars/administrative instructions."

10. He also drawn the attention of this Court to number of decisions rendered by this Court as mentioned in para 17 of the above decision, which is also extracted hereunder:

"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 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."

11. The learned Senior Counsel would further draw the attention of this Court to paragraph 20(1) of the above decision, which is relevant for the purpose of the present case, which is also extracted hereunder:

"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 28 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) to (5)"

From the above, it is very clear that the issue does no more call for any adjudication and the same is settled in favour of the Institution. The learned Senior counsel would also rely on a decision of this Court rendered by a learned single Judge in W.P.Nos.6679 & 6680 of 2016, dated 24.11.2017, wherein, after advertng to various decision, the learned Judge has concluded as under in paragraph 3:

"3. Thus, the issue is well settled now that any school, either 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 competent authorities. In the cases on hand, admittedly, the non-teaching employees had been appointed against the vacancies in relation to the sanctioned posts as Non-teaching staff in various cadres and therefore, by following the above cited case laws, this Court inclined to direct the respective respondents to approve the appointments of the Non-teaching staff by the Private Aided Colleges and to sanction the grant within a period of twelve weeks from the date of receipt of a copy of this order."

12. The learned Senior Counsel would also rely on a recent decision of this Court rendered in W.P.No.23950 of 2018 dated 25.06.2019, wherein, he would draw the attention of this Court to the conclusion as found in paragraphs 10 to 14, which are extracted hereunder:

"10. This Court has considered the submissions made on behalf of the petitioner as well as the learned Government Advocate for respondents 1 to 4.

11. From the facts as mentioned above and also the legal principle as relied on by the learned counsel for the petitioner, it becomes very clear that as far as the appointment of the non-teaching staff is concerned, either the Tamil Nadu Recognised Private Schools (Regulation) Act or Rules provide for any such requirement and therefore, the rejection order stating that the School has not obtained prior permission, would be per se illegal and cannot be sustained in law.

12. Moreover, as far as the facts of this case are concerned, the original proposal was forwarded by the School on 26.02.2018 itself i.e., much prior to the coming into force of the G.O.Ms.No.101 dated 18.05.2018. Therefore, even assuming for the sake of argument that the requirement is mandatory, such requirement cannot be pressed into service as far as the present appointment of the petitioner is concerned. Therefore, on facts, this Court is of the view that the appointment of the petitioner prior to coming into force of G.O.Ms.No.101 dated 18.05.2018 cannot be unsettled only on the basis of requirement which is made

mandatory subsequent to the proposal. This Court when enquired with the Government Advocate as to what was the prevailing situation before 18.05.2018 that whether any such requirement was there in any Government Orders, there was no specific answer or material produced except stating that there was such requirement prior to 18.05.2018.

13. Even otherwise, as far as the above cited decisions are concerned, the ratio laid down thereon and the observations made by the Division Bench of this Court as well as the learned Single Judge, it emerges that unless the Act or Rules are amended correspondingly in line with the Government Orders, the same cannot be insisted upon by the authorities. In fact, the learned Judge of this Court, in one of the aforesaid decisions, has held that such requirement cannot be insisted upon for appointment of the non-teaching staff, since nothing has been provided in the Act or Rules for complying with such requirement. Therefore, in all fours, the petitioner has made out a clear case for grant of relief. The objection of the official respondents has no legs to stand and the same has to be rejected as without any merits or substance.

14. For the above said reasons, this Court is of the considered view that the impugned proceeding is liable to be quashed and therefore, the order of the 4th respondent in Na.Ka.No.3469/A2/ 2018 dated 24.07.2018 is hereby set aside. The 4th respondent is directed to grant approval to the appointment of the petitioner as Lab Assistant in the 5th respondent School and disburse the grant-in-aid towards salary and allowances with effect from the date of his appointment i.e. 26.02.2018. The consequential order is to be passed by the authorities within a period of four weeks from the date of receipt of a copy of this order."

13. This Court does not think it is required to refer the above said decisions for the simple reason that from the impugned order, it appears that the rejection is only on the ground that appointment of non-teaching staff in certain categories have to be filled up only by outsourcing method.

14. As rightly contended by the learned Senior Counsel for the petitioner that such insistence that appointment to certain categories can only be made by outsourcing method does not have any legal sanction and the Government Order passed in this regard is therefore, has to be declared as without the authority of law. More particularly, such insistence cannot be made by the educational authority, since the appointments were made only against the sanctioned strength belonging to non-teaching staff category and such appointments were made by minority institution which enjoys a special protection under Article 30(1) of the Constitution of India. Even otherwise, this Court does not think that the Government Order requiring such method of appointment, namely, outsourcing can held to be valid of law in the teeth of the complete code as envisaged and the scheme of the Tamil Nadu Private Colleges (Regulation) Act, 1976 and Rules framed thereunder and unless the Act/Rules amended providing for such method of appointment, the Government cannot issue an executive fiat providing a different method of appointment completely outside the scheme of the Act and the Rules. Such executive order if allowed to operate in the field, will tantamount to overriding the statutory scheme and the provisions of the Act. Such action of the Government if validated, would run contrary to the constitutional protection given to the minority institutions, like the petitioner college herein under Article 30(1) of the Constitution of India.

15. In any event, it is not open to the Government in the face of clear provisions of the Act and the Rules to bring any order which would undermine the effect and implementation of the scheme of the Act particularly, Tamil Nadu Private Colleges (Regulation) Act, 1976 and the Rules. Such power is not vested in the Government unless the Act or the rules are sought to be amended in tune with the changed policy of the Government in regard to appointment of certain non-teaching staff in some categories.

16. On the whole, this Court is the view that the rejection of the proposal on the stated ground cannot stand the test of judicial scrutiny and therefore, the same is liable to be set aside. In the circumstances, this Court has no hesitation to allow the Writ Petition and accordingly, the Writ Petition is allowed. The impugned order issued by the 1st respondent in G.O. (Ms) No.219 Higher Education (D1) Department dated 24.10.2013 insofar as it directs the petitioner college to fill up the posts of non-teaching staff through outsourcing and also the consequential proceedings of the 3rd respondent Joint Director in Na.Ka.No.2311/U2/2018 dated 09.05.2018, are hereby set aside.

There shall be a consequential direction to the 3rd respondent Joint Director to grant approval forthwith to the appointment of 5 non-teaching staff whose details were mentioned in the proposal dated 11.04.2018 and disburse the grant-in-aid towards their salary and allowances with effect from the respective dates of their appointments. The 3rd respondent is directed to pass appropriate orders in this regard within a period of four weeks from the date of a receipt of a copy of this order. No costs. Consequently, connected WMP is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

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-600 006.
3. The Joint Director of Collegiate Education,
Chennai Region,
Chennai-600 015.

+1cc to Mr.Isaac Chambers, Advocate Sr.71909
+1cc to the Government Pleader Sr.72727
+1cc to the Special Government Pleader Sr.73427

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