



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.06.2019

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.[MD]Nos.22533 to 22535 of 2015

and

M.P.[MD]Nos.1, 1, 1, 2, 2 & 2 of 2015

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Scott Christian College (Autonomous),
Nagercoil - 629 003,
Rep. by its Correspondent / Secretary,
Adv. C.Rober Bruce : Petitioner in W.P.[MD]No.22533/15

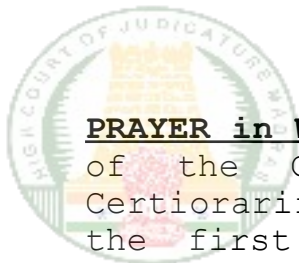
Nesamony Memorial Christian College,
Marthandam, Kanyakumari District,
Rep. by its Correspondent / Secretary,
Rt. Rev. Dr.G.Devakadaksham : Petitioner in W.P.[MD]No.22534/15

Women's Christian College,
Nagercoil - 629 001,
Rep. by its Correspondent / Secretary,
Prof.V.Suder Raj : Petitioner in W.P.[MD]No.22535/15
Vs.

1.The State Represented by
Principal Secretary to Government,
Higher Education (D1) Department,
Fort St. George, Chennai.

2.The Director of Collegiate Education,
College Road,
Chennai - 600 006. : Respondents in all Writ Petitions

PRAYER in W.P.[MD]No.22533/15: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records in G.O.Ms.No.219 by the first respondent dated 24.10.2013 and the proceedings of the second respondent in Na.Ka.No.17509/G3/2008 dated 13.11.2014 insofar as it relates to the petitioner's college and quash the same and consequently direct the respondents to permit the petitioner's college to fill up the posts on regular basis and release the grant in aid for 4 post of Office Assistant, 2 post of Watchman, 2 post of Waterman, 2 post of Gardener, 6 post of Sweeper and 2 post of Scavenger.



PRAYER in W.P.[MD]No.22534/15: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records in G.O.Ms.No.219 by the first respondent dated 24.10.2013 and quash the same and consequently direct the respondents to permit the petitioner's college to fill up the posts on regular basis and release the grant in aid for 6 post of Office Assistant, 1 post of Steno typist, 1 post of Electrician, 1 herbarium keeper, 1 library assistant, 2 watchmen, 2 post of Gardener, 1 Waterman, 6 post of Sweeper and 1 post of Scavenger, 1 Marker.

PRAYER in W.P.[MD]No.22535/15: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records in G.O.Ms.No.219, Higher Education dated 24.10.2013 and quash the same and consequently direct the respondents to permit the petitioner's college to fill up the posts on regular basis and release the grant in aid for 1 post of Herbarium Keeper, 2 post of Office Assistant, 1 post of Mechanic, 1 post of Marker, 2 post of Watchman, 1 post of Waterman, 1 post of Gardener, 4 post of Sweeper and 1 post of Scavenger.

For Petitioners : Mr.F.Deepak

For Respondents : Mr.D.Muruganantham
Additional Government Pleader
[In all Writ Petitions]

COMMON ORDER

The relief sought for in these writ petitions is to quash G.O.Ms.No.219, dated 24.10.2013 and the consequential proceedings of the second respondent dated 13.11.2004. Further direction is sought for to permit the petitioners to fill up the posts at regular basis and release the grant in aid.

2.Learned Counsel for the writ petitioner states that all these writ petitioners are minority institutions and under the Constitution, they are empowered to administer the institution. Undoubtedly, appointments can be made by the minority institutions, however, they are bound to follow the minimum educational qualifications prescribed by the University Grants Commission for all such appointments.

3.The question arose whether prior permission is to be obtained for making such appointments by the minority institutions. The Courts have decided the issue in favour of the minority institutions and the only mandatory criteria is to ensure that the appointments are made with qualified candidates with reference to the educational

qualifications prescribed by the University Grants Commission as well as in consonance with the statutes and Rules in force issued by the State Government. The issue had already been settled by this Court in **W.P. [MD]No.6679 & 6680 of 2016 dated 24.11.2017**. The relevant paragraphs are extracted hereunder:

"2. The issue involved in these writ petitions for filling up of vacancies against the sanctioned strength of Non-teaching staff by the Minority Institutions is no longer res integra, for, a Division Bench of this Court, even three years ago, in **P.Ravichandran 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 cases)**, (decided on **19.08.2016**), ordered the official respondents therein to accord approval for filling up of the vacancies against sanctioned posts of non-teaching Staff by the Private Aided Schools. For better appreciation, relevant portions of the order passed by this Court are extracted below:-

"2.With regard to the legal position in respect of minority institutions, whether prior permission should be obtained before filling up any vacancy in a sanctioned Post, the Honourable Division Bench of this Court even three years ago, in **P.Ravichandran v. State of Tamil Nadu and others reported in (2013) 7 MLJ 641**, has settled the issue. It is relevant to extract paragraph Nos.17 and 20 of the above said judgment:-

17. A Division Bench of Madurai Bench of this Court in W.A(MD)No.462 of 2006, judgment, dated 01.12.2006, considered the scope of Rule 11(1) of the Tamil Nadu Private Colleges (Regulation) Rules, 1976 relying upon the earlier order passed on 13.08.2006, 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

21.09.2005;



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- (ii) W.P.No.28396 of 2004, order dated 29.03.2006;
- (iii) W.A.Nos.92 & 93 of 2008, judgment dated 06.01.2010;
- (iv) W.P(MD)No.174 of 2009, order dated 27.04.2010;
- (v) W.A.Nos.140, 811/2006 & 805/2007, judgment dt. 21.10.2010;
- (vi) W.A.No.2858 of 2010, judgment dated 21.03.2011;
- (vii) W.A(MD)Nos.1088 of 2011, judgment dated 19.10.2011;
- (viii) W.A.Nos.2345 of 2011, judgment dated 05.03.2012;
- (ix) Dr.S.Sukumaran v. State of Tamil Nadu, (2012) 5 MLJ 670 rendered by one of us (NPVJ); and
- (x) W.A.No.474 of 2013, judgment dated 03.04.2013.

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.

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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.



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(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.

3.A cursory 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."

4.In yet another writ petition in **W.P. [MD]No.9458 of 2019 dated 22.04.2019**, this Court held as follows:

"4.The learned counsel appearing for the petitioner submitted that by G.O.Ms.No.219, Higher Education (D1) Department, dated 24.10.2013, the Government had sanctioned only 50% of the posts to the Government aided institutions. The said Government order was challenged in W.P.Nos.6679 and 6680 of 2016 and this Court by an order, dated 24.11.2017, set aside the abovesaid Government Order. The learned Counsel for the petitioner further submitted that several writ petitions were filed before this Court, challenging the rejection order passed by the Joint Director of Collegiate Education based on G.O.Ms.No.219 and the said writ petitions were allowed. The writ appeals filed by the Government in W.A.(MD)Nos.461 of 2016, challenging the said orders, were dismissed by order, dated 22.04.2016. The Government further challenged the Judgment of the Division Bench before the Supreme



Court in S.L.P.No.22766 of 2013, which was also dismissed by the Supreme Court. Hence, <http://www.judis.nic.in> the learned counsel seeks the intervention of this Court by directing the second respondent to approve the appointment of the petitioner in the light of the recommendation sent by the third respondent, dated 31.10.2016."

5.In view of the fact that the issues raised in the present writ petitions had already been settled by the Courts, the present writ petitions are to be considered. In fine, for the reasons stated above, all the writ petitions are allowed by quashing the impugned order. It is made clear that approval of appointments are to be considered by the competent educational authority only after scrutinising the proposal and after verifying the educational qualifications of the persons who were appointed in the respective institutions.

6.Accordingly, these Writ Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

/ True Copy /

Sub Assistant Registrar(CS-)

To

1.The Principal Secretary to Government,
Higher Education (D1) Department,
Fort St. George, Chennai.

2.The Director of Collegiate Education,
College Road,
Chennai - 600 006.

+1 CC to M/s.F.DEEPAAK, Advocate (SR-71748[F] dated 27/06/2019)
+1 CC to M/s.SPL GP (SR-72158[F] dated 28/06/2019)

W.P[MD]Nos.22533 to 22535 of 2015
27.06.2019

MR

ES/23.07.2019/6P/5C