



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.05.2019
Pronounced on : 30.07.2019

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CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP (MD)No.6593 of 2019

Virudhunagar Hindu Nadar's
Senthilkumara Nadar College,
Rep.by its Secretary.

... Petitioner

Vs.

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

2.The Regional Joint Director,
Collegiate Education,
Madurai Region, Madurai.

... Respondents

Prayer : This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 1st respondent to approve the posts of the 12 non-teaching staffs viz., Sweeper-5, Waterman-2, Watchman-2, Scavenger-2 and Marker-1 in the sanctioned vacancies in the Petitioner's College in the light of the order passed in W.P.Nos 6679 & 6680 of 2016, W.A.(MD) Nos.461 & 462 of 2016 and SLP.No.22766 of 2017 based on the recommendation sent by the 2nd respondent vide proceedings Na.Ka.No.13065/A3/2018 dated 09.11.2018 and the representation given by the petitioner college dated 15.10.2018.

For Petitioner : Mr.T.Arul

For Respondents : Mr.Aayiram K.Selvakumar,
Additional Government Pleader

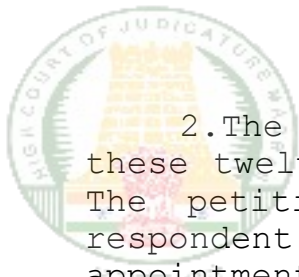
ORDER

The writ petitioner college was started in the year 1948. It is offering a number of U.G courses, P.G courses, M.Phil courses as well as Ph.D courses. It is also running self finance courses. The



petitioner college is an aided institution. The respondent authorities over the years have issued a number of proceedings sanctioning as many as 50 posts of non teaching staff under the aided scheme. Vacancies arose in such sanctioned posts. The details are as under :

Sl. No.	Posts	Number of Posts Approved	Number of Vacant posts as on 31.10.2018	Vacancy Caused Details
1.	Sweeper	6	5	1.Vacancy arose due to retirement of Mr.S.Ponnupandy
				2.Vacancy arose due to promotion of Mr.J.Ramalingam as Record Clerk
				3.Vacancy arose due to retirement of Mr.M.Vadivelu
				4.Vacancy arose due to promotion of Mr.P.Anantharaj as Laboratory Assistant
				5.Vacancy arose due to retirement of Mr.G.Subbaraj
2.	Waterman	2	2	1.Vacancy arose due to voluntary retirement of Mr.R.Seenivasagam
				2.Vacancy arose due to retirement of Mr.J.Manickam
3.	Watchman	2	2	1.Vacancy arose due to promotion of Mr.K.Ganesapandian as Laboratory Assistant
				2.Vacancy arose due to termination of Mr.S.Arul Jhon Sebastin
4	Scavenger	2	2	1.Vacancy arose due to death of Mr.P.Mariyappan
				2.Vacancy arose due to death of Mr.M.Karuppasamy
5.	Marker	1	1	Vacancy arose due to retirement of Mr.J.Anantharaj

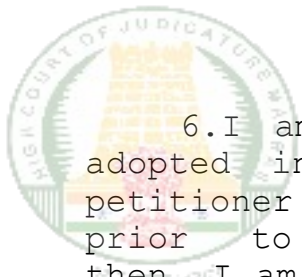


2.The petitioner had appointed eligible candidates for all these twelve vacancies occurring in the various non teaching posts. The petitioner college submitted their proposal to the second respondent on 15.10.2018 seeking departmental approval for the appointments made by the petitioner college. The second respondent has since forwarded the same to the first respondent on 09.11.2018. Since the first respondent had not responded, the writ petitioner had filed this writ petition for directing the respondents to approve the appointments made to the said twelve non teaching posts.

3.The writ petition came up for admission on 20.03.2019. On the admission date, the Special Government Pleader took notice for the respondents. It was made clear that the matter will be taken up for disposal on 27.04.2019 for final disposal. The respondents were specifically directed to file their counter by then. The case was taken up on 27.04.2019. On the said date, for reasons best known, the respondents did not file their counter affidavit. To give one more opportunity to the respondents, the case was listed on 30.05.2019. Even on that date, no reply was filed by the respondents. This Court therefore proceeded to reserve orders in this case.

4.The primary ground of objection raised by the respondents appears to be that the petitioner did not obtain prior approval of the department before proceeding to make appointments in question. The other ground of objection is based on G.O(Ms)No.219, Higher Education (D1) Department, dated 24.10.2013 whereby 50 % of the non teaching posts are to be outsourced.

5.After carefully considering the rival contentions, I am of the view that substantial relief will have to be given to the petitioner college. It has been held authoritatively that a vacancy arising in a sanctioned post can be filled up by the management without obtaining prior permission from the competent authorities. The learned counsel appearing for the writ petitioner drew my attention to the order dated 24.11.2017 made in WP.Nos.6679 & 6680 of 2016. I have no hesitation to reject the contention of the respondents that the proposal submitted by the petitioner cannot be considered because they had not obtained prior permission from the department before filling up the vacancies in question. The other ground based on G.O(Ms)No.219, dated 24.10.2013 cannot also be fully accepted. It is true that the issue is yet to be examined finally and appears to be pending in WA(MD)Nos.461 & 462 of 2016 before the Hon'ble Division Bench. But then, as early as on 22.04.2016, the Hon'ble Division Bench had granted interim relief making it clear that the approval so granted would be subject to the result of the writ appeals. The order made on 22.04.2016 in CMP (MD)Nos.3254 & 3255 of 2016 was challenged before the Hon'ble Supreme Court. The Hon'ble Supreme Court by order dated 12.10.2018 had dismissed the SLP.



6.I am of the view that a similar course of action can be adopted in this case also. Of course, the counsel for the petitioner submitted that the vacancies in those cases arose even prior to the issuance of G.O(Ms)No.219 dated 24.10.2013. But then, I am of the view that this will have to necessarily await the outcome of the writ appeals. In fact, even in the prayer made in this writ petition, the petitioner has only invoked the interim order granted in the writ appeals. Having come to this court on the strength of the interim order granted in the writ appeals, the petitioner cannot now seek a larger relief. Therefore, I direct the respondents to grant approval in respect of the appointments made by the petitioner in respect of the posts of Sweeper, Waterman, Watchman and Gardener as directed by the Hon'ble Division Bench in the other writ appeals. Approvals will abide by the ultimate outcome of the said writ appeals. It is seen that in G.O(Ms)No.219 dated 24.10.2013, there is no reference to the posts of scavenger. Therefore, the respondents are directed to approve the appointments made to the post of scavengers.

7.I am passing a direction straightaway in this writ petition mainly because there is no challenge to the basic premise projected by the petitioner. Firstly, these vacancies arose only in sanctioned posts. Secondly, the candidates appointed by the management are having requisite qualifications. The management has followed the usual selection process before making appointments and it is not the case of the respondents that there was any deviation from the established procedure. Hence, I have no hesitation to direct the respondents to approve the appointments made by the petitioner college as indicated above. The proceedings shall be issued within a period of four weeks from the date of receipt of a copy of this order.

8.This writ petition is disposed of accordingly. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

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

2.The Regional Joint Director,
Collegiate Education,
Madurai Region, Madurai.



WP(MD)No.6593 of 2019

+1 CC to M/s.T.ARUL, Advocate (SR-79018[F] dated 31/07/2019)

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Order made in
WP (MD) No. 6593 of 2019
30.07.2019

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JMN (13.09.2019) 5P : 4C