



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.11.2019

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CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.A.[MD]Nos.1257 to 1260 & 1264 to 1267 of 2019

and

All connected miscellaneous petitions

- 1.The State of Tamil Nadu,
Represented by its Secretary,
Department of Higher Education,
For St. George, Chennai - 600 009.
- 2.The Director of Collegiate Education,
College Road, Chennai - 600 006.
- 3.The Joint Director of Collegiate Education,
Madurai Region, Madurai,
Madurai District. : Appellants in All Writ Appeals

Vs.

The Secretary,
Fatima College (Autonomous),
Mary Land, Madurai,
Madurai District - 625 018. : Respondent(in all Writ Appeals)

Common Prayer in WA(MD). 1257 to 1260 of 2019 and 1264 to 1267 of 2019 :

These Writ Appeals are filed under Clause 15 of the Letters Patent, praying to set aside the order dated 19.08.2016 passed in WP (MD)Nos.17916 of 2015 to 17922 of 2015 and 2093 of 2016 respectively.

Prayer in WP(MD). 17916/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of

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Certiorarified Mandamus calling for the records relating to the impugned proceeding issued by 3rd respondent Joint Director in Aa.Thi. Mu.No. 8322/21/2015 dated 11.08.2015, Quash the same, and further Direct the 3rd respondent Joint Director to approve forthwith the appointment of L. Shanthi as Lab Assistant in the petitioner's college and disburse the grant-in-aid towards her salary and allowances w.e.f. the date of her appointment viz., 17.06.2013.

Prayer in WP(MD) . 17917/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceeding issued by 3rd respondent Joint Director in Aa.Thi. Mu.No. 8325/21/2015 dated 24.08.2015, Quash the same, and further Direct the 3rd respondent Joint Director to approve forthwith the appointment of M.Ahila as Library Assistant in the petitioner's college and disburse the grant-in-aid towards her salary and allowances w.e.f. the date of her appointment viz., 17.06.2013.

Prayer in WP(MD) . 17918/ 2015 :

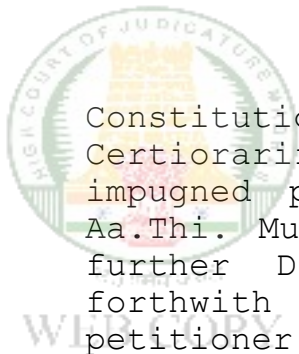
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari Mandamus calling for the records relating to the impugned proceeding issued by 3rd respondent Joint Director in Aa. Thi. Mu. No. 8328/21/2015 dated 24.08.2015, Quash the same, and further Direct the 3rd respondent Joint Director to approve forthwith the appointment of M.Magdaline Manonmani as Record Clerk in the petitioners college and disburse the grant-in-aid towards her salary and allowances w.e.f. the date of her appointment viz., 16.06.2014.

Prayer in WP(MD) . 17919/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari Mandamus calling for the records relating to the impugned proceeding issued by 3rd respondent Joint Director n Aa. Thi. Mu. No. 8324/21/2015 dated 24.08.2015, Quash the same, and further Direct the 3rd respondent Joint Director to approve forthwith the appointment of P. Kaladevi as Library Assistant in the petitioner's college and disburse the grant-in-aid towards her salary and allowances w.e.f. the date of her appointment viz., 17.06.2013.

Prayer in WP(MD) . 17920/ 2015 :

Writ Petition is filed under Article 226 of the



Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceeding issued by 3rd respondent Joint Director in Aa.Thi. Mu.No. 8327/21/2015 dated 24.08.2015, Quash the same, and further Direct the 3rd respondent Joint Director to approve forthwith the appointment of P.Jeya as Lab Assistant in the petitioner's college and disburse the grant-in-aid towards her salary and allowances w.e.f. the date of her appointment viz., 16.06.2014.

Prayer in WP(MD) . 17921/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari Mandamus calling for the records relating to the impugned proceeding issued by 3rd respondent Joint Director in Aa. Thi. Mu. No. 8326/21/2015 dated 11.08.2015, Quash the same, and further Direct the 3rd respondent Joint Director to approve forthwith the appointment of S.Emelda Daisy as Record Clerk in the petitioner's college and disburse the grant-in-aid towards her salary and allowances w.e.f. the date of her appointment viz., 16.06.2014.

Prayer in WP(MD) . 17922/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceeding issued by 3rd respondent Joint Director in Aa.Thi. Mu.No. 8321/21/2015 dated 11.08.2015, Quash the same, and further Direct the 3rd respondent Joint Director to approve forthwith the appointment of K. Jeyabalaji as Lab Assistant in the petitioner's college and disburse the grant-in-aid towards her salary and allowances w.e.f. the date of her appointment viz., 17.06.2013.

Prayer in WP(MD) . 2093/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceeding issued by the 3rd respondent Joint Director in O.Mu.No.12517/A3/2015 dated 29.12.2015 and the subsequent proceedings in O.Mu.No.12537/A3/2015 dated 02.01.2016, quash the same, and further Direct the 3rd respondent Joint Director to approve forthwith the appointment of 21 non-teaching staff (Name List annexed) in the petitioner's college and disburse the grant-in-aid towards their salary and allowances w.e.f the date of their appointment.

For Appellants : Mrs.S.Srimathy

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Special Government Pleader
For Respondent : Ms.Amala
[In all Writ Petitions]

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COMMON JUDGMENT

**[Common Judgment of the Court was delivered by
T.S.SIVAGNANAM, J.]**

By consent, these Writ Appeals are taken up for final disposal at the admission stage itself.

2.Heard Mrs.S.Srimathy, learned Special Government Pleader appearing on behalf of the appellants and Ms.Amala, learned Counsel appearing on behalf of the respondent.

3.These Writ Appeals have been filed by the State of Tamil Nadu, represented by its Secretary, Department of Higher Education, and two others challenging the orders dated 19.08.2016. The prayer sought for in the writ petitions though might have been highly in variance to each other, the sum and substance of the challenge is whether the appointments can made by the management in non-teaching posts or whether such posts have to be filled by outsourcing. This issue is no longer res integra and has been considered by several Hon'ble Division Benches. At this juncture, we may refer to three judgments, the first of which is in the case of **P.Ravinchandran Vs. State of Tamil Nadu** reported in (2013) 7 MLJ 641. The appeal was filed by the writ petitioner, insofar as the issue whether prior permission was required for filling up of sanctioned vacant posts in the aided college, is required or not?

4.In the said appeal, the Government resisted the claim of the appellant by contending that the Director of Collegiate Education is the competent authority to fix the number of posts from time to time and prior permission is required for filling up of vacant posts and in this regard, Rule 11 of the Tamil Nadu Private Colleges (Regulation) Rules, 1976 was referred. Identical submissions have been made before us by the learned Special Government Pleader Smt.S.Srimathy. The contention was examined by the Hon'ble Division Bench and after taking note of the various provisions of the Tamil Nadu Private Colleges Regulations Act and the rules framed thereunder, the Court held that no prior approval is necessary for filling up of vacant posts in private aided colleges and it is not open to the Government to contend that the vacant sanctioned post can be filled up by the management only after getting prior permission.

5.The learned Special Government Pleader appearing for the appellant further submitted that in terms of the rule, the Director of Collegiate Education is entitled to not only assess the norms of



work load prescribed by the respective universities and also take note of the overall financial consideration. Therefore, it is submitted that G.O.Ms.No.49 dated 14.05.2002 and G.O.Ms.No.219 dated 24.10.2013 were issued wherein specific directions have been issued by the Government for filling up of the vacancies for the post of Office Assistant, Gardener and 'D' category posts. Therefore, it is submitted that this issue was not considered in the case of P.Ravichandran [cited supra] and therefore, this Court should interfere with the order passed in the writ petition.

6.However, we find that the very same issue was considered by the Hon'ble Division Bench in the case of **State of Tamil Nadu represented by the Secretary, Department of Higher Education and two others Vs. The Secretary, Nirmala College for Women (Autonomous), Red Fields, Coimbatore in W.A.[MD]Nos2096 and 2124 of 2019 dated 19.07.2019**. The submissions made by Mrs.S.Srimathy, learned Special Government Pleader before us was in fact raised before the Hon'ble Division Bench by her counter part, the learned Special Government Pleader for Education in the principal seat. The Hon'ble Division Bench held that Rule 11(1) of the said rules 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.Further, the correctness of the stand taken by the department refusing to grant approval by relying on G.O.Ms.No.219 dated 24.10.2013 was also considered by the Hon'ble Division Bench and it was pointed out that there was no question of issuing a Government Order for outsourcing, even in respect of the sanctioned post. Further, it was pointed out that when it is made out that the post is sanctioned, the management has every right to fill up the post and the Government has no right to say that the post should be filled up only by outsourcing. Further, it is held that the posts were sanctioned in accordance with the provisions of the facts and rules, staff strength fixed as per the rule cannot be taken away by issuing a Government Order directing or permitting outsourcing. Therefore, the Hon'ble Division Bench confirmed the order passed in W.P.Nos.6679 & 6680 of 2016 dated 24.11.2017. The decision in this case of Nirmala College for Women is a direct answer to the arguments placed before us by Mrs.S.Srimathy.

8.It would be relevant to take note of another judgment of the Division Bench in the case of **Director of Collegiate Education Vs. The Secretary, Rajapalayam Rajus College in W.A.[MD]No.931 of 2018 dated 12.07.2018**. In the said appeal, the Government had raised identical contention as raised before us and the Division Bench had confirmed the order passed by the learned Single Judge which had followed the decision in the case of **C.Manikandan Vs. State of Tamil Nadu, Rep. by its Secretary, Department of Higher Education, Chennai**



reported in (2012) 4 MLJ 918. Ultimately, the appeal filed by the Government was dismissed by judgment dated 12.07.2018. The Government filed appeal to the Hon'ble Supreme Court against the said decision in S.L.P.No.323 of 2019 and the Hon'ble Supreme Court by order dated 18.01.2019 condoned the delay and dismissed the SLP.

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9.Further, we find that pursuant to the dismissal of the SLP by the Hon'ble Supreme Court, the authorities have approved those appointments and sanctioned the grant vide proceedings dated 28.08.2019. Further more, we note that even in these batch of cases, few posts have already been approved by complying with the order passed by the learned Single Judge. Thus, we find no ground to interfere with the order passed in the writ petitions.

10.Accordingly, the Writ Appeals stand dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

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/ /2020

Sub Assistant Registrar(CS)

MR

To

- 1.The Secretary,
The State of Tamil Nadu,
Department of Higher Education,
For St. George, Chennai - 600 009.
- 2.The Director of Collegiate Education,
College Road, Chennai - 600 006.
- 3.The Joint Director of Collegiate Education,
Madurai Region, Madurai,
Madurai District.

Common Judgment made in
W.A.[MD]Nos.1257 to 1260
& 1264 to 1267 of 2019

Dated: 12.11.2019

KK/SAR/07.01.2020/6P-4C/