



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED :28.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE **R.MAHADEVAN**

WEB COPY

**WP(MD)Nos.20497 to 20499 of 2016**

**and**

**W.M.P.(MD)Nos.499 to 501 of 2017**

1.Sri-La-Sri Kasivasi Swaminatha Swamigal Arts College,  
represented by its Secretary,  
S.Ramalingam. ... Petitioner in  
WP(MD)Nos.20497 to 20499 of 2016

2.Sri Kumaraguru bora Swamigal Arts College,  
Reb.by its Secretary,  
B.Baskaran, Srivaikundam, Thoothukudi District.  
...Petitioner in WP(MD)No.20499 of 2016

Vs.

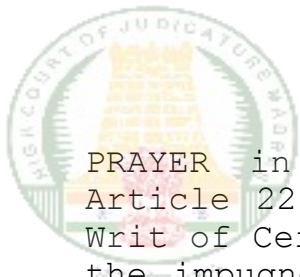
1.The Secretary to Government,  
Higher Education Department,  
Government of Tamil Nadu,  
Fort St.George, Chennai.

2.The Director of Collegiate Education,  
E.V.K.Sampath Maligai,  
College Road, Nungambakkam,  
Chennai. ...Respondents 1 and 2 in All WPs.

3.The Joint Director of Collegiate Education,  
Thanjavur Region,  
Mannar Saraboji Government College Campus,  
Thanjavur - 613 005. ...3<sup>rd</sup> Respondent in  
WP(MD)Nos.20497 to 20498 of 2016

4.The Joint Director of Collegiate Education,  
Tirunelveli District. ...R3 in WP(MD)No.20499 of 2016

PRAYER in W.P.(MD)No.20497 of 2018: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order bearing Na.Ka.No.2153/Aa3/2016, dated 22.09.2016 passed by the third respondent and quash the same and consequently to direct the respondents to approve the appointments of Tmt.S.Mangaiyarkarasi, Dr.S.Natarajan and M.Bhuavaneswari as Assistant Professor in Tamil and Dr.N.Kalavani as Assistant Professor in English, Dr.N.Rajesh, as Librarian and Mr.S.Ramesh Kannan as Director of Physical Education in the petitioner college with effect from their date of appointment with all consequential benefits.



PRAYER in W.P.(MD)No.20498 of 2018: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order bearing Na.Ka.No.1689/Aa3/2016, dated 08.09.2016 passed by the third respondent and quash the same and consequently to direct the respondents to approve the appointment of Mr.S.Sivashanmugam, as Typist in the petitioner college with effect from his date of appointment with all consequential benefits.

PRAYER in W.P.(MD)No.20499 of 2018: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order bearing Na.Ka.No.6569/Aa3/2016, dated 29.09.2016 passed by the third respondent and quash the same and consequently to direct the respondents to approve the appointments of Mr.G.Silambarasan, as Junior Assistant, Mr.A.Chidambaram, as Record Clerk, Mr.D.Karthikeyan as Office Assistant, Mr.A.Muthukumaran, as Office Assistant, Mr.M.Muthu Shanmugam as Office Assistant and Mr.K.Sivakumar as Office Assistant in the petitioner college with effect from their date of appointment with all consequential benefits.

|                 |                               |
|-----------------|-------------------------------|
| For Petitioner  | : Mr.M.E.Ilango               |
| (in all cases)  |                               |
| For Respondents | : Mr.C.M.MariChelliah Prabhu  |
| (in all cases)  | Additional Government Pleader |
|                 | ***                           |

### **COMMON ORDER**

These writ petitions have been filed seeking to quash the impugned proceedings and consequently to direct the third respondent to approve the appointments made by the petitioner college with monetary benefits.

2.The learned Counsel appearing for the petitioner college submitted that the petitioner college was established six decades ago. The status of minority institution was granted by the decree dated 12.08.1985 in OS No.18 of 1985 by the Subordinate Judge, Kumbakonam and the appeal filed by the Government, against the said judgment was also dismissed. Hence, the petitioner college runs as a minority institution.

3.It is further submitted that being a minority institution, the petitioner college, can very well appoint teaching and non teaching staff. As such, the college made several appointments, in the vacant places, after adhering to the statutory provisions and the same were also done after passing resolutions by the Management Committee.

In pursuance of the resolutions,

necessary proposals were submitted to the respondents, seeking to approve the appointments made, in various teaching and non teaching posts on various occasions. But, the said proposals were rejected by the third respondent, on the ground that the same are unsustainable in law. Challenging the rejections orders passed by the third respondent, the petitioner college is before this Court.

4.Now, the learned Counsel appearing for the petitioner submitted that the issue involved in these writ petitions, has already been decided by a Division Bench of this Court in WA No.2415 of 2013, on 23.04.2018 and hence, he prayed for a similar order, in these writ petitions also.

5.The relevant portions of the above said judgment are as follows:

*"9.In the decision of the Division Bench of this Court, reported in 2001 (4) CTC 641 (The Secretary, D.G.Vaishnav College, Arumbakkam, Chennai 600 106 and another vs. Dr.T.Venkataraman Reader and Head, Post Graduate and Research, Dept. of Chemistry, D.G.Vaishnav College, Chennai and 3 others), it has been held as under :-*

*3. The appellant in W.A. No.2387 of 2001 has been granted a minority status by a declaration granted by a decree dated 19.2.1988 by the Court of the Principal District Judge, Madras, in A.S. No.275 of 1987. It is not disputed that the said decree had become final. As on date, the said decree has not been nullified. But Mr. P. Jyothimani, learned counsel for the first respondent, submits that in view of G.O.(Ms.) No. 270, dated 17.6.1998, the decree, which has been granted on 19.2.1988, had become inoperative. Prima facie, we are unable to agree with the said submission as the Government has been a party and suffered a decree on 19.2.1988 and the said decree having become final, the Government is bound by the same unless there is a specific legislation that too, if it is not an affront to the above decree granted by the judicial authority. Then Mr.Jothimani takes us to the order of the Supreme Court in TMA. Pai Foundation and Ors. v. State of Karnataka and Ors, LA. No.20 in WP(C) No.317 of 1993 dated 17.10.1994. It is not disputed that the said writ petition is still pending on the file of the Supreme Court. In the interim order passed on the above date, the Civil Court's decree granting minority status to the respondents, who have been parties therein,*



WEB COPY

that is respondents 2 to 6, has not been taken cognisance of Particular reference has been made to the said respondents and the said order does not operate in rem. In fact that position has been clarified by a learned single Judge of this Court in The Correspondent, St. Ignatius Higher Secondary School, Kurumbanai - 629 251, Kanyakutnari District and Ors. v. Director of School Education, College Road, Chennai 6 and Ors.. It is not brought to our notice that this judgment of the learned single Judge has been overruled. As such, we find a prima facie case in favour of the appellant in W.A. No.2387 of 2001 that it still enjoys minority status as on date.

10. In the decision of the Apex Court, reported in AIR 2005 SC 3096 (R.Murali and others vs. Kanyaka P.Devasthanan & Charities and others), it has been held as under :-

We have extracted above the relevant portions of the decree granted by the city civil court in the year 1976. The respondents themselves obtained a decree of declaration that the institution belongs to a religious denomination and the authorities under Tamil Nadu Act, have no powers of framing or modifying any scheme of administration of the institution under the Tamil Nadu Act. We fail to understand how an executable part of decree granted by the city civil court which clearly restrains the authorities under the Tamil Nadu Act from modifying or framing the scheme of administration of the institution and declares the institution to be of a religious denomination, can be described as merely 'incidental observation', 'obiter dicta', 'not part of ratio decidendi' and 'not authoritative.' The operative part of the judgment containing the decree, rightly or erroneously granted, having not been appealed against, has attained finality and cannot be described as an 'incidental observation', 'not a part of ratio decidendi', 'obiter dicta' and 'not authoritative' as has been done by the Division Bench in its impugned judgment. The conclusion of the city civil court on which decree is based is the main and operative part of the decision. The Division Bench has committed a gross error of law in ignoring a



vital part of the judgment and decree dated 13.12.1976 of the City Civil Court, Madras which was obtained by the respondents themselves as the members of the Board of Trustee in their own suit instituted and numbered as O.S.No.7453 of 1972. Such a judgment and decree is valid and binding on the respondents. By their own conduct of obtaining a decree of declaration and injunction against the authorities, under the Tamil Nadu Act, they are estopped from raising a contrary plea in the subsequent suit instituted against them and oppose grant of leave of the Court sought by the present appellants under Section 92 of the Code of Civil Procedure. The respondents cannot be allowed to approbate and reprobate in the two suits in which the subject matter and issue of jurisdiction of civil court involved are the same.

11. Contending that the decree obtained from the Civil Court cannot be permitted to be declared a nullity in a writ proceedings, the learned counsel for the appellant relied upon the decision reported in AIR 1997 Madras 386 (Manonmaniam Sundaranar vs. Kumaragurubara Swamigal Arts), where under, the Court passed the following observation, which reads as under:

26. As already noticed, the decree granted by the sub-Court, Kumbakonam in O.S. 18/85 is a nullity is not challenged in the counter nor argued before the learned single Judge. Therefore, we are of the view that the appellant University cannot now be permitted to raise the question of nullity of a Civil Court decree at this distance of time. This apart, Civil Court's decree dated 12-8-1985 was confirmed in A.S. No. 62/86 by the Appellate Court and no second appeal has been filed against the said Appellate Court's order. In fact, the application filed by University to implead itself as a party in A.S. 62/86 was also dismissed by the Appellate Court and further revision to this court was also dismissed. Therefore, we hold that the decree of declaration granted by the competent sub-Court at Kumbakonam dated 12-8-1985 is valid in law and not a nullity and that the said decree is not a nullity as contended by the appellant-University. The said contention therefore fails and is dismissed.



12. A perusal of the records, more particularly, the judgment in O.S.No.18 of 1985, which was confirmed in A.S.No.62 of 1986, reveals that the minority status of the 4th respondent has been upheld. The State has not chosen to file appeal against the said order and, therefore, the said order has attained finality. The minority status of the 4th respondent has become final. Therefore, it is not open to the State to contend that the fourth respondent is not entitled to minority status.

13. Once the minority status of the appellant institution is upheld, the findings rendered by the learned single Judge relating to the minority status of the 4th respondent school is liable to be set aside.

14. The learned Special Government Pleader appearing for respondents 2 to 4 submits that it is only the State Government which has to declare the minority status of the Institution and unless it is done, the school cannot claim minority status.

14.1. This contention is repelled by learned counsel appearing for the appellant by relying upon 1999 (1) CTC 121 (The correspondent, St. Ignatius Higher Secondary School, Kurumbanai vs. Director of School Education, College Road, Chennai and others) and contending that declaration of minority status is only an acceptance of legal character which existed anterior to such declaration and that the status of the minority institution will continue even if the Government not declaring such institutions as minority institutions.

15. Explaining the effect of declaration, the learned counsel for the appellant relied upon the Judgment of the Supreme Court 1998 (6) SCC 674 (N.Ammad vs. Manager, Enjay High School and others), where under, it has been held that even if the Government had not declared the Institution as minority institution, the status of the minority institution will continue and the effect of declaration is only a recognition of its legal character. The relevant observation reads as under:

When the Government declared the School as a minority school, it has recognised a factual position that the School was established and is being administered by a minority community, the declaration is only an open acceptance of a legal character which should necessarily have existed antecedent to such declaration.



Therefore, we are unable to agree with the contention that the School can claim protection only after the Government declared it as minority school on 02.08.1994.

WEB COPY

Thus, it is clear that, in order to claim protection as a minority institution, separate declaration by the State Government is not mandatory and the order of the civil court itself is sufficient. The findings contrary to this established rule is liable to be set aside.

16. In the result, the Writ Appeal is allowed. The findings with regard to the status of the fourth respondent school are hereby set aside. No costs. Consequently, connected miscellaneous petitions are closed.

6. The learned Additional Government Pleader appearing for the respondents has no serious objections for the above submission.

7. This Court is of the view, that the decision of the Division Bench of this Court, made in WA No.2415 of 2013, on 23.04.2018, cited supra, is squarely applicable to the cases on hand. Thus, in the light of the above judgment, this Court sets aside the proceedings impugned herein, passed by the third respondent and directs the third respondent to approve the appointments made by the petitioner college, on the basis of its proposals within a period of twelve weeks from the date of receipt of a copy of this order.

8. These writ petitions are disposed of, on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (WRITS))

// True Copy //

Sub Assistant Registrar(CS )

dsk

To

1. The Secretary to Government,  
<https://hcservices.ecourts.gov.in/hcservices/>  
Higher Education Department,  
Government of Tamil Nadu, Fort St. George, Chennai.



2.The Director of Collegiate Education,  
E.V.K.Sampath Maligai,  
College Road, Nungambakkam,  
Chennai.

WEB COPY

3.The Joint Director of Collegiate Education,  
Thanjavur Region,  
Mannar Saraboji Government College Campus,  
Thanjavur - 613 005.

4.The Joint Director of Collegiate Education,  
Tirunelveli District.

3 CCs to M/s.M.E.ILANGO, Advocate ( SR-50560 TO 50652)

+1 CC to M/s.SPL GP ( SR-51064[F] dated 01/03/2019 )

ORDER MADE IN  
**WP (MD) Nos.20497 to 20499 of 2016**

28.02.2019

DS/ /SAR- (05.04.2019) 8P 9C