



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

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W.P. (MD)Nos.12012,12013 12014, 12015, 12016, 12020, 12021, 12023,
12025, 12027, 12030 and 12037 of 2020

W.M.P. (MD) Nos.10367, 10360, 10369, 10357, 10358, 10377, 10373,
10361, 10362, 10363, 10364 and 10371/2020

(Through Video Conferencing)

The Secretary
St. Mary's College (Autonomous)
Thoothukudi - 628 001
Thoothukudi District.

... Petitioner in all W.Ps.
Vs.

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

2.The Joint Director of Collegiate Education,
Tirunelveli Region - 628 001
Tirunelveli District.

... Respondents in all W.Ps.

Prayer in W.P. (MD) No.12012 of 2020:

Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the 2nd respondent Joint Director of Collegiate Education to approve forthwith the appointment of A.Patricia Romila as Assistant Professor (English) in the petitioner's College and disburse the grant-in-aid towards her salary and all other allowances w.e.f. the date of her appointment viz., 17.06.2019.

Prayer in W.P. (MD) No.12013 of 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ, order or direction in the nature of a Writ of Mandamus directing the 2nd respondent joint Director of Collegiate Education to approve forthwith the appointment of P.Dhanalakshmi as Assistant Professor (Physics) in the petitioner's college and disburse the grant-in aid towards her salary and all other allowances w.e.f the date of her appointment viz., 14.6.2019.

Prayer in W.P. (MD) No.12014 of 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ, order or direction in the nature of a Writ of Mandamus directing the 2nd respondent joint Director of Collegiate Education to approve forthwith the



appointment of A.Christina as Assistant Professor (French) in the petitioner's college and disburse the grant-in aid towards her salary and all other allowances w.e.f the date of her appointment viz., 01.07.2019.

Prayer in W.P. (MD) No.12015 of 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ, order or direction in the nature of a Writ of Mandamus directing the 2nd respondent joint Director of Collegiate Education to approve forthwith the appointment of Dr.D.Vinoba Gladis as Assistant Professor (History) in the petitioner's college and disburse the grant-in aid towards her salary and all other allowances w.e.f the date of her appointment viz., 17.6.2019.

Prayer in W.P. (MD) No.12016 of 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ, order or direction in the nature of a Writ of Mandamus directing the 2nd respondent joint Director of Collegiate Education to approve forthwith the appointment of Ms.S.S.Anuja as Assistant Professor (History) in the petitioner's college and disburse the grant-in aid towards her salary and all other allowances w.e.f the date of her appointment viz., 14.6.2019..

Prayer in W.P. (MD) No.12020 of 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ, order or direction in the nature of a Writ of Mandamus directing the 2nd respondent joint Director of Collegiate Education to approve forthwith the appointment of Dr.M.Paripooranaselvi as Assistant Professor (Zoology) in the petitioner's college and disburse the grant-in aid towards her salary and all other allowances w.e.f the date of her appointment viz., 17.6.2019.

Prayer in W.P. (MD) No.12021 of 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ, order or direction in the nature of a Writ of Mandamus directing the 2nd respondent joint Director of Collegiate Education to approve forthwith the appointment of Ms.T.A.Alfreeda as Assisstant Professor (Economics) in the petitioner's college and disburse the grant-in aid towards her salary and all other allowances w.e.f the date of her appointment viz., 17.6.2019.

Prayer in W.P. (MD) No.12023 of 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ, order or direction in the nature of a Writ of Mandamus directing the 2nd respondent joint Director of Collegiate Education to approve forthwith the



appointment of Dr.G.Priscilla Pacifica as Assisstant Professor (Mathematics) in the petitioner's college and disburse the grant-in aid towards her salary and all other allowances w.e.f the date of her appointment viz., 17.6.2019.

Prayer in W.P. (MD) No.12025 of 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ, order or direction in the nature of a Writ of Mandamus directing the 2nd respondent joint Director of Collegiate Education to approve forthwith the appointment of Dr.A Saleth Mary Vetriselvi as Assistant Professor (Commerce) in the petitioner's college and disburse the grant-in aid towards her salary and all other allowances w.e.f the date of her appointment viz., 14.6.2019.

Prayer in W.P. (MD) No.12027 of 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ, order or direction in the nature of a Writ of Mandamus directing the 2nd respondent joint Director of Collegiate Education to approve forthwith the appointment of Dr.R.Mary Santhi as Assistant Professor (Botany) in the petitioner's college and disburse the grant-in aid towards her salary and all other allowances w.e.f the date of her appointment viz., 14.6.2019.

Prayer in W.P. (MD) No.12030 of 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ, order or direction in the nature of a Writ of Mandamus directing the 2nd respondent joint Director of Collegiate Education to approve forthwith the appointment of Dr.P.Subavathy as Assistant Professor (Zoology) in the petitioner's college and disburse the grant-in aid towards her salary and all other allowances w.e.f the date of her appointment viz., 14.6.2019.

Prayer in W.P. (MD) No.12037 of 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ, order or direction in the nature of a Writ of Mandamus directing the 2nd respondent joint Director of Collegiate Education to approve forthwith the appointment of Mrs.P.Jaya Mary as Assistant Professor (Commerce) in the petitioner college and disburse the grant-in aid towards her salary and all other allowances w.e.f the date of her appointment viz., 14.6.2019.

For Petitioner : Mr.K.Ragatheesh Kumar for
(in all WPs) M/s.Isaac Chambers

For Respondents : Mr.G.Arjunan
(in all WPs) Government Advocate

**COMMON ORDER**

In all these writ petitions, the issue raised is one and the same and therefore, with the consent of the learned counsel for the parties, all these writ petitions were heard together and are being disposed of by this common order.

2. The petitioner in all these cases is St.Mary's College (Autonomous), Tuticorin, which is a recognized minority institution getting aid for the teaching and non teaching faculty from the Government.

3. In the petitioner's College, the sanctioned posts in the cadre of Assistant Professors in various disciplines like, English, French, History, Economics, Mathematics, Physics, Botany, Zoology, Commerce become vacant due to the erstwhile incumbents retired from service.

4. In the said vacancies, which are sanctioned vacancies, eligible candidates were selected and appointed by the petitioner's College either on 14.06.2019 or on 28.06.2015. After making such appointments, proposals were sent to the respondents seeking approval of such appointments by the petitioner's College by proposal dated 21.02.2020 and the same had been submitted to the respondents only on 29.05.2020.

5. In order to appreciate the facts in each of the Teachers in all these writ petitions, who were appointed as Assistant Professors in various discipline as stated above and their date of appointment and their qualifications and the approval of the qualifications by the concerned University, ie., Manonmanium Sundaranar University, Tirunelveli, the following table would be greatly useful. Hence, it is extracted hereunder:

S. No	Name & Designation	Qualification	Date of Appointment	Vacancy detail	Qualification approval by the University
1	A.Patricia Romila - Asst. Professor (English)	M.A., M.Phil.,SET	14.06.2019	Retirement of A.Sebasti, Associate Professor (English) on 31.05.2017	Ref.No.MSU/R/CDC/A6/221/Q-A/A.P. Dated 22.11.2019
2	A.Christina - Asst. Professor (French)	M.A., NET	28.06.2019	Retirement of Dr.S.Thenmozhi, Associate Professor (French) on 30.06.2019	Ref.No.MSU/R/CDC/A6/221/Q-A/A.P. Dated 05.12.2019
3	D.Vinoba gladis - Asst. Professor (History)	M.A.M.Phil., Ph.D	14.06.2019	Retirement of one Mrs.M.Pithchai Savariammal, Associate Professor (History) on 31.05.2013	Ref.No.MSU/R/CDC/A6/221/Q-A/A.P. Dated 22.11.2019
4	S.S.Anuja - Asst. Professor - (History)	M.A.M.Phil., SET	14.06.2019	Retirement of Sister S.Decla, Associate Professor (History) on 31.05.2014	Ref.No.MSU/R/CDC/A6/221/Q-A/A.P. Dated 22.11.2019



5	T.A.Alfreeda - Asst. Professor (Economics)	M.A., NET	14.06.2019	Retirement of Dr.L.Thilagarani Associate Professor (Economics) on 31.05.2018	Ref.No.MSU/R/CDC/A6/221/Q-A/A.P. Dated 05.12.2019
6	G.Priscilla Pacifica Asst. Professor (Mathematics)	M.Sc., M.Phil., Ph.D., SET	14.06.2019	Retirement of Sister S.Alphonse Roseline Mary, Associate Professor (Mathematics) on 31.05.2018	Ref.No.MSU/R/CDC/A6/221/Q-A/A.P. Dated 05.12.2019
7	P.Dhanalakshmi Asst. Professor (Physics)	M.Sc., SET	14.06.2019	Retirement of Mrs.Indrani, Associate Professor (Physics) on 31.05.2012	Ref.No.MSU/R/CDC/A6/221/Q-A/A.P. Dated 22.11.2019
8	R.Mary Santhi Asst. Professor (Botany)	M.A., M.Phil Ph.D	14.06.2019	Retirement of Dr.S.Maria Victorial Rani Associate Professors (Botany) on 31.05.2017	Ref.No.MSU/R/CDC/A6/221/Q-A/A.P. Dated 05.12.2019
9	M.Paripooranaselvi - Asst. Professor (Zoology)	M.A., M.Phil., Ph.D., SET	14.06.2019	Retirement of Mrs.S.Jesily Associate Professor (Zoology) on 31.05.2019	Ref.No.MSU/R/CDC/A6/221/Q-A/A.P. Dated 22.11.2019
10	P.Subavathy - Asst. Professor (Zoology)	M.A., M.Phil., Ph.D., SET	14.06.2019	Retirement of Dr.R.D.Thilaga Associate Professor (Zoology) on 31.05.2019	Ref.No.MSU/R/CDC/A6/221/Q-A/A.P. Dated 05.12.2019
11	P.Jaya Mary - Asst. Professor (Commerce)	M.Com., M.Phil., SET	14.06.2019	Retirement of Mrs.Ida Roselin Vought, Associate Professor (Commerce) on 31.05.2017	Ref.No.MSU/R/CDC/A6/221/Q-A/A.P. Dated 05.12.2019
12	A.Saleth Mary Vetriselvi Associate Professor Commerce	M.Com., M.Phil., Ph.D.,	14.06.2019	Retirement of Mrs.A.A.Maria Celine, Associate Professor (Commerce) on 31.05.2018	Ref.No.MSU/R/CDC/A6/221/Q-A/A.P. Dated 22.11.2019

6. Since those proposals sent by the College Management in respect of the appointment of these Professors at the petitioner's College, were pending and so far, no orders have been passed giving approval of such appointment, the present batch of writ petitions in respect of each of such appointments, since has been separately made, have been filed.

7. Heard the learned counsel for the petitioner, who would submit that, the posts, where these incumbents were appointed now, are the sanctioned vacancies in various disciplines. Insofar as the qualifications of each of the teachers, who have been appointed as Assistant Professors, those qualifications, having been verified, was approved by the concerned affiliating University namely, Manonmanium Sundaranar University, Tirunelveli, by the proceedings of the University in respect of each of the case on various dates in the year 2019. Therefore, as far as the appointment of these teachers are concerned, there can be no further impediment for the respondents to consider the proposals sent by the College Management and approve the same, so that, these teachers, who have been appointed in 2019, would get the salary and other service benefits. Therefore, the learned counsel for the petitioner seeks indulgence of this Court to issue suitable directions to the respondents.

8. However, the learned Government Advocate appearing for the respondents would submit that, whether these appointments have been sanctioned vacancies or not have to be verified by the



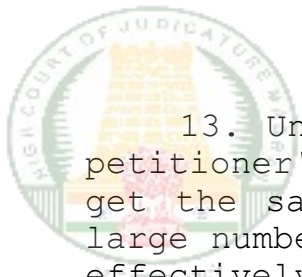
respondents in this regard. He would further submit that, it is the claim of the petitioner's College that, based on the student strength, these number of professors in the cadre of Assistant Professors are required to be employed and in this regard, it is also to be verified that, whether the claim made by the petitioner's college, with regard to the students strength, as claimed by them, are correctly in the roll of the College and in this regard, the College register have to be verified by the authorities, ie., the respondents herein.

9. He would also submit that, in respect of the qualifications claimed by each of the teacher, who have been appointed now, those qualifications whether satisfied the norms of UGC as well as the Government orders issued in this regard from time to time, also to be verified and without verification of these aspects, it cannot straight away approve the appointment made by the petitioner's College and therefore, those proposals can only be considered, after satisfying the authorities on the aforesaid aspects, for which, some more documents may be required to be called for from the College management.

10. I have considered the said submissions made by the learned counsel for both sides, especially, the learned Government Advocate appearing for the respondents.

11. Insofar as the apprehension and the objection raised by the learned counsel for the respondents is concerned, absolutely, there can be no quarrel in respect of the said satisfaction of the respondents herein before they decide the approval issue in respect of these appointments.

12. Whether the petitioner's College has got a sanctioned vacancy to make all these appointments and whether the claim of the petitioner about the students strength is correct or not and whether the qualifications claimed to have been available to each of the teachers now appointed, as has been approved by the concerned University, is correct or not, are all matters to be once again gone into by the respondents, of course, based on the necessary documents and certificates either has been submitted already by the petitioner's Management or to be submitted by the petitioner Management on a specific query raised in this regard. However, the respondents cannot withhold such approval process without processing the same and therefore, the petitioner's College being the recognized minority institution, where sanctioned posts are there, for which, as claimed by the petitioner's management, qualified teachers have been appointed and their qualifications having been verified and certified by the affiliating University, there can be no impediment for the respondents to process those applications or proposal submitted by the petitioner management for approval of those teachers' appointment.



13. Unless and until the teachers appointed a year back in the petitioner's college are approved, they may not be in a position to get the salary and other service benefits and without teachers in large number in various disciplines, the petitioner's College cannot effectively impart education to the students on the roll. Therefore, it is incumbent on the part of the respondents to approve the proposal sent by the College Management seeking such approval and in this context, this Court is of the considered view that, this nature of writ of mandamus can be issued to the respondents to do the needful in accordance with law in the light of the aforesaid facts and discussions.

14. It is further made clear that, since the issue of getting prior permission from the official respondents before filling up the posts has already been decided in number of cases and in this regard, I had an occasion to consider the same issue in W.P.(MD) No.8187/2020 in the matter of Secretary, Holy Cross College, Nagercoil v. The State of Tamil Nadu, rep. by its Secretary and others, dated 29.07.2020, where I have passed the following order:

"8.In this regard, whether a prior approval for minority institution is required or not is no more an issue to be agitated before the Court of law, in other words, the said issue is no more res-integra. In this context, it is to be noted that, I had an occasion to consider the same issue in respect of yet another institution in the case of "The Secretary, Arul Anandar College Autonomous), Karumathur, Madurai Vs. The State of Tamil Nadu represented by the Secretary, Department of Higher Education, Fort St. George, Chennai" in W.P.(MD) Nos.15601 and 15602 of 2018 by order dated 18.07.2018, where, having considered all these aspects, especially, in the context of the issue with regard to the prior approval, I had passed the following order:

"12.As has been rightly pointed out by the learned counsel appearing for the petitioner, there is no need for getting prior approval from the authorities concerned for making appointment in private aided colleges in this State as the law governing the private colleges, the Tamil Nadu Private Colleges Regulations Act, 1976 and the Rules called Tamil Nadu Private College Regulation Rules, 1976 and both in the Act or in the Rules, no such requirement is contemplated. This issue has been settled long ago by a number of decisions of this Court and one such decision of a Division Bench of this Court as cited supra in P.Ravichandran case is a complete answer to the question raised before this Court in these writ petitions.



13. In the said judgment, Division Bench after having exhaustively discussed the issue has affirmed that the Director of Collegiate Education cannot insist the private aided college management to get prior permission to fill up the vacant post for any sanctioned vacancies. The relevant portion of the Division Bench decision is extracted herein for easy reference:

"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 sanctions posts, by issuing circulars/administrative instructions.

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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;



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(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."

14.In view of the rule position as well as categorical pronouncement of this Court in the afore cited Division Bench judgment, the same reason of prior permission as has been cited in the impugned order, no doubt is unsustainable and therefore, for that reason, the impugned order ought not have been passed.

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17.In view of the above, the impugned orders are quashed and the matter is remitted back to the respondents for reconsideration. While making reconsideration, the respondents shall not insist upon the college management to get prior permission for making appointment in a sanctioned vacancy as there is no such procedure contemplated either in the Tamil Nadu Private Colleges Regulation Act or in the Rules made thereunder and accordingly, pass necessary orders for the approval of the said appointments made by the petitioner college in the sanctioned vacancies and the needful shall be done by the respondents, within a period of six weeks from the date of receipt of a copy of this order."

9.Moreover, in respect of the petitioner institution itself, the issue of prior approval have already been raised and it has been decided by a series of judgments, which ultimately concluded by the dismissal of SLP filed by the department before the Hon'ble Supreme Court in SLP No.22766 of 2017 dated 12.10.2018.

10.Therefore, absolutely, there could be no further impediment for the respondents to consider the proposals



dated 16.11.2018 sent by the petitioner institution for approval of the 8 Assistant Professors at the petitioner institution and in that view of the matter, this Court is inclined to dispose of this writ petition with the following order:

"The respondents, especially, the 2nd and 3rd respondents are directed to consider the proposals dated 16.11.2018 submitted by the petitioner institution for approval of appointment of 8 Assistant Professors at the petitioner institution, who were appointed from 18.06.2018 and consider the said proposals and pass orders thereon, on merits and in accordance with law by passing necessary orders for granting approval of such appointments, if the appointments are otherwise in order and such exercise shall be undertaken by the respondents 2 and 3 within a period of 8 weeks from the date of receipt of a copy of this order.

11. With above direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed."

15. In view of the settled legal position, the respondents shall not insist for any prior permission for making such appointments.

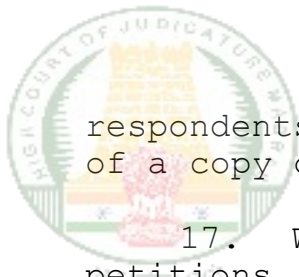
16. In view of the above, this Court is inclined to pass the following orders in all these writ petitions:

"That the respondents are hereby directed to consider the proposals individually submitted by the petitioners College in respect of each of the appointment under proposal dated 21.02.2020 submitted on 29.05.2020 and accordingly, decide the same and pass orders as to the approval of such appointment of teachers in the post of Assistant Professors in various discipline at the petitioner's college.

(ii) In this regard, it is open to the respondents to seek for any further documents in order to satisfy the respondents about the claim of the petitioner's college with regard to the student strength and also the clarification for each of the teacher appointed.

(iii) If any such query is raised, the same shall immediately be complied with by the petitioner's College without allowing to take any delay.

(iv) After getting all these clarifications and verifying the documents as sought for to be submitted by the petitioner's college, the respondents shall pass orders with regard to the plea of approval of these teachers and the same shall be made by the



respondents within a period of two months from the date of receipt of a copy of this order."

17. With these observations and directions, these writ petitions are disposed of. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

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Sub Assistant Registrar(CS)

RR

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

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

2.The Joint Director of Collegiate Education,
Tirunelveli Region - 628 001
Tirunelveli District.

+1 CC to M/s.GP (SR-17515[F] dated 21/09/2020)

+12 CC to M/s.ISAAC CHAMBERS, Advocate (SR-17608 to 17619[F] dated 21/09/2020)

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KM(CO)

TR(10.11.2020) 11P 16C