



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.03.2021

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

AND

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

W.A(MD)Nos.461 and 462 of 2016

WEB COPY

1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of Higher Education,
Fort St. George,
Chennai - 600 009.

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

3.The Joint Director of Collegiate Education,
Tirunelveli Region,
Tirunelveli - 627 002.

... Appellants/Respondents in both W.As'

Vs.

The Secretary,
Holy Cross College (Autonomous),
Nagercoil - 629 004.
Kanyakumari District.

.... Respondent/Writ Petitioner in both W.As'

Common Prayer: Writ Appeals filed under Clause 15 of the Letters Patent, against the orders dated 05.03.2015 & 10.03.2015 passed in W.P(MD)Nos.2410 of 2015 and 3315 of 2015 respectively.

Prayer in WP(MD). 2410 of 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue writ of Certiorarified Mandamus calling for the records relating to the impugned proceeding issued by the 3rd respondent Joint Director in A.Thi.Mu.N.14830/E3/2014 dated 02.01.2015 quash the same, and further direct the 3rd respondent joint Director to approve forthwith the appiontment of 24 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 viz., 01.12.2014.

Prayer in WP(MD). 3315 of 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 proceedings issued by the 3rd respondent joint Director in A. Thi. Mu. No. 14846/E3/2014 dated 02.01.2015, quash the same and further direct the 3rd Respondent Joint Director to approve forthwith the appointment of 19 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 respective dates of their appointment viz., 23.06.2014.

For Appellants : Mr.K.P.Narayanakumar
(In both W.As') Special Government Pleader

For Respondent : Mr.Isaac Mohanlal
(In both W.As') Senior Counsel
for M/s.Isaac Chambers

COMMON JUDGMENT

**(Judgment of the Court was delivered by
PUSHPA SATHYANARAYANA, J.)**

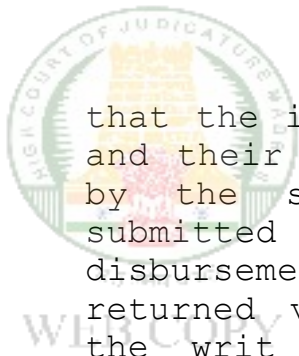
Since the issue raised in the Writ Appeals are one and the same, they are taken up together and disposed of by this common order.

2.W.A(MD)Nos.461 and 462 of 2016 are filed challenging the orders dated 05.03.2015 & 10.03.2015 passed in W.P(MD)Nos.2410 of 2015 and 3315 of 2015 respectively.

3.The respondent/writ petitioner College made a challenge to the impugned proceedings issued by the third appellant/the Joint Director of Collegiate Education in proceedings in A.Thi.Mu.No.14846/E3/2014, dated 02.01.2015 and quash the same and direct the third appellant to approve forthwith the appointment of 19 teaching staffs in the writ petitioner College and disburse the grant-in-aid towards their salary and allowances with effect from the date of their appointment. These challenges are made in W.P (MD)No.3315 of 2015.

4.Similarly, the order of the third appellant, dated 02.01.2015 with respect to 24 non-teaching staffs of the same College was challenged in W.P(MD)No.2410 of 2015.

5.The writ petitioner College had taken a stand that their College is aided by the Government of Tamil Nadu and as there were 35 posts which had fallen vacant, the writ petitioner College had filled 21 posts on 23.06.2014. Out of 21, the Manonmaniam Sundaranar University, Tirunelveli, had granted qualification approval for 19 teachers. For the said 19 teaching staffs, they were appointed against the sanctioned posts. It was reiterated



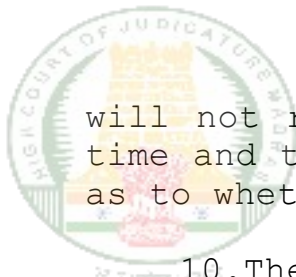
that the incumbents were fully qualified for the respective posts and their appointments were well within the staff strength fixed by the second appellant. When the writ petitioner College submitted the proposal to the third appellant for the purpose of disbursement of grant-in-aid towards their salary, the same was returned vide impugned proceedings, dated 02.01.2015, directing the writ petitioner College to enclose the prior permission granted by the Director of College Education to fill up the vacant posts along with the proposal.

6. Identical is case with 24 non-teaching staffs and payment of their salary and allowances were returned of want of prior approval.

7. The learned Single Judge, after perusing the materials and considering the rival submissions, found that the issue involved in the Writ Petitions was no longer *res integra* in view of the fact that the issue has already been considered and decided by this Court holding that no such permission is required to fill up the vacancy arising out of sanctioned posts, placing reliance on the decisions of the Division Bench of this Court in **P.Ravichandran Vs. State of Tamil Nadu, rep. by Secretary to Government, Department of Higher Education, Chennai and others** reported in **2013 (7) MLJ 641**.

8. In fact, the learned Single Judge in paragraph No.6 of the order had recorded that the Additional Government Pleader had fairly conceded to the said position. Accordingly, the Writ Petitions were allowed and direction was given to re-submit their proposal to the third appellant and directing the third appellant to consider and pass appropriate orders on merits. Aggrieved by the said decisions, the above Writ Appeals have been filed by the State.

9. The learned Special Government Pleader appearing for the appellants submitted that payment of grant is subject to Rule 7 of the Tamil Nadu Private Colleges (Regulation) Rules, 1976; that as per Section 9(1) of the Tamil Nadu Private Colleges (Regulation) Act, 1976 (hereinafter referred to as 'the Act') the College concerned has to send a statement to the authorities as prescribed in sub-Section (2) of Section 4 of the Act, 1976 and that Section 10(2) of the Act, 1976, the Government may withhold permanently or for any specified period, the whole or part of any grant in respect of any private College, if the conditions specified by the Government are not complied with or contravened. The learned Special Government Pleader would also further contend that no teaching posts should be filled up without obtaining prior approval of the Director of Collegiate Education. It was also submitted that the workload of the particular department



will not remain constant and it is liable to change from time to time and therefore, it is for the competent authority to ascertain as to whether the vacant posts have to be filled up or not.

10.The learned counsel appearing for the respondent/writ petitioner College submitted that as per the orders of the Hon'ble High Court, prior permission of the Director of Collegiate Education has been sought for and as soon as the permission is received, the said posts will be filled up. In respect of the minority institutions are concerned, the sanctioned non-teaching posts, they are entitled to make appointments of their own choice subject to fulfillment of the necessary qualifications. Therefore, the learned Single Judge also had rightly concluded that the impugned proceedings are unsustainable and allowed the Writ Petitions.

11.Heard the learned counsel appearing on either side and perused the materials available on record.

12.Admittedly, the writ petitioner College is a Religious Minority Institution and it is well settled position of law that for the sanctioned non-teaching posts, they are entitled to fill up the said posts of their own choice, subject to fulfillment of the necessary criteria prescribed by the Government.

13.In ***P.Ravichandran Vs. State of Tamil Nadu, rep. by the Secretary to Government and others*** reported in **2013 (7) MLJ 641**, it has been specifically held by the Division Bench of this Court, which reads as follows:-

"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.

(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."

14. In the light of the above decision, the authorities only have to see whether the teaching staffs are fully qualified and that for the non-teaching staffs, they possessed the prescribed qualification.

15. Following the same, yet another Judgment of the Division Bench of this Court in **W.A(MD)Nos.532 to 534 of 2020, dated 06.08.2020 (The State rep. by Principal Secretary to Government Vs. Women's Christian College)**, also held that prior approval for appointment of teaching and non-teaching staffs are not necessary for sanctioned posts.

16. The learned Special Government Pleader also pointed out that the above referred decision in **P.Ravichandran Vs. State of Tamil Nadu, rep. by the Secretary to Government and others** reported in **2013 (7) MLJ 641**, is challenged before the Hon'ble Supreme Court and the appeal is pending before the Hon'ble Supreme Court.

17. Reliance was also placed on the decision of the Hon'ble Supreme Court in **Kolawana Gram Vikas Kendra Vs. State of Gujarat and others** reported in **2010 (2) MLJ 133 (SC)**, which reads as follows:-

"7. From the reading of aforementioned para 3, it is clear that all that the Government wants to examine is as to whether the proposed appointments were within the frame work of the rules considering the workload and the availability of the post in that institution and, secondly; whether the selected candidates had the necessary qualifications for the subjects in which the said teachers were appointed. The same applies to the non-teaching staff also.

8. In view of this clear stand taken by the State Government, we cannot pursue ourselves to hold that the



aforementioned circular amounts to any unconstitutional interference in the internal working of the minority institution. In that view, we would choose to dismiss these appeals. However, Mr. Ahmadi raised another point saying that if the prior approval or the no-objection certificate, as the case may be, is not awarded within seven days without any reason, then it would be hazardous for the minority institution to run itself. We do expect the competent authority to issue the no-objection certificate within the time provided in the said circular which is of seven days. Of course, if there are any objections, the authority will be justified to take some more time within the reasonable limits.

9. With these observations, these appeals are dismissed. However, there shall be no order as to the costs."

18.However, it would be pertinent to point out that the Joint Director of Collegiate Education, Tirunelveli in his proceedings, dated 24.06.2015 and 30.01.2016, had granted approval to the appointment of 19 teaching staffs and 14 non-teaching staffs, subject to certain conditions. There are only 10 non-teaching staffs have to be approved. This Court had also given a direction for the appointment of 10 staff members who fall under the basic service to be approved by the Joint Director of Collegiate Education within a period of one month from the date of the passing of the order.

19.In view of the above, the orders, dated 05.03.2015 & 10.03.2015 passed in W.P(MD)Nos.2410 of 2015 and 3315 of 2015 respectively, by the learned Single Judge is confirmed. If the approval for 10 non-teaching staffs is yet to be granted by the authorities, the same may be considered and appropriate orders be passed on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order.

20.In fine, these Writ Appeals are dismissed. No costs.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ps



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 Secretary,
Department of Higher Education,
Fort St. George,
Chennai - 600 009.
- 2.The Director of Collegiate Education,
College Road,
Chennai - 600 006.
- 3.The Joint Director of Collegiate Education,
Tirunelveli Region,
Tirunelveli - 627 002.

+2 CC to Mr.ISAAC CHAMBERS, Advocate SR.No. 14151 & 14152
+1 CC to Mr. Special Government Pleader, SR.No. 14075

**Judgment made in
W.A(MD)Nos.461 and 462 of 2016
26.03.2021**

MA(CO)
TR(07.05.2021) 7P 7C