



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P. (MD).No.15669 of 2016

and W.M.P. (MD).Nos.11507, 11508 & 11509 of 2016

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The Secretary,
St.Ignatius College of Education,
Palayamkottai - 627 002,
Tirunelveli.

... Petitioner

.Vs.

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.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned Government order issued by the 1st respondent in G.O.(Ms) No.219, Higher Education (D1) Department, dated 24.10.2013 and the consequential proceedings issued by the 3rd respondent Joint Director in O.Mu.No.15417/E2/2015, dated 13.04.2016, quash the same and further Direct the 3rd respondent Joint Director to approve forthwith the appointment of Mrs.A.Maria Rose Mary as Gardener in the petitioner's College and disburse the grant-in-aid towards her salary and allowances with effect from the date of her appointment, viz., 12.10.2015.

For Petitioner	: Mr.Issaac Mohanlal, Senior Counsel for Mr.T.Cibi Chakraborty
For Respondents	: Mr.M.Lingadurai for R1 to R3 Government Advocate

ORDER

This writ petition is filed for issuing a writ of Certiorarified Mandamus to quash the impugned Government Order in G.O.(Ms) No.219, Higher Education (D1) Department, dated 24.10.2013 and the consequential proceedings of the third respondent, dated 13.04.2016 and further to direct the third respondent to approve



forthwith the appointment of Mrs.A.Maria Rose Mary as Gardener in the petitioner's College with all consequential benefits.

2.The brief facts that are necessary for the disposal of this writ petition are as follows:

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2.1.The petitioner is an Aided Minority Institution and administered by a Congregation of the Missionary Sisters of the Immaculate Heart of Mary (ICM), Tiruchirappalli. The petitioner's Institution is also registered as a society under the Tamil Nadu Societies Registration Act. It is stated that 227 students are studying in the aided sections of the College. One Principal, 11 Teaching Staffs and 11 Non-teaching Staffs are employed in the aided sections and all the posts are sanctioned. It is stated by the petitioner that the post of Gardener in the College fell vacant, on 12.10.2015, due to the promotion of the earlier occupant as Office Assistant, with effect from 12.10.2015. The College appointed one Mrs.A.Maria Rose Mary as Gardener, with effect from 12.10.2015.

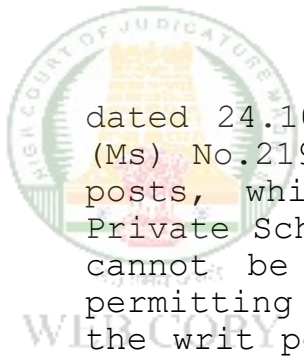
2.2.When the College submitted the proposal to the third respondent / Joint Director, on 14.12.2015, for disbursement of grant-in-aid towards the salary of the staff appointed, by the impugned proceedings, dated 13.04.2016, the Joint Director returned the proposal, on the ground that as per G.O.(Ms) No.219, Higher Education (D1) Department, dated 24.10.2013, posts below the cadre of Office Assistant should be filled up only by outsourcing and that salary of the post should be paid by the College Management only. Since the approval was rejected placing reliance on the Government Order vide G.O.(Ms) No.219, Higher Education (D1) Department, 24.10.2013, the impugned order passed by the third respondent and the said Government Order are under challenge in the present writ petition.

3.The learned Senior Counsel appearing for the petitioner submitted that this Court had earlier in several writ petitions, quashed the impugned order vide G.O.(Ms) No.219, Higher Education (D1) Department, dated 24.10.2013, at the instance of Private Colleges. The learned Senior Counsel submitted further that G.O. (Ms) No.219, dated 24.10.2013, has been issued to give permission to the Director of Collegiate Education, to fill up the posts that are fell vacant during the period from 01.06.2008 to 31.05.2011 and that therefore, the said Government Order cannot be applied to the case, where the vacancy arose after 31.05.2011. Since the vacancy in the case of petitioner's Institution arose, on 12.10.2015, it is submitted by the learned Senior Counsel for the petitioner that the impugned order returning the proposal for approval by citing G.O. (Ms) No.219, dated 24.10.2013, is not appropriate.

4.A Division Bench of this Court in Writ Appeal in **W.A.No.2096 and 2124 of 2019**, by order, dated 19.07.2019, considered

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G.O.(Ms) No.219, Higher Education (D1) Department,



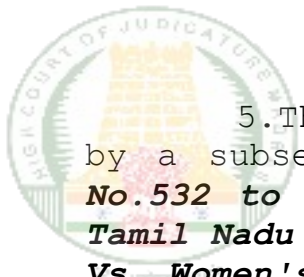
dated 24.10.2013. Originally, writ petitions challenging the G.O. (Ms) No.219, dated 24.10.2013, were allowed, after holding that the posts, which were sanctioned in accordance with the Tamil Nadu Private Schools Regulations Act, 1976 and the Rules made thereunder, cannot be taken away by issuing Government Order directing or permitting outsource. The order of learned Single Judge allowing the writ petitions was upheld by the Hon'ble Division Bench in the order passed in W.A.Nos.2096 & 2124 of 2019, dated 19.07.2019. The relevant portion of the order is extracted below:-

"5.The Government issued an order in G.O. (Ms) No.219, Higher Education, dated 24.10.2013 directing the Management for outsourcing the vacancies in Group D categories like Sweeper, Scavenger, Cleaner and Gardener. The proposals submitted by the Management was rejected only on the basis of the order in G.O.(Ms) No.219 dated 24.10.2013.

6.Rule 11 (1) of the Tamil Nadu Private Colleges (Regulation) Rules, 1976, 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.There is no dispute that the Management was entitled to make appointments taking into account four vacancies in the post of Non-teaching staff. The denial of approval was only on account of the order in G.O.(Ms) No.219 dated 24.10.2013. There is no question of issuing a Government Order for outsourcing, even in respect of the sanctioned post. When it is made out that the post is sanctioned, the Management is having every right to fill up the post. The Government has no right to say that the post should be filled up only by outsourcing.

8.The posts were sanctioned only in accordance with the Tamil Nadu Private Schools Regulation Act, 1976 and the Rules made thereunder. The staff strength fixed as per the Rules cannot be taken away by issuing a Government Order directing or permitting outsourcing. We are therefore of the view that the learned Single Judge was justified in allowing the Writ Petition."



5.The above Judgment of the Division Bench is also followed by a subsequent decision, by another Division Bench in ***W.A. (MD) . No.532 to 534 of 2020***, dated 06.08.2020, in the case of ***State of Tamil Nadu through its Principal Secretary to Government and another Vs. Women's Christian College, Nagercoil and others***.

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6.In the counter affidavit filed by the second respondent, the second respondent has no other defence except referring to G.O. (Ms) No.219, dated 24.10.2013.

7.Since, this Court has declared that G.O.(Ms) No.219, dated 24.10.2013, is invalid and opposed to the Statutory Provisions, the impugned order cannot be sustained. As submitted by the learned Senior Counsel appearing for the petitioner, the Government Order cannot be made applicable to the post, which fell vacant after 31.05.2011. Reading of the impugned Government Order, it is seen that the Government Order is intended to cover vacancies that have fallen vacant during the period from 01.06.2008 to 31.05.2011. Hence, on both grounds the writ petition deserves to be allowed.

8.The learned Government Advocate appearing for the respondent submitted that the G.O.(Ms) No.49, Personnel and Administrative Reforms Department, dated 14.05.2002, is also relevant, as the Government has taken decision as early in 2002 and directed the outsourcing of 'D' category staffs like sweeper, scavenger, cleaner, gardener and Office Assistant etc. The learned counsel fails to note that the G.O.(Ms) No.49, dated 14.05.2002, was the recommendations for Government Departments. It is stated therein that all Group 'D' categories like Sweepers and Scavengers, etc. should be progressively outsourced and engaged on contract basis. Therefore, the Public Departments and the District Collectors were directed to outsource the services on contract basis. This Government Order has no application to Private Educational Institutions. Only by G.O.(Ms) No.219, dated 24.10.2013, there was a direction to fill up vacancies during the period from 01.06.2008 to 31.05.2011 through outsourcing and on contract basis, based on the earlier Government Order vide G.O.(Ms) No.49, dated 14.05.2002, which was in respect of Government Departments.

9.For the reasons stated above, this Court is unable to accept the reasons for the stand taken by the respondents in the counter affidavit.

10.In the result, this writ petition is allowed. The impugned Government order issued by the 1st respondent in G.O.(Ms) No.219, Higher Education (D1) Department, dated 24.10.2013 and the consequential proceedings issued by the 3rd respondent Joint Director in O.Mu.No.15417/E2/2015, dated 13.04.2016, are quashed. The 3rd respondent / Joint Director is directed to approve forthwith the appointment of Mrs.A.Maria Rose Mary as Gardener in the petitioner's



Institution with all consequential benefits. No costs.
Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS III)

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Sub Assistant Registrar(CS)

To

1.The Secretary, State of Tamil Nadu,
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.

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-26303[F] dated 13/08/2021)

+1 CC to M/s.The Special Government Pleader (SR-26245[F] dated 13/08/2021)

W.P. (MD) .No.15669 of 2016
12.08.2021

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