



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.[MD]No.24928 of 2019

and

W.M.P.[MD]No.21514 of 2019

WEB COPY

The Secretary,
Sri S.Ramaswamy Naidu Memorial College
Sadayampatti, NH 44,
Sattur - 626 203.
Virudhunagar District.

... 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,
Madurai Region,
Madurai - 625 002.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the second respondent Director of Collegiate Education to give permission forthwith to fill up 9 vacant Non-teaching posts viz., 1 Museum Keeper, 2 Watchman, 1 Waterman, 1 Gardener, 3 Sweepers and 1 Marker in the petitioner college, within a reasonable time as may be specified by this Court.

For Petitioner : Mr.K.Ragatheesh Kumar
for Mr.Isaac Mohanlal
Senior Counsel.

For Respondents : Mr.P.Mahendran
Additional Government Pleader

ORDER

The petitioner herein is a linguistic minority institution who had made an application to the second respondent herein seeking for permission for filling up 9 vacant Non-teaching posts viz., 1 Museum



Keeper, 2 Watchman, 1 Waterman, 1 Gardener, 3 Sweepers and 1 Marker in their college.

2. Heard Mr.K.Ragatheesh Kumar, for Mr.Isaac Mohanlal, learned Senior Counsel appearing for the petitioner and Mr.P.Mahendran, learned Additional Government Pleader appearing for the respondents.

3. According to the petitioner, though no permission is required to fill up these sanctioned vacancies, since the college is a minority institution, such a request was made only by way of an abundant caution.

4. The respondents in their counter have taken a stand that in view of G.O.Ms.No.219, Higher Education (D1) Department dated 24.10.2013, these non-teaching posts requires to be filled up through outsourcing and on contract basis from and out of the college funds. Among these posts, the post of Museum Keeper has been abolished in view of G.O.Ms.No.135, dated 12.06.2009, which cannot be renewed by the higher education department.

5. The learned Counsel for the petitioner would submit that the objections of the respondents have come up for consideration before the Hon'ble Division Bench of this Court in the **State of Tamil Nadu, Higher Education Department Vs. Secretary, Nirmala College for Women in W.A.Nos.2096 and 2124 of 2019**. The Hon'ble Division Bench in its order dated 19.07.2019, had held that outsourcing of sanctioned posts is impermissible, in the following manner:

"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."

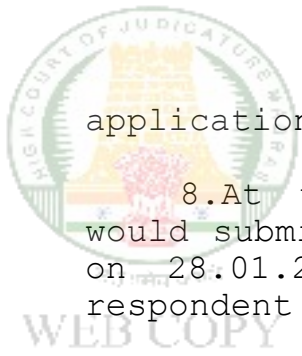
6.A similar view has been taken by an other Division Bench of this Court in the case of **State of Tamil Nadu, Principal Secretary to Government, Higher Education Department Vs. Women's Christian College in W.A.[MD]Nos.532 to 534 of 2020**, placing reliance on the decision in **Nirmala College for Women case** [referred supra] , wherein it has been held as follows:

"8.The respondents are Religious Minority Institutions and it is well settled position of law that in respect of sanctioned non-teaching posts, they are entitled to fill up the said posts of their own choice and of course, subject to fulfilment of necessary criteria prescribed by the Government.

9.The learned Judge had surveyed various earlier decisions in this regard and concluded that in the light of the well settled position, the impugned proceeding warrants interference and allowed the writ petitions.

10.This Court on an independent application of mind to the entire materials placed and also considering the rival submissions, is of the considered view that there are no merits in these writ appeals."

7.This being the position, the justification admitted in the counter affidavit may not be sustainable. Nevertheless, such a decision requires to be taken by the third respondent based on the petitioner's application made in this regard and this Court may not be justified in stepping into the shoes of the statutory authorities and passing such orders. Nevertheless, if the third respondent is called upon to pass appropriate orders pursuant to the petitioner's



application in this regard, the ends of justice could be secured.

8.At this juncture, the learned Counsel for the petitioner would submit that they had made an application seeking for approval on 28.01.2019 and the same has been forwarded to the second respondent on 26.02.2019, which is said to be pending.

9.Learned Additional Government Pleader also affirms that the application is still pending and submitted that the respondents may be permitted to consider the application on its own merits and pass orders.

10.In the light of the observations made and the submissions of the respective Counsels, there shall be a direction to the second respondent herein to consider the petitioner's application dated 28.01.2019, on its own merits and in the light of the observations made in the present order and take further course of action in accordance with law, at least within a period of **three [3] months** from the date of receipt of a copy of this order.

11.With the above direction, this Writ Petition stands disposed of. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MR

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,
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,
Madurai Region,
Madurai - 625 002.

+1 CC to M/s.ISAAC CHAMBERS, Advocate SR-11368[F] dated 16/03/2021
+1 CC to M/s.SPL GP (SR-11599[F] dated 16/03/2021)

W.P.[MD]No.24928 of 2019

15.03.2021

na (CO)
TR(19.04.2021) 5P 6C