



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)No.25282 of 2019

and W.M.P. (MD)No.21878 of 2019

WEB COPY

The Secretary,
Mannar Thirumalai Naicker College,
Pasumalai - 625 004,
Madurai 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 - 625 020.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a 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 Scavenger, 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.

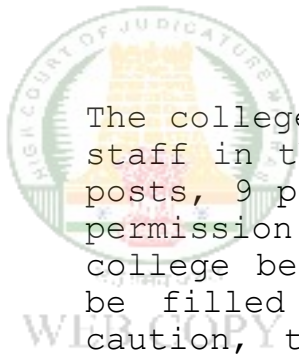
For Petitioner : Mr.K.Ragatheesh Kumar
for M/s.Isaac Chambers

For Respondents : Mr.P.Subbaraj,
Government Advocate.

ORDER

The petitioner has filed this Writ Petition, seeking a direction to the second respondent to give permission forthwith to fill up 9 vacant non-teaching posts viz., 1 Scavenger, 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.

2. According to the petitioner, the petitioner college is a recognized Telugu Linguistic Minority Educational Institution. There are 1258 students studying in the aided sections of the college and 2696 students studying in the self-financed section.



The college is sanctioned with 55 teaching staff and 27 non-teaching staff in the aided sections. Out of the 27 sanctioned non-teaching posts, 9 posts fell vacant due to various reasons. Though no prior permission is required to fill up the sanctioned vacancies, as the college being a Minority Institution and the posts which sought to be filled are sanctioned to the college long back, by abundant caution, the petitioner college submitted proposal to the second respondent, through the proper channel i.e., the third respondent on 02.01.2019, seeking permission to fill up the vacancies. Since there is no response, the petitioner college sent a reminder to the third respondent on 20.02.2019. Again, there was no response. According to the petitioner, on enquiry with the officials of the respondents 2 and 3, it was informed that the proposal is kept pending in view of G.O.Ms.No.219, Higher Education (D1) Department, dated 24.10.2013, which contemplates certain categories of non-teaching posts shall be filled either by outsourcing or on contractual basis and the respective college should meet out the expenses for the same. Hence, the petitioner has come out with the present Writ Petition.

3. The learned counsel appearing for the petitioner submitted that the act of second respondent keeping the proposal seeking permission to fill up the 9 vacant posts of non-teaching staff in the petitioner college pending, is without any basis. He further submitted that there is no impediment for the second respondent to give permission to fill up 9 vacancies in the petitioner college by considering the proposal dated 02.01.2019. He further submitted that G.O.Ms.No.219, Higher Education (D1) Department, dated 24.10.2013, referred by the respondents 2 and 3 was already considered and quashed by this Court in various writ proceedings. This Court, by order dated 24.11.2017 in W.P.Nos.6679 & 6680 of 2016, quashed the said Government Order and the same was also confirmed by the Division Bench of this Court in ***W.A.Nos.2096 and 2124 of 2019 [The State of Tamil Nadu Vs. The Secretary, Nirmala College for Women, Coimbatore District]***, by judgment dated 19.07.2019. In the said judgment, this Court has held as follows:

"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 Gardner. 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.

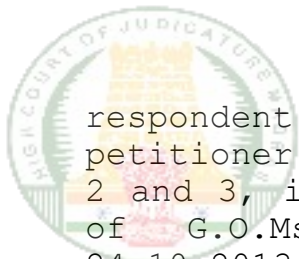
9. The intra court appeal is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed."

4. The learned counsel appearing for the petitioner relied on a judgment of this Court in ***W.A. (MD)Nos.532 to 534 of 2020 [The State represented by Principal Secretary to Government, Higher Education (D1) Department, Vs. Women's Christian College, Nagercoil and others]***, dated 06.08.2020 and in the said judgment, this Court has 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."

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents and perused the materials available on record carefully.

6. From the above materials available on record, it is seen that 9 vacancies in non-teaching posts arose in the petitioner college, which is Linguistic Minority College, due to various reasons. The petitioner sought permission from the second respondent to fill up the sanctioned non-teaching posts. The second



respondent has not passed any order. The learned counsel for the petitioner contended that on enquiry from the office of respondents 2 and 3, it was informed that the proposal is kept pending in view of G.O.Ms.No.219, Higher Education (D1) Department, dated 24.10.2013, which contemplates certain categories of non-teaching posts shall be filled either by outsourcing or on contractual basis and the respective college should meet out the expenses for the same. The validity of the said Government Order was challenged in number of writ petitions and the said Government Order was struck down by this Court. The Hon'ble Apex Court also dismissed the SLP filed against the judgment of this Court. The two judgments relied on by the learned counsel for the petitioner referred to above, makes it clear that the petitioner college is entitled to fill up the sanctioned non-teaching posts of their own choice and of course, subject to fulfilment of necessary criteria prescribed by the Government.

7. In view of the above judgments, the second respondent is directed to consider the proposal submitted by the petitioner, within a period of four weeks from the date of receipt of a copy of this order, taking into consideration the judgments of this Court referred to above.

8. With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

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Sub Assistant Registrar(CS)

vsm

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 - 625 020.

+1 CC to M/s.ISAAC CHAMBERS, Advocate(SR-23963[F] dated
27/07/2021)

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and W.M.P. (MD) No.21878 of 2019
26.07.2021

MGJ (23/08/2021) 5P 5C