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W.P.Nos.19075, 19079,
19085 & 19087 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2023

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.Nos.19075, 19079, 19085 & 19087 of 2020

and

W.M.P.Nos.23648, 23650, 23656 & 23657 of 2020

The Principal and Secretary
St. Christopher's College of Education,
Vepery, Chennai – 600 007.

... Petitioner
in 4WPs

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 Regional Joint Director of
Collegiate Education,
Chennai Region, Chennai – 600 015.

... Respondents
in 4WPs

Prayer in WP.No.19075 of 2020: Writ Petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 3rd respondent Joint Director to approve forthwith the



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appointment of Mrs.T.Govinthamal as Sanitary Worker in the petitioner college with effect from the date of his appointment viz., 24.06.2019 and disburse the grant-in-aid towards her salary and allowances from the said date.

Prayer WP.No.19079 of 2020: Writ Petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 3rd respondent Joint Director to approve forthwith the appointment of Mr.S.Sujin as Night Watchman in the petitioner college with effect from the date of his appointment viz., 30.11.2019 and disburse the grant-in-aid towards his salary and allowances from the said date.

Prayer WP.No.19085 of 2020: Writ Petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 3rd respondent Joint Director to approve forthwith the appointment of Mr.R.Charles Robinson as Office Assistant in the petitioner college with effect from the date of his appointment viz., 24.06.2019 and disburse the grant-in-aid towards his salary and allowances from the said date.

Prayer WP.No.19087 of 2020: Writ Petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 3rd respondent Joint Director to approve forthwith the appointment of Mr.J.Devaraj as Watchman in the petitioner college with effect from the date of his appointment viz., 24.06.2019 and disburse the



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grant-in-aid towards his salary and allowances from the said date.

For Petitioner	: Mr.P.Godson Swaminath For M/s.Isaac Chambers (in 4WPs)
For Respondents	: Mr.S.Silambanan, Additional Advocate General Assisted by Mr.T.Chezhiyan Additional Government Pleader (in 4WPs)

COMMON ORDER

These writ petitions have been filed seeking mandamus, directing the 3rd respondent / Joint Director to approve the appointment of Sanitary worker and Night Watchman in the petitioner-College from the respective date of appointment.

2. The only reason why the approval was not granted by the 2nd respondent is because of the issuance of G.O.Ms.No.49, Personal and Administrative Reforms Department, dated 14.05.2022. The said Government order reads that the Group 'D' category of Non-Teaching posts i.e., sweeper, scavenger, cleaner and gardener shall be progressively outsourced and on contract basis. Based on the said Government order, the



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Government permitted the Director of Collegiate Education to fill up 1282 Non-Teaching posts i.e., Office Assistant 573, Marker 64, sweeper – 259, waterman-182, gardener-121, cleaner-83 as on 22.08.2008 vide G.O.Ms.No.219, Higher Education (D) Department dated 24.10.2013 in the Government Aided Arts and Science Colleges and College of Education. The difference between the appointment made by the colleges and outsourced is that on the basis of the entitlement of expenditure.

3. According to the 2nd respondent the posts are filled through outsourcing. The aided colleges should meet out the expenditure from the college funds and that will not be covered in the grant. However, challenging the Governments reluctance to approve similar such appointments by various similarly aided educational institutions, writ petitions have been filed and allowed. The writ appeals filed by the Government respondents challenging the same were also dismissed.

4. Mr.S.Silambanan, learned Additional Advocate General appearing on behalf of the respondents submitted that the orders passed in W.A.No.1027 of 2013 have arisen out of the orders passed in W.P.No.26162



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of 2010. Special Leave Petitions have been filed before the Hon'ble Supreme Court of India, which are pending.

5. The learned counsel for the petitioners attracted the attention of this Court to the various orders passed in similar such writ petitions, which culminated into the directions issued against the respondents. Reliance are placed upon the orders passed in WP.No.23950 of 2018 dated 25.06.2019 and W.P.No.17511 and 17518 of 2019 dated 16.08.2019. In fact one Special Leave Petition has been filed challenging the similar orders and also been dismissed. It is seen that from the Diary No.2673 of 2017 of the Hon'ble Supreme Court that the impugned order under challenge was passed by this Court. However, SLP got dismissed.

6. However, in the latest judgment of this Court passed in similar such petitions filed in W.P.No.17511 and 17518 of 2019 dated 16.08.2019, the following order has been passed:

“10. This Court is unable to appreciate as to how despite the settled legal principle in respect of the Minority institutions, the Educational authorities can insist upon certain requirements as



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provided for in the Tamil Nadu Private Colleges (Regulation) Act 1976 and Rules. When the Minority Institution enjoys a complete protection under Article 30 of the Constitution of India, such protection cannot be trifled with by the Educational authorities by insisting on application of certain requirements provided under the Act and Rules, which provisions cannot be applied to the Minority Institutions. In fact, in respect of appointment of non-teaching staff, requirement of advertisement was not envisaged in the Rules and such requirement cannot be supplemented by any executive action of the respondents. Unless the Rules are supplanted providing for such requirement, the Educational authorities cannot insist on the same, which is not found specifically in the Rules. Even otherwise, such requirement, even if introduced in the Rules, cannot be pressed into service in respect of minority institutions.

11. As rightly contended by the learned Senior counsel for the petitioner Rule 11(4)(ii) was in relation to the appointment of teaching staff by the College Committee. But as far as the Minority Institutions are concerned, the College Committee



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is not required to be constituted under Section 11 of the Act unlike in respect of the institutions not being Minority institutions. In the absence of such regulation, this Court is unable to countenance the action of the respondents 2 and 3 in refusing to grant approval of the appointments of the seven non-teaching staff in the petitioner institution. The refusal to grant approval for the subject appointments, would therefore, cannot stand the test of judicial scrutiny and the same is liable to be interfered with. The insistence on requirement of advertisement for appointment of non-teaching staff in the Minority Institution is without the authority of law and the same cannot be enforced as against the petitioner institution. The petitioner institution comes under the protective cover, being the minority institution, under Article 30 of the Constitution of India, such protective cover cannot be sought to be uncovered by the insistence on a statutory requirement, which first of all cannot be made applicable for the non-teaching staff and secondly such requirement cannot be enforced in the teeth of the Constitutional protection guaranteed to the minority institutions. In fact, the claim of the petitioner is fully covered by the



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decisions of the Hon?ble Supreme Court of India, cited above.

12. For the above said reasons, this Court has no hesitation in allowing the writ petitions. Accordingly, the writ petitions are allowed and the impugned orders of the third respondent in A.Thi.Mu.No.2684/Aa3/2018, dated 20.08.2018 and A.Thi.Mu.No.274/Aa3/2018, dated 20.08.2018, respectively, are hereby set aside and the third respondent is directed to grant approval forthwith for the appointments of the seven non-teaching staff as well as the appointment of Sr.A.Sippriyan Mary as Lab Assistant in the petitioner?s College and also disburse staff grant towards their salary and allowances with respect to their respective date of appointments. The third respondent is directed to pass appropriate orders in this regard within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently connected miscellaneous petitions are closed.”

7. The petitioner's Institution is also a minority institution, which is protected under Article 30 of the Constitution of India and such protection



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has already been extended to similar such institutions, whenever their autonomy is disturbed. The petitioner is also entitled to the same relief. In fact, contempt petition has also filed against the Government Officials for non-compliance of the order, since the Managing committee is the supreme authority as far as the minority institution is concerned to take any policy decision in relation to the appointment of the staff. A minority institution themselves have separate and privilege category. There is no hesitation to extent the benefit of the earlier orders to the petitioner-Institution.

8. With the above observations, these Writ Petitions stand allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Index : Yes / No
Neutral Citation : Yes / No
Speaking order / Non-speaking order



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To

1. The Secretary,
The 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 Regional Joint Director of
Collegiate Education,
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R.N.MANJULA, J.

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