



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2023

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.29647 of 2023

and

W.M.P.Nos.29259 & 29260 of 2023

Ramasamy Tamil College,
Rep. by its Secretary,
Mr.PR.Veerappan,
S/o. Mr.Periyakaruppan,
Mahilvagam, 27, Church 1st Street,
(Opp AP Mahal)
T.T.Nagar,
Karaikudi – 630 001.

... Petitioner

Vs.

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

2.The Director of Collegiate Education,
I.A.S.E. Campus,
577, Anna Salai, Saidapet,
Chennai – 600 015.

3.The Regional Joint Director of Collegiate Education,
Madurai Region,
Madurai – 625 002.

... Respondents



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Prayer: Writ Petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration, to declare that G.O.Ms.No.49 dated 14.05.2002 and Letter No.1688/D1/2023 dated 05.06.2023 issued by the 1st respondent and consequential letter issued by the 3rd respondent in O.Mu.No.6055/Aa/2023 dated 19.09.2023 are not applicable / has no relevancy to the Aided Private Colleges to appoint Group D Employees and consequently direct the 3rd respondent to grant approval for the appointment of 4 Group D Employees namely Gardener – 1, Watchman – 1, Sweeper – 1 and Scavenger – 1 who were appointed in the sanctioned retirement / promotion vacancies and to release the Salary from their respective date of appointment.

For Petitioner : Mr.E.Martin Jayakumar

For Respondents : Mr.M.Bindran
Additional Government Pleader

ORDER

The petitioner herein is a private aided College. When four vacancies arose to the posts of Gardener, Watchman, Scavenger and Sweeper, permission was sought for by the college on 17.08.2022 to fill up these posts. Thereafter, through the proceedings of the 2nd respondent dated 03.11.2022, permission was also granted to fill up these posts. Accordingly, appointment



orders were issued on 19.04.2023 for the three posts of Watchman, Sweeper and Scavenger and on 28.04.2023 for the post of Gardener. When the petitioner had sought for approval of these appointments, through a proposal dated 22.05.2023, the 2nd respondent herein had placed reliance on G.O.Ms.No.49, Personnel and Administrative Reform (F) Department dated 14.05.2022 and rejected the proposal, on the ground that as per the Government instructions, these posts can be filled only through outsourcing. Aggrieved by the same, the petitioner has preferred the present writ petition.

2. The learned counsel for the petitioner submitted that the G.O.Ms.No.49 dated 14.05.2002 modification of the earlier G.O.Ms.No.219, Higher Education (D1) Department dated 24.10.2013, was already quashed by this Court through orders passed in ***W.P.Nos.6679 and 6680 of 2016*** in the case of ***The Secretary, Nirmala College for Women (Autonomous) vs. The State of Tamil Nadu*** dated 24.11.2017, which order was upheld in ***W.A.Nos.2096 and 2124 of 2019*** dated 19.07.2019 and therefore, the present impugned order placing reliance on the G.O.Ms.No.49 dated 14.05.2002 cannot be sustained.

3. Per contra, the learned Additional Government Pleader appearing on



behalf of the respondents placed reliance on the averments in the counter affidavit and submitted that as per the clarification issued by the Principal Secretary, High Education Department dated 08.11.2022 as well as G.O.Ms.No.49 dated 14.05.2002, the vacancies in Group 'D' category has to be necessarily filled through outsource and cannot be filled directly. Therefore, the respondents have rightly rejected the proposal as well as the approval of the of the appointments.

4. I have given careful consideration to the submissions made by the respective counsels.

5. After the G.O.Ms.No.219, Higher Education Department dated 24.10.2013 came to be quashed by the learned Single Judge of this Court, an intra Court appeal was preferred by the Department in W.A.Nos.2096 and 2124 of 2019 and by order dated 19.07.2019, the Hon'ble Division Bench of this Court had held that when the management of a aided school is vested with the right to fill up any vacancies of non-teaching staff, the Government has no right to impose any condition that the same should be filled up only by outsourcing. The relevant portion of the order reads as follows:

“6. Rule 11 (1) of the Tamil Nadu Private



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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 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.”



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6. G.O.Ms.No.49, Personnel and Administrative Reform (F) Department dated 14.05.2022 had prescribed that the Group 'D' post should be filled up by outsourcing by entrusting them on contract basis. In modification of the G.O.Ms.No.49, G.O.Ms.No.219 came to be passed, reiterating the order in G.O.Ms.No.49 and stipulating certain guidelines for filling up the vacancies in Group 'D' category. When this Court had already quashed G.O.Ms.No.219, which is only a modification order of the G.O.Ms.No.49, the respondents were not justified in placing reliance on G.O.Ms.No.49 and directing the petitioner to fill up the post through outsourcing.

7. This apart, while quashing the G.O.Ms.No.219, the Hon'ble Division Bench of this Court had categorically observed that when a non-teaching post is sanctioned to a educational institution, the management has every right to fill up the post and the Government has no say in the matter of filling up the post and accordingly, held that there cannot be any condition to fill up the sanctioned post only by outsourcing.

8. In this background, the reason assigned in the impugned order, as



well as the submission made by the learned Additional Government Pleader justifying their action on the basis of G.O.Ms.No.49, as well as the clarification given by the Principal Secretary, Higher Education Department dated 08.09.2022 cannot be legally sustainable. Consequently, the action of the respondents in rejecting the petitioner's claim seeking for approval of the appointments of the four sanctioned posts cannot be sustained.

9. In the said circumstances, the impugned order in G.O.Ms.No.49 dated 14.05.2002 and Letter No.1688/D1/2023 dated 05.06.2023 issued by the 1st respondent and consequential letter issued by the 3rd respondent in O.Mu.No.6055/Aa/2023 dated 19.09.2023 are quashed. Consequently, the petitioner is granted liberty to re-submit the proposal dated 22.05.2023 to the 2nd respondent herein, seeking approval of the appointments of Mr.Palaniyappan, Watchman, (date of appointment 18.04.2023), Mr.Selvakumar, Sweeper, (date of appointment 19.04.2023), Mr.P.Saravanan, Scavenger, (date of appointment 19.04.2023), and Mr.Ganesh, Gardener, (date of appointment 28.04.2023) and on receipt of the proposal, the 2nd respondent shall pass appropriate orders, approving their appointment and for release of the necessary grant in aid. Such orders shall be passed within a period of four (4) weeks from the date of receipt of copy of this order.



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10. With the above directions, this Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

21.12.2023

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Index : Yes
Neutral Citation : Yes
Speaking order



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To

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Higher Education Department,
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