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W.P.(MD).Nos.2220 and 2221 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 02.06.2023

PRONOUNED ON : 21.11.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).Nos.2220 and 2221 of 2016

and

W.M.P.(MD)Nos.1942 to 1947 of 2016

M.V.Ekanathan

... Petitioner in
W.P.(MD)No.2220 of 2016

R.S.Ganeshbabu (Died)
R.S.Jothi

... Petitioner in
W.P.(MD)No.2221 of 2016

***(Petitioner substituted, vide Court order
dated 28.02.2023 in WMP(MD)No.3098
of 2023 in WP(MD)No.2221 of 2016)***

Vs.

1.The Government of Tamil Nadu,
represented by its Principal Secretary,
Higher Education Department,
Fort St.George, Secretariat,
Chennai-600 009.



W.P.(MD).Nos.2220 and 2221 of 2016

WEB COPY

- 2.The Director of Collegiate Education,
College Road, Nungambakkam,
Chennai-600 006.
- 3.The Joint Director of Collegiate Education,
Madurai Region, Madurai.
- 4.Sourashtra College,
Represented by its Secretary,
Pasumalai, Madurai.

... Respondents in both cases

PRAYER in W.P.(MD)No.2220 of 2016 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Certiorarified Mandamus***, to call for records pertaining to the impugned G.O.Ms.No.49, Personnel and Administrative Reforms (F) Department, dated 14.05.2002, passed by the 1st respondent and the impugned order passed by the 3rd respondent in Na.Ka.No.1198/U2/2016, dated 18.03.2016, to quash the same and to direct the 3rd respondent to approve the petitioner's appointment as Gardener in the 4th respondent College with effect from 21.12.2015 and to pay the attendant monetary benefits within a time frame fixed by this Court.

(Prayer amended, vide Court order, dated 28.02.2023, in WMP(MD)No.4019 of 2023 in WP(MD)No.2220 of 2016)

PRAYER in W.P.(MD)No.2221 of 2016 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of***



W.P.(MD).Nos.2220 and 2221 of 2016

WEB COPY

Certiorarified Mandamus, to call for records pertaining to the impugned G.O.Ms.No.49, Personnel and Administrative Reforms (F) Department, dated 14.05.2002, passed by the 1st respondent, to quash the same and to direct the 3rd respondent to approve the petitioner's appointment as Waterman in the 4th respondent College.

In both cases:

For Petitioner	: Mr.M.Saravanan
For R1 to 3	: Mr.V.Omprakash Government Advocate
For R4	: No appearance

COMMON ORDER

Since both the writ petitions are filed challenging the same impugned order passed in G.O.Ms.No.49, both the writ petitions were taken up together and a common order is passed.

2.(i) The writ petition in W.P.(MD)No.2220 of 2016 is filed by M.V.Ekanathan for writ of ***Certiorarified Mandamus***, to quash the impugned



W.P.(MD).Nos.2220 and 2221 of 2016

WEB COPY

G.O.Ms.No.49, Personnel and Administrative Reforms (F) Department, dated 14.05.2002 and to direct the 3rd respondent to approve the petitioner's appointment as Gardener in the 4th respondent College. Pending writ petition, the 3rd respondent passed an order, dated 18.03.2016 declining to grant approval. Hence, the petitioner amended the prayer to quash the said impugned order, dated 18.03.2016 as well.

2.(ii) The writ petition in W.P.(MD)No.2221 of 2016 is filed by R.S.Ganeshbabu for ***Writ of Certiorarified Mandamus***, to quash the impugned G.O.Ms.No.49, Personnel and Administrative Reforms (F) Department, dated 14.05.2002, passed by the 1st respondent and to direct the 3rd respondent to approve the petitioner's appointment as Waterman in the 4th respondent College. In W.P.(MD)No.2221 of 2016, the petitioner was appointed as Waterman, but he died on 09.11.2019. Hence, the substitution petition is filed and the same is allowed.



W.P.(MD).Nos.2220 and 2221 of 2016

WEB COPY

3. The brief facts of the case as stated in the affidavit are that the 4th respondent College is a linguistic minority college established in the year 1967 and the 1st respondent vide letter dated 24.02.1977 had declared the college as minority college. The college is governed by the Tamilnadu Private Colleges Regulation Act, 1976, except Sections 19 to 23. As on today, six approved posts of Sweeper, two approved posts in each category of Watchman, Waterman and Gardener and one approved post of Scavenger are vacant in the 4th respondent college. In a catena of decision, this Court and the Hon'ble Apex Court have held that there is no need to seek prior approval for filling up the vacancy in approved posts. Out of 14 posts, in the above category, 13 posts are vacant and some of the posts became vacant in the year 2000 and till date, the same are not filled up. The petitioners had passed 10th standard and also passed foundation course and they are eligible to be appointed as Gardener and Waterman.



W.P.(MD).Nos.2220 and 2221 of 2016

WEB COPY

4. The petitioner M.V.Ekanathan was working in the 4th respondent college from 17.01.2002 on consolidated pay basis. On 21.12.2015, the 4th respondent appointed the petitioner M.V.Ekanathan as Gardener in the vacancy caused due to the promotion of one N.R.P.Janaganbabu. The petitioner R.S.Ganeshbabu was working in the 4th respondent college from 14.09.2000 on consolidated pay basis. On 21.12.2015, the 4th respondent appointed the petitioner R.S.Ganeshbabu as Waterman in the vacancy caused due to the promotion of one M.S.Rajendran. The petitioners joined the regular service and were regularly working in the 4th respondent college. The 4th respondent has forwarded the proposal for approval and the same is pending. In the meanwhile, the 3rd respondent has orally informed that the petitioners' appointment will not be approved unless the prior permission from the Government is obtained. Further, the 3rd respondent had informed the College that the Government had issued G.O.Ms.No.49, P & AR Department, dated 14.05.2002 and decided that the Group D posts including the posts of Sweeper, Scavenger, Cleaner and Gardener shall be outsourced and hence, they are not in a position to give



W.P.(MD).Nos.2220 and 2221 of 2016

WEB COPY

approval. The contention of the petitioners is that the said G.O. is not applicable to the 4th respondent college which is a minority college, but relying on the said G.O., the respondents had declined to grant approval. Hence, the petitioners are before this Court.

5. The 3rd respondent had filed counter affidavit in W.P.(MD)No. 2220 of 2016 stating that petitioner was initially appointed as Gardener without getting prior permission from the 3rd respondent. Moreover, the 4th respondent's proposal did not mention the details about the petitioner and the 4th respondent has not stated initially in which post the writ petitioner was appointed. Suddenly, the 4th respondent stated that the writ petitioner was appointed as Gardener in the year of 2015 and submitted the proposal, dated 04.02.2016. The same was rejected by the 3rd respondent, vide proceedings, dated 18.03.2016. In this background, the petitioners in both the writ petitions are seeking approval, but failed to challenge the above rejection order. The expenditure on salaries, allowances and administrative expenses have grown



W.P.(MD).Nos.2220 and 2221 of 2016

WEB COPY

enormously in the recent past and have posed considerable burden on the finances of the State Government. Hence, the Government has constituted the Staff and Expenditure Reforms Commission to examine the scope for curtailing avoidable expenditure. The said commission has submitted an interim report to the Government and one of the recommendations of the commission relates to outsourcing of services like sweeping, scavenging, cleaning, watch and ward etc. In short, the group 'D' category staff were recommended to be outsourced and entrusted on contract basis. After examining the said recommendation, the Government had decided to accept the same with minor modification. Hence the Government accordingly issued G.O.Ms.No.49, Personnel and Administrative Reforms Department, dated 14.05.2002 directing all group 'D' categories shall be outsourced and entrusted on contract basis and the said expenses shall be from College Fund of Government Aided Arts and Science Colleges. Based on the above said G.O, the said proposal was already rejected on 18.03.2016 and it has been categorically stated by the 3rd respondent that “D” Category posts should not be filled up on regular basis. In the impugned



W.P.(MD).Nos.2220 and 2221 of 2016

WEB COPY

order, the 3rd respondent by referring to G.O.Ms.No.49, Personnel and Administrative Reforms Department, dated 14.05.2002, has categorically stated that Group D services ought to be outsourced and they will not be granted approval. Hence, the 3rd respondent prayed to dismiss the writ petition.

6. Heard Mr.M.Saravanan, learned Counsel appearing for the petitioner in both writ petitions and Mr.V.Omprakash, learned Government Advocate appearing for the respondents 1 to 3 in both writ petitions and perused the records.

7. The 1st contention of the petitioners is that the 4th respondent College is a linguistic minority institution, hence the protection granted to the minority institutions is available to the 4th respondent college. Therefore, while appointing any person in the sanctioned vacancy the 4th respondent college need not seek prior permission for appointing and filling up the said vacancy. The said contention of the petitioners cannot be accepted, since there was a



W.P.(MD).Nos.2220 and 2221 of 2016

WEB COPY

general ban for fresh appointment in G.O.Ms.No.212 Personnel and Administrative Reforms-P dated 29.11.2001. Thereafter the ban was lifted through G.O.Ms.No.14 Personnel and Administrative Reforms-P dated 07.02.2006. Whenever the general ban is cited, all aided schools and colleges would take a plea that this general ban would not be applicable to the aided schools and colleges. But the reason for the general ban and the prevailing circumstances ought to be taken into account. It is seen that the ban of recruitment was issued since the government was under financial constraints. Moreover, after banning the fresh recruitment the government had fixed the cut-off date for old pension as 31.03.2003 and the new contributory pension scheme is applicable for the persons recruited from 01.04.2003. For aided schools and colleges also, the government was paying the pension and hence the said policy decision of stopping the old pension scheme and bringing the teaching and non-teaching under the new contributory scheme is applicable to the aided schools also. Hence the general ban for fresh recruitment is applicable to all aided schools and colleges. When there is general policy decision as



W.P.(MD).Nos.2220 and 2221 of 2016

WEB COPY

stated supra there is no question of giving special privilege to the minority institutions and hence the general ban is applicable to all aided schools and colleges, including minority institutions. If such privilege is granted to minority schools and colleges, it is against Article 14 of the Constitution. Infact it is stated in the petitioner's affidavit itself that the college had not appointed D category vacancy from 2002 onwards which means that the Government has implemented the ban to the aided schools and colleges also, including minority institutions and any appointment from 29.11.2001 is illegal and approval cannot be granted.

8. Even after lifting of general ban, the schools and colleges were not granted permission to appoint the non-teaching staffs. During this ban period, the government had also taken a policy decision that as far as non-teaching staffs like Sweeper, Scavenger, Cleaner, Gardener, Marker, Watch and Ward etc., shall be outsourced on contract basis. To this effect the government had issued G.O.Ms.No.49, Personnel and Administrative Reforms Department,



W.P.(MD).Nos.2220 and 2221 of 2016

WEB COPY

dated 14.05.2002 and subsequently issued another G.O.Ms.No.219 Higher Education (D1) Department dated 24.10.2013. Again, the aided schools and colleges would take a plea that the said G.O.s are not applicable to the aided schools and colleges. But it is seen that the Government has taken a policy decision to outsource the said non-teaching staff category on contract basis, which is based on the recommendation of the Staff and Expenditure Reforms Commission, which was constituted to curtail the expenses in administration of the State. The said **G.O.Ms.No.49** is extracted hereunder:

*“GOVERNMENT OF TAMILNADU
ABSTRACT*

*"The Staff and Expenditure Reforms Commission" - Recommendation on
"outsourcing of Services of certain employees in Government
Department" - Orders issued.*

PERSONNEL AND ADMINISTRATIVE REFORMS (F) DEPARTMENT

G.O.Ms.No.49

Dated 14.05.2002

G.O.Ms.No.467, Finance (CMPC) Department, dated 26.11.2001



W.P.(MD).Nos.2220 and 2221 of 2016

WEB COPY

ORDER:

The expenditure on salaries, allowances, and administrative expenses have grown enormously in the recent past, and have posed considerable burden on the finances of the State Government. The Government have therefore constituted the Staff and Expenditure Reforms Commission to examine the scope for curtailing avoidable expenditure in administration. The Commission has submitted an interim report to Government. One of the recommendations of the Commission relates to outsourcing of services like sweeping, scavenging, cleaning, watch and ward, etc., The Commission has recommended that the work of all Group "D" category staff like Sweeper, Scavenger, Cleaner, Gardener, Office Assistant, etc., may be progressively outsourced and entrusted on contract basis.

2. The Government have examined the above recommendation of the Staff and Expenditure Reforms Commission and have decided to accept the same with a minor modification.

3. The Government accordingly direct that the work of all Group "D" categories like Sweeper, Scavenger, Cleaner and Gardener shall be progressively outsourced and entrusted on contract basis. The Public Department in Secretariat, the Heads of Department and the District Collectors are entrusted with the responsibility of finalizing the tenders for engaging one or more Agencies to cater to the requirements of various offices in defined area. This order is however, not applicable to the post of Office Assistant. While outsourcing the services ordered above a condition may imposed in the tender to ensure that the existing NMR/Consolidated Wage/Daily Wage employees are to be given preference in employment by the Contractor to protect the interests of such persons.



W.P.(MD).Nos.2220 and 2221 of 2016

WEB COPY

4. This order issues with the concurrence of the Finance Department, vide its U.O.No.1466/FS/P/2002, dated 26.04.2002. (By order of the Governor)

P.SHANKAR
Chief Secretary to Government”

9. The said **G.O.Ms.No.219** is extracted hereunder:

"ABSTRACT

Collegiate Education - Aided Colleges - Filing up of vacancies in the post of Office Assistant Marker and "D" Category posts - Permission accorded - Orders issued.

Higher Education (D1) Department

G.O.(Ms) No.219
Thiruvalluvar -
Aippasi 7

Dated: 24.10.2013
Aandu 2044 Vijaya Varudam,

Read:

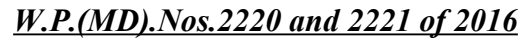
1.G.O.(Ms)No.49, Personnel and Administrative Reforms Department, dated 14.5.2002.

2. From the Director of Collegiate Education Letter No.17509/G3/2008, dated 9.9.2008, 28.9.2010, 07.12.2010 and 9.2.2011.

3. Government letter No.22011/D1/2008-14, dated 20.7.2011.

4. From the Director of Collegiate Education Letter Na.ka. No.17509 / G3/2008, dated 24.1.2013.

ORDER:



3. In the letter fourth read above the Director of Collegiate Education has furnished the details of vacancies in the posts of Office Assistant, Marker, Sweeper, Cleaner, Watchman, Waterman and Gardener in Government Aided Arts and Science Colleges and Colleges of Education during the period 1.6.2008 to 31.5.2011 as follows:-

<i>S. No.</i>	<i>Posts</i>	<i>Total</i>
<i>1</i>	<i>Office Assistant</i>	<i>486</i>
<i>2</i>	<i>Gardener</i>	<i>127</i>
<i>3</i>	<i>Waterman</i>	<i>126</i>
<i>4</i>	<i>Sweeper</i>	<i>373</i>
<i>5</i>	<i>Cleaner</i>	<i>97</i>
<i>6</i>	<i>Watchman</i>	<i>200</i>
<i>7</i>	<i>Marker</i>	<i>83</i>
<i>Total</i>		<i>1492</i>

<https://www.mhc.tn.gov.in/judis>
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W.P.(MD).Nos.2220 and 2221 of 2016

WEB COPY

4. In the Government Order first read above orders were issued that work of all group 'D' categories like Sweeper, Scavenger, Cleaner and Gardener in the Government Department shall be progressively outsourced and entrusted on contract basis.

5. The Government have examined the proposal of the Director of Collegiate Education, in para 3 above in the light of the Government Order first read above and have decided to accord permission to the Director of Collegiate Education to fill up the vacancies in the post of Office Assistant, Marker, Sweeper, Cleaner, Watchman, Waterman and Gardener in Government Aided Arts and Science Colleges and Colleges of Education. Accordingly, the Government accord permission to the Director of Collegiate Education to fill up the following posts that have fallen vacant during the period from 1.6.2008 to 31.05.2011:-

- (i) 243 vacancies in the posts of Office Assistant
- ii) 83 vacancies in the posts of Marker by 24 meeting the salary cost from the Sports Funds of Aided Colleges and
- iii) 923 vacancies in the post of Sweeper, Cleaner, Watchman, Waterman and Gardener through outsourcing and on contract basis, by meeting the expenditure from college fund of Government Aided Arts and Science Colleges and Colleges of Education based on the orders issued in G.O.Ms.No.49, Personnel and Administrative Reforms department, dated 14.5.2002.

6. This order issues with the concurrence of Finance department, vide its U.O.No.59166/Edn-I/13, dated 22.10.2013 and U.O.No. 61053/CMPC/13, dated 24.10.2013.

(By order of the Governor)

Apurva Varma
Principal Secretary to Government"



W.P.(MD).Nos.2220 and 2221 of 2016

WEB COPY

10. When the government has stated that the expenditure on salaries, allowances, and administrative expenses have grown enormously in the recent past, and have posed considerable burden on the finances of the State Government, then the government is having every right to reduce the burden. The government is disbursing grant-in-aid for salary and other monetary benefits. If the government is having financial constraints and the Government was not in a position to spend on such increase, then the Government cannot be forced to bear the burden. Hence based the said recommendation of the Staff and Expenditure Reforms Commission, the Government has issued G.O.Ms.No. 49, Personnel and Administrative Reforms Department, dated 14.05.2002 and the same is perfectly valid.

11. It is pertinent to note that the grant-in-aid was introduced pre -colonial period, thereafter the Government is granting grant-in-aid to the Schools and Colleges, since independence. The Government was not in a position to create infrastructures and hence the Government has granted



W.P.(MD).Nos.2220 and 2221 of 2016

WEB COPY

permission to private sectors to create infrastructures and the Government would contribute for salary expenses. Now, the Government is stating that since there is a steady increase of expenditure, it is not in a position to support the Schools and Colleges by way of grant-in-aid and directed the schools and colleges to outsource the “D” category alone. In such circumstances the government cannot be forced to disburse grant-in-aid. Moreover, this is a policy decision taken by the Government and the same cannot be interfered with.

12. Moreover, grant-in-aid is not a right or fundamental right or statutory right, then obviously no mandamus would lie to compel the Government to grant such aid and the government have power to deny the same as held in the case of W.A.No.1329 of 1999 in G.Sahadevan Nair vs. Government of Tamil Nadu, rep. by its Secretary [(2008) 4 MLJ 289], wherein this Court has held follows:-



W.P.(MD).Nos.2220 and 2221 of 2016

WEB COPY

*"15. In view of several decisions of the Supreme Court, there can be no longer any doubt that even though there is a fundamental right to establish a minority institution by a religious or linguistic minority, such minority institution **cannot claim grant-in-aid either as a fundamental right or even as a statutory right, in the absence of any specific provision to that extent.** However, under Article 30(2) of the Constitution, it has the protection of not being discriminated against. If there is no provision for grant in aid to any institution, obviously there cannot be any discrimination because the minority institutions and the non-minority institutions are treated alike. It is in the above context, the validity of Section 14-A of the Tamil Nadu Recognised Private Schools (Regulations) Act, 1973 incorporated by way of amending Act 11 of 1999 has been upheld by the Division Bench [(2006) 5 CTC 193]. However, in the present case, we are not called upon to determine the rights of the parties on that footing. In the present case, the questions are confined to the institutions which had been in existence before the cut-off date. Some of the institutions were receiving aid and the question relating to those institutions is regarding their right to claim aid in respect of additional posts. In respect of other institutions, the question is whether they were entitled to claim grant-in-aid. If any minority institution was entitled to receive such aid, but was denied such aid on account of any erroneous order, such order is obviously to be corrected and such institution established before the cut-off date can have the*



W.P.(MD).Nos.2220 and 2221 of 2016

WEB COPY

continued right of receiving such aid and the amended provision contained in Section 14-A cannot be put against such right merely on account of the fact that such institution had not received aid before the cut-off date."

13. In the case of State of Odisha and another vs. Anup Kumar Senapati and another [Civil Appeal No.7295 of 2019], the Hon'ble Supreme Court had held that that **grant-in-aid cannot be claimed as a matter of right merely, on completion of the prescribed period** and it is dependent upon fulfilment of various conditions. The relevant portion is extracted hereunder:

*"8. It is apparent from the provisions that **grant-in-aid cannot be claimed as a matter of right merely on completion of the prescribed period**. It is dependent upon fulfilment of various conditions. The Director is competent to examine the case concerning the post filled up before 1.6.1994. Moreover, it is discretionary to avail the benefit of grant in aid. There is no compulsion for the institution to apply for it.*

*9. The Government considering the **financial constraint has decided to repeal the Order of 1994 substituting it by Order of 2004 with effect from 5.2.2004, promulgated in exercise of powers conferred under***



W.P.(MD).Nos.2220 and 2221 of 2016

WEB COPY

*Section 7C(4) of the Act. A significant departure had been made instead of salary cost to be given to the institution of the staff under the Order of 1994, the concept has been changed to block grant, which shall be a fixed sum of grant-in-aid determined by the taking into account salary and allowance as on 1.1.2004. The quantum of block grant has been made **dependent upon the economic capacity of the Government** as provided in Section 7C(1) of the Act and it shall not deal with the salary and allowance payable to any such employee by the Governing Body from time to time. Paragraph 3 is reproduced hereunder:*

...

14. Learned counsel appearing on behalf of employees have submitted that right has accrued to the employees to receive the grant-in-aid under the Order of 1994 with respect to the posts which were in existence and the appointment had been made before 1.6.1994 on completion of 5 years or 3 years, as the case may be. The Tribunal has allowed the application in another matter in the year 2010. Thereafter, writ petitions were filed on the ground of parity to claim similar relief and the representation were filed under the order of the High Court, which was illegally rejected by the State Government. Thereafter, original applications were filed before the Tribunal, and the same rightly has been allowed. The decision in Loknath Behera case does not lay down law correctly as once the right has accrued and has vested to



W.P.(MD).Nos.2220 and 2221 of 2016

WEB COPY

claim grant-in-aid it cannot be taken away, the orders passed by the Tribunal and High Court granting relief cannot be faulted. The decision in Loknath Behera deserves to be set aside. The employees were entitled to approval of their appointment and payment of grant-in-aid in terms of Order of 1994. The Order of 1994 contains long lasting commitment towards extending the grant-in-aid benefits to the educational institutions. The communication of the Higher Education Department, Government of Odisha dated 7.10.2017 indicate that grant-in-aid can be claimed and there is continuing eligibility notwithstanding the repeal of the provisions of the Order of 1994. There is no dispute concerning the method of selection and qualification of the respondents to occupy the respective posts. Thus, after completion of the qualifying period, the grant-in-aid has been rightly ordered to be released. An office order was passed on 5.7.2011, informing the respondents that they were approved for payment of 40% of Block Grant in terms of Order of 2008. Thereafter, cases were filed before the Tribunal. As some of the colleges are located in educationally backward districts, it would not be appropriate to deny the payment of a benefit under the Order of 1994. Similar benefits have been granted to a large number of colleges by the Tribunal as well as by the High Court. The employees cannot be forced to obtain less favourable treatment under the Order of 2008, which provides for 40% of Block Grant where grant-in-aid is available under the Order of 1994 of salary, benefits of annual increments, dearness



W.P.(MD).Nos.2220 and 2221 of 2016

WEB COPY

Supreme Court has also held that if there is financial constraints to the government then the government had right to impose conditions and the government had right to decline. Following the aforesaid judgments, the Madras High Court has held that writ of Mandamus will not lie against the provisions of the Act and the grant-in-aid is not a fundamental right and the same cannot be demanded, in the judgment rendered in the case of State of Tamil Nadu and others Vs. the Correspondent St. Joseph's Middle School vide order dated 25.03.2021 in REV.APLC(MD)No.180 of 2018, wherein the Hon'ble Division Bench has elaborately dealt with the issue of grant-in-aid by referring to various Supreme Court judgments. Therefore following the Anup Kumar Senapati's judgment and the other judgments referred supra, this Court is of the considered opinion that the Government has considered the issue based on the Staff and Expenditure Reforms Commission report and had taken a policy decision to reduce the financial burden and the same is legally sustainable.



W.P.(MD).Nos.2220 and 2221 of 2016

WEB COPY

15. The contention of the official respondents is that the 4th respondent college has not specifically stated how the petitioner was appointed in consolidated pay without prior permission. The petitioners refuted the said claim by stating that prior permission is not necessary for minority colleges, if there is any sanctioned vacancy. After hearing the rival submissions, this Court is of the considered opinion that if there are sanctioned vacancies the minority institutions have right to choose their own candidates and their rights are protected under Article 30(1) of the Constitution. But the Government has right to reduce the sanctioned vacancies, right to direct to engage any class or category through outsourcing and decline to approve the appointment to such categories. If the government has financial constraints, the government cannot be forced to disburse grant-in-aid.

16. The petitioners and the minority institutions are confusing the right to administer the minority institution of the minorities and right to decline approval & grant-in-aid of the Government. It is made clear that the minority



W.P.(MD).Nos.2220 and 2221 of 2016

WEB COPY

institutions are having right to administer the minority institution which is to choose their candidates of their choice. But the government has right to decline grant-in-aid based on the economic condition of the government. In the present case when the government had put forth that the government's economy is not in good condition, then under the guise of minority status the government cannot be burdened with further financial constraints and the government cannot be forced to pay the grant-in-aid.

17. Therefore the G.O.(Ms)No.49, Personnel and Administrative Reforms Department, dated 14.05.2002 and G.O.Ms.No.219 Higher Education (D1) Department dated 24.10.2013 are legally sustainable. Moreover, the Government has taken this policy decision as early as 2002 itself. In such circumstances, appointing the petitioners on 21.12.2015 is violating G.O. (Ms)No.49, Personnel and Administrative Reforms Department, dated 14.05.2002 and hence the said appointment cannot be entertained and hence the



W.P.(MD).Nos.2220 and 2221 of 2016

WEB COPY

impugned order, dated 18.03.2016 declining to grant approval is legally sustainable and the writ petitions are liable to be dismissed.

18. Accordingly the writ petitions are dismissed. No costs.

Consequently, connected miscellaneous petitions are closed.

21.11.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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WEB COPY



W.P.(MD).Nos.2220 and 2221 of 2016

S.SRIMATHY, J.

Tmg

W.P.(MD).Nos.2220 and 2221 of 2016

21.11.2023