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W.P.Nos.9164 & 9177 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Writ Petition Nos.9164 and 9177 of 2024
and W.M.P.Nos.10202 & 10207 of 2024

W.P.No.9164 of 2024

Sri G.V.G. Visalakshi College for Women,
Rep. by its Secretary,
Smt.Sumathi Krishnaprasad,
W/o.Mr. BVVSS Krishnaprasad,
A-16, Soundararaja Krishnamurthy Street,
Gandhinagar,
Udumalpet – 642 154.

... Petitioner in W.P.No.9164/2024

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 Collegiate Education,
Coimbatore Region,
Coimbatore – 641 018.

... Respondents

COMMON PRAYER: Writ Petition filed under Article 226 of the
Constitution of India, for issuance of Writ of Mandamus, directing the



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respondents to disburse the salary of the Group D Non Teaching Staffs namely 1. Mrs.A.Arthy – Waterman, 2. Mrs.M.Deepa – Sweeper, 3.Mrs.K.Krishnaveni – Sweeper, 4. Mrs. M.Chitra – Sweeper, 5. Mrs.K.Sathya – Sweeper, 6. Mrs.G.Kousalya – Watchman, 7. Mrs.G.Neelaveni – Watchman, 8. Mrs.D.Maheswari – Office Assistant, 9.Mrs.D.Nanthini Devi – Office Assistant, 10. Mr.S.Manoj Kumar – Games Maker, 11. Mrs.K.Priya – Scavenger, 12. Mrs.A.Sambavi – Gardener with effect from their date of appointment.

W.P.No.9177 of 2024

Meston College of Education,
Rep. by it Secretary,
Rev.Fr.Lourdusamy Susai,
S/o.Mr.Susai,
Residing at
Meston College of Education,
No.10/33, West Cott Road, Royapettah,
Chennai – 600 014.

... 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 Collegiate Education,
Chennai Region,
Saidapet, Chennai – 600 015.

... Respondents



W.P.Nos.9164 & 9177 of 2024

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, directing the respondents to disburse the salary of the 7 non-teaching including Group D Non Teaching Staffs namely 1. Mr.S.Sundar Singh – Junior Assistant, 2. Mr.R.Martin – Driver, 3. Mrs.R.Joyce Sylvia – Office Assistant, 4. Mrs.R.Madhumidha – Office Assistant, 5. Mr.S.Manoj Antony-Watchman, 6.Mr.V.Kalaimani – Sweeper, 7. Mr.S.Udhaya Kumar - Scavenger with effect from their date of appointment i.e., 10.03.2023.

For Petitioner : Mr.E.Martin Jaya KUmAr
[in both W.Ps.]

For Respondents : Mr.R.Kumaravel
[in both W.Ps.] Additional Govt. Pleader [R1 to R3]

COMMON ORDER

These two writ petitions are filed for a writ of mandamus directing the respondents to disburse the salary of the Group - D non-teaching staff whose names are mentioned in the prayers.

2. It is the case of the petitioner Management that the Group-D non-teaching staffs are appointed as against the sanctioned post and the appointments have duly been approved by the respondents. After grant of approval to the appointment and when the concerned employees have already joined duty and are discharging their duties, the grant-in-aid cannot be refused.



WEB CONTENT

3. Even though the matter is listed for admission, in view of the limited question involved, since the learned Additional Government Pleader took notice, this Court granted an opportunity to the learned Additional Government Pleader to get instructions and argue the matter and the matter was passed over. In the afternoon session, when the matter is taken, the learned Additional Government Pleader would rely upon a co-ordinate bench of this Court in W.P.(MD).Nos.2220 and 2221 of 2016 vide judgment dated 02.06.2023, where the minority institution contended that they have a right to choose their own candidates, which is protected under Article 30(1) and therefore, there is no need of prior approval of the respondents, the Court had specifically rejected the said contention in paragraph 15 of the said judgment, which is extracted hereunder:

“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.”

4. The learned Additional Government Pleader would contend that, when the Government has passed G.O.Ms.No.49, Personnel and Administrative Reforms (F) Department, dated 14.05.2002 and G.O.Ms.No.219, Higher Education (D1) Department, dated 24.10.2003 has specifically instructed that the works relating to sweeping, scavenging, cleaning, watch and ward, etc., has to be outsourced and entrusted on contract basis, the impugned appointment ought not to have been made.

5. *Per contra*, the learned counsel for the petitioner would submit that the said G.O. has been set aside by the judgment of this Court dated 19.07.2019 in W.A.Nos.2096 & 2124 of 2019.



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6. The said submission is refuted by the learned Additional Government Pleader on the ground that as a matter of fact the said G.Os. have been upheld by the judgment in *M.V.Ekanathan's* case cited supra and the statement made by the learned counsel for petitioner is incorrect.

7. I have considered the said rival submissions made on either side and have perused the materials placed before this Court.

8. Even the G.O.Ms.No.49 only states as follows "the Sweeper, Scavenger, Cleaner, Gardener, Office Assistant etc., may be progressively outsourced and entrusted on contract basis". Therefore, the same does not in any manner ban the appointment. It only states that it can be progressively out sourced. However, in this case when the petitioners Management appointed the hands, forwarded the appointments for approval, the respondents duly approved the appointments. Therefore, it is too late in a day for the learned Additional Government Pleader to contend that the prior approval is not there and that outsourcing has to be done. Even otherwise, this Court has repeatedly considered the issue on behalf of the several other managements in the following cases:



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1. *The State of Tamil Nadu, rep. by its Secretary Vs. The Secretary,*

Nirmal College for Women [W.A.Nos.2096 and 2124 of 2019]

2. *Sri G.V.G.Visalakshi College for Women Vs. The Director of Collegiate Education, Chennai [W.P.No.2492 of 2022]*

3. *The Director of Collegiate Education Vs. The Secretary, Rajapalayam Raju's College [W.A.(MD).No.931 of 2018]*

and even an SLP filed by the respondent in SLP Civil Diary No.323 of 2019 was dismissed by the Hon'ble Supreme Court. Therefore, the matter is no longer *res-integra*. Taking a right decision, the respondents have already approved the appointments. Having approved the appointments now the respondents cannot back off from paying the grant-in-aid. Therefore, these two writ petitions deserve to be allowed. Accordingly, these two writ petitions are allowed as prayed for. No costs. Connected miscellaneous petitions are closed.

02.04.2024

Index: Yes

Speaking Order: Yes

Neutral Citation: No

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D.BHARATHA CHAKRAVARTHY, J.

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