



WP(MD) No.23255 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.06.2024**

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.23255 of 2023
and WMP(MD)No.19451 & 24713 of 2023

The Secretary,
ST.Ignatius College of Education (Autonomous),
Palayamkottai,
Tirunelveli – 627 002.

.. Petitioner

Vs.

1. The State of Tamil Nadu,
Represented 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,
Tirunelveli Region,
Tirunelveli - 627 008.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by



WP(MD) No.23255 of 2023

WEB COPY

the 2nd respondent Director in Na.Ka.No.12308/H1/2023-2 dated 20.04.2023 and the consequential proceedings of 3rd respondent Joint Director in O.Mu.No.7136/U4/2023 dated 20.09.2023 and quash the same and further direct the 3rd respondent Joint Director to approve forthwith the appointment of Mr.J.Antony James as Watchman in the petitioner college and disburse the grant-in-aid towards his salary and allowances with effect from the date of appointment i.e., 01.06.2022.

For Petitioner : Mr.A.Ruban Babu
for M/s. Isaac Chambers

For Respondents : Mr. M.Siddharthan
Additional Government Pleader

ORDER

Heard Mr.A.Ruban Babu, learned counsel appearing for the petitioner and Mr.M.Siddharthan, learned Additional Government Pleader appearing for the respondents.

2. The petitioner has filed this writ petition seeking Writ of Certiorarified Mandamus to quash the impugned proceedings issued by the 2nd respondent in Na.Ka.No.12308/H1/2023-2 dated 20.04.2023 and



WP(MD) No.23255 of 2023

WEB COPY

the consequential proceedings of 3rd respondent in O.Mu.No. 7136/U4/2023 dated 20.09.2023 and further direct the 3rd respondent to approve forthwith the appointment of Mr.J.Antony James as Watchman in the petitioner college and disburse the grant-in-aid towards his salary and allowances with effect from the date of appointment i.e., 01.06.2022.

3. The petitioner College has appointed one J.Antony James as Watchman on 01.06.2022. When the proposal was sent for approval of the third respondent, it was rejected stating that all grouped categories like Sweepers, Scavengers, Cleaner and Gardener shall be progressively outsourced and entrusted on contract basis in view of the G.O.Ms.No.49 Employees and Administrative Reforms (F) Department dated 14.05.2002.

4. The above Government Order has issued to the Government Departments subsequently extended to the appointments made by the aided Colleges as a whole by issuing another G.O.Ms.No.219 dated 24.10.2013. However, the said Government Order was subsequently



WP(MD) No.23255 of 2023

challenged by way of filing W.P.(MD)No.15669 of 2016 by the very same college and the said writ petition was allowed by declaring the G.O.Ms.No.219 dated 24.10.2023 as invalid. The appeal filed by the Government challenging the writ petition filed by similar aided college in W.A(MD).No.2096 and 2124 of 2019 has also been dismissed on 19.07.2019.

5. In the subsequent writ petitions, the above judgment has been followed by making due reference. In this regard, I feel it is appropriate to cite the judgment of this Court held in W.P.(MD)No.15669 of 2016 dated 12.08.2021 wherein it is held as under:

“ 4.A Division Bench of this Court in Writ Appeal in W.A.No. 2096 and 2124 of 2019, by order, dated 19.07.2019, considered the validity of G.O.(Ms) No.219, Higher Education (DI) Department, dated 24.10.2013. Originally, writ petitions challenging the G.O. (Ms) No.219, dated 24.10.2013, were allowed, after holding that the posts, which were sanctioned in accordance with the Tamil Nadu Private Schools Regulations Act, 1976 and the Rules made thereunder, cannot be taken away by issuing Government Order directing or permitting outsource. The order of learned Single Judge allowing the writ petitions was upheld by the Hon'ble Division Bench in the order passed in W.A.Nos.2096 & 2124 of 2019, dated 19.07.2019. The relevant portion of the order is extracted below:-



WEB COPY



WP(MD) No.23255 of 2023

“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 Gardener. 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.”

5. The above Judgment of the Division Bench is also followed by a subsequent decision, by another Division Bench in W.A. (MD).No.532 to 534 of 2020, dated 06.08.2020, in the case of State of Tamil Nadu through its Principal Secretary to Government and another Vs. Women's Christian College, Nagercoil and others.

6. In the counter affidavit filed by the second respondent, the second respondent has no other defence except referring to G.O.(Ms) No.219, dated 24.10.2013.



WP(MD) No.23255 of 2023

7. Since, this Court has declared that G.O.(Ms) No.219, dated 24.10.2013, is invalid and opposed to the Statutory Provisions, the impugned order cannot be sustained. As submitted by the learned Senior Counsel appearing for the petitioner, the Government Order cannot be made applicable to the post, which fell vacant after 31.05.2011. Reading of the impugned Government Order, it is seen that the Government Order is intended to cover vacancies that have fallen vacant during the period from 01.06.2008 to 31.05.2011. Hence, on both grounds the writ petition deserves to be allowed.

8. The learned Government Advocate appearing for the respondent submitted that the G.O.(Ms) No.49, Personnel and Administrative Reforms Department, dated 14.05.2002, is also relevant, as the Government has taken decision as early in 2002 and directed the outsourcing of 'D' category staffs like sweeper, scavenger, cleaner, gardener and Office Assistant etc. The learned counsel fails to note that the G.O.(Ms) No.49, dated 14.05.2002, was the recommendations for Government Departments. It is stated therein that all Group 'D' categories like Sweepers and Scavengers, etc. should be progressively outsourced and engaged on contract basis. Therefore, the Public Departments and the District Collectors were directed to outsource the services on contract basis. This Government Order has no application to Private Educational Institutions. Only by G.O.(Ms) No.219, dated 24.10.2013, there was a direction to fill up vacancies during the period from 01.06.2008 to 31.05.2011 through outsourcing and on contract basis, based on the earlier Government Order vide G.O.(Ms) No.49, dated 14.05.2002, which was in respect of Government Departments.”



WP(MD) No.23255 of 2023

WEB COPY

6. So in the above judgment itself it is clarified that G.O.Ms.No. 49 dated 14.05.2002 is not applicable to the private Educational Institutions like the petitioner's College and the only Government Order applicable is G.O.Ms.No.219 Higher Education Department dated 24.10.2013. Even the said Government Order has been subsequently quashed and hence the impugned orders are liable to be set aside.

7. In view of the above stated reasons, the impugned orders are set aside. The 3rd respondent is directed to grant approval of the appointment of J.Antony James as Watchman in the petitioner college, if it is otherwise in order and pass orders in the light of the earlier judicial pronouncements made in this regard within a period of four weeks from the date of receipt of a copy of this order.

8. With the above direction, this writ petition is disposed of. No Costs. Consequently, connected miscellaneous petitions are closed.

21.06.2024
(2/2)

Index : Yes / No
NCC : Yes / No
PJL



WP(MD) No.23255 of 2023

WEB COPY

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Department of Higher Education,
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