

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2025

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**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN**

**W.A.No.2348 of 2024
and
C.M.P.No.16529 of 2024**

1. The Government of Tamil Nadu,
Represented by its Principal 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.
- ... Appellants

-Vs-

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

... Respondent



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PRAYER : Appeal filed under Clause 15 of Letters Patent, to set aside the order in W.P.No.29647 of 2023 dated 21.12.2023 and allow the above writ appeal.

For Appellants : Mr.D.Ravichandar
Special Government Pleader

For Respondent : Mr.E.Martin Jaya Kumar

J U D G M E N T

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

This intra Court appeal has been directed against the order passed by the writ Court dated 21.12.2023 in W.P.No.29647 of 2023.

2. That the respondent / writ petitioner is a Private Aided College, namely, Ramasamy Tamil College at Karaikudi. It has got various sanctioned teaching and non-teaching posts.

3. Insofar as non-teaching posts are concerned, there are four Group-D posts called one Gardner, one Watchman, one Scavenger and one Sweeper. Those posts since have become vacant, in order to fill-up these posts, the College Management sought permission from the appellant Department on 17.08.2022, having considered the said request made by the College, the



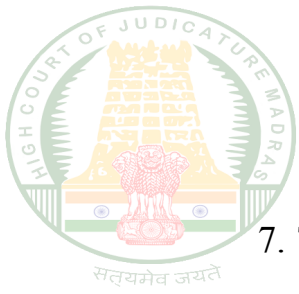
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Directorate of Collegiate Education, i.e., second appellant, vide its
WEB COMMUNICATION dated 03.11.2022 had accorded permission to fill-up these posts.

4. Pursuant to such permission granted by the concerned authority, the appointment orders were issued to fill-up the three posts on 19.04.2023 and one post on 28.04.2023, therefore, all together all the four posts have been filled up by two separate orders.

5. After having filled up these posts, proposal had been sent on 22.05.2023 by the College Management to the second appellant, i.e., the Director of Collegiate Education for giving such approval.

6. However, the second appellant had rejected the said proposal for giving approval by citing the reason that, as per the Government Order in G.O.(Ms)No.49, Personnel and Administrative Reforms (F) Department dated 14.05.2002, these kind of Group-D posts shall not be filled up on permanent basis instead as per the decision taken by the Government which is reflected in G.O.(Ms)No.49, these Group-D posts shall be engaged by outsourcing on private basis.



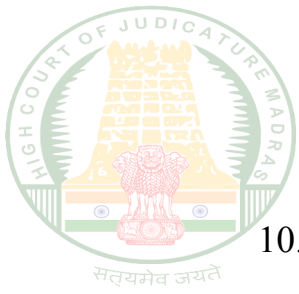
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7. The said reason has been given in the rejection order, challenging the same, the College Management had approached this Court seeking prayer of writ of declaration to declare that, G.O.(Ms)No.49 dated 14.05.2002 and the consequential letter dated 05.06.2023 issued by the first respondent in the writ petition and the consequential letter issued by the third respondent in the writ petition dated 19.09.2023 are not applicable or has no relevancy to the Aided Private Colleges to appoint Group-D Employees and consequently direct the third respondent in the writ petition to grant approval for the appointment of Group-D Employees, namely, Gardener, Watchman, Sweeper and Scavenger who had already been appointed in the sanctioned vacancies.

8. The said prayer having been considered, the writ Court by order dated 21.12.2023 has allowed the said writ petition and in fact the learned Judge has gone to the extent of quashing G.O.(Ms)No.49 itself along with the consequent and connected communications as sought for in the prayer of the writ petition.

9. Even though a writ of declaration has been sought to declare that G.O.(Ms)No.49 will have no application to the Private Aided Institutions like the respondent / writ petitioner College, the writ Court has reasons which has been recorded in the order and quashed G.O.(Ms)No.49 dated 14.05.2002.



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10. Assailing the said order, Mr.D.Ravichandar, learned Special

Government Pleader appearing for the appellants would contend that, insofar as the policy decision that has been taken by the Government which is reflected in G.O.(Ms)No.49 is concerned, in order to streamline the heavy expenditure being incurred by the Government for these kind of Group-D posts, the Expenditure Reforms Commission has been appointed to make a recommendation on outsourcing of services of certain employees in the Government Department.

11. The Government also constituted the Staff and Expenditure Reforms Commission to examine the scope for curtailing avoidable expenditure in the administration. The Commission has submitted an interim report to the Government. One of the recommendations of the commission is that, it relates to outsourcing of services like Sweeping, Scavenging, Cleaning, Watch and ward etc., therefore, the Commission has recommended the work of all Group-D category staffs like Sweeper, Scavenger, Cleaner, Gardner, Office Assistant etc., may be progressively outsourced and entrusted on contract basis.

12. Having accepted the said recommendation made by the Reforms Commission, the Government has come forward to issue the Government Order



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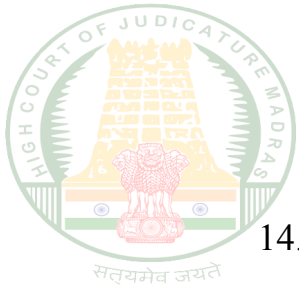
in G.O.(Ms)No.49, Personnel and Administrative Reforms (F) Department

dated 14.05.2002, where *inter alia* the Government has passed the following

order:

"3. The Government accordingly direct that the work of all Group "D" categories like Sweeper, Scavenger, Cleaner and Gardner shall be progressively outsourced and entrusted on contract basis. The Public Department is 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 areas. This order is however, not applicable to the Post of Office Assistant. While outsourcing the services ordered above a condition may be imposed in the tender to ensure that consolidated wage / daily wage employees are to be given preference in employment by the Contractor to protect interests of such persons."

13. By virtue of this G.O.(Ms)No.49, the Government had decided to progressively outsource the Group-D categories, like Sweeper, Scavenger, Cleaner and Gardner etc., in various Government Department right from the Secretariat.



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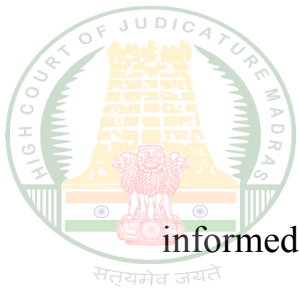
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14. Subsequently, the Education Department has come forward with another Government Order in G.O.(Ms)No.219, Higher Education (D1) Department dated 24.10.2013 stating that, the Directorate of Collegiate Education wanted to fill up 923 vacancies in the post of Sweeper, Cleaner, Watchman, Waterman and Gardner through outsourcing and on contract basis, by meeting the expenditure from the college fund of the 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 14.05.2002.

15. That permission sought for by the Directorate of Collegiate Education has been accorded by the Government to the said G.O.(Ms).No.219.

16. At one point of time, G.O.(Ms)No.219 has been put under challenge 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.***

17. The writ Court in fact has quashed the said G.O.(Ms)No.219 in the said order which has been upheld in an intra Court appeal in W.A.Nos.2096 and 2124 of 2019 by the Division Bench order dated 19.07.2019. We are also



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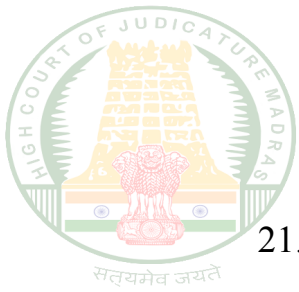
informed that, as against the said order, a Special Leave Petition filed by the

State also got dismissed by the Hon'ble Supreme Court.

18. Therefore, a quietus has been given, insofar as the attempt that has been made where the Education Department sought permission from the Government to fill up 900 plus posts of Group-D employees in various Government Aided Educational Institutions by way of outsourcing, by putting up full stop of the attempt made by the Education Department.

19. The quashment of G.O.(Ms)No.219 by the orders of this Court as has been confirmed by the Hon'ble Supreme Court might have influenced the mind of the writ Court, thereby the learned Judge has come to the conclusion that, G.O.(Ms)No.49 had also to face the same fate as G.O.(Ms)No.49 also cannot stand in the way insofar as the appointment to be made in the Group-D posts and accordingly, the learned Judge through the impugned order in fact has quashed G.O.(Ms)No.49 also.

20. We have heard Mr.E.Martin Jaya Kumar, learned counsel appearing for the respondent also.



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21. We have gone through the import of G.O.(Ms)No.49 and the relevant portion of G.O.(Ms)No.49 has been extracted herein above, under which, it has been made very clear that, the Group-D categories, like Sweeper, Scavenger, Gardner and Cleaner shall be progressively outsourced and entrusted on contract basis. The Public Department in Secretariat, the Heads of Department and the District Collectors were entrusted with the responsibility of finalising the tenders for engaging one or more agencies to cater to the requirements of various offices in defined areas.

22. Even the very heading of G.O.(Ms)No.49 makes it very clear that it is the Staff and Expenditure Reforms Commission's recommendation on outsourcing of services of certain employees in Government Department.

23. Thereby the Government has come out with G.O.(Ms)No.49 only to streamline the appointment to be made in Group-D posts in various Government Departments.

24. G.O.(Ms)No.49 does not speak anything about the right of the Educational Institutions, especially, the Private Aided Educational Institutions and insofar as the Colleges which are privately run with an aid from the



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Government recognised by the Educational Department are governed by

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separate legislation called Tamil Nadu Private Colleges (Regulation) Act, 1976,

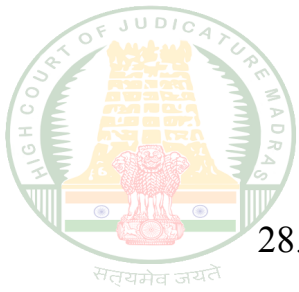
like that, such schools are governed by separate legislation called Tamil Nadu

Recognised Private Schools (Regulation) Act, 1973.

25. When that being the position, against the statutory right that has already been conferred by the legislation to the Management of the Private Educational Institutions, whether such an executive orders in the name of Government Order as that of G.O.(Ms)No.49 can be applied to these Educational Institutions or not is the first question.

26. Assuming that, that kind of executive orders can be issued, whether the order in G.O.(Ms)No.49 would be applicable to the Private Educational Institutions also is another question.

27. If we delve into these issues to answer these questions it will be the answer emphatically "No", because as against the statutory provisions provided under the two legislations which we have mentioned, no such executive orders can be passed, that is the answer to the first question.



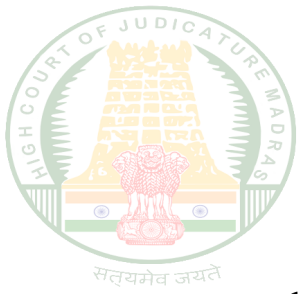
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28. Insofar as the second question is concerned, G.O.(Ms)No.49 does not speak about anything with regard to the proposed applicability of the policy decision taken by the Government as reflected in G.O.(Ms)No.49 in respect of the Private Colleges run by the various Private Educational Agencies Aided by the Government.

29. When that being the position, the prayer sought for in the writ petition to declare that G.O.(Ms)No.49 may not be necessitated as it would have no application to the Private Educational Institutions. If this position is accepted by the Court, the Court would not have gone into the extend of quashing G.O.(Ms)No.49, that is our view.

30. In that view of the matter, we are inclined to dispose of this writ appeal with the following modification of the order that has been passed by the writ Court which is impugned herein:

(i) G.O.(Ms)No.49, Personnel and Administrative Reforms Department, dated 14.05.2002 shall not be made applicable to the Private Aided Educational Institutions both Colleges and Schools run in the State of Tamil Nadu which are mainly governed by two legislations stated herein above.



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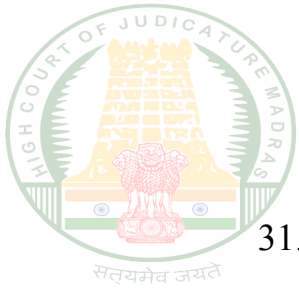


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(ii) Insofar as the consequential proceedings that has been issued, by which the proposal given by the respondent / College Management to give approval of the appointment that has been made in the sanctioned vacancies in Group-D posts are concerned, the only reason since has been cited by the appellant Department by citing G.O.(Ms)No.49 since would not hold good, the order negating such proposals sent by the College Management also would not be sustained in the legal scrutiny, therefore, the quashment or setting aside of those orders passed by the Educational Department through the impugned order of the learned Judge is to be upheld. Resultantly, the order impugned in this writ appeal insofar as the quashment of G.O.(Ms)No.49, Personnel and Administrative Reforms Department, dated 14.05.2002 is concerned, is set aside, instead the aforestated declaration alone is made.

(iii) As a sequel, the consequential orders of rejection of approval of Group-D posts of the respondent / College Management are also set aside.

(iv) Resultantly, there shall be a direction to the appellant Department to reconsider the proposal that has been sent by the College Management for approval of such appointment and such approval shall be given by the second appellant within a period two months from the date of receipt of a copy of this order.



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31. With these directions and modifications, this Writ Appeal is

WEB accordingly disposed of. However, there shall be no order as to costs.

Consequently, connected miscellaneous petition is closed.

(R.S.K., J.) (C.S.N., J.)
27.01.2025

NCC : Yes
Index : Yes
Speaking Order : Yes

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