

(2012) 03 MAD CK 0160

In the Madras High Court

Case No : Writ Petition (MD) No. 2427 of 2007 and M.P. (MD) No's. 1 and 2 of 2007

C. Manikandan

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 09-03-2012

Acts Referred:

Constitution of India, 1950 — Article 29, 30

Citation : (2012) 4 MLJ 918

Hon'ble Judges : K. Ravichandra Baabu, J

Bench : Single Bench

Advocate : Isaac Mohanlal, for the Appellant; R. Karthikeyan, Additional Government Pleader and T. Shelly Suba Kumar, for the Respondent

Final Decision : Allowed

Judgement

K. Ravichandra Baabu, J.—In this writ petition the petitioner has challenged the order passed by the 3rd respondent in his proceedings in O. Mu. No. 9878/E3/2004 dated 3.1.2006 consequently, seeking for a direction to the respondents 2 and 3 to approve the petitioner's appointment as Waterman at the 5th respondent-college from the date of his appointment, namely, 4.4.1996 with salary and other attendant benefits. The case of the petitioner is that the 5th respondent-college is an Arts and Science College established and administrated by a Society, called "Sree Ayyappa Educational Society". All the members belonging to the said society are Malayalees. The 5th respondent-college, thus, is a Linguistic Minority Educational Institution in terms of Article 30 of the Constitution of India and such minority status to the 5th respondent had already been declared by a competent civil Court by a judgment and decree dated 21.4.1987 in O.S. No. 1221 of 1985 on file of the District Munsif Court, Nagercoil. It is stated by the petitioner that the 5th respondent-college is having 60 teaching staffs and 28 non-teaching staffs. Except for the post graduate course of M.Com, all other courses are receiving aid from the Government. It is

stated by the petitioner that the 5th respondent-college was sanctioned with one post of Waterman by the Directorate of Collegiate Education through his proceedings in D. Dis. No. 10990/S2/75 dated 27.5.1977. In that post, the 5th respondent-college appointed the petitioner on 4.4.1996. The petitioner having passed 8th Standard, is fully qualified to the said post. After appointing the petitioner, the 5th respondent-college submitted the proposal to the 3rd respondent on 15.4.1996 seeking for the approval and for disbursement of salary. The 3rd respondent through his proceedings dated 6.5.1996 returned the proposal by seeking certain particulars and also by stating that the college did not obtain prior permission before making the appointment. In spite of resubmitting the proposal with all the required details, the 3rd respondent once again returned the proposal on 1.7.1996 on the very same reason. The 5th respondent-college resubmitted the proposal on 16.8.1996 and consequently, the 3rd respondent forwarded the proposal to the second respondent. However, the second respondent through his proceedings dated 7.8.1998 informed the 3rd respondent that the Government had prescribed certain guidelines for the grant of minority status to colleges under G.O. Ms. No. 270, dated 17.6.1998, and therefore, the 5th respondent-college though obtained a decree from the competent Civil Court declaring it as Linguistic Minority Institution, should obtain orders from the Government once again with regard to its minority status. Though the 5th respondent-college repeatedly informed that there was no necessity for seeking declaration once again from the Government and permission from the authorities before filling up the sanctioned vacancies, the 3rd respondent repeatedly asked the college to produce prior permission granted by the second respondent to fill up the post of Waterman. The last of such order passed by the 3rd respondent dated 3.1.2006, is impugned in this writ petition.

2. Notice of motion was ordered by this Court on 24.3.2007. After notice, the respondents entered appearance. The 5th respondent filed a counter affidavit. The respondents 1 to 3 did not file any counter affidavit, though time was sought for.

3. The 5th respondent in its counter affidavit has stated that Sree Ayyappa Educational Society, Chunkankadai, Nagercoil is a Society registered under the Societies Registration Act and all the members of the society are Malayalees belonging to Linguistic Minority. The society established the 5th respondent-college in the year 1970 to provide higher education to the Malayalam Linguistic Minority in the Kanyakumari District of Tamil Nadu. The college though established for the benefit of the Malayalam Linguistic Minority in the Kanyakumari District, admissions are given to all deserving candidates irrespective of caste or religion. The college is recognized and aided by the Government of Tamil Nadu. The Principal District Munsif Court, Nagercoil by its judgment and decree made in O.S.No. 1221 of 1985 had declared the 5th respondent-college as a Linguistic Minority Institution and the said judgment had become final, conclusive and binding on the respondents as no further appeal was filed against the same. It is further stated by the 5th respondent that the

Government Order in G.O. Ms. No. 270, Higher Education Department, dated 17.6.1998, relied on by the second respondent would apply only to those institution which were parties before the Hon"ble Supreme Court in I.A. No. 20 in TMA Pai Foundation and Others v. State of Karnataka and Others in W.P. (C) No. 317 of 1993, dated 17.10.1994. It is further stated by the 5th respondent that in respect of appointment of certain teaching staff when similar objection was raised, W.P. No. 28093 of 2003 came to be filed and in pursuant to an order made therein, the 3rd respondent herein through his proceedings in No. RC. 14387/E3/2003 dated 18.3.2004 approved the appointment of those teachers by specifically recognizing the 5th respondent-college as a Linguistic Minority Institution. It is further stated by the 5th respondent that when the appointment of the petitioner as Waterman is against the sanctioned the post, the respondents 1 to 3 are bound to approve the same and disburse the salary and consequently, there is no question of seeking prior permission arises as the post is already a sanctioned one.

4. The learned counsel appearing for the petitioner argued that the post of Waterman was sanctioned by the second respondent through his proceedings dated 27.5.1977, and the said post was not resumed or withdrawn at the time of appointing the petitioner on 4.4.1996. Thus, the learned counsel further argued that when the petitioner was appointed in the sanctioned post, the same has to be approved by the department by disbursing the salary and other attendant benefits to the petitioner. The learned counsel further argued that when the 5th respondent-institution had already been declared by the competent civil Court as Linguistic Minority Institution by its judgment and decree made in O.S.No. 1221 of 1995, dated 21.4.1987, the respondents 1 to 3 are not justified in refusing approval on the ground that no prior permission was obtained by the management before filling up the vacancy. The learned counsel also argued that very same respondent granted approval to the post of Lecturer in History Department to one T. Leka through the proceedings of the 3rd respondent dated 18.3.2004 by specifically accepting the 5th respondent-college as a Linguistic Minority Institution. Therefore, according to the learned counsel appearing for the petitioner, the respondents cannot take a different stand while considering the approval of the petitioner to the post of Waterman.

5. In support of his contention, the learned counsel for the petitioner relied on the following decisions:

(1) Unreported decision in W.P. No. 11032 of 2008 dated 7.7.2008 in the matter of C.S.I. Kanyakumari Diocese, Nagercoil, Kanyakumari District, rep. by its Chairman and Bishop, Rt. Rev. G. Devakadacham v. The Government of Tamil Nadu

(2) In the matter of Kamaraj Memorial Higher Secondary School v. Government of Tamil Nadu (2009) 7 MLJ 1135.

(3) In the matter of Asan Memorial Association v. The State of Tamil Nadu (2009)

WLR 897 : LNIND 2009 Mad 2904 : (2009) 7 MLJ 1153.

(4) Unreported decision in W.A. No. 92 and 93 of 2008, dated 6.1.2010 in the matter of Government of Tamil Nadu and Others v. B. Ravichandran and Others.

(5) In the matter of Nalloor Vettuvanni Kandan Sastha Devaswom College at Attoor and N.V.K.S. Educational Agency, Vettuvanni, Marthandam, Kanyakumari District, rep. by its Secretary Mr. S. Krishnakumar v. Government of Tamil Nadu and Others (2010) 4 MLJ 517.

(6) Unreported decision made in W.P. (MD) No. 174 of 2009 dated 29.4.2010 in the matter of J. Devaraj Selvakumar v. The Director of Collegiate Education, College Road, Nungambakkam and Others

(7) In the matter of Kamaraj Memorial Higher Secondary School Panthaluvilai Vs. The Government of Tamilnadu, .

(8) Unreported decision in W.A. No. 140, 811 of 2006 etc, dated 21.10.2010 in the matter of Government of Tamil Nadu v. J. Premakumari and Others.

(9) In the matter of the Secretary, D.G. Vaishnav College v. Dr. T. Venkataraman 2001 (4) CTC 641 : LNIND 2001 Mad 1150.

(10) Unreported decision in W.A. No. 1180 of 2008 dated 11.11.2011 in the matter of the Government of Tamil Nadu v. C.S.I. Kanyakumari Diocese, Nagercoil, Kanyakumari District rep. by its Chairman and Bishop Rt. Rev. G. Devakadacham.

6. The learned counsel appearing for the 5th respondent argued that when the 5th respondent-institution is declared by the competent civil Court as Linguistic Minority Institution, there is no necessity for seeking prior permission from the department before filling up any vacancy in a sanctioned post. The learned counsel further contended that the 5th respondent-institution was not a party in I.A. No. 20 in W.P. (C) No. 317 of 1993 dated 17.10.1994 in the matter of TMA Pai Foundation and Others v. State of Karnataka and Others (supra) and consequently, the respondents 1 and 3 are not justified in applying G.O. Ms. No. 270, dated 17.6.1998, in the case of the 5th respondent-college. The learned counsel for the 5th respondent further argued that once the petitioner was appointed in the sanctioned post, the respondents 1 to 3 are duty bound to approve the same and pay salary and other benefits to the petitioner from the date of the initial appointment.

7. The learned Additional Government Pleader appearing for the respondents 1 to 3 had argued that while establishing the college in the year 1963 they did not seek minority status and only in the year 1987 the college obtained a declaration decree from the competent civil Court with regard to its minority status. While fixing the staff strength in the year 1977, the college was considered only as non-minority institution. It is further argued by the learned Additional Government Pleader that even after obtaining a decree from the competent civil Court they

are bound to approach the Government and obtain the approval for such status. It is argued by the learned Additional Government Pleader that the college so far did not apply for such approval. When the Government has got power to impose reasonable restriction and regulations even in respect of minority institution, it is necessary for the 5th respondent-college to approach the Government and seek approval with regard to the minority status. Even though the competent civil Court has granted a decree in favour of the 5th respondent, the 5th respondent ought to have given such intimation to the Government. It is further argued by the learned Additional Government Pleader that the Article 29 and 30 of the Constitution of India are dealt with separately while considering the rights of the minority. The learned Additional Government Pleader further argued that though the post was sanctioned as early as in the year 1987, the same was not filled up till 1996 and therefore, without seeking prior permission once again, the 5th respondent is not entitled to fill up the said post.

8. Heard the learned counsels for the respective parties.

9. The points for consideration in this case are as follows:

(1) When the 5th respondent-college had been declared as Linguistic Minority Institution by a competent civil Court, and such decree having become final, conclusive and binding on the parties, is it necessary for the 5th respondent-college to seek such minority status once again from the first respondent-Government especially when the 5th respondent-institution was not a party in I.A. No. 20 in W.P. (C) No. 317 of 1993 dated 17.10.1994 in the matter of TMA Pai Foundation and Others v. State of Karnataka and Others (supra)?

2. Whether the 5th respondent-institution is bound to seek prior permission from the respondents 1 to 3 before filling up the vacancy in the sanctioned post?

10. While considering the first point with regard to the minority status of the 5th respondent-institution is concerned, the admitted facts are that the said institution was declared as minority institution by a competent civil Court, namely, the District Munsif Court, Nagercoil in O.S. No. 421 of 1995 by its judgment and decree dated 21.4.1987. It is also an admitted fact that the said judgment and decree were not further appealed against and the same had become final, conclusive and binding on the parties. It is also stated by the 5th respondent-college that they are not parties before the Hon"ble Supreme Court in I.A. No. 20 in W.P. (C) No. 317 of 1993 dated 17.10.1994 in the matter of TMA Pai Foundation and Others v. State of Karnataka and Others (supra). While that being the factual position, whether the respondents 1 to 3 are right in directing the 5th respondent-college to seek further declaration of minority status from the Government, even after getting such status through a decree of the competent civil Court. The very same issue was considered by the Hon"ble Division Bench of this Court in The Secretary, D.G. Vaishnav College, Chennai and Another v. Dr. T. Venkataraman and Others (supra) and in paragraph 3 of its judgment, the Hon"ble Division Bench has held as follows:

3. The appellant in W.A. No. 2387 of 2001 has been granted a minority status by a declaration by a decree dated 19.2.1988 by the Court of the Principal District Judge, Madras in A.S. No. 275 of 1987. It is not disputed that the said decree had become final. As on date, the said decree has not been nullified. But Mr. P. Jothymani, learned counsel for the first respondent submits that in view of G.O. (Ms) No. 270, dated 17.6.1998, the decree, which has been granted on 19.2.1988, had become inoperative. Prima facie, we are unable to agree with the said submission as the Government has been a party and suffered a decree on 19.2.1988 and the said decree having become final, the Government is bound by the same unless there is a specific legislation that too, if it is not an affront to the above decree granted by the judicial authority. Then Mr. Jothimani takes us to the order of the Supreme Court in T.M.A. Pai Foundation and Others v. State of Karnataka and Others (supra), I.A. No. 20 in W.P. (C) No. 317 of 1993 dated 17.10.1994. It is not disputed that the said writ petition is still pending on the file of the Supreme Court. In the interim order passed on the above date, the Civil Court's decree granting minority status to the respondents, who have been parties therein, that is respondents 2 to 6, has not been taken cognisance of Particular reference has been made to the said respondents and the said order does not operate in rem. In fact that position has been clarified by a learned single Judge of this Court in Correspondent, St. Ignatius Higher Secondary School, Kurumbanai - 629251, The Correspondent, St. Ignatius Higher Secondary School, Kurumbanai-629 251, Kanyakumari District and others Vs. Director of School Education, College Road, Chennai 6 and others, . It is not brought to our notice that this judgment of the learned single Judge has been overruled. As such, we find a prima facie case in favour of the appellant in W.A. No. 2387 of 2001 that it still enjoys minority status as on date.

11. Further, a learned single Judge of this Court considered the same issue in detail in W.P. No. 11032 of 2008 dated 7.7.2008 in C.S.I. Kanyakumarai Diocese, Nagercoil, Kanyakumari District, rep. by its Chairman and Bishop, Rt. Rev. G. Devakadacham v. The Government of Tamil Nadu (supra) and in paragraphs 10, 11 and 12 of the order it has been held as follows:

10. The binding nature of the Civil Court decree granting minority status was again considered by a Division Bench of this Court in the decision in The Secretary, D.G. Vaishnav College, Chennai and Another v. Dr. T. Venkataraman and Others 2001 (4) CTC 641, and in paragraph 3 the Division Bench held as follows:

3. The appellant in W.A. No. 2387 of 2001 has been granted a minority status by a declaration granted by a decree dated 19.2.1988 by the Court of the Principal District Judge, Madras, in A.S. No. 275 of 1987. It is not disputed that the said decree had become final. As on date, the said decree has not been nullified. But Mr. P. Jyothimani, learned counsel for the first respondent, submits that in view of G.O. (Ms) No. 270, dated 17.6.1998, the decree, which has been granted on 19.2.1988, had become inoperative. Prima facie, we are unable to agree with the

said submission as the Government has been a party and suffered a decree on 19.2.1988 and the said decree having become final, the Government is bound by the same unless there is a specific legislation that too, if it is not an affront to the above decree granted by the judicial authority. Then Mr. Jyothimani takes us to the order of the Supreme Court in *T.M.A. Pai Foundation and Others v. State of Karnataka and Others* (supra), L.A. No. 20 in W.P. (C) No. 317 of 1993 dated 17.10.1994. It is not disputed that the said writ petition is still pending on the file of the Supreme Court. In the interim order passed on the above date, the Civil Court's decree granting minority status to the respondents, who have been parties therein, that is respondents 2 to 6, has not been taken cognisance of. Particular reference has been made to the said respondents and the said order does not operate in rem. In fact that position has been clarified by a learned single Judge of this Court in *The Correspondent, St. Ignatius Higher Secondary School, Kurumbanai-629 251, Kanyakumari District and Others v. Director of School Education, College Road, Chennai-6 and Others* (supra). It is not brought to our notice that this judgment of the learned single Judge has been overruled. As such, we find a prima facie case in favour of the appellant in W.A. No. 2387 of 2001 that it still enjoys minority status as on date.

In the above Division Bench judgment, the order of the learned single Judge in *The Correspondent, St. Ignatius Higher Secondary School, Kurumbanai-629 251, Kanyakumari District and Others v. Director of School Education, College Road, Chennai-6 and Others* (supra) was approved and it is categorically held that once the minority declaration is made by a competent Civil Court, the said institution need not apply again to the Government to declare its status as the Civil Court judgment has become final.

12. Similar issue was considered by me in W.P. (MD) No. 1971 of 2007 order dated 20.11.2007, wherein the petitioner educational agency and its institutions, which were granted minority status by the Government for the academic year, was required to get renewal of minority status from the Government. Following the earlier judgment of a Division Bench of this Court in *Thirumuruga Kirupananda Variyar Thavathiru Sundaran Swamikal Medical, Educational and Charitable Trust Vs. State of Tamil Nadu and Another*, have allowed the writ petition holding that the minority declaration once granted will hold good for the subsequent years also, unless it is duly cancelled by the Government. The said Division Bench judgment was followed by a learned single Judge in the decision in *C.S.L. Institute of Technology, Thovalai v. The Government of Tamil Nadu and Another* (2004) WLR 202 : LNIND 2003 Mad 1839, and paragraph 6 of the decision is extracted hereunder:

6. It is true that by order dated 20.11.2003, the Government had renewed the minority status of the petitioner institution for the academic year 2001-2002. But, the question which arises for consideration in this writ petition is with regard to the justification of the Government to seek for periodical renewal for every academic year. That issue was particularly considered by the Division Bench of

this Court as stated above. I am in respectful agreement with the views expressed by the Division Bench in this context. There is no provocation for the Government to insist on such renewal for every year when once the institution has been granted the Minority Status. Unless or otherwise, there is any change in the Constitution of the agency or any adverse information is received by the Government, which might lead to the conclusion that the declaration of the Institution is fraudulent and erroneous or the Management had undergone any change in its constitution, there is absolutely no need or necessity for the Government to expect such periodical renewal. Such requirement will unnecessarily lead to delay and red-tapism which is totally uncalled for. In the present case itself for the academic year 2001-2002 renewal is granted only on 20.11.2003, that too only because the petitioner has moved this Court. The administration of the school and the plight of the students cannot be kept under such unreasonable suspense and doubt, which is totally unwarranted. Assuming that periodical check is necessary, the Government should evolve a methodology whereby renewal could be sought for once in five years or more and in such a manner that renewal should be applied for and granted atleast three or four months prior to the lapse of the said period. The present requirement of annual renewal is neither reasonable nor warranted. As stated earlier, it is always open to the authorities to call upon the management to explain the position if any adverse information is received by the Government. It is totally unreasonable to expect all the minority schools in the State to be knocking at the doors of the authorities every year and the authorities would pass orders only after two years as in this case in spite of filing of a writ petition.

The above said orders are again followed by me in W.P. No. 27840 of 2005, order dated 28.2.2008.

12. Here in this case, the Government conceded before this Court in W.P. No. 524 of 1975 dated 4.9.1976 that the institutions run by the Petitioner Educational Agency are Minority Educational Institutions. There is no change pointed out in the constitution of the petitioner educational agency and the request of the department to get minority status insofar as the other similarly placed institutions are concerned, the same has already been set aside by this Court and the said orders, as stated supra, have become final. In the light of the above cited judgments, there is no need for the petitioner Diocese to get minority status from the Government and the demand made by the second respondent through the impugned order, is unsustainable. Further, no reason is given by the second respondent to get further declaration from the government. It is not the case of the second respondent that the character of the institution is changed, particularly when the petitioner educational agency is a Diocese. Even if the authorities of the Diocese are changed, the character of the institutions will never change. Hence the impugned order requesting the petitioner management to get minority declaration from the Government for treating the institutions as minority institutions cannot be sustained.

13. The said order of the learned single Judge of this Court made in W.P. No. 11032 of 2008 dated 7.7.2008 was challenged in W.A. No. 1180 of 2008 and the Hon"ble Division Bench by its Judgement dated 11.11.2011 dismissed the said Writ Appeal.

14. In another decision in Nalloor Vettuvanni Kandan Sastha Devaswom College at Attoor and N.V.K.S. Educational Agency, Vettuvanni, Marthandam, Kanyakumari District, rep. by its Secretary Mr. S. Krishnakumar v. Government of Tamil Nadu and Others (supra), a learned single Judge considered the applicability of G.O. Ms. No. 270 dated 17.6.1998 with regard to the institution which was not a party before the Hon"ble Supreme Court in I.A. No. 20 in W.P. (C) No. 317 of 1993 in TMA Pai Foundation and Others v. State of Karnataka and Others (supra) and has categorically found at paragraphs 9, 10, 12 and 13 as follows:

9. The Supreme Court of India in I.A. No. 20 in W.P. (C) No. 317 of 1993 in TMA Pai Foundation and Others v. State of Karnataka and Others (supra) case passed an order on 17.10.1994 with respect to the educational institutions which had been impleaded as one of the respondents in the aforesaid interlocutory application pending before it. A general order was passed by the Supreme Court staying the operation of all the decrees which might have been obtained from the civil Court declaring the minority status of an institution which was made a party to the said interlocutory application. Those educational institutions which had already become party to the said interlocutory application were also directed to approach the State Government for passing necessary orders as to the status of such institutions.

10. As rightly pointed out by the learned counsel appearing for the petitioner, the order passed by the Supreme Court in the aforesaid order in I.A. No. 20 in W.P. (C) No. 317 of 1993 would apply only to the educational institutions which had already been impleaded as party to the said interlocutory application. The said order will not apply to the educational institutions which had already obtained a decree declaring its status as minority institution from a competent Court but was not made a party to the said proceedings before the Supreme Court.

12. The aforesaid G.O. Ms. No. 270 Higher Education Department dated 17.6.1998 was put to test in Secretary, D.G. Vishnav College v. Dr. T. Venkataraman (supra) wherein it was held that an educational institution which had already obtained a decree declaring its status as a minority institution cannot be asked to apply for grant of minority status afresh especially when such educational institution was not a party to the proceedings in TMA Pai Foundation and Others v. State of Karnataka and Others (supra) case pending before the Supreme Court. The first Bench of this Court held that the order passed by the competent civil Court operates in rem whereas the order passed by the Supreme Court in I.A. No. 20 in W.P. (C) No. 317 of 1993 would be binding only the parties who had already been arrayed as parties before it and therefore, such an order passed by the Supreme Court would not operate in rem.

13. Therefore, it is held that the direction issued by the Supreme Court in I.A. No. 20 in W.P. (MD) No. 317 of 1993 would apply only to the institutions which had already been made a party to the said proceedings. By no stretch of imagination, the order of the Supreme Court can be applied to nullify a decree obtained by an institution which was not a party to the proceedings before the Supreme Court. Further, G.O. Ms. No. 270 Higher Education Department dated 17.6.1998 passed by the first respondent would apply only to the applications which are pending and also to the applications which are submitted in future seeking conferment of minority status.

15. In another decision in Kamaraj Memorial Higher Secondary School v. Govt. of T.N. (supra) a learned single Judge has considered the very same issue with regard to the need for declaration of minority status from the Government and has held at paragraph 7 as follows:

7. In the light of the said decisions and having regard to the fact that the competent Civil Court has already granted declaration in favour of the petitioner holding that the petitioner School is a linguistic minority School (Malayalam), the respondents are not justified in demanding further proof of minority status from the petitioner to consider the request of recognition. Therefore, the respondents are bound to treat the petitioner School as a linguistic minority School (Malayalam) and consider the request of the petitioner seeking grant of recognition from 1.6.2002. Necessary order is directed to be passed by the competent authority within a period of four weeks from the date of receipt of a copy of this order.

16. Similar view was taken by another learned single Judge in a decision in Kamaraj Memorial Higher Secondary School v. Government of Tamil Nadu (supra), at paragraphs 7 and 8 as follows:

7. A perusal of the materials placed before this discloses that the petitioner school has been declared as a linguistic minority school as per the judgment of the Principal District Munsif Court, Nagercoil in O.S. No. 117 of 1992 dated 6.4.1994. It is pertinent to note that in the said suit, the District Chief Educational Officer, Nagercoil was impleaded as a defendant. It is also further relevant to note that such judgment and decree reached finality as per the submissions of the learned counsel for the petitioner as no appeal has been preferred by the defendant against the said suit. That being the position, while the petitioner preferred an application seeking for the relief of approval of appointment of five teachers, the 5th respondent herein passed an order dated 14.7.2009 stating that the order from the 2nd respondent herein namely Director of School Education has awaited on the basis of the judgment and decree obtained by the school declaring the petitioner school as a linguistic minority institution. As pointed out by the learned counsel for the petitioner, in respect of the very same school, this Court in W.P. No. 34674 of 2003 dated 23.6.2009 filed by a teacher of the petitioner school by placing reliance on the Division Bench of this Court and the Hon'ble Apex Court held as here under:

1. The point involved in this writ petition has been covered by a decision of this Court in the case of Correspondent, St. Ignatious Higher Secondary School, Karumbanai 629 251; Kanyakumari District and Others v. Director of School Education, College Road, Chennai - 6 and Others (supra), wherein the learned single judge has clearly held that order passed in I.A. No. 20 in TMA. Pai Foundation and Others v. State of Karnataka and Others (supra), W.P. No. 317 of 1993 apply only to the respondents who are parties to that interlocutory application.

2. The Division Bench of this Court in the case of Secretary, D.G. Vaishnav College v. Dr. T. Venkataraman (supra) also very categorically held that when a decree of Civil Court granting minority status has become final and the Government having been a party and suffered the decree, it is binding on the Government unless there is specific legislation provided such legislation is not affront to the decree granted by judicial authority. It is further held that the Government cannot by issue of G.O. call upon educational institution which have obtained decree of minority status afresh especially when such educational institutions are not party to order of Supreme Court of India. It is further found that the order of Supreme Court in I.A. No. 20 in W.P. (C) No. 317 of 1993 is not an order in rem and it is only an order in personam.

3. In view of the binding nature of the above Division Bench Judgment of this Court, I am of the view that the impugned order has to be set aside and the same is set aside and the mandamus as sought for is also to be granted and the same is accordingly granted by allowing the writ petition

In the said unreported order, this Court directed the District Educational Officer to approve the appointment of the petitioner in the said writ petition. In yet another order passed by this Court dated 8.9.2005 in W.P. No. 27920 of 2005 filed by the very same petitioner school, this Court held as here under:

As there is no dispute that the Management or the school has been declared as linguistic minority school in O.S. No. 117 of 1982 on the file of the Principal District Munsif, Nagercoil dated 6.4.1994 in terms of the judgment of this Court in Secretary, D.G. Vaishnav College v. Dr. T. Venkataraman (supra), the petitioner need not get minority status from the State Government. The writ petition is disposed of with a direction to the respondents to consider the proposal forwarded by the petitioner school for approval of the papers without reference to the fact that the petitioner has not obtained any minority status from the State Government and dispose of the same within a period of eight weeks from the date of receipt of a copy of this order. However, the Government is entitled to consider the approval with reference to the other conditions with regard to qualification of the Teachers.

8. It is pertinent to note that in the said order of this Court, it is made very clear that the petitioner need not get minority status from the State Government. Therefore, there is no necessity of any further order to be passed by the 2nd

respondent namely Director of School Education in respect of the status of the petitioner school as the same was already declared as linguistic minority institution and such being the petitioner, this Court is of the considered view that there is no legal impediment for the 3rd and 4th respondent to grant approval for the appointment of teachers by the petitioner school.

17. From the reading of the above said case laws, it is clear that the 5th respondent-institution having been declared as minority institution by a competent civil Court and the said judgment and decree having become final, conclusive and binding on the parties, they need not go before the Government to seek the minority status once again especially when they were not parties before the Hon'ble Supreme Court in L.A. No. 20 in W.P. (C) No. 317 of 1993 dated 17.10.1994 in the matter of TMA Pai Foundation and Others v. State of Karnataka and Others (supra), consequently, the respondents 1 to 3 are not entitled to apply G.O. Ms. No. 270 dated 17.6.1998 to the case of the 5th respondent-college and to direct them to approach the Government seeking for approval of their status once again as minority institution.

18. Insofar as the other point with regard to the requirement of prior permission before filling up the vacancy is concerned, it is seen that the post of Waterman was sanctioned by the second respondent through his proceedings dated 27.5.1977 and the said post was not resumed and withdrawn later. Therefore, when the petitioner was appointed in the year 1996 by the 5th respondent-college to the post of Waterman, the said post was very much available with 5th respondent-college as a sanctioned post and consequently, when the petitioner was appointed in a sanctioned post by the 5th respondent-college there need not be any prior permission from the respondents 1 to 3 before filling up the said post. The same issue as to whether any prior permission is required before filling up the post in a sanctioned vacancy was considered by a learned single Judge of this Court in W.P. No. 4960 and 14450 of 1997 dated 10.7.2007 (cited supra) and the learned single Judge has held that once the appointment of the person in a sanctioned post is made in accordance with law no prior permission from the Directorate of Collegiate Education is required. The said order of the learned single Judge was appealed against in W.A. No. 92 and 93 of 2008 and the Hon'ble Division Bench dismissed the Writ Appeals on 6.1.2010 by observing as follows at paragraphs 3 and 4:

3. The learned single Judge has dealt with both the above said Writ Petitions together and by following the decision of this Court rendered in W.P. No. 28396, dated 29.3.2006, the learned Judge has categorically held that once appointment of a person in a sanctioned post is made in accordance with law, no prior permission from the Director or Collegiate Education is required. While holding so, the learned Judge has quashed the impugned proceedings, dated 28.2.1997 and directed the appellants to approve the writ petitioner's (C. Karunakaran) appointment from 2.7.1990 with all consequential service benefits.

4. In view of the such a categoric conclusion of the learned single Judge which

was arrived by him by following the earlier decision of this Court rendered in W.P. No. 28396, dated 29.3.2006, we do not find any scope to interfere with the said order, except to confirm the same.

19. Likewise, the Hon''ble Division Bench of this Court in W.A. No. 140 of 2006 etc., dated 21.10.2010 in Government of Tamil Nadu v. J. Premakumari and Others (supra) has considered the same issue and held as follows at paragraph 4:

4. We have perused the impugned order as well as the earlier Division Bench decision. In the earlier Division Bench decision, it was categorically held that once appointment of a person in a sanctioned post is made in accordance with law, no prior permission from the Directorate of Collegiate Education is required. In the case on hand, the issue involved is appointment of persons against the sanctioned post. Therefore, the ratio of the earlier Division Bench decision is squarely applicable to the facts of the present case.

20. Further a learned single Judge of this Court in his judgment dated 27.4.2010 made in W.P. (MD) No. 174 of 2009 (cited supra) has considered the same issue and by following the earlier order passed by the Hon''ble Division Bench at paragraphs 13,14,15, and 16 as held as follows:

13. The purport of Rule 11(1) of the Rules, came to be discussed by Mr. Justice ELIPE DHARMA RAO in the order dated 29.3.2006 in W.P. (MD) No. 28396 of 2004, when the Government took a similar stand and raised such an argument, and the learned Judge has held that no prior permission is required so long as such appointment has been made within the sanctioned post. Following are the relevant paragraphs in this regard, which read as follows:

9. So, the question that now arises for consideration is to whether the appointment of the petitioner is well within the sanctioned post. In this context, it would be worthwhile to extract Rule 11 (1) of the Rules:

The number of teachers employed in a college shall not exceed the number of posts fixed by the Director from time to time, with reference to the academic requirements and norms of work load prescribed by the respective Universities and over all financial considerations.

10. Thus, it is evident from the above, any such appointment of teachers should not exceed the number of posts fixed by the Director. In the present case, the third respondent college has been sanctioned with two posts of Malayalam Lecturers and since a vacancy has arisen due to the retirement of one Dr. A.M. Vasudevan Pillai, the petitioner herein was appointed through direct recruitment process in the said vacancy.

11. Further, as regards the other limbs of the rule relating to the norms of the workload and financial considerations also, when there is no reduction of workload in the third respondent college and in the absence of any order passed by the second respondent pointing out any such reduction of financial constraints, it can be held that the appointment of the petitioner is done in

accordance with the Rule and therefore, no prior permission is required to appoint the petitioner.

12. Therefore, it is clear that the order passed by the second respondent is contrary to Rule 11(1) of the Rules and has to be set aside. Accordingly, the same is set aside. The second respondent is directed to pass the order of approval of the petitioner from the date of his initial appointment within a period of six weeks from the date of receipt of a copy of this order. Consequently, connected WPMP is closed.

Thereby held that the rejection of proposal for approval of the appointment made is contrary of the Provisions of Rule 11(1) of the Rules.

14. That proposition was followed by Mr. Justice S. RAJESHWARAN in the order in W.P. Nos. 4960 and 14450 of 1997, dated 10.7.2007, wherein the learned Judge after referring to Rule 11 (1) of the Rules, has set aside the rejection order, which was made on the ground that prior approval was not obtained and directed the educational authorities to grant approval.

15. The said judgment of the learned single Judge, came to be questioned by the educational authorities in W.A. Nos. 93 and 94 of 2008, which came to be decided by a Division Bench of this Court and in the judgment dated 6.1.2010, while the Division Bench confirmed the stand of the leaned single Judge, has held as follows:

The learned single Judge has dealt with both the above said writ petitions together and by following the decision of this Court rendered in W.P. No. 28396 of 2004, dated 29.3.2006, the learned Judge has categorically held that once appointment of a person in a sanctioned post is made in accordance with law, no prior permission from the Director of Collegiate Education is required. While holding so, the learned Judge has quashed the impugned proceedings, dated 28.2.1997 and directed the appellants to approve the writ petitioner's (C. Karunakaran) appointment from 2.7.1990 with all consequential service benefits.

16. In the context of the categorical legal pronouncement on the issue, especially that of the Division Bench as stated above, there is absolutely no substance in the impugned order, which on the face of it is not sustainable in law and the same is liable to be set aside. Accordingly, the impugned order of the first respondent, dated 2.12.2008 is set aside and the writ petition stands allowed with a direction to the first and second respondents to grant approval for the appointment of the petitioner in the third respondent college with effect from the date of his appointment i.e. on 16.7.2001 and also release the teaching grant and such order shall be passed within four weeks from the date of receipt of a copy of this order.

From the categorical findings rendered by the Hon''ble Division Bench as well as the learned single Judges of this Court as cited supra, it is clear that there is no necessity for the 5th respondent-college to seek prior permission before filling up

the post in a sanctioned vacancy. The impugned order in this writ petition came to be passed only on two grounds, namely, that the 5th respondent-institution did not obtain minority status from the Government and that no prior permission was obtained before filling up the post. As I have found both reasons assigned by the respondents 1 to 3 in refusing to accord approval are unsustainable the writ petition is allowed and the impugned order is set aside. Consequently, the respondents 1 to 3 are directed to approve the appointment of the petitioner as a Waterman in the 5th respondent-college from the date of his appointment and pay salary and other attendant benefits available to him within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Petition allowed.