

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2015

CORAM

THE HON'BLE Ms. JUSTICE K.B.K.VASUKI

W.P.Nos.29772 and 10366 of 2004 and 8989 of 2011
WPMP.Nos.2593 of 2004 and 11095 of 2006.

WP.No.29772 of 2004
S.Chenniappan

.. petitioner

v.

1.The Director of Collegiate Education,
College Road, Chennai-6.

2.The Bharathiar University,
rep by its Registrar
Coimbatore.

3.Bishop and Chairman
Bishop Thorp College
Dharapuram 638 657
Erode District.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of Mandamus to direct the third respondent not to close the BA(Co-operation) department in Bishop Thorp College, Dharapuram except after following the procedure under Section 25 of the Tamil Nadu Private College (Regulation) Act and rules made thereunder and consequently to direct the 3rd respondent to pay salary to the petitioner in accordance with the University Grants Commission pay scale.

WP.No.10366 of 2004

1.V.Annathurai
2.K.Selvarajan
3.D.Ubendhiran

.. petitioners

v.

1.The Director of Collegiate Education
College Road, Chennai-6.

2.The Joint Director of Collegiate Education
Race Course, Coimbatore.

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3.The Secretary
Bishop Thorp College
Diocesan Officer, Puthur
Trichy-620017.

4.The Bharathiar University
rep by its Registrar, Coimbatore.
(R4 impleaded as per order dated 27.09.2012
in WPMP.333 of 2012)

.. respondents

Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of Mandamus to direct the First and second respondent to consider the representations of the petitioners dated 21.08.1996 as followed by the latest representation dated 07.01.2004 and pass orders rectifying the arbitrariness and consequently directing the third respondent to pay the petitioners the UGC scale of pay applicable to the College Teachers in accordance with law.

WP.No.8989 of 2011

S.Vasudevan

.. petitioner

V.

1.The Director of Collegiate Education
College Road, Chennai-6.

2.The Joint Director of Collegiate Education
Race Course, Coimbatore.

3.The Secretary
Bishop Thorp College
Ellis Nagar Post,
Dharapuram -620017.

4.The Bharathiar University
rep by its Registrar, Coimbatore.
(R4 impleaded as per order dated 27.09.2012
in MP.1/12 in WP.8989 of 2011)

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of Mandamus to direct the first respondent to consider the representation of the petitioner dated 21.08.1996 and followed by the latest representation dated 04.10.2010 and pass orders rectifying the arbitrariness, directing the 3rd respondent to pay the petitioner the UGC scale of pay applicable to the college teachers in accordance with law.

For Petitioners : Mr.R.Thiagarajan, SC
for P.Premkumar in other WPs

Mr.V.Bharathidasan in WP.10366/04

For Respondents : Mr.S.Gunasekaran, GA (Education).
Spl.GP. for R1 in WP.No.29772 of 2004
for R1 and R2 in both the
WP.Nos.10366 of 2004 and 8989 of 2011

M/s.C.Sangamithirai for R3 in all the WPs.
M/s.S.T.S.Murthi for R4 in all the WPs.

COMMON ORDER

The relief sought for in all the three writ petitions is for directing the Bishop Thorp college to pay the petitioners/faculty members UGC scale of pay applicable to college teachers. The additional relief sought for in WP.No.29772 of 2004 is for directing the same respondent college not to close BA(Co-operation) Department in Bishop Thorp College, Dharapuram without following the procedure under Section 25 of Tamil Nadu Private College (Regulation) Act and Rules.

2.All the writ petitions are filed by the individual teaching staffs of the respondent college, Dharapuram which is the minority private self financing college and affiliated to Bharathiar University. While, the petitioner in WP.No.29772 of 2004 is lecturer in B.A.(Co-operation) department (Selection grade), the petitioners in WP.No.10366 of 2004 are the lecturers in Computer Science and the petitioner in WP.No.8989 of 2011 is Associate professor and Head of Department (Commerce) in the same Bishop Thorp college, Dharapuram.

3.Regarding the relief for closure of B.A(Co-operation) this Court while admitting WP.No.29772 of 2004, granted an order of injunction on 14.10.2004 in WMP.36163 of 2004 restraining the respondents from terminating the service of the petitioner until further orders, however with liberty given to the respondent college for approaching the authorities concerned for closure of the subject mentioned course in terms of Section 25 of the Tamil Nadu Private College (Regulation) Act and Rules (herein after referred to as "ACT").

4.The respondent college filed separate WMP.No.2593 of 2004 in WP.No.29772 of 2004 for vacating the injunction granted and both WMP.No.36163 of 2004 and WMP.No.2593 of 2004 were disposed of by common order dated 18.04.2005 in and under which the 3rd respondent management therein is held entitled to approach the educational authority seeking prior permission for closure of the course without prejudice to their contention that the management being minority unaided institution need not approach Director of Collegiate Education. The respondent/Director of Collegiate education was further directed to consider the application filed by the 3rd respondent college for such permission on merits.

5. In pursuance of the same the respondent college sent a representation to the first respondent on 07.11.2007 seeking permission for closure of BA(Co-operation) course. As no order was passed in the said representation, the respondent college filed WP.No.17094 of 2008 and the same was disposed of on 18.07.2008 directing the education authorities to consider the representation and pass appropriate orders on merits. The respondent/Directorate of Collegiate Education had thereafter passed an order dated 29.10.2008 for closure of B.A.(Co-operation) in the respondent college. Questioning the validity and correctness of the same, the petitioner in WP.No.29772 of 2004 filed WP.No.25404 of 2009 for issuing a writ of certiorari to quash the impugned order dated 29.10.2008 as null and void. The petitioner challenged the validity of the order mainly on the ground that notice for the closure of any course under Rule 16 (1) of the Tamil Nadu Private College (Regulation) Act shall be given before 1st September of the year, preceding the year, in which, the closure is proposed to be given effect to. Whereas the application for permission was given on 07.11.2007 after September 2007, as such the permission accorded by the authority concerned for closure of the course for the academic year 2008-2009 is not legally valid. This court having accepted the contention so raised on the side of the petitioner that the representation seeking permission for closure was not in conformity with Rule 16(2)(b) of Tamil Nadu Private College (Regulation) Act, set aside the impugned order, however, with direction issued to the respondent college to send fresh representation in accordance with Rule 16(2)(b), with further direction issued to the education authority to pass appropriate order in accordance with relevant rule.

6. The order passed by the learned single judge dated 29.04.2010 in WP.25404 of 2009 was challenged by the respondent college by way of writ appeal in WA.No.1370 of 2010 and the Division Bench of this Court by order dated 25.08.2010 confirmed the order of the single judge and dismissed the appeal. In pursuant to the order passed in WP.No.25404 of 2009 the respondent college again applied for closure and the respondent/Directorate of Collegiate Education granted appropriate orders and the same was again challenged by the petitioner in WP.No.29772 of 2004 by way of WP.No.13701 of 2011, wherein the learned brother judge of this Court having found that the fresh application filed by the respondent which was received by the competent authority on 14.10.2010 suffers from the same defect as that of the earlier representation and was by order dated 22.11.2011 pleased to set aside the impugned permission granted for closure of the subject concerned, however with liberty given to third respondent to file fresh application for closure according to law. The learned brother judge has while doing so also directed the respondent college to safeguard the interest of the lecturers and to protect the interest of the petitioner.

7. Aggrieved by the same, the respondent college has filed a writ appeal in W.A.No.898 of 2013, which was disposed of by directing the respondent management to offer the writ petitioner alternative post in Bishop Heber College, Trichy in the Commerce Department (Self financing Section) with salary protection. The writ petitioner was also given liberty to accept the said offer made to him. That being the subsequent development, the same renders the writ petition in WP.29772 of 2004 for the same relief for closure of B.A.(Co-operation) in Bishop Thorp College, Dharapuram to be infructuous.

8. Regarding the other relief sought for by the writ petitioner and the identical relief sought for in the other writ petitions for paying them salary as per UGC scale applicable to college teachers, the Bharathiar University to which the respondent college is affiliated, issued a circular dated 14.09.2007 directing all the affiliated colleges to fulfill certain norms for their affiliation and the same was challenged by way of WP.No.37099 of 2007 by the Association of Self Financing Arts, Science and Management Colleges of Tamil Nadu represented by its Secretary. The respondent College is also one of the members of the petitioners association in WP.No.37099 of 2007. The writ petition was taken up along with WP.No.8144 of 2007 which is filed by the same Association against another circular dated 16.02.2007 issued by the same University directing the affiliated colleges to have college committee and regarding the procedure by which the committee should conduct the proceedings and the constitution of the college council etc., and the learned brother judge has in para 5 of their order dealt with the issue involved in WP.No.37099 of 2007. The learned single judge has observed that the conditions contained in the circular will in no manner affect the rights of the Management to run the college and the condition was imposed only in the matter of running private colleges and the colleges are bound to comply with the recommendations of UGC and they cannot deny their obligations to pay the salary to the teachers on par with the UGC scale of pay which is one of the conditions imposed by UGC and without which they cannot maintain the conditions of affiliation. The order passed by the learned single judge was challenged by way of W.A.Nos.2299 and 2300 of 2012 by the same Association.

9. The learned counsel for the appellants has in the course of argument, made an endorsement to the effect that the prayer sought for in the writ appeals was not pressed in-so-far as non minority colleges are concerned and the submission so made was also recorded by the Division Bench of this Court. Though an objection was raised therein regarding the number of non minority colleges, the Division Bench observed that the minority status can always be verified by the university, on the basis of the declaration granted by the competent Civil Court or Government Orders issued. With such direction and observation, the Division Bench of this court by common order dated 22.01.2015 disposed of the writ appeals.

10. One of the grounds raised herein opposing all the reliefs sought for in all the three writ petitions by the respondent college is that the respondent college being minority unaided self financing college, is not bound to seek permission from the authority concerned for closure of any course as contemplated under Section 25 of the Act and they are not bound to implement UGC pay scale to its teachers. The learned counsel for the petitioners would at this juncture draw the attention of this court to the information given by (1) National Commission for minorities dated 11.06.2010 (2) Regional Joint Director, Coimbatore dated 17.05.2010 (3) Director of Collegiate Education dated 28.01.2010 to the effect that no minority status is granted to Bishop Thorp College, Dharapuram and the same does not enjoy minority status and there is no Arts and Science College having minority status within whose jurisdiction lies the respondent college. If that is so, the respondent college having not been confirmed the minority status is not entitled to question the authority of the University to issue one such circular containing various conditions and the respondent college cannot be permitted to raise such objection and this court is not required to go into the same on merits.

11. The learned counsel for the petitioners have also brought to the notice of this Court to the order passed by the learned single judge of this court in batch of writ petitions in WP.Nos.18618, 19994 of 1998 and 3330 of 1999 and also WP.No.4468 of 2012 filed by the Association of Management of unaided Arts and Science Colleges and aided self financing colleges in Manonmaniam Sundaranar University against the resolution of the University dated 16.10.1998 thereby imposing the disbursement of UGC scale of pay to the teachers and Government scale of pay to the non teaching staffs as one of the conditions for granting affiliation. The learned brother judge was pleased to dismiss the writ petitions on the ground that the teachers are entitled to get equal pay for the service and the University, which is the authority to maintain the standard of education, must see to it that proper qualified teachers are appointed and they must also see to it that salary is paid equally to other members of staff. The other WP.No.(MD).4468 of 2012 was filed by one of the guest lecturers for directing the Govt Law College, Madurai to implement UGC guideline and to refix the Honourarium for the guest lecturers in accordance with the guidelines issued by the UGC. The learned brother judge by order dated 22.08.2012, allowed the writ petition by holding that the guidelines issued by the UGC are binding on the University and the persons performing similar duties cannot be discriminated in the matter of payment of salary and denial of benefits under UGC recommendation is arbitrary and hit by Article 14 of the constitution of India.

12. That being the legal and factual state of affairs, the respondent college who suffered an adverse order in WP.No.37099 of 2007 can have no ground to deny the benefits of UGC pay scale to the

petitioners on par with similarly placed teachers and the respondent college is hence bound to comply with the direction of University which is the competent authority to impose such conditions.

13.In the result, WP.No.29772 of 2004 filed regarding closure of B.A.(Co-operation) Department in the third respondent/Bishop Thorp College, Dharapuram is dismissed as infructuous.

14.In the result, the official respondents/Education Department are directed to consider and pass appropriate order on the petitioners' representation for payment of salary in accordance with UGC pay scale to the teachers in the third respondent non-minority college, in the light of the order passed in WP.Nos.8144 and 37099 of 2007 dated 05.06.2012 as confirmed in WA.No.2299 and 2300 of 2012 dated 22.01.2015, with arrears. The above exercise shall be completed within eight weeks from the date of receipt of the copy of this Order.

15.All other writ petitions are accordingly ordered. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

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To

1.The Director of Collegiate Education,
College Road, Chennai-6.

2.The Joint Director of Collegiate Education
Race Course, Coimbatore.

3.The Registrar,
Bharathiar University,
Coimbatore.

4.Bishop and Chairman
Bishop Thorp College
Dharapuram 638 657
Erode District.

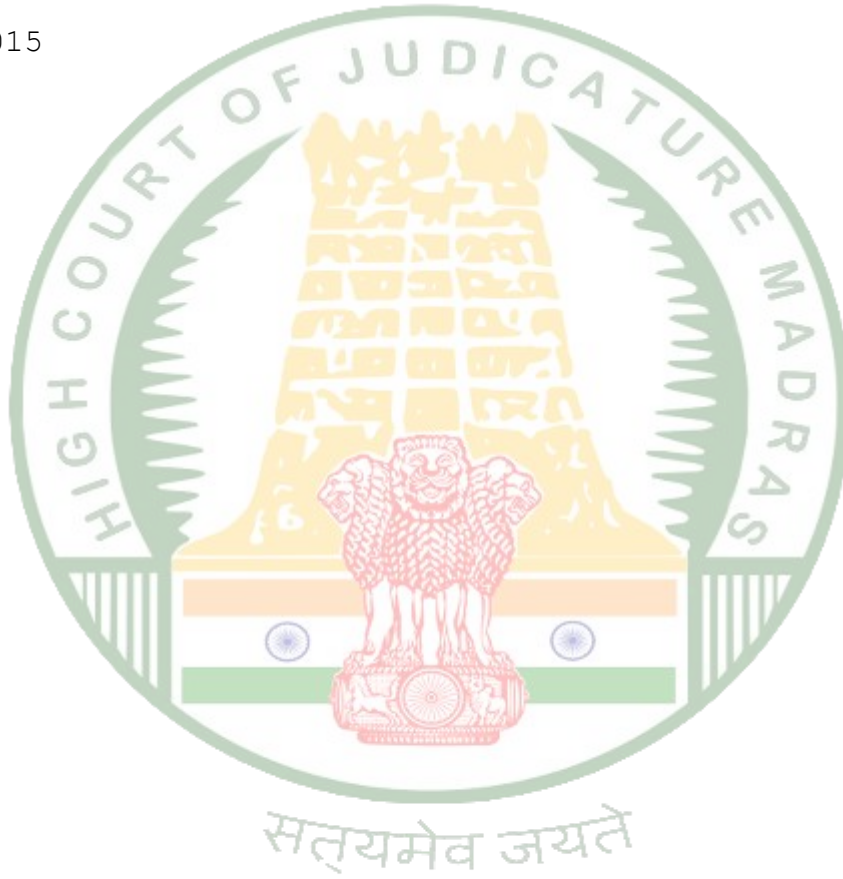
5.The Secretary
Bishop Thorp College
Diocesan Officer, Puthur
Trichy-620017.

6.The Secretary,
Bishop Thorp College
Ellis Nagar Post,
Dharampuram - 620017.

3 cc to Mr.V.Bharathidasan , Advocate Sr.No.24440
1 cc to Mr.P.Premkumar , Advocate Sr.No.24556

WP.Nos.29772 and 10366 of 2004
and 8989 of 2011

svi(co)
pmk.8.9.2015



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