

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2016

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE MRS.PUSHPA SATHYANARAYANA

W.A.No.1731 of 1999

- 1.The State of Tamil Nadu,
rep. by its Secretary,
Education Department,
Fort St. George, Madras-9.
- 2.The Director of Collegiate Education,
College Road, Madras-6.
- 3.The Deputy Director of Collegiate Education,
Tirunelveli. .. Appellants / Respondents

Vs.

- 1.Sadakathullah Appa College,
rep. by its Secretary and Correspondent,
Ramnath Nagar,
Palayamkottai,
Tirunelveli.
- 2.N.Kaja Mohideen,
Record Clerk,
Sadakathullah Appa College,
Ramnath Nagar,
Palayamkottai,
Tirunelveli. .. Respondents /Petitioners

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 03.12.1998 in W.P.No.15686 of 1989 on the file of this Court.

WP No.15686/1989: Petition filed under article 226 of the constitution of India praying this court to call for the records before the 2nd respondent ending with his order No.O.MUL.18404/A4/89 dated 23.5.1989 and issue a writ of certiorarified Mndamus quashing the same and directing the respondents to pay the grant to respect o the 3 Laboratory Assistans namely 1) Zakir Hussain 2) S.M.A.Syed Mohammed and 3) Mohammed Ibrahim appointed by the petitioner.

For Appellants .. Mr.K.Karthkeyan
Government Advocate

For Respondents.. Mr.Vijay Narayan
Senior Counsel
for
Mr.K.Ilias Ali for R1
Mr.R.Subramanian for R2

JUDGMENT

(Judgment of the Court was made by The Hon'ble Chief Justice)

The first respondent, minority institution, requested for approval of appointment made to the post of three Lab Assistants through direct recruitment process in pursuance to the communications dated 28.02.1989 and 19.04.1989. This request was declined by the Director of Collegiate Education, Chennai vide communication dated 23.05.1989 on the ground that promotions were not given to the employees working in the lower categories.

2. It is the say of the first respondent that persons working in the lower categories were not competent to occupy the post of Lab Assistant and that is why they had sought not to make any appointment from the existing employees, but appointed the qualified Lab Assistants through direct recruitment. Thus, the order dated 23.05.1989 was assailed by filing W.P.No.15686 of 1989. Inter alia the issue of right of minority institutions to administer themselves including qua the issue of employment was raised and the writ petition was decided vide order dated 03.12.1998 in favour of the first respondent. It is thereafter that the present appeal has been preferred by the State Government.

3. In nutshell, the claim made in the grounds of appeal is that prior approval for appointment was mandatory even qua the minority institutions. In this behalf, the learned Government Advocate (Education) appearing for the appellants has relied upon the judgment of the Hon'ble Supreme Court in Kolawana Gram Vikas Kendra v. State of Gujarat and others, reported in (2010) 1 SCC 133, where paragraph 7 reads as under:-

"7. In our considered view, we do not view this to be interference in the selection process. It would be perfectly all right for a minority institution to select the candidates without any interference from the Government.

However, the requirement of this prior approval is necessitated because it is for the Government to see as to whether there were actually posts available in the said institution as per the strength of students and secondly; whether the candidates, who were sought to be appointed, were having the requisite qualifications in terms of the rules and regulations of the Education Department. That is precisely the stand taken by the State of Gujarat before us in its counter-affidavit."

4. It is simultaneously conceded that the larger issue of right to appoint teachers of its choice among the qualified candidates is in issue and that has been referred by the Hon'ble Supreme Court to the Constitution Bench in Special Leave to Appeal (Civil) No.9754 of 2008 (Assn. of Management of Private Colleges v. Sec. University Grants Commn. & others) vide order dated 14.07.2010 in the context that the question whether the right of the Management to manage the affairs of the minority institution including the right to appoint the staff of its choice should be so considered by the Constitution Bench. This issue would naturally await the opinion of the Hon'ble Supreme Court.

5. In the given facts of the case, 29 years have elapsed. Any competing persons with direct appointees have retired. The only ground taken for rejection of the request of the first respondent is that the promotees should have been promoted from the lower cadre, while the stand of the first respondent is, such promotees were not eligible for the post of Lab Assistants. The order of the appellants does not state anything about the aspect of the qualifications of the promotees vis-a-vis the requirement for the post of Lab Assistants.

6. In view of the aforesaid factual position and also the passage of time, we are of the view that no purpose would be served in keeping the present appeal alive.

7. We dismiss the appeal, leaving the larger question open. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary,
Education Department,
Fort St. George, Madras-9.
- 2.The Director of Collegiate Education,
College Road, Madras-6.
- 3.The Deputy Director of Collegiate Education,
Tirunelveli.

+1 cc to Government Pleader, Advocate, sr.1230

+1 cc to Mr.K.Ilias Ali, Advocate, sr.1080

+1 cc to Mr.R.Subramanian, Advocate, sr.1040

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