

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.08.2019

DELIVERED ON: 16.08.2019

CORAM:

THE HON'BLE MR.JUSTICE V.PARTHIBAN

W.P.NOS.17511 AND 17518 OF 2019

AND

W.M.P.Nos.16988, 16989, 16994, 16995 of 2019

The Secretary,
Nirmala College for Women
(Autonomous)
Red Fields, Coimbatore
Coimbatore District - 641 018.

..Petitioner in both the W.Ps.

-Vs-

1.The State of Tamil Nadu,
rep.by is Secretary
Department of Higher Education,
Fort St.George,
Chennai-600 009

2.The Director of Collegiate Education,
College Road, Chennai-600006

3.The Joint Director of Collegiate Education,
Coimbatore Region, Coimbatore,
Coimbatore District 641 018

...Respondents in both the W.Ps.

Prayer in W.P.No.17511 of 2019: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records relating to the impugned order issued by the 3rd respondent Joint Director in A.Thi.Mu.No.2684/Aa3/2018, dated 20.08.2018, and to quash the same and further direct the third respondent Joint Director to approve forthwith the appointment of 7 non-teaching staff, viz., 1.Mrs.R.Sharmili, Typist, 2.Ms.J.Helen Saranya, Record Clerk, 3.Mr.G.Vivek Thomas, Record Clerk, 4.Mr.Christopher D, Record Clerk, 5.Mrs.S.Daisy, Record Clerk, 6.Mrs.A.Josephine Gloria, Library Assistant and 7.Mrs.Lilly pushpam, Lab Assistant, in the petitioner's college and disburse the staff grant towards their salary and allowances with effect from the respective dates of their appointments.

Prayer in W.P.No.17518 of 2019: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records relating to the impugned order issued by the 3rd respondent Joint Director in A.Thi.Mu.No.274/Aa3/2018, dated 20.08.2018, and to quash the same and further direct the third respondent Joint Director to approve forthwith the appointment of Sr.A.Sippriyan Mary as Lab Assistant in the petitioner's College and disburse the staff grant towards her salary and allowances with effect from the respective dates of her appointment.

For Petitioner : Mr.Isaac Mohan Lal, Sr.counsel
for M/s.Isaac Chambers

For Respondents: Mr.V.Kathirvelu, Spl.G.P.

COMMON ORDER

The petitioner is a private institution founded and administered by 'The Governing Body of the Nirmala College of Women, Coimbatore', which is a Society, registered under the Tamil Nadu Societies Registration Act, 1951. There are 1300 students studying in the College in various subjects. The petitioner college has a sanctioned strength of 69 + 1 teaching staff and 44 non-teaching staff, working in the aided Sections of the college as on today. Out of 44 posts of non-teaching staff sanctioned by the Government, the following posts are earmarked, in each category:

1. Superintendent, 3 Assistants, 4 Junior Assistants, 2 Typists, 1 Steno Typist, 1 Store Keeper, 4 Record Clerks, 2 Library Assistants, 9 Lab Assistants, 4 Office Assistants, 2 Watchmen, 2 Gardeners, 5 Sweepers, 1 Water Woman, 1 Games Marker and 2 Scavengers.

2. Recently 7 posts fell vacant against the posts of Typist, Record Clerk, Library Assistant, Lab Assistant. The petitioner college, in order to fill up the vacant posts of Typists, Record Clerk, Library Assistant and Lab Assistant, has selected persons and appointed them in the said posts on 01.09.2016 and 01.06.2018. Thereafter, the petitioner College submitted two separate requests on 12.06.2018 and 20.06.2018, to the third respondent, seeking for disbursement of staff grant towards payment of their salaries. Subsequently, on 17.01.2018, a proposal was sent to the third respondent for approval of their appointments. In response to the same, the third respondent passed order on 20.08.2018, refusing to grant approval for seven non-teaching staff stating that a clarification was being sought from the second respondent, viz.,

the Director of Collegiate Education and it was stated in the proceedings of the Director that any proposal received for approval of appointments shall be rejected, if due advertisement was not made in the news papers for such appointments. The said order of refusing to grant approval to the appointments of seven non-teaching staff is assailed in the present writ petition.

3. Shri Issac Mohan Lal, the learned Senior counsel appearing for the petitioner would submit that the petitioner College being a minority institution, can appoint persons of their own choice, particularly, non-teaching staff in their institution. According to the learned Senior counsel, the advertisement for appointment of teaching staff is provided under Rule 11(4) (ii) of the Tamil Nadu Private Colleges (Regulation) Rules, 1976, which reads as under:-

"R.11. Conditions of service, etc., of teachers and other persons in college:

(1)

.

(4) (ii) The committee shall fill up the posts by promotion or by direct recruitment. The committee shall, while making promotion, consider the claims of all the qualified teachers in that college. If, however, none of the qualified teachers in the college is found suitable for promotion, the vacancy shall be filled up by direct recruitment by calling for application from qualified persons through the Press or by calling for a list of candidates from the Employment Exchange by following the rule of reservation ordered by the Government from time to time for direct recruitment."

The learned Senior Counsel would submit that such requirement is provided only for appointment of teaching staff when such appointment is sought to be filled up by the College Committee. He would submit that as far as the minority institution is concerned, no such College Committee required to be constituted in terms of Section 11 of the Tamil Nadu Private Colleges (Regulation) Act 1976. Therefore, he would draw the attention of this Court to Section 11 of the Act, which provides for constitution of Committee in every private college, but not being a minority College. Therefore, he would submit that even for appointment of teaching staff, such requirement cannot be insisted upon in respect of the minority institutions.

4. The learned Senior counsel would submit that the issue is directly covered by the decision of the Hon'ble Supreme Court of India, in N.Ammad vs. Manager, Emjay High School and Others [(1998) 6 Supreme Court Cases 674]. He would draw the

attention of this Court to arguments advanced on behalf of the minority institution in Paragraph No.27 of the judgment and the finding of the Hon'ble Supreme Court in Paragraph No.28, which are extracted hereunder:

"27. Shri R.F. Nariman, learned senior counsel contended, alternatively, that if the management is anxious to find out the most qualified person to fill up the post of Headmaster the management should have advertised for the post inviting applications from qualified persons. To buttress up the said argument learned counsel cited a two Judge Bench decision of this Court in Shainda Hasan vs. State of Uttar Pradesh & ors. (1990 2 SCR 699). In that case the management of a college was selected by relaxing the qualifications the University declined to accord approval thereto. When appellant approached this court learned judges suggested that the University might not interfere with the selection and appointment under the facts of that case. But no legal proposition has been laid down that selection process must be through advertisement. According to us, it is for the management of the minority educational institution to choose the modality for selecting the qualified persons for appointment.

28. Thus the management's right to choose a qualified person as the Headmaster of the school is well insulated by the protective cover of Article 30(1) of the Constitution and it cannot be chiselled out through any legislative act or executive rule except for fixing up the qualifications and conditions of service for the post. Any such statutory or executive fiat would be violative of the fundamental right enshrined in the aforesaid Article and would hence be void."

The learned Senior counsel therefore would submit that the protecting cover of Article 30(1) of the Constitution of India cannot be diluted by any statutory requirement and if any such requirement is provided, even assuming that such requirement is made available in the Private Colleges (Regulation) Act 1976, such requirement is unconstitutional and cannot be insisted upon. In any event, according to the learned Senior counsel, there is no such requirement envisaged either in the Act or in the Rules, particularly in regard to the appointment of non-teaching staff. According to the learned Senior Counsel, in the absence of any requirement for causing advertisement in

newspapers, the third respondent or the second respondent cannot refuse to grant approval of the 7 non-teaching staff, whose appointments were against sanctioned posts.

5.The learned Senior counsel would also draw the attention of this Court to yet another decision of the Hon'ble Supreme Court of India in Secy.Malankara Syrian Catholic College vs. T.Jose and Others [(2007) 1 Supreme Court Cases 386]. He would particularly refer to paragraph No.12 of the judgment in regard to the questions raised as to what extent the State can regulate the right of minority to administer their educational institutions. Paragraph No.12 of the judgment is extracted hereunder:-

"12. The rival contentions give rise to the following questions:

(i) To what extent, the State can regulate the right of the minorities to administer their educational institutions, when such institutions receive aid from the State.

(ii) Whether the right to choose a Principal is part of the right of minorities under Article 30 (1) to establish and administer educational institutions of their choice. If so, Section 57(3) of the Act would violate Article 30(1) of the Constitution of India."

6.The Hon'ble Supreme Court of India has laid down the general principle after adverting to various principles as found at paragraph No.19 of the judgment, which is also extracted hereunder:-

"19. The general principles relating to establishment and administration of educational institution by minorities may be summarized thus:

(i) The right of minorities to establish and administer educational institutions of their choice comprises the following rights :

a) To choose its governing body in whom the founders of the institution have faith and confidence to conduct and manage the affairs of the institution;

b) To appoint teaching staff (Teachers/Lecturers and Head-masters/Principals) as also non-teaching staff; and to take action if there is dereliction of duty on the part of any of its employees;

c) To admit eligible students of their choice and to set up a reasonable fee structure;

d) To use its properties and assets for the

benefit of the institution;

(ii) The right conferred on minorities under [Article 30](#) is only to ensure equality with the majority and not intended to place the minorities in a more advantageous position vis-à-vis the majority. There is no reverse discrimination in favour of minorities. The general laws of the land relating to national interest, national security, social welfare, public order, morality, health, sanitation, taxation etc. applicable to all, will equally apply to minority institutions also.

(iii) The right to establish and administer educational institutions is not absolute. Nor does it include the right to maladminister. There can be regulatory measures for ensuring educational character and standards and maintaining academic excellence. There can be checks on administration as are necessary to ensure that the administration is efficient and sound, so as to serve the academic needs of the institution. Regulations made by the State concerning generally the welfare of students and teachers, regulations laying down eligibility criteria and qualifications for appointment, as also conditions of service of employees (both teaching and non-teaching), regulations to prevent exploitation or oppression of employees, and regulations prescribing syllabus and curriculum of study fall under this category. Such regulations do not in any manner interfere with the right under [Article 30\(1\)](#).

(iv) Subject to the eligibility conditions/qualifications prescribed by the State being met, the unaided minority educational institutions will have the freedom to appoint teachers/Lecturers by adopting any rational procedure of selection.

(v) Extension of aid by the State, does not alter the nature and character of the minority educational institution. Conditions can be imposed by the State to ensure proper utilization of the aid, without however diluting or abridging the right under [Article 30\(1\)](#)."

7. Finally the Hon'ble Supreme Court of India has concluded in paragraph No.21 as under:-

"21. We may also recapitulate the extent of

regulation by the State, permissible in respect of employees of minority educational institutions receiving aid from the State, as clarified and crystalised in TMA Pai. The State can prescribe :-

(i) the minimum qualifications, experience and other criteria bearing on merit, for making appointments,

(ii) the service conditions of employees without interfering with the overall administrative control by the Management over the staff.

(iii) a mechanism for redressal of the grievances of the employees.

(iv) the conditions for the proper utilisation of the aid by the educational institutions, without abridging or diluting the right to establish and administer educational institutions.

In other words, all laws made by the State to regulate the administration of educational institutions, and grant of aid, will apply to minority educational institutions also. But if any such regulations interfere with the overall administrative control by the Management over the staff, or abridges/dilutes, in any other manner, the right to establish and administer educational institutions, such regulations, to that extent, will be inapplicable to minority institutions."

8. Therefore, the learned Senior counsel would submit that by insisting on paper advertisement, the second and third respondents are interfering with the rights of the Minorities, which are protected under Article 30 of the Constitution of India.

9. In response to the notice, Mr. V. Kathirvelu, learned Special Government Pleader entered appearance on behalf of the respondents. On the basis of a direction from this Court, written instructions have been filed on behalf of the respondents. According to the written instructions filed on behalf of the second respondent, the request for approval of the appointment of seven non-teaching staff was rejected because of the advertisement not being published in the newspapers before recruiting them. According to the instructions, the present appointments were against the Rules and therefore, the same was rejected by the second and third respondents.

10. This Court is unable to appreciate as to how despite the settled legal principle in respect of the Minority institutions, the Educational authorities can insist upon

certain requirements as provided for in the Tamil Nadu Private Colleges (Regulation) Act 1976 and Rules. When the Minority Institution enjoys a complete protection under Article 30 of the Constitution of India, such protection cannot be trifled with by the Educational authorities by insisting on application of certain requirements provided under the Act and Rules, which provisions cannot be applied to the Minority Institutions. In fact, in respect of appointment of non-teaching staff, requirement of advertisement was not envisaged in the Rules and such requirement cannot be supplemented by any executive action of the respondents. Unless the Rules are supplanted providing for such requirement, the Educational authorities cannot insist on the same, which is not found specifically in the Rules. Even otherwise, such requirement, even if introduced in the Rules, cannot be pressed into service in respect of minority institutions.

11.As rightly contended by the learned Senior counsel for the petitioner Rule 11(4)(ii) was in relation to the appointment of teaching staff by the College Committee. But as far as the Minority Institutions are concerned, the College Committee is not required to be constituted under Section 11 of the Act unlike in respect of the institutions not being Minority institutions. In the absence of such regulation, this Court is unable to countenance the action of the respondents 2 and 3 in refusing to grant approval of the appointments of the seven non-teaching staff in the petitioner institution. The refusal to grant approval for the subject appointments, would therefore, cannot stand the test of judicial scrutiny and the same is liable to be interfered with. The insistence on requirement of advertisement for appointment of non-teaching staff in the Minority Institution is without the authority of law and the same cannot be enforced as against the petitioner institution. The petitioner institution comes under the protective cover, being the minority institution, under Article 30 of the Constitution of India, such protective cover cannot be sought to be uncovered by the insistence on a statutory requirement, which first of all cannot be made applicable for the non-teaching staff and secondly such requirement cannot be enforced in the teeth of the Constitutional protection guaranteed to the minority institutions. In fact, the claim of the petitioner is fully covered by the decisions of the Hon'ble Supreme Court of India, cited above.

12.For the above said reasons, this Court has no hesitation in allowing the writ petitions. Accordingly, the writ petitions are allowed and the impugned orders of the third respondent in A.Thi.Mu.No.2684/Aa3/2018, dated 20.08.2018 and A.Thi.Mu.No.274/Aa3/2018, dated 20.08.2018, respectively, are hereby set aside and the third respondent is directed to grant approval forthwith for the appointments of the seven non-

teaching staff as well as the appointment of Sr.A.Sippriyan Mary as Lab Assistant in the petitioner's College and also disburse staff grant towards their salary and allowances with respect to their respective date of appointments. The third respondent is directed to pass appropriate orders in this regard within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently connected miscellaneous petitions are closed.

msk

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary,
Government of Tamil Nadu,
Department of Higher Education,
Fort St.George,
Chennai-600 009
- 2.The Director of Collegiate Education,
College Road, Chennai-600006
- 3.The Joint Director of Collegiate Education,
Coimbatore Region, Coimbatore,
Coimbatore District 641 018

+3CCs to M/s.Isaac Chambers, Advocate, SR.No.70239
+1cc to the Govt.Pleader, Vide Sr.No.70009

W.P.Nos.17511 and 17518 of 2019

Kak(26/08/2019)

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