

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24-04-2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.27095, 12126, 12127, 12128, 12129, 31076 and 31083 of 2018

And

W.M.P.Nos.14147, 14148, 14135, 14136, 14139, 14140, 14143, 14144, 36360, 36363, 31517, 36258, 36259, 36263, 36265, 36266, 36268 of 2018, 2009 and 2013 of 2019

Dr.R.Nanthini ...Petitioner in WP 27095/18  
Dr.K.S.Sridhar ... P-1 in WP 12126to12129/18  
Dr.G.Karunamoorthi ... P-2 in WP 12126to12129/18  
R.Natarajan ... P-1 in WPs 31076&31083/18  
M.Kolangiappan ... P-2 in WP 31076&31083/18  
T.Sekar ... P-3 in WP 31076&31083/18  
S.Saravanan ... P-4 in WP 31076&31083/18

- Vs -

WP No.27095/2018

- 1.The State of Tamil Nadu,  
Represented by its Principal Secretary to Government,  
Higher Secondary Education Department,  
Fort St. George,  
Chennai-600 009.
- 2.The University of Madras,  
Represented by its Registrar,  
Chepauk,  
Chennai-600 005.
- 3.The Directorate of Collegiate Education,  
College Road,  
Chennai-600 006.
- 4.The Pachaiyappa's Trust Board and  
Member Secretary, College Committee of  
Pachaiyappa's College, Chennai-600 030  
Represented by Hon'ble Mr. Justice R.Shanmugam,  
Interim Administrator,  
Pachaiyappa's Trust Board Office,  
Pachaiyappa's College, Chennai-600 030.

5.Dr.N.Shettu  
Principal,  
Pachaiyappa's College,  
Chennai-600 030.

.. Respondents

WP No.12126 to 12129 of 2018:

1.The State of Tamil Nadu,  
Represented by its Principal Secretary to Government,  
Higher Secondary Education Department,  
Fort St. George,  
Chennai-600 009.

2.The Vice Chancellor,  
University of Madras,  
Chepauk,  
Chennai-600 005.

3.Pachaiyappa's Trust Board,  
Represented by its Member Secretary,  
Pachaiyappa's Trust Board Office,  
Pachaiyappa's College,  
Chennai-600 030.

4.Director of Collegiate Education,  
Office of the Director of Collegiate Education,  
9<sup>th</sup> Floor, EVK Sampath Buildings,  
College Road,  
Chennai-600 006.

5.The Selection Committee,  
Represented by its Chairman,  
Pachaiyappa's Trust Board Office,  
Pachaiyappa's College,  
Chennai-600 030.

.. Respondents

6.Dr.N.Shettu  
Principal,  
Pachaiyappa's College,  
Chennai-600 030.

..Respondent in W.P.No.12126/2018  
(R6-impleaded as per order dated 22.04.2019  
in W.M.P.No.11911/2019 in W.P.No.12126/2018)

WP No.31076 & 31083 of 2018:

1.The State of Tamil Nadu,  
Represented by its Principal Secretary to Government,  
Higher Secondary Education Department,  
Fort St. George,  
Chennai-600 009.

2.The Vice Chancellor,  
University of Madras,  
Chepauk,  
Chennai-600 005.

3.Pachaiyappa's Trust Board,  
Represented by its Member Secretary,  
Pachaiyappa's Trust Board Office,  
Pachaiyappa's College,  
Chennai-600 030.

4.Director of Collegiate Education,  
Office of the Director of Collegiate Education,  
9<sup>th</sup> Floor, EVK Sampath Buildings,  
College Road,  
Chennai-600 006.

5.The Selection Committee,  
Represented by its Chairman,  
Pachaiyappa's Trust Board Office,  
Pachaiyappa's College,  
Chennai-600 030.

6.The College Committee,  
Represented by its Secretary,  
Pachaiyappa's Trust Board Office,  
Pachaiyappa's College,  
Chennai-600 030.

... Respondents

7.Dr.N.Shettu  
Principal,  
Pachaiyappa's College,  
Chennai-600 030.

...Respondent in W.P.No.31076/2018

(R7-impleaded as per order dated 22.04.2019  
in W.M.P.No.11917/2019 in W.P.No.31076/2018)

WP No.27095 of 2018 is 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 proceedings of the then member Secretary of the College Committee of the Pachaiyappa's College, Chennai-600 030, now represented by the fourth respondent in file number Rc.No.A1/682/2010 dated 20.4.2018 and the consequential proceedings in R.C.No.A1/682/2010 dated 9.6.2018 and to quash the same and directing the fourth respondent to redo the selection strictly in accordance with the UGC Regulation and Tamil Nadu Private Colleges (Regulation) Rules, 1976 within a time frame and consider the application of the petitioner for

the post of Principal. [Prayer amended vide order of Court dated 25.2.2019 made in WMP No.2003 of 2019 in WP No.27095 of 2018]

WP Nos.12126 to 12129 of 2018 are filed under Article 226 of the Constitution of India praying to issue Writs of Certiorarified Mandamus, calling for the records in connection with the impugned Circular of the third respondent dated 20.4.2018 in proceedings Rc.Nos.A1/682/2018, A1/683/2018, A1/684/2018 and A1/685/2018 and quash the same as illegal arbitrary and not binding on the petitioners and consequently direct the third respondent to issue a fresh Notification in accordance with the Regulation of the University Grants Commission, 2010, implemented by the University of Madras in proceedings No.A-II/MPV/UGC Regulation 2010/2018/564 to the post of Principal.

WP Nos.31076 and 31083 of 2018 is filed for the issuance of Writs of Certiorarified Mandamus, calling for the records in connection with the impugned Circular of the third respondent dated 20.4.2018 in proceedings RC Nos.A1/682/2018 and A1/685/2018 and quash the same and consequently direct the third respondent to reconstitute the fifth respondent Section Committee to issue a fresh Notification in accordance with the Regulation of the University Grants Commission, 2010 implemented by the University of Madras in proceedings No.A-II /MPV/UGC Regulation 2010/2018/564 to the post of Principal.

For Petitioner in  
WP 27095/18 : M/s.B.Saraswathi and  
J.Srinivasamohan.

For Petitioner in  
WPs 12126 to 12129/2018: Mr.V.Srinath

For Petitioner in  
WPs 31076 31083/2018 : Mr.A.Ramesh Babu

For R-1&R-3 in WP 27095,: Mr.V.Kadhirvelu,  
R-1&R-4 in WPs 12126 to Special Government Pleader.  
12129/18,R-1 and R-4  
in WPs 31076&31083/18

For R-2 in WPs 27095,: Mr.Stalin Abhimanyu  
WPs 12126 to 12129/18,  
R-2 in WPs 31076&31083/18

For R-4 in WPs 27095,  
R-3 in WPs 12126 to 12129/18,  
R-3 in Wps31076&31083/18  
R-5 in WPs 12126to12129/18,  
R-5&R-6 in WPs 31076&  
31083/18 : Mr.K.V.Sundararajan

For R-5 in WP 27095/18: Mr.P.V.S.Giridhar for  
Mr.D.Prasanna

For R6 in  
W.P.No.12126/2018

For R7 in  
W.P.No.31076/2018 : Mr.N.R.Chandran,  
Senior counsel  
for M/s.Prasanna.D.

#### C O M M O N O R D E R

Notifications issued by the Pachaiyappa's Trust Board for appointment to the Post of Principal dated 20.04.2018 are under challenge in all the writ petitions and in W.P.No.27095 of 2018, the consequential proceedings dated 09.06.2018, appointing Dr.N.Shettu as Principal at Pachaiyappa's College, Chennai is also under challenge.

2. All these writ petitions are filed, challenging the process of selection conducted by the Selection Committee appointed by the Pachaiyappa's Trust Board and mainly on the ground that the University Grants Commission(UGC) Regulations as well as Section 11(4) of the Tamil Nadu Private Colleges (Regulation) Act were not followed. The grounds for challenging the Notification are common in all these batch of writ petitions and thus, all these writ petitions are taken together and the common order is passed.

3. Pachaiyappa's College, Chennai is one among the six colleges administered by the Pachaiyappa's Trust Board. The Pachaiyappa's Trust Board is now under the administrative control of the Interim Administrator appointed by the High Court. The colleges administered by the Pachaiyappa's Trust Board are governed by the Tamil Nadu Private Colleges (Regulation) Act and the Rules, 1976. Rule 11 of the Tamil Nadu Private Colleges (Regulation) Rules, 1976, provides promotion in respect of teaching staff shall be made on the ground of merit and ability. The sanctioned posts can be filled up by way of

promotion or by direct recruitment. While making the promotions, the names of all the eligible and qualified teachers working in the Colleges are to be considered.

4. Only in the event of non-availability of qualified teachers within the college, then the administration can go in for filling up the post by way of direct recruitment.

5. Rule 11(4) of the Tamil Nadu Private Colleges (Regulation) Rules, 1976, makes it clear that when more than one college is administered by the Educational Agency, all colleges under the control of such Educational Agency shall be treated as one Unit.

6. On the retirement of one Dr.S.Kaliraj on 31.5.2018, the College Committee of Pachaiyappa's College, Chennai-30 has appointed the fifth respondent Dr.N.Shettu as the Principal of Pachaiyappa's College for Men in proceedings dated 9.6.2018, which is impugned in WP No.27095 of 2018.

7. The writ petitioner in WP No.27095 of 2018 claims that she is one among the senior most Associate Professors working in the Pachaiyappa's Trust Board. The writ petitioner states that the order impugned passed by the then Member Secretary appointing the fifth respondent as the Principal of Pachaiyappa's College for Men, Chennai-30, refers to the proceedings of the Selection Committee dated 7.5.2018 as well as the proceedings of the College Committee Meeting of Pachaiyappa's College dated 9.6.2018.

8. The Selection Committee under the provisions of the University Grants Commission Regulation was also said to be constituted by the Pachaiyappa's Trust Board and approved by the Vice Chancellor of University of Madras. The Selection Committee proceedings dated 7.5.2018 refers to the Tamil Nadu Private Colleges (Regulation) Act, 1976 and other proceedings.

9. As per the said proceedings of the Selection Committee, the Committee unanimously selected the fifth respondent for the post of Principal, Pachaiyappa's College for Men, Chennai-30. The proceedings of the College Committee dated 9.6.2018 reveals that the Committee decided to accept the recommendations of the Selection Committee.

10. The representatives of the College Committee had sent a complaint to the third respondent alleging certain serious irregularities in convening the meeting of the College Committee and the decision taken to accept the recommendations of the Selection Committee.

11. It is contended that neither the Pachaiyappa's Trust Board nor the Selection Committee have made public the results of the selection for the post of Principal, Pachaiyappa's College for Men or for other colleges. The Trust Board has appointed the Principal for the following Colleges on 9.6.2018:-

- "(i) Pachaiyappa's College for Men, Chennai 600 030;
- (ii) Chellammal Women's College, Chennai;
- (iii) Pachaiyappa's College for Men, Kancheepuram; and
- (iv) Pachiyappa's College for Women, Kancheepuram."

12. As per Rule 11 of the Tamil Nadu Private Colleges (Regulation) Rules, 1976, all the six colleges under the control of the Pachaiyappa's Trust have to be treated as one Unit for promotion of Associate Professors as Principals. The selection and promotion should be made only on the said basis. For selecting Principals for Pachaiyappa's College for Men, Grade-I College and three other Grade-II Colleges, the senior most Associate Professors working in the Colleges under the control of the Educational Agency alone should have been considered for selection and not on the basis of applications.

13. The writ petitioner states that transparent procedure had not been followed by the Selection Committee or by the College Committee. Two members of the College Committee of Pachaiyappa's College for Men had made a complaint to the third respondent / Directorate of Collegiate Education, alleging serious irregularities.

14. The procedures followed by the Selection Committee was neither transparent nor made available in the public domain. The method adopted by the Selection Committee to select one individual for each college is also not made known to the persons concerned. In fact, the Committee should have recommended the names of the persons in the order of preference to the College Committee for appointment. The entire result of the selection was kept under secret. The College Committee had approached the Selection Committee and on that basis, the impugned order of appointment had been issued. Under those circumstances, the College Committee Members had submitted the complaint to the third respondent stating that serious allegations and irregularities occurred in the process of selection and more specifically, in the matter of appointment of the fifth respondent as Principal of Pachaiyappa's College for Men, Chennai-30.

15. At the outset, it is contended that Rule 11(4) of the Tamil Nadu Private Colleges (Regulation) Rules, 1976, were not followed while appointing the fifth respondent as the Principal. This apart, the entire proceedings of the Selection

Committee was kept as secret. The affairs and the mandatory transparency contemplated under the Act and the Rules were not followed. Thus, the selection itself is tainted with mala fides and in violation of the Act and the Rules as well as the UGC Regulations and more-so the appointment of the fifth respondent is liable to be quashed.

16. The learned counsel appearing on behalf of the fifth respondent in WP No.27095 of 2018 contended that the fifth respondent Dr.N.Shettu was appointed as the Principal of the Pachaiyappa's College, Chennai. The Pachaiyappa's College, Chennai is designated as Grade-I and the fifth respondent was found fully qualified in accordance with the UGC Regulations and the Selection Committee constituted selected the fifth respondent and appointed in proceedings dated 9.6.2018. The appointment of the fifth respondent was approved by the University of Madras and subsequently by the Director of Collegiate Education in proceedings dated 27.9.2018. In view of the fact that the writ petitioners have not challenged the approval of appointment issued by the Director of Collegiate Education, the present writ petitions are liable to be dismissed.

17. This apart, the fifth respondent Dr.N.Shettu is fully qualified and found suitable for appointment to the post of Principal by the newly constituted Selection Committee and there is no infirmity in respect of appointment. This apart, the statutory recognition has been given to the appointment of the fifth respondent as Principal of Pachaiyappa's College at Chennai and the writ petitioners have not challenged the same and therefore, the present writ petitions are not maintainable.

18. Further, it is contended that the writ petitions are not maintainable on the ground that writ petitioner had not at all participated in the process of selection and therefore, the candidate, who had not participated in the process of selection, has no locus standi to challenge the Recruitment Notification or the appointment. The other writ petitioner, who has participated in the process of selection, is unconnected with the Pachaiyappa's College, Chennai and the Pachaiyappa's College, Chennai is concerned, the fifth respondent Dr.N.Shettu is posted as Grade-I Principal and therefore, the writ petition filed against him in WP No.27095 of 2018 is liable to be dismissed.

19. With reference to Rule 11(4) of the Private Colleges (Regulation) Act, 1976, the learned counsel for the fifth respondent contended that when the City College is designated as Grade-I, a separate Selection was conducted and as far as the other Colleges are concerned, the Post of Principal is designated as Grade-II. Thus, the Selection Committee had

conducted a separate selection for Grade-I Principal and another selection for Grade-II Principal by conducting separate selection, which cannot be construed as an illegality. When there is a difference in Grade, the selection was conducted separately. This apart, the majority of the members of the Selection Committee had signed the selection and approved the same. This being the factum, there is no irregularity in respect of the appointment of the fifth respondent Dr.N.Shettu as the Principal of the Pachaiyappa's College, Chennai.

20. The learned counsel for the fifth respondent in W.P.No.27095 of 2018, relied on the judgment of the Supreme Court in the case of Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational & Charitable Trust vs. State of Tamil Nadu [(1996) 3 SCC 15], wherein the Hon'ble Supreme Court in paragraph 26 held as under:-

"It cannot, therefore, be said that the test of two legislations containing contradictory provisions is the only criterion of repugnance. Repugnancy may arise between two enactments even though obedience to each of them is possible without disobeying the other if a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field. The contention of Shri Sanghi that there is no repugnancy between the proviso to Section 5(5) of the Medical University Act and Section 10-A of the Indian Medical Council Act because both can be complied with, cannot, therefore, be accepted. What has to be seen is whether in enacting Section 10-A of the Indian Medical Council Act, Parliament has evinced an intention to cover the whole field relating to establishment of new medical colleges in the country."

21. Relying on the abovesaid judgment, the learned counsel for the fifth respondent contended that when there is no bar under the UGC Regulations to conduct a separate selection for each College, the UGC Regulations alone will prevail over the State Act and therefore, Section 11(4) need not be considered at all. Though the State Act contemplates the concept of one Unit in respect of Single Educational Agency running more than the two Colleges, the same need not be applied strictly as in the present case the selections were conducted separately by the Pachaiyappa's Trust Board.

22. The judgment of the Andhra Pradesh High Court in the case of P.V.S.V.Prasada Rao and Others vs. Andhra University and Others [decided on 16.12.2005 in WP Nos.8835 of 1994 and 4885 of 1995], wherein the Hon'ble High Court of Andhra Pradesh in paragraph 124 held as under:-

"As noticed above some of the petitioners applied for the posts for which they are qualified. They appeared before the selection committee for the interview. They waited till Board of Management accepted the recommendation of the selection committees. They did not even approach this Court at that stage. They filed the writ petition after the University made appointments pursuant to resolution of the Board of Management questioning the very employment notification itself. Whether principles of estoppel and waiver operate against them? The answer must be in the affirmative. We are supported by three authorities of the Supreme Court on this point."

23. The learned counsel for the fifth respondent citing the judgment argued that the writ petitioners after completion of the process of selection approached this Court and they have not approached the Court soon after the publication of the Notification by the Authorities Competent. Thus, now after the appointment, the challenge made in respect of the Circular need not be considered.

24. It is contended by the learned counsel for the fifth respondent that all necessary parties were not impleaded. Even the appointed candidates pursuant to the impugned Notification had not been impleaded as parties in the writ petition. Without providing an opportunity to all such appointed candidates, the writ petition cannot be decided on merits and it is to be dismissed as not maintainable.

25. The learned counsel appearing on behalf of the writ petitioner cited the judgment of the High Court of Madras in the case of K.R.S. Girija Shyamsundar (Dr.) v. State of Tamil Nadu [(2015) 3 LW 163], wherein the High Court of Madras considered the selection process to be conducted as per the UGC Regulations. The relevant paragraphs 17, 18, 19, 20, 21, 22, 23, 24 and 29 are extracted hereunder:-

"17. Selection Process:-

Under the Regulations, the University Grant Commission has formulated Performance Based Appraisal System (PBAS), which in turn, is based on the Academic Performance

Indicators (API). The selection procedure to the post of Principal as per the amended Regulation 6.1.0 is as follows:-

"6.1.0. 'The overall selection procedure shall incorporate transparent, objective and credible methodology of analysis of the merits and credentials of the applicants based on weightages given to the performance of the candidate in different relevant dimensions and his/her performance on a scoring system proforma, based on the Academic Performance Indicators (API) as provided in this Regulations in Tables 1 to IX Appendix III.

Provided that API scores will be used for screening purpose only and will have no bearing on expert assessment of candidates in Direct Recruitment/CAS (Career Advancement Scheme).

Provided also that the API score claim of each of the sub-categories in the Category III (Research and Publications and Academic Contributions) will have the following cap to calculate the total API score claim for Direct Recruitment/CAS.

| Sub-Category                                        | Cap as % of API cumulative score in application |
|-----------------------------------------------------|-------------------------------------------------|
| III (A): Research papers (Journals, etc)            | 30%                                             |
| III (B) Research publications (Books, etc.)         | 25%                                             |
| III (C) Research Projects                           | 20%                                             |
| III (D) Research Guidance                           | 10%                                             |
| III(E) Training Scores and Conference/Seminar, etc. | 15%                                             |

In order to make the system more credible, universities may assess the ability for teaching and/or research aptitude through a seminar or lecture in a class room situation or discussion on the capacity to use latest technology in teaching and research at the interview stage. These procedures can be followed for both direct recruitment and CAS promotions wherever selection committees are prescribed in these Regulations.

18. Similarly Clause 6.0.2 of the Pre-

Regulation 2010 has been amended and substituted in the following manner.

"6.0.2 The Universities shall adopt these Regulations for selection committees and selection procedures through their respective statutory bodies incorporating the Academic Performance Indicator (API) based Performance Based Appraisal System (PBAS) at the institutional level for University Departments and their Constituent colleges/ affiliated colleges (Government/ Government-aided/Autonomous/Private Colleges) to be followed transparently in all the selection processes. An indicative PBAS template proforma for direct recruitment and for Career Advancement Schemes (CAS) based on API based PBAS is annexed in Appendix III. The universities may adopt the template proforma or may devise their own self-assessment cum performance appraisal forms for teachers. While adopting this, universities shall not change any of the categories or scores of the API given in Appendix-III. The Universities can, if any wish so, increase the minimum required score or devise appropriate additional criteria for screening of candidates at any level of recruitment."

19. Clause 6.0.9 speaks about the API scoring system in the process of selection and the assessment by the Selection Committee with the appropriate weightages. It is apposite to reproduce the said provision.

"6.0.9 The Academic Performance Indicator (API) scoring system in the process of selection of Principal shall be similar to that of directly recruited College Professors. In addition, the selection committee shall assess the the following dimensions with the weightages given below:

- a. Assessment of aptitude for teaching, research and administration (20%);
- b. Ability to communicate clearly and effectively (10%);
- c. Ability to plan institutional programmes, analyze and discuss curriculum development and delivery, research support and college development/administration (20%)

d. Ability to deliver lecture programmes to be assessed by requiring the candidate to participate in a group discussion or exposure to a class room situation by a lecture (10%); and

e. Analysis of the merits and credentials of the candidates on the basis of the Performance Based Appraisal System (PBAS) proforma developed by the affiliating University based on these Regulations (deduced to 40% of the total API score)."

20. Interpretation of 6.1.0:-

6.1.0 of the Regulation lays emphasis on the procedure, which will have to be incorporated. It is required to be transparent, objective with the credible methodology of analysis of the merits and credentials of the applicants. It has two parts. One is based on the weightages given to the performance of the candidates in different relevant dimensions. The second one is on the performance on a scoring system proforma, based on the API as provided in the Regulations in Tables 1 to IX of Appendix III. The proviso to Regulation 6.1.0 says that API scores will be used for screening purpose only. It will not have any bearing on expert assessment of candidates.

21. Under 6.0.2., the University concerned either adopt the template proforma or devise its own self assessment cum performance appraisal forms for teachers. However, it shall not change any of the categories or scores of the API given in Appendix III.

22. Now coming back to Regulation 6.0.9, the assessment of the candidate would include a, b, c and d. These four components constitute 60% of the marks to be awarded by the Selection Committee. Now the dispute is with regard to Clause (e). As discussed earlier, a PBAS can be developed by the University concerned. For that purpose, it can also adopt the one, which is available with the UGC. In the case on hand, it was adopted based upon the analysis made on the merits and credentials of the candidates on the basis of the PBAS proforma (deduced to 40% of the total API Scores).

23. A detailed procedure has been provided in Table I and III of Appendix III insofar as the appointment of the Professor is concerned. Therefore, the total API score will have to be deduced to 40%. In other words, while Clause a to d deals with assessment by the Selection Committee, Clause (e) deals with analysis based upon PBAS, the remaining 60% marks are to be meant as in addition to the analysis made with respect to the 40% marks. To put it differently, of the 100% marks, the Selection Committee can assess it upto 60% and remaining 40% is analysis of the marks obtained on the basis of PBAS. In other words, the Regulation 6.0.9 does not give 100% discretion to the Selection Committee but only 60% marks. For example, if a candidate has obtained 60% marks by way of API scores for the purpose of evaluating his performance, 60 marks would be deduced to 24 marks by adopting the following methodology  $60 \times 40/100 = 24$ . This 24 marks would be added with the percentage marks awarded under Clause a, b, c and d of the Regulation 6.0.9. Admittedly, such an yardstick has not been followed as it is the specific case of the fourth respondent as the discretion vested in it is unfettered.

24. Clause 6.1.0:-

As discussed above, there is no difficulty in understanding the object and rationale behind clause 6.1.0. It makes it abundantly clear that over all selection process shall have transparent objective and credible methodology. Though the proviso states that API scores will be used for screening purpose only but it should be construed inconsonance with Regulation 6.0.9. In other words, the marks obtained by way of API scores form a different category and they do not have any bearing on the expert assessment on the candidates. To put it differently, the API scores cannot act as a bar with respect to the expert assessment of Clause a to d of the Regulation 6.0.9 as dealt with already. The object and rationale behind this is to prevent a selection solely based upon API scores and give a elbow room for the expert assessment.

29. In the result, the selection made in favour of the seventh respondent is set aside and consequently, the fourth respondent is directed to re-constitute the Selection Committee strictly in accordance with the Regulations of the year 2010. The fourth respondent will have to follow the selection procedure as contemplated under Regulations 6.0.9, 6.1.0 and 6.0.2 in the light of the discussions made. The entire exercise will have to be done by the fourth respondent within a period of twelve weeks from the date of receipt of a copy of this order."

26. The said judgment of the learned single Judge was confirmed by the Division Bench of this Court in Writ Appeal No.1222 of 2015 on 22.6.2017. The Special Leave Petition filed by the Management before the Supreme Court was also dismissed on 11.12.2017

27. The learned counsel for the writ petitioners states that none of these procedures contemplated under the UGC Regulations as well as the Private Colleges (Regulations) Act, 1976 had been followed by the respondents while issuing the impugned Notification as well as at the time of appointing the respondents as Principal.

28. In the case of Commissioner of Income Tax, Mumbai vs. Anjum M.H. Ghaswala and Others [(2002) 1 SCC 633], wherein the Hon'ble Supreme Court of India, in paragraph-27, held as under:-

"27. Then it is to be seen that the Act requires the Board to exercise the power under Section 119 in a particular manner i.e. by way of issuance of orders, instructions and directions. These orders, instructions and directions are meant to be issued to other income tax authorities for proper administration of the Act. The Commission while exercising its quasi-judicial power of arriving at a settlement under Section 245-D cannot have the administrative power of issuing directions to other income tax authorities. It is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute

itself. If that be so, since the Commission cannot exercise the power of relaxation found in Section 119(2)(a) in the manner provided therein it cannot invoke that power under Section 119(2)(a) to exercise the same in its judicial proceedings by following a procedure contrary to that provided in sub-section (2) of Section 119."

29. Relying on the abovesaid judgment, the learned counsel for the writ petitioners states that when the Rule prescribes a particular procedure, the authorities are bound to exercise their powers in the manner prescribed in the Statute as well as in the Regulations. In the present cases, the respondents had not notified the UGC Regulations properly and further not followed the procedures contemplated for conducting the selection. Thus, the entire selection process is bad in law.

30. On the same line, the Supreme Court passed another order in *Tata Chemicals Ltd. vs. Commissioner of Customs* [(2015) 11 SCC 628], wherein the Supreme Court in paragraph 18 held as under:-

"18. .... In law equally the Tribunal ought to have realised that there can be no estoppel against law. If the law requires that something be done in a particular manner, it must be done in that manner, and if not done in that manner has no existence in the eye of the law at all. The Customs Authorities are not absolved from following the law depending upon the acts of a particular assessee. Something that is illegal cannot convert itself into something legal by the act of a third person."

31. The Pachaiyappa's Trust filed a counter-affidavit stating that Mr. Justice P. Shanmugam, Retired Judge of Madras High Court, was appointed as an Interim Administrator on 14.6.2018 to conduct the election to Pachaiyappa's Trust Board to administer the Board till elections are over and new Board of Trustees take charge. The Secretary, who filed the counter-affidavit, states that he was appointed as Secretary In-charge of Pachaiyappa's Trust by the Interim Administrator.

32. The counter filed by the Secretary of Pachaiyappa's Trust enumerates that the issues are in connection with the selection and appointment to the Post of Principal of Pachaiyappa's college. The Pachaiyappa's Trust Board issued four Circulars, all dated 20.04.2018, notifying vacancies in the post

of Principal of four Colleges (1) Pachaiyappa's College, Chennai (2) Chellammal Women's College, Chennai (3) Pachaiyappa College for Women, Kanchipuram and (4) Pachaiyappa's College for Men, Kanchipuram. Excepting Pachaiyappa's College, Chennai, which is designated as Grade-I, all other Principal Posts are Grade-II. The Circular is common excepting the names of the Colleges. The post of Principal being promotional post, the Associate Professors/Professors working in the Colleges in the management of Pachaiyappa's Trust Board are eligible to apply to the post. All these four Circulars are challenged in WP Nos.12126, 12127, 12128 and 12129 of 2018 by Dr.K.S.Sridhar and Dr.G.Karunamurthy. Four other petitioners Thiru R.Natarajan and others have filed impleading petitions in WP No.12126 of 2018.

33.It is the stand of the Pachaiyappa's Trust Board in their counter that the selection for the post of Principals in each of the four colleges were taken up separately. The following number of persons applied for the post of Principal in those colleges and the dates of interview are as follows:-

|                                                 |   |           |            |
|-------------------------------------------------|---|-----------|------------|
| Pachaiyappa's College, Chennai                  | - | 8 persons | (7.5.2018) |
| Chellammal College for Women                    | - | 3 persons | (7.5.2018) |
| Pachaiyappa's College for Women,<br>Kanchipuram | - | 3 persons | (8.5.2018) |
| Pachaiyappa's College for Men,<br>Kanchipuram   | - | 7 persons | (9.5.2018) |

34. It is true that as per Rule 11(4)(ii) of Tamil Nadu Private Colleges (Regulation) Rules, 1976 there could be only one selection process in case of one Unit. The Circulars dated 20.4.2018 also state as follows:-

"Selection to the post of Principal, is from among the holders of Associate Professors/Professors in the Colleges of Pachaiyappa's Trust.

As per Rule 11(4)(i) of Tamil Nadu Private Colleges (Regulation) Rules 1976 promotion in respect of teaching staffs shall be made on the grounds of merit and ability, seniority being considered only where merit and ability or approximately equal. The Colleges run by the Pachaiyappa's Trust Board will be treated as one Unit as per explanation to Rule 11(4)(ii) of the Tamil Nadu Private Colleges (Regulation) Rules, 1976."

35. The selection as per the statutory rules read with Circular must have been done treating the colleges as one Unit. The post of Principals under the management of Pachaiyappa's Trust are transferable and under the control of one Educational Agency. By treating as one Unit all the teaching staffs in all the colleges would have more opportunity for participating in the selection and equality in assessing the merit and ability.

36. Pachaiyappa's Trust Board has taken the stand of one Unit in a Writ Petition No.26180 of 2017 (Pachaiyappa's Trust Board vs. UGC and University of Madras) filed by them against the University of Madras. When University refused the approval for the Assistant Professors selected on the ground that separate selection should have been done with Expert in the field, Pachaiyappa's Trust Board challenged the said order stating that selections in the colleges of Pachaiyappa's Trust Board must be treated as one Unit.

37. It is true that Clause IV of UGC Regulations is omitted in the Circular dated 20.4.2018. UGC Regulations 2010, apart from setting out the composition of Selection Committee, also sets out minimum qualifications in the Annexure to the Regulations prescribes table for API calculations under Category III. The three persons constituted the Selection Committee on behalf of the Management in so far as Principal of Pachaiyappa's College selection is concerned are:

- (1) Thiru S.Jayachandran, President/Chairman Governing Body;
- (2) Dr.V.Ramanathan, Financial Trustee, Chairperson  
Nominee (Member);
- (3) Dr.R.Prabaakaran, Trustee, Chair Person's Nominee  
(Member)

It is not clear as to who among the two is an Expert in academic administration.

38. The assessment of the candidates as per the records available are done by awarding marks as follows:-

| Assessment        | Maximum | Maximum               |
|-------------------|---------|-----------------------|
| 01.Qualifications | -10-    | ] Academic            |
| 02.Service        | -10-    | ] Qualifications and  |
|                   |         | ] Experience 20 marks |
| 03.M.Phil Guided  |         | -2- )                 |
| 04.Ph.d. Guided   |         | -4- )                 |

|                                                                                        |        |                                    |
|----------------------------------------------------------------------------------------|--------|------------------------------------|
| 05.Project (Minor) funded by UGC/DST/MOES/ETC-2-                                       | )      |                                    |
| 06.Project (Major) funded by UGC/DST/MOES/ETC-4-                                       | )      | Research                           |
| 07.Seminars (National Level) organised                                                 | -2-    | ) Activities                       |
| 08.Seminars (International Level) organised                                            | -2-    | ) 30 marks                         |
| 09.Conference (National Level) organised                                               | -2-    | )                                  |
| 10.Conference (International Level) organised                                          | -2-    | )                                  |
| 11.Books Authored                                                                      | -2-    | )                                  |
| 12.Journals Published (National)                                                       | -3-    | )                                  |
| 13.Journals Published (International)                                                  | -5-    | )                                  |
| 14.Head of Department                                                                  | -4-    | )                                  |
| 15.Principal-in-Charge                                                                 | -4-    | )                                  |
| 16.Additional/Deputy Warden                                                            | -3-    | )                                  |
| 17.NCC                                                                                 | -2-    | )                                  |
| 18.NSS                                                                                 | -2-    | )                                  |
| 19.Academic Bodies at University level AC/Senate/Syndicate/VOS                         | -8-)   | Administrative Experience 30 marks |
| 20.Academic Bodies at College level, College Committee/College Council/ Sub Committee. | -4-    | )                                  |
| 21.Membership in Academic Body at various Universities                                 | -3-    | )                                  |
| 22.Interview                                                                           | -20-)  | 20 marks                           |
| Total                                                                                  | -100-) | 100 marks                          |

39. The maximum marks awardable to each of the 22 areas to the candidates are given along with the serial numbers as above. The marks thus awarded to the above candidates are consolidated and the highest scorer out of 100 is selected. As per the Annexure to the UGC 2010 Regulations 4.2.0.(iv) a minimum score as stipulated in the Academic Performance Indicator (API) based

Performance Based Appraisal System (PBAS) as set out in the Regulations Appendix III is to be followed. A very detailed procedure is prescribed in S.Nos.III-A to III-E by awarding scores and assessment grades and award of points. In so far as the Colleges Principals selection are concerned this procedure appears to have not been followed. The date of interview for Principal of Pachaiyappa's College was 7.5.2018 at 11.00 A.M. The College Committee Meeting was held on 7.5.2018. By another proceedings of the Urgent Meeting of the College Committee dated 9.6.2018, the appointment order was issued in favour of the fifth respondent Dr.N.Shettu. Two of the nine Committee Members have not signed the Minutes of the College Committee. In so far as assessment of merits is concerned, it is both objective as well as subjective. It is submitted that it is for the writ petitioners to establish whether the parameters set out in the UGC Regulations 2010 were followed or not.

40. Pachaiyappa's College notified four vacancies in the post of Principals of four Colleges under the control of Pachaiyappa's Trust. As per Rule 11(4) of the Tamil Nadu Private Colleges (Regulation) Rules, 1976 promotion to the said post shall be made from among the Teachers working in those Colleges on the ground of merit and ability, seniority being considered only where merit and ability are approximately equal. The 'Explanation' to this Rule states that for the purpose of promotion if an Educational Agency has established and administered more than one College, then the Colleges under the control of that Educational Agency shall have to be treated as one Unit.

41. It is true that there was separate Selection Committee for each of the four Colleges and selections were made on the basis of interview and qualifications. The candidates were considered on their performance in the interview by awarding marks under different heads by each of the Selection Committee Members. There is no requirement that the marks obtained by the candidates is to be disclosed before selection and appointment.

42. The University of Madras filed a counter affidavit, stating that the Selection Committee has followed the Procedure and accordingly, they have approved the selection process. The entire perusal of the affidavit shows that they have superficially verified the proposal submitted by the Management of Pachaiyappa's Trust Board and they have not gone into the procedures followed with reference to the original documents. However, with caution in paragraph 14 of the affidavit, the Registrar, University of Madras, who filed an affidavit, stating that "This respondents undertake to initiate stern action if there is any violation/deviation of UGC norms in the selection

process." Thus, mere narration of certain facts are insufficient to circumvent the illegalities and irregularities committed by the Selection Committee of Pachaiyappa's Trust Board.

43. The Interim Administrator submitted common written arguments by stating as follows:-

It is submitted that the counter of the Pachaiyappa's Trust Board in nutshell is as follows (i) The Rule 11(4) of the Tamil Nadu Private Colleges Rule and the explanation clearly stipulates that in case of promotion the Colleges under the control of Education Agency shall be treated as one Unit; (ii) The Circular clause 4.2.0 - Sub-clause 4, namely 'A' minimum score as stipulated in the Academic Performance Indicator (API) based performance Based Appraisal System (PBAS), as set out in the Regulations in Appendix III for direct recruitment of Professors in Colleges was omitted to be incorporated in the Circular and (iii) The constitution of Selection Committee was also not in consonance with the UGC Regulations.

44. It is submitted that the UGC Regulations are statutory and have to be followed meticulously and properly as spelt out in the Regulations. This Hon'ble Court as well as the Supreme Court as on many occasions has clearly held that the UGC Regulations are statutory and that they have to be mandatorily followed. The non-following of the same would also result in cancellation of the grant/aid by the UGC Grants Commission. Some of the decision, in this regard are as follows:-

1. 1994 Supplement 3 SCC 516;
2. 2015 (3) Law Weekly 163;
3. 2008 (2) MLJ 593;
4. 2002 (1) SCC 633;

45. It is submitted that the Rule 11(4) reads as follows:

"[(4) (i) Promotions in respect of teaching staff shall be made on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal, and in respect of non-teaching staff promotions shall be made on seniority basis, provided other conditions regarding qualification are satisfied]

[(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 the 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 applications 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.]

Explanation:- For purposes of this Rule, if an Educational Agency has established and administered more than one College, then the Colleges under the control of that Educational Agency shall be treated as one Unit."

Hence, a mere perusal of the above Rule shows that if Educational Agency (PTB) is administering more than one College, then the Colleges under the Control of the Educational Agency (PTB) shall be treated as one Unit for the purpose of promotions. Here admittedly for the appointment of Principal for four Colleges separate Selection Committee has been constituted and separate selection process has been done without treating all the Colleges as one Unit. The Circular dated 20.4.2018 also mentions that all the Colleges of the PTB have to be treated as one Unit.

46. The written arguments submitted by the Interim Administrator are to be viewed seriously for the purpose of deciding the issues involved in these writ petitions.

47. Large scale allegations are made against the Pachaiyappa's Trust. Various litigations are also pending against the Trust and on account of serious allegations, the Hon'ble High Court appointed an Interim Administrator, who in turn, after taking charge of the administration, scrutinised the files available on record and filed the counter-affidavit as well as the written arguments. When the Interim Administrator, in unambiguous terms, reiterated that the constitution of Selection Committee was not in consonance with the UGC Regulations as well as the Circular Clause 4.2.0 Sub-clause (4) namely 'A' minimum score as stipulated in the Academic Performance Indicator (API) based performance Based Appraisal System (PBAS), as set out in the Regulations in Appendix III for direct recruitment of Professors in Colleges was omitted are undoubtedly in violation of U.G.C.Regulations.

48. It is further contended that the UGC Regulations are statutory and those Regulations are to be followed mandatorily while appointing the College Teachers, principal etc. The failure on the part of the administration in following the UGC Regulations would result in cancellation of the Grant/Aid by UGC Grants Commission.

49. The State Act also contemplates that if the Educational Agency is administering more than one College, then the Colleges under the control of the Educational Agency shall be treated as one Unit for the purpose of promotions. However, for appointment to the post of Principal for four colleges, separate Selection Committee had been constituted and separate selection process was conducted without treating all the Colleges as one Unit. When these all are the statutory violations and illegalities now identified by the Interim Administrator and brought to the notice of this Court on record, this Court has no hesitation in coming to the conclusion that the entire selection was conducted not in consonance with the statutes, and regulations and more specifically on extraneous considerations.

50. This Court cannot come to the conclusion that the erstwhile Administrators were unaware of the UGC Regulations and the provisions of the Private Colleges (Regulation) Act. The Pachaiyappa's Trust is running these Colleges for several years, and the establishment is also the oldest one. Thus, ignorance of law, if at all pleaded can never be accepted by this Court. When certain violations of the Statutes are committed, this Court is bound to identify the reasons for such violations and the manner in which such violations are committed. There is no scope for drawing a factual inference that these officials are ignorant of Statute as well as the UGC Regulations. Contrarily, this Court has no doubt in its mind that, the authorities had committed these illegalities and violations, wantonly and intentionally in order to extend favouritism and nepotism to few people, whom they considered as their own men, or their choice.

51. Favouritism and nepotism are the greatest enemy to the constitutional mandates and perspectives. The Statutes and the UGC Regulations are enacted and implemented in order to ensure that the constitutional mandates are implemented without any violations. If the oldest establishment running several Colleges for several years and made appointments on ever so many occasions, this Court is of the considered opinion that, the act of violations and illegalities are committed intentionally in order to extend favouritism and nepotism to few Professors, who were all appointed to the top post of the Principal of such reputed Colleges.

52. Under these circumstances, this Court is bound to view the circumstances and the violations seriously. The Court has to ensure that such violations, favouritism and nepotism are not repeated again and again. It is pertinent to note that the public authorities namely the Director of Collegiate Education as well as the University of Madras were also not vigilant in

scrutinising the proposals submitted by the Pachaiyappa's Trust Board. Contrarily, appointment of approvals were granted without even verifying the procedures followed for selecting the candidates and in respect of the appointments made.

53. The salary to these Professors, Principal and other staffs are being paid from the taxpayers' money. The Officials of the Directorate of College Education are accountable and responsible for the taxpayers' money, which is being paid to these Principal/Professors and other staffs working in the colleges. When huge amount of public money is involved towards payment of salaries to these public servants, the Director of Collegiate Education is expected to be doubly cautious, while granting approval of appointments to these posts.

54. Contrarily, the approval of appointments cannot be made in a routine manner. Even without scrutinising the notifications issued by the Management and the procedures of selection followed in consonance with the State Act as well as the UGC Regulations. Thus, those officials, who all are accountable and responsible, are also liable to be prosecuted for their lapses, negligence and dereliction of duty, if at all such approvals are granted intentionally without even verifying the process of selection conducted by the Management. Thus, officials must be personally held liable and all suitable stringent actions are to be initiated to ensure that the efficiency in public administration is maintained by the State.

55. Efficiency in public administration is a constitutional mandate. The State is bound to maintain effective and efficient public administration and it is the constitutional duty. It is relevant to cite Article 335, which speaks about the claims of Scheduled Castes and Scheduled Tribes while making appointments to services and posts, which reads that "The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State".

56. The constitution emboldens that even in case of providing reservation to the Scheduled Castes and Scheduled Tribes, the State or Union must ensure maintenance of efficiency of administration in the making of appointments. Thus, the merit, transparency, and efficient administrations are not compromised in the Constitution, even while implementing the Rule of Reservation.

57. This being the constitutional principles, this Court is of an undoubted opinion that the violation of the

Statute and the UGC Regulations in the matter of appointment of Principal and Professors are to be viewed seriously. Such violations would certainly result inefficiency in the administration causing so much of imbalances and heart burdening issues amongst all other teaching staff and employees serving in educational institutions.

58. Maintaining morale of the teaching staff and employees, both in educational institutions and public organisations, are of paramount importance. An employee can be made to work efficiently only if he is confident that, he will get his appreciations or promotions in consonance with the Statutes and the Regulations in force. In the event of any doubt in the matter of following such Statutes and Regulations, no employee will get the sense of security in his employment and his future prospects would be in peril. Thus, efficiency in administration rests on the concept of integrity and honesty in implementing the Statutes and Regulations in its strict sense. This being the principles to be adopted by the Administrators, the violations intentionally done should never be viewed leniently or there is no scope for any misplaced sympathy by the Constitutional Courts. The Constitutional Courts are bound to ensure that the philosophies and ethos of the Constitution are maintained. Courts are duty bound to kindle the State or Union to thrive hard to achieve the constitutional goals.

59. The concept of democracy can be sharply widened only by improving the efficiency of the public administration. More specifically in educational institutions, which all are the bricks and sources to uplift the development of the young citizen of our great Nation. Education is the potential source, through which a country can achieve the development. The importance of education can never be explained in simple terms. The benefits of education are described in many terms by many scholars, philanthropists and other intellectuals. Thus, implementing Statutes and Regulations in educational institutions can never be compromised nor be neutralized.

60. Under these circumstances, the very issuance of Notification itself is not in accordance with the UGC Regulations in the present lis on hand. The Interim Administrator appointed by the High Court conceded in his counter-affidavit as well as in the written arguments that the procedures were not followed in consonance with the Statute as well as the UGC Regulations as elaborated in earlier paragraphs. It is unambiguously established that the Pachaiyappa's Trust Board had not followed the Statutes and the UGC Regulations in its letter and spirit, so as to ensure clean selection process.

61. Contrarily, by violating the Statutes and the UGC

Regulations, the erstwhile management had appointed men of their choice on extraneous considerations and undoubtedly, such a situation would lead further corrupt activities by these public servants.

62. Once the corrupt activities are identified, the consequences of these corrupt activities lead to an advanced cancer. It cannot be stopped so easily by a person who was appointed on extraneous consideration. One can never expect that a dishonest selection would deliver honest results in administration. Thus, the irregularities and illegalities are going root of the matter and allowing such kind of activities in educational institutions would not only cause injustice to the society as a whole, but to be construed as the beginning for destruction of the institution itself. Few facts and circumstances argued by the respective counsels appearing in these writ petitions would explain the situation prevailing in Pachaiyappa's Trust Board. Some great souls contributed their valuable properties to the Trust with great ideas and visions. The men who occupied the position in the Trust subsequently made an attempt to destroy such visions aims and noble ideas. Undoubtedly they are committing the greatest sin and they are answerable and accountable at one point of time. Thereby, they are not only committing sin against the society but also committing sin against such great souls, who contributed their valuable properties, which they would have earned by their hard work. A right thinking person with good conscious can never allow such irregularities and illegalities to happen in such a reputed Trust, namely, Pachaiyappa's Trust.

63. The learned counsels to the lis on hand, even referred to the police complaints and other instances occurred with regard to the administration. However, this Court is not inclined to go deep into those issues as such issues are not closely connected with the issues raised in the present writ petitions. However, the Court cannot close its eyes in respect of such statements made before the high Court. Under these circumstances, this Court is of an undoubted opinion that some actions are certainly warranted in order to streamline the administration in the interest of the public at large as well as in the interest of the educational institutions being administered by Pachaiyappa's Trust.

64. The greatest concern for this Court is that the taxpayers' money is also not properly handled by the Educational Authorities of the State of Tamil Nadu. They are granting approval of appointments even without properly verifying the proposals submitted by the College Management and ensure that the appointments are made by strictly following the Statutes in force as well as the UGC Regulations. Thus, those officials of

the Higher Education Department are also certainly accountable and answerable to the public at large. No public servant has got any authority to misuse or abuse the finance of the State. Every rupee of the taxpayers' money must be spent judiciously by the State. State, being the custodian of the taxpayers' money, is constitutionally liable for any such lapses, irregularities and illegalities in relation to the financial expenditures. Under these circumstances, the violations which all are not identified or intentionally allowed to be continued must not be tolerated and those officials are also to be prosecuted and all suitable actions are to be initiated in this regard.

65. This Court has anxiously considered the counter-affidavit filed by the Secretary, In-charge of Pachaiyappa's Trust. The counter-affidavit filed in the present writ petitions are certainly relevant and important. The counter-affidavit exposes truthful submissions of the management in respect of the facts and circumstances. The counter-affidavit reveals that the procedures to be followed for the purpose of selection and appointment.

66. As per Rule 11(4)(ii) of the Tamil Nadu Private Colleges (Regulation) Rules, 1976, there could be only one selection process in case of one unit. The Circulars dated 20.4.2018 also enumerates selection to the post of Principal is from among the holders of Associate Professors/Professors in the Colleges of Pachaiyappa's Trust. As per rule 11(4)(i) of the Tamil Nadu Private Colleges (Regulation) Rules, 1976, promotion in respect of teaching staff shall be made on the grounds merit and ability, seniority being considered only where merit and ability are approximately equal. The colleges run by Pachaiyappa's Trust Board will be treated as one Unit, as per Explanation to Rule 11(4)(ii) of the Tamil Nadu Private Colleges (Regulation) Rules, 1976.

67. It is further contended by the respondent that Clause (4) of UGC Regulations are omitted in the Circular dated 20.4.2018. The UGC Regulations 2010 apart from setting out the composition of Selection Committee also sets out the minimum qualifications in the annexure to the Regulations prescribes table for API calculations under Category III. In respect of the Selection Committee appointed by the Management for selection to the post of Principal, it was not made clear as to who among the two members of the Committee is expert in academic administration.

68. The irregularities occurred in issuing Circulars for selection and the procedures followed for the selection to the post of Principal reveals that the Pachaiyappa's Trust Board Management had not followed the procedures contemplated under

the Tamil Nad Private Colleges (Regulation) Rules, 1976 as well as the UGC Regulations in this regard.

69. Beyond the independent consideration of this Court with reference to the Rules and the Regulations, the counter-affidavit filed by the Secretary, In-charge of Pachaiyappa's Trust reveals that such procedures had not been followed by the erstwhile management, who conducted the selection. When the facts based on the records available were revealed before this Court, unambiguously stating that the procedures contemplated under the Rules as well as the UGC Regulations were not followed, this Court has no hesitation in coming to the conclusion that the selection itself is tainted with irregularities and illegalities.

70. The learned counsel appearing on behalf of the selected candidates/5<sup>th</sup> respondent Dr.N.Shettu as well as the other learned counsels appearing on behalf of the selected candidates, who were appointed as Principals, is contended that the writ petition itself is not maintainable as the writ petitioners, who participated in the process of selection had not challenged the process at the initial stage. Thus, after participation, they cannot challenge the Notification, which cannot be entertained by the Courts. It is further contended that all the necessary parties were not impleaded and this apart, the appointed candidates are fully qualified to hold the Post of Principal.

71. The fact remains that the appointment of Dr.N.Shettu alone is approved by the Directorate of College Education and in respect of other colleges, the approval of appointments are yet to be considered by the Directorate of Collegiate Education.

72. In respect of such technical aspects, this Court is bound to consider the nature of the irregularities and illegalities committed by the Selection Committee as well as the Pachaiyappa's Trust Board and such nature of cases cannot be decided in a routine manner, based on certain technical grounds raised by the parties. If the illegalities and irregularities are identified, then the Constitutional Court cannot close its eyes and decide the matter on certain technicalities, so as to allow such irregularities to continue. The Hon'ble High Court being a Court of Justice, always duty bound and thrive hard to reach the concept of complete justice to the citizen of this great Nation. Once, the issues are adjudicated, then the Court identified certain illegalities and irregularities in the process of selection, which goes to the root of the matter, then deciding the writ petition on certain technical grounds is certainly impermissible under the Constitution. The Constitutional mandate to provide "complete justice" to the

citizen is of paramount importance. An illegality can never be allowed to escape from the clutches of action. If the Court found that the very notification and the process through which the persons were appointed were not in consonance with the Statutes as well as the University Grants Commission Regulations.

73. The Supreme Court, in *Gurdip Singh v. State of Jammu & Kashmir*, AIR 1983 SC 2638, observed that admission of candidates by illegal means cannot be retained. The Supreme Court held that the candidates as well as the authorities who resort to illegal methods cannot be permitted to plead this sympathy to retain their admission. This has emboldened the participants of this fraud to retain the ill-gotten admission in the hope that even if the matter is taken up before the court, they will be saved. Their Lordships observed in this regard as follows:

"Undue lenient view of the Courts on the basis of human considerations in regard to selection of candidate for admission to educational institution by adopting illegal means on the part of the authorities has served to create an impression that even where an advantage is secured by stratagem and trickery, it could be rationalised in courts of law. Courts do and should take a human and sympathetic view of matters. That is the very essence of justice. But considerations of Judicial Policy also dictate that a tendency of this kind where advantage gained by illegal means is permitted to be retained will jeopardise the purity of selection process itself: engender cynical disrespect towards the judicial process and in the last analysis embolden errant authorities and candidates into a sense of complacency and impunity that gains achieved by such wrong could be retained by an appeal to the sympathy of the court. Such instances reduce the jurisdiction and discretion of Courts into private benevolence".

A Division Bench of the Kerala High Court in *Purushothaman v. Registrar and others*, 1996 (I) KLJ 531, held that persons who get orders of appointment by resorting to backdoor methods should be sent out through the backdoor itself. In *Krishna Yadav v. State of Haryana*, AIR 1994 SC 214, the Supreme Court held that the entire selection will be liable to be set aside if the selection is conceived in fraud and delivered in deceit. Their Lordships observed as follows:

"As regards the selection made without interview, fake and ghost interviews, tampering with the final records, fabricating documents, forgery, an inference that always motivated by extraneous considerations can be drawn. The entire selection thus is arbitrary and is liable to be set aside. The plea that the innocent candidates should not be

penalised for the misdeeds of others is not applicable to such cases".

In A.P. Christian Medical Educational Society v. Government of A.P. 1986 (2) SCC 687, it was held that the court cannot issue directions to the university to protect the interest of students who had been admitted erroneously, as that would be in clear transgression of the provisions of the Act and the Regulations. The Court cannot, by its fiat, direct the university to disobey the statute. That would be destructive of the rule of law. In this case, it is clear that by awarding 50% marks for the interview and not holding the interview a such and wrong imaginal figures in the interview, the authorities have acted against the rule of law and fairness, and have violated and guidelines issued for the selection. In Punjab Engineering College v. Sanjay Gulati, AIR 1983 SC 580. In similar circumstances, the Supreme Court held that when students who are wrongly admitted do not suffer the consequences of the manipulations, if any, made on their behalf by interested person. This has virtually come to mean that one must get into the educational institution by means, fair or foul; once you are in, no one will put you out. Law's delays work their wonders in such diverse circumstances. It is found that this situation has emboldened the erring authorities or educational institutions of the various state to indulge in violating the norms of admission with impunity. They seem to feel that the Courts will leave the admissions intact even if the admissions are granted contrary to the rules and regulations. This is most unsatisfactory state of affairs. Laws are meant to be obeyed, not flouted. Some day, not distant, if admissions are quashed for the reason that they were made wrongly, it will have to be directed that the names of students who are wrongly admitted should be removed from the rolls of the institutions. Those who infringed the rules must pay for their lapse and the wrong done to the deserving students has to be rectified. In this case, since it is seen that all the 600 candidates were admitted without assessment, the whole selection is liable to be quashed.

74. There may be an opinion that the Court is deviating from the issues raised in the writ petition with reference to the prayer sought for by the writ petitioner. Such observations and moulding the relief are essential as the Constitutional Courts are the custodian of the Constitution and whenever it is brought to the notice of this Court that certain illegality or irregularity, Courts must not shut its eyes in respect of such illegalities or unconstitutionality or the schemes in relation to the development of our great Nation.

75. Judges are not Goldsmiths. Goldsmiths can create ornaments as per the orders placed by their customers. Judges

are bound to look in and around the society and in the event of noticing the unconstitutionality or illegality or paralyzation of developmental activities, then duty mandates on the Constitutional Courts to initiate appropriate action for the purpose of eradicating or to declare such activities as unconstitutional. Thus, it is not as if, the Constitutional Courts while exercising the powers under Article 226 of the Constitution of India must decide only the reliefs and the pleadings. Thus, writ proceedings cannot be equated with Civil Suits under the Code of Civil Procedure. The High Court is exercising plenary jurisdiction.

76. The faith of the people is the bedrock on which the edifice of judicial review and efficacy of the adjudication are founded. Erosion of credibility of the judiciary, in the public mind, for whatever reasons, is greatest threat to the independence of the judiciary. We live in an age of accountability. What is required of Judges is changing.

77. Judgments of the courts are widely discussed, debated and even criticised. In this age of technology, open society and liberal democracy coupled with varied nature of cases raising complex issues which are decided by the courts, including "hard cases" any outcome whereof may be susceptible to criticism, as both views may appear to be equally strong. In that sense, judiciary walks the tightrope of independence. It has also become a regular feature that even laymen, who are constitutionally illiterate, enter such debate and evaluate the outcomes influenced by their emotions, rather than on legal or constitutional principles.

78. In the case of N.K.T. National Girls Higher Secondary School School, Vs. The Government of Tamil Nadu, reported in 1999 1 MLJ 11, the Hon'ble Single Judge of the Madras High Court, held as follows:-

"26. In Union of India and Ors. v. R. Reddappa and Anr. (in para 5), their Lordships have said thus:

...the jurisdiction exercised by the High Court under Article 226 or the tribunal is not as wide as it is in appeal or revision but once the court is satisfied of injustice or arbitrariness, then the restriction^ self-imposed or statutory, stands removed, and no rule or technicality on exercise of power, can stand in the way of rendering justice....

28. In the book 'writ remedies' by Justice-Bhagabati Prosad Banerjee - 2nd Edition (1998), at page 15, the learned Author has said thus, regarding the scope of Article 226:

To do complete justice: High Court, being a Court of Plenary jurisdiction, has inherent power to do 'complete justice' between the parties similar to Supreme Court's power under Article 142. The mere fact that there is no provision parallel to Article 142 relating to the High Court, can be no ground to think that they have not to do complete justice and if moulding of relief would do complete justice between the parties, the same cannot be ordered. Absence of provision like Article 142 is not material. High Courts too can exercise power of review which inheres in every court of plenary jurisdiction. The power to do complete justice also inheres in every court, not to speak of a court of plenary jurisdiction like the High Court. Of course, this power is not as wide as which the Supreme Court has under Article 142....

29. Why I am stressing on power under Article 226 of the Constitution of India is that once the petitioner has come to this Court with a grievance, and if the same is found to be genuine one, and if it is further found that an injustice has been caused by intervention of a third party who has no right over the institution, this Court cannot close its eyes and say that in view of the technical arguments put forward by the 10th respondent, petitioner is not entitled to any remedy. Technicalities will have to yield when it is ultimately found that interest of justice has suffered, especially when a manifest injustice is apparent. We must also understand that this Court is concerned about an educational institution where the atmosphere should be peaceful. If a third party interferes in the management of the educational institution without any right and consequently the teaching staff are transferred or removed from service, persons who are really affected are the students for no fault of theirs. It is the institution that fails, and consequently the entire society is affected. This Court is well aware that even though it has got extraordinary or unlimited powers, it should be exercised with great limitations. But that is a self-imposed restriction. But once the injustice is patent and it is likely to affect the society at large, that will be a circumstance to exercise the extraordinary powers and see that justice is restored.

79. In the case of B.C. Chaturvedi Vs. Union of India and others, reported in 1995 SCC (6) 749, the Hon'ble Mr. Justice. Hansaria B.L. (J) made an observation as follows:-

"6. I had expressed my unhappiness qua the first facet of the case, as Chief Justice of the Orissa High

Court in paras 20 and 21 of [Krishna Chandra v. Union of India](#), AIR 1992 Orissa 261 (FB), by asking why the power of doing complete justice has been denied to the High Courts ? I feel happy that I have been able to state, as a Judge of the Apex Court, that the High Courts too are to do complete justice. This is also the result of what has been held in the leading judgment."

80. In the case of Dwarka Nath Vs. Income-Tax Officer, reported in AIR 1966 SC 81, His Lordship, the Hon'ble Mr. Justice. Subba Rao, J., speaking for a Three Judges Bench of the Hon'ble Supreme Court of India observed in paragraph 6, as follows:-

"High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country".

Their Lordship in conclusion terms said that the High Court can mould the reliefs to meet the peculiar and complicated requirements of this Country. Thus, the Hon'ble High Court cannot be a silent spectator in respect of certain developments made in a writ proceedings and the allegations and the facts placed in a writ petition.

81. In the case of B.P. Achala Anand Vs. S. Appi Reddy & Another, in Appeal (Civil) No. 4250 of 2000 dated 11.02.2005, the Hon'ble Chief Justice. C. Lahoti, CJI, (as then he was), held as follows:-

"Unusual fact situation posing issues for resolution is an opportunity for innovation. Law, as administered by Courts, transforms into justice. "The definition of justice mentioned in Justinian's Corpus Juris Civilis (adopted from the Roman jurist Ulpian) states 'Justice is constant and perpetual will to render to everyone that to which he is entitled.' Similarly, Cicero described justice as 'the disposition of the human mind to render everyone his due'." The law does not remain static. It does not operate in a vacuum. As social norms and values change, laws too have to be re-interpreted, and recast. Law is really a dynamic instrument fashioned by society for the purposes of achieving harmonious adjustment, human relations by elimination of social tensions and conflicts. Lord Denning once said: "Law does not standstill; it moves continuously. Once this is recognized, then the task of a judge is put on a higher plain. He must consciously seek to mould the law so as to serve the needs of the time."

82. The legal principles enunciated in the cases cited supra, this Court is of an undoubted opinion that moulding of the relief in such nature of cases are highly imminent. Courts cannot remain as a mute spectator in respect of such large scale irregularities and illegalities in the matter of selection to the higher post of Principal of a College as the salaries are being disbursed from the tax-payers coffers. The interest of the people at large are involved. Thus, it is important to consider all these aspects and more specifically, in respect of the lis on hand, the Interim Administrator appointed by the High Court of Madras categorically enumerated that the procedures of selection were not conducted in consonance with the University Grants Regulations as well as Section 11 (4) of the Tamil Nadu Private Colleges (Regulations Act).

83. The contention of the learned Special Government Pleader appearing on behalf of the Director of Collegiate Education is also ambiguous and it is crystal clear that the appointment of one Principal namely Dr.N.Shettu alone is approved without even scrutinizing the process of selection conducted by the Selection Committee of the Pachaiyappa's Trust Board. The Directorate of School Education failed in its duty to scrutinize the procedures followed by the Management. Thus, an action against all such officials, who all are responsible and answerable are liable to be prosecuted under the Discipline and Appeal Rules. Under these circumstances, the technical grounds raised deserves no merit consideration as this Court found that Selection was conducted in a fraudulent manner and to deprive equal opportunity to all the eligible candidates, who all are aspiring to secure promotion to the Post of Principal. Once, the fraudulent elements are identified in the process of selection, nothing can stop the High Court from issuing suitable directions to set right the process by conducting a re-selection. Contrarily, if these irregularities are allowed to continue, then the institution itself would be derailed and the equality clause enunciated in the Constitution itself is infringed as far as all the eligible candidates are concerned.

84. When the counter-affidavit is filed by the Secretary, In-charge of the Pachaiyappa's Trust, who is functioning under the control of the Interim Administrator appointed by this Court, there is no difficulty in accepting the averments made in the counter-affidavit filed in these writ petitions. The counter-affidavit reveals the fact that the selection was not conducted in accordance with law and the illegalities and irregularities crept in the process of selection were also explicitly stated in the counter-affidavit. This being the factum, the arguments advanced on behalf of the selected persons deserve no merit consideration. Undoubtedly, as per the legal principles settled by the Apex Court as well as

the High Court, the allegations crept in during process of selection can never be cured and in the event of identifying such irregularities and illegalities, the Courts have no option except to direct the authorities concerned to conduct a fresh selection in order to uphold the Rule of Law.

85. This being the factum of the lis on hand, this Court is inclined to pass the following orders:-

1.a) In respect of WP No.27095 of 2018, the impugned proceedings of the then member Secretary of the College Committee of the Pachaiyappa's College, Chennai-600 030, now represented by the fourth respondent in file number Rc.No.A1/682/2010 dated 20.4.2018 and the consequential proceedings in R.C.No.A1/682/2010 dated 9.6.2018 stand quashed.

1.b) In respect of WP Nos.12126 to 12129 of 2018, the impugned Circular of the third respondent dated 20.4.2018 in proceedings Rc.Nos.A1/682/2018, A1/683/2018, A1/684/2018 and A1/685/2018 stand quashed.

1.c) In respect of WP Nos.31076 and 31083 of 2018, the impugned Circular of the third respondent dated 20.4.2018 in proceedings RC Nos.A1/682/2018 and A1/685/2018 stand quashed.

2) The process of selection conducted by the Pachaiyappa's Trust Board through its Selection Committee and College Committee are declared null and void and in violations of the Provisions of the Tamil Nadu Private Colleges(Regulations)Rules, 1976 and the University Grants Commission Regulations.

3) The Interim Administrator appointed by the High Court of Madras is directed to conduct a fresh selection for appointments/promotions to the Post of Principal for all the Colleges by strictly following the Statutes/Rules and the University Grants Commission (UGC) Regulations. The process of selection is directed to be concluded as expeditiously as possible and without causing any delay.

4) The Interim Administrator is directed to look into the complaints made by the writ petitioners and other members in respect of corrupt activities in the process of selection and file appropriate complaint before the Director of Vigilance and Anti-Corruption, who in turn, shall probe the issues in relation to the corrupt activities in the process of selection, with reference to the competent Educational authorities, and the University and initiate all appropriate actions.

86.With the above directions, all the writ petitions stand allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Svn/kak

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Principal Secretary to Government,  
Higher Secondary Education Department,  
Fort St. George,  
Chennai-600 009.
- 2.The Registrar,  
University of Madras,  
Chepauk,  
Chennai-600 005.
- 3.The Directorate of Collegiate Education,  
College Road,  
Chennai-600 006.
- 4.Hon'ble Mr. Justice R.Shanmugam,  
Interim Administrator,  
Pachaiyappa's Trust Board Office,  
Pachaiyappa's College, Chennai-600 030.  
The Pachaiyappa's Trust Board and  
Member Secretary, College Committee of  
Pachaiyappa's College, Chennai-600 030.
- 5.The Vice Chancellor,  
University of Madras,  
Chepauk,  
Chennai-600 005.
- 6.The Member Secretary,  
Pachaiyappa's Trust Board,  
Pachaiyappa's Trust Board Office,  
Pachaiyappa's College,  
Chennai-600 030.

7. Director of Collegiate Education,  
Office of the Director of Collegiate Education,  
9<sup>th</sup> Floor, EVK Sampath Buildings,  
College Road,  
Chennai-600 006.

8. The Chairman,  
The Selection Committee,  
Pachaiyappa's Trust Board Office,  
Pachaiyappa's College,  
Chennai-600 030.

9. The Secretary,  
College Committee,  
Pachaiyappa's Trust Board Office,  
Pachaiyappa's College,  
Chennai-600 030.

+2ccs to Mr.V.Srinath , Advocate, SR.No 39411  
+3ccs to M/s.B.Saraswathi , Advocate, SR.No.39729  
+1cc to Mr.Mr.Stalin Abhimanyu , Advocate, SR.No.39627  
+6ccs to Mr. D.Prasanna, Advocate, SR.No.339350-39352 &39603  
+7ccs to Mr.K.V.Sundararajan , Advocate, SR.No.39543-39549  
+1 cc Govt.Pleader SR.NO..no.39864

W.P.Nos.27095, 12126, 12127, 12128,  
12129, 31076 and 31083 of 2018

Kak(26/04/2019)

सत्यमेव जयते

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