

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE
AND

The Hon'ble Mr.JUSTICE SUBRAMONIUM PRASAD

W.A.Nos.1216 to 1218 of 2016
and C.M.P.Nos.15589 to 15591 of 2016

W.A.No.1216 of 2016

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

... Appellant/3rd Respondent

-vs-

1. V.Annathurai
Lecturer
Department of Computer Science,
Bishop Thorp College,
Dharapuram - 638657.
2. K.Selvarajan
Lecturer
Department of Computer Science,
Bishop Thorp College,
Dharapuram - 638657.
3. D.Ubendhiran
Lecturer
Department of Co-operation,
Bishop Thorp College,
Dharapuram - 638657.
4. The Director of Collegiate Education,
College Road,
Chennai - 600006.
5. The Joint Director of Collegiate Education,
Race Course,
Coimbatore.

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6. The Bharathiar University,
Rep. by its Registrar, Coimbatore.

7. The Secretary,
University Grants Commission,
Bahadur Shah Zafar Marg,
New Delhi - 110002.

... Respondents

(*R7 suo motu impleaded vide Court order dated 04.04.2019 made in W.A.Nos.1216 to 1218 of 2016 by KKSJ & PDAJ*)

W.A.No.1217 of 2016

Bishop and Chairman,
Bishop Thorp College
Dharapuram - 638657
Erode District.

... Appellant

-vs-

1. S.Chenniappan
Lecturer in Co-operation (Selection Grade)
Bishop Thorp College, Dharapuram,
Erode District - 638657.

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

3. The Bharathiar University
Rep. by its Registrar,
Coimbatore.

4. The Secretary,
University Grants Commission,
Bahadur Shah Zafar Marg,
New Delhi - 110002.

... Respondents

(*R4 suo motu impleaded vide Court order dated 04.04.2019 made in W.A.Nos.1216 to 1218 of 2016 by KKSJ & PDAJ*)

W.A.No.1218 of 2016

The Secretary,
Bishop Thorp College,
Ellis Nagar Post - 638657,
Dharapuram.

... Appellant

-vs-

1. S.Vasudevan
Asso. Prof & Head, Dept of Commerce
Bishop Thorp College,
Ellis Nagar (PO),
Dharapuram - 638657.
2. The Director of Collegiate Education,
College Road, Chennai - 600006.
3. The Joint Director of Collegiate Education,
Race Course Road,
Coimbatore.
4. The Bharathiar University
Rep. by its Registrar,
Coimbatore.
5. The Secretary,
University Grants Commission,
Bahadur Shah Zafar Marg,
New Delhi - 110002.

... Respondents

(*R5 suo motu impleaded vide Court order dated 04.04.2019 made in W.A.Nos.1216 to 1218 of 2016 by KKSJ & PDAJ*)

Prayer in W.A.No.1216 of 2016 : Appeal filed under Clause 15 of the Letters Patent Act against the order dated 30.04.2015 in W.P.No.10366 of 2004.

Prayer in W.P.No.10366 of 2004:

Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus to direct the first and Second respondent to consider the representation of the petitioners dated 21.08.1996 as followed by the latest representation dated 07/01/2004 and pass orders rectifying the arbitrariness and consequently directing the third respondent to pay the petitioners the UGC Scale of pay applicable to the College Teachers in accordance with law.

Prayer in W.A.No.1217 of 2016 : Appeal filed under Clause 15 of the Letters Patent Act against the order dated 30.04.2015 in W.P.No.29772 of 2004.

Prayer in W.P.No.29772 of 2004:

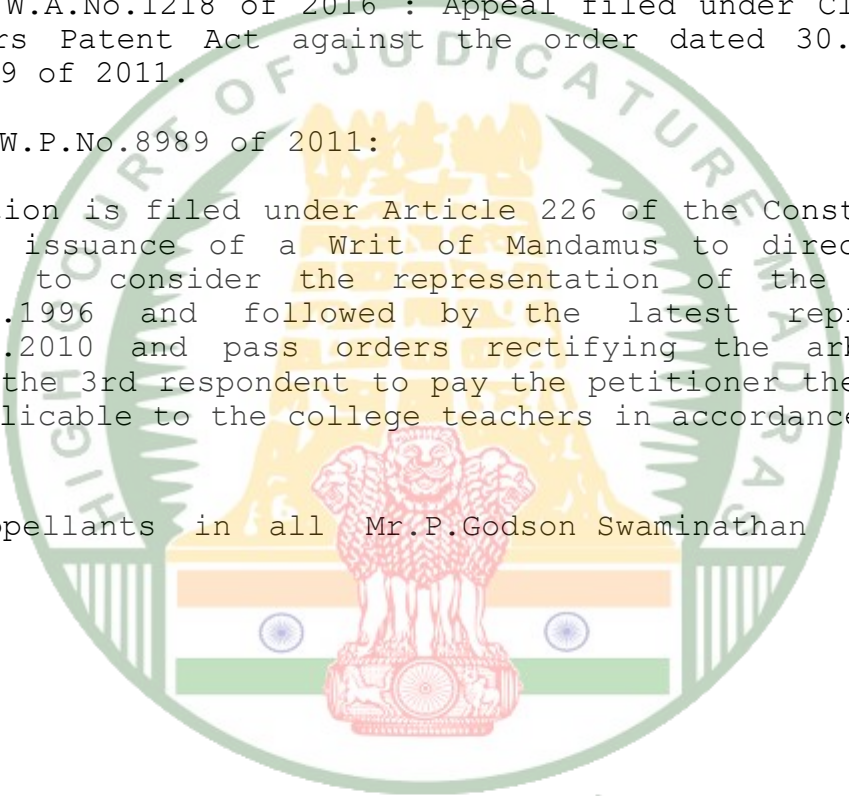
Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus to direct the third respondent not to close the BA (Co-Operation) department in Bishop Thorp College, Dharapuram except after following the procedure under Section 25 of the Tamil Nadu Private College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

Prayer in W.A.No.1218 of 2016 : Appeal filed under Clause 15 of the Letters Patent Act against the order dated 30.04.2015 in W.P.No.8989 of 2011.

Prayer in W.P.No.8989 of 2011:

Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to direct the 1st respondent to consider the representation of the petitioner dated.21.8.1996 and followed by the latest representation dated.4.10.2010 and pass orders rectifying the arbitrariness directing the 3rd respondent to pay the petitioner the UGC Scale of Pay applicable to the college teachers in accordance with law.

For Appellants in all Mr.P.Godson Swaminathan
WAs



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For Respondents in : Ms.P.T.Ramadevi [R1 & R2]
W.A.No.1216/2016 Mr.N.R.Chandran (Senior Counsel)
for Mr.P.Premkumar [R3]
Mr.Akhil Akbarali [R4 & R5]
Mr.L.P.Shanmugasundaram
Special Government Pleader
(Co-operation) [R6]
Mr.E.Rabu Manohar [R7]

For Respondents in : Mr.N.R.Chandran (Senior Counsel)
W.A.No.1217/2016 for Mr.P.Premkumar [R1]
Mr.Akhil Akbarali
Government Advocate [R2]
Mr.L.P.Shanmugasundaram
Special Government Pleader
(Co-operation) [R3]
Mr.E.Rabu Manohar [R4]

For Respondents in : Mr.N.R.Chandran (Senior Counsel)
W.A.No.1218/2016 for Mr.P.Premkumar [R1]
Mr.Akhil Akbarali [R2 & R3]
Government Advocate
Mr.L.P.Shanmugasundaram
Special Government Pleader
(Co-operation) [R4]
Mr.E.Rabu Manohar [R5]

COMMON JUDGMENT

(Delivered by The Hon'ble Chief Justice)

Heard learned counsel for the appellant in all the three appeals.

2. These three appeals have been filed by the same Institution which is stated to be established by the same Diocese and claims itself to be a minority institution. The dispute which has given rise to the appeals is primarily two fold. Firstly, as to the status of the Institution, as to whether it is a minority institution entitled to seek protection under Article 30 of the Constitution of India or not and the second is the entitlement of the teachers of the Institution to receive the same pay scale as fixed by the University Grants Commission.

3. The Writ Petitions had also prayed for certain other reliefs relating to the closure of one of the Departments of the College namely B.A.(Co-operation) but the same has been rendered infructuous during the pendency of the writ petition itself and is, therefore, no longer a matter of any adjudication before

this Court in the Writ Appeal. It is only the aforesaid two issues, namely the minority status of the institution and the entitlement of the U.G.C. pay scale of the teaching staff which is being canvassed before this Court by learned counsel for the appellant.

4. Learned counsel for the appellant contends that the learned Single Judge, without there being any material to the contrary, erroneously assumed the institution to be not having a minority status on the ground that the institution has not been conferred such a status and therefore, it cannot challenge the Circular issued by the Bharathiar University to which it is affiliated, with regard to the Constitution of the Committee of Management of the Institution and other ancillary matters. It is urged that the right to establish and administer are both being impinged, thereby violating Article 30 of the Constitution of India and consequently, the aforesaid finding of the learned Single Judge on the status of the appellant of not having been conferred a minority status deserves to be set aside.

5. On the second issue relating to grant of U.G.C. scale of pay to the teaching staff, it is urged that the Institution is situate in a rural area and any increase of fee in order to meet the salary status at par with the U.G.C. scale might ultimately end up in the closure of the Institution, hence, any such insistence of the applicability of the U.G.C. scale on the teachers of the Institution would be unjustified. He also contends that the very applicability of the U.G.C. scale is also disputed by the Institution and therefore, on both counts, the impugned judgment should be set aside.

6. We have also heard the learned counsel for the respondent University and learned counsel for the State.

7. The first issue is with regard to the status of the Institution being a minority Institution. Relying on the order in W.P.No.566 of 1975 dated 24.09.1976 and the subsequent orders, the contention appears to be that the appellant has been established and is being administered under the umbrella of a Diocese, the minority status whereof is not in dispute at all. It is urged that this status of minority does not require any fresh recognition, inasmuch as the Institution was admittedly established and is being administered by the minority community. Apart from the judgments that have come on record, what is to be seen is that after the declaration of law with regard to the status of Minority Institutions in the case of TMA Pai Foundation vs. State of Karnataka, (2002) 8 SCC 481, the status to be obtained by the Central Minority Commission has been indicated in the relevant Circulars issued in this regard, but insofar as the State of Tamil Nadu is concerned, in view of

the orders passed by the Supreme Court in the said case, a Government Order in G.O.Ms.No.270, Higher Education (J1) Department, dated 17.06.1998 was issued, that has been placed before us by learned counsel and where we find in Para 2 that it has been made compulsory for all such Institutions to approach the Government and obtain a certification. Para 2 therein is extracted hereunder:-

"2. In the orders passed by the Supreme Court of India in T.M.A. Pai Foundation and others case, second read above, the Supreme Court of India, have stayed the operation of all the decrees/orders which might have been given by any Civil Court in respect of the minority status to the Institutions concerned and directed that the Institutions claiming minority status shall approach the Government for a declaration that they are minority institutions, and till such time the Government issue an order declaring that it is a minority institution, they cannot operate as Minority Institutions."

8. Learned counsel for the appellant contends that once the Diocese that has established the institution itself enjoys a minority status, then the Institution established or managed under the umbrage of the Diocese should also be presumed to be enjoying the same status. The aforesaid argument may be acceptable and it is for the State Government to accept the same on the basis of whatever claim is placed before it, but the fact remains that the Government Order dated 17.06.1998 has not been challenged by the appellant and the same continues to be in force. In this view of the matter, a certification has to be obtained in view of Para 2 which has been extracted herein above. However, we agree with the argument of learned counsel for the appellant that merely because such a certificate has not been obtained, the same would not take away otherwise the minority status of the Institution. The reason is that if the Institution has been established and is being administered by the minority community, then it has the constitutional protection of the fundamental right guaranteed under Article 30 of the Constitution of India. Such a fundamental right is not subject to any waiver by either the Institution or by the Government and the minority status has to be accepted on the basis of the evidence relating to its establishment and administration and would not be dependent on a mere certification. The certification is, therefore, necessary for the purpose of receiving recognition, affiliation or such other benefits that may be available to an Institution on its recognition as such by the Government. The seeking of such a status is, therefore, not seeking of a declaration but seeking of a certification of the existing status of the Institution itself. Consequently, the observation made by the learned

Single Judge that the respondent College having not been conferred the said status is not entitled to question the Circular of the University has to be read in the said context. The appellant Institution if is a minority Institution has the right to contest any Circular interfering with its management and affairs as that would directly impinge Article 30 of the Constitution of India. We, therefore, accordingly, treat the observation of the learned Single Judge made in the impugned judgment as such in the light of what has been stated herein above. We may also clarify that the said observation of the learned Single Judge does not amount to a declaration that the Institution is not a minority institution.

9. The next question is with regard to the grant of U.G.C. scale to the teaching staff of the Institution. This, according to us, has been rightly observed by the learned Single Judge to have attained a finality, in the light of the judgment dated 05.06.2012 in W.P.No.37099 of 2007. The said judgment categorically holds the teaching staff to be entitled to the U.G.C. scale in respect of all the Institutions which form part of the Association that had preferred the said writ petition. It is undisputed that the appellant College was and is a part of the said Association and therefore, in our opinion, the judgment dated 05.06.2012 is binding on the appellant. Further, even though a writ appeal was filed against the said judgment in W.A.Nos.2299 and 2300 of 2012, the judgment dated 22.01.2015 delivered therein, nowhere reverses the said finding of the learned Single Judge in the judgment dated 05.06.2012. The aforesaid declaration that the U.G.C. scales are admissible and the teaching staff of the Institution are entitled to the same, therefore, remains no longer res integra and stands sealed with the aforesaid judgment. The learned Single Judge having held so, has in our opinion also arrived at the correct conclusion and we see no reason to differ from the view taken by him.

10. The argument raised on behalf of the appellant that the Institution is situate in a rural area and is likely to face a financial crisis or even a closure is a speculative argument with which we cannot, in the exercise of jurisdiction under Article 226 of the Constitution of India, deal with, as a judgment has to be delivered on existing facts and not on consequences that are likely to arise in future. The contention, therefore, of any inconvenience being anticipated in this regard may not even be a cause of concern to the appellant Institution, inasmuch as the scales having been fixed by the U.G.C. and being binding in view of the judgment herein above, it is open to the appellant to tap its resources for complying with the same.

11. One of the argument advanced by learned counsel for the appellant is that the teaching staff which is claiming such entitlement, is always subject to the fulfillment of their qualifications as prescribed by the University Grants Commission from time to time. It goes without saying that the entitlement of a salary against a post, has to be in accordance with law and obviously subject to the qualifications prescribed for the said post. We, therefore, see no reason to interfere at this stage leaving it open to the appellant Institution to take a decision in the event, a member of the teaching staff does not possess the requisite qualification. The issue will, therefore, have to be accordingly, dealt with by the Director of Collegiate Education, Government of Tamil Nadu, in the event, any dispute is raised in this regard.

12. We also observe that so far as the issue of conferment of minority status is concerned, it is open to the appellant College to apply before the Competent Authority in terms of the Government Order referred to herein above and obtain a certification and in the event any such application is moved, the Competent Authority shall be bound to consider the same and pass appropriate orders expeditiously.

13. These Writ Appeals are disposed of, with the aforesaid observations. No costs. Connected CMPs are closed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

To

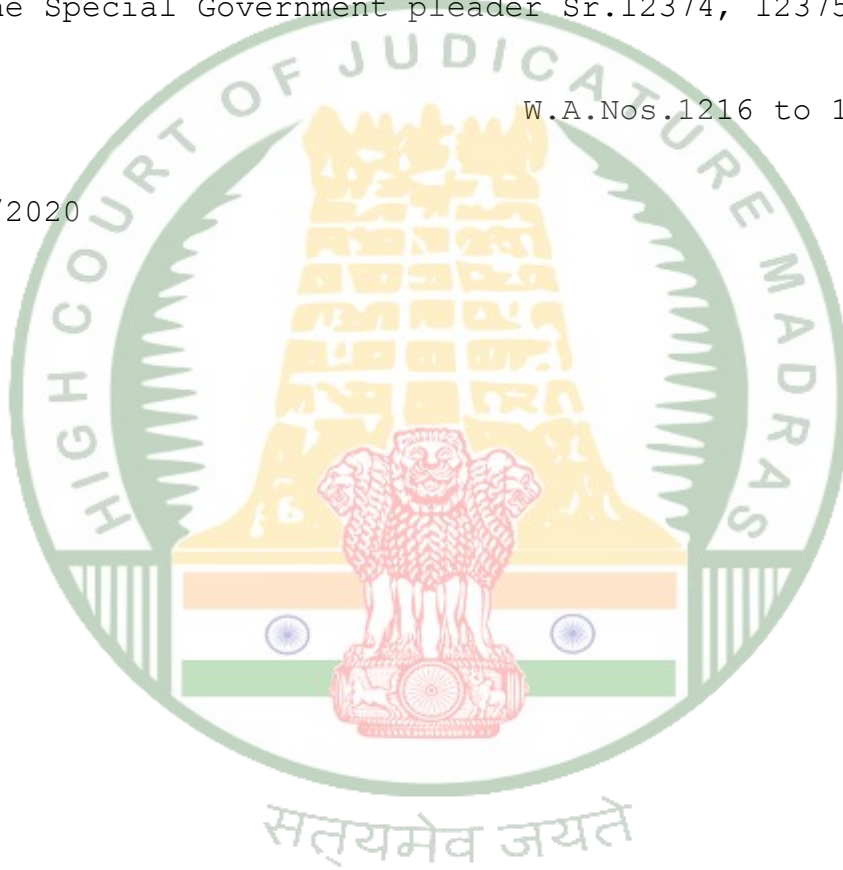
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New Delhi - 110002.

+1cc to M/s.Isaac Chambers, Advocate Sr.12724
+1cc to Mr.B.Rabu Manohar, Advocate Sr.11997
+1cc to Mr.P.Premkumar, Advocate Sr.11956
+1cc to Mr.P.T.Ramadevi, Advocate Sr.11849
+1cc to Mr.L.P.Shanmugasundram, Advocate Sr.13137
+1cc to the Special Government pleader Sr.12374, 12375, 12376

W.A.Nos.1216 to 1218 of 2016

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srg 12/03/2020



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