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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:27.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.A(MD)No.1266 of 2016

in

W.P. (MD)No.5486 of 2014

- 1.The Government of Tamil Nadu
rep. By its Secretary to Government
Higher Education Department,
Fort St. George,
Chennai-600 009.
 - 2.The Director of Collegiate Education,
College Road,
Nungambakkam,
Chennai-06.
 - 3.The Joint Director of Collegiate Education,
Tiruchirapalli Region,
Tiruchirapalli,
Tiruchirapalli District-20. ... Appellants/Respondents
- Vs.
- 1.The Secretary,
St. Joseph's College (Autonomous)
Tiruchirapalli-625 002
Tiruchirapalli District. 1st Respondent/Petitioner
 - 2.Bharathidasan University,
Tiruchirapalli-620 024
Tiruchirapalli District
rep. By its Registrar. ... 2nd Respondent/4th Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 03.09.2014 made in W.P.(MD)No.5486 of 2014.

Prayer in WP(MD). 5486/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceeding issued by 3rd Respondent Joint Director in Na.Ka.No. 0907/E1/2012 dated 13.03.2013 quash the same and further

<https://hcservices.ecourts.gov.in/hcservices/> direct him to approve forthwith the appointment of 24 teaching



staff (Name List Annexed) in the petitioner s college and disburse the grant in aid towards their salary and allowances w.e.f. the respective dates of their appointment viz., 18.06.2012 and pass such further or other orders.

For Appellants : Mr.VR.Shanmuganathan
Special Government Pleader

For Respondents : No appearance

JUDGMENT

(Judgment of the Court was delivered by **M. SATHYANARAYANAN, J.**)

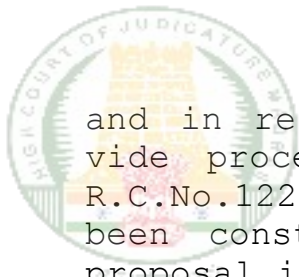
The official respondents 1 to 3 in W.P.(MD).No.5486 of 2014 are the appellants.

2.The first respondent/writ petitioner had filed the said writ petition praying for issuance of writ of certiorarified mandamus to quash the impugned proceedings of the third appellant dated 13.03.2013 in and by which, the approval sought for by the said institution for the appointment of 25 Assistant Professors in various departments had been returned by citing a reason that before approving the said appointment, the Aided colleges has to get approval from the Director of Collegiate Education, based upon the report submitted by the Scrutiny Committee.

3.The primordial submission made by the first respondent/College is that admittedly, it is a minority educational institution and their rights are guaranteed under Article 30 of the Constitution of India and therefore, they have fundamental rights for administration and that the said appointment has also been made in sanctioned vacancies and hence, the reason assigned for return of the approval, on the part of the third appellant/third respondent in the writ petition is per se unsustainable.

4.The respondents 1 to 3 took a stand that though the said rights of the minority institutions are guaranteed under Article 30 of the Constitution of India, the uncontroverted fact remains that the said posts are aided posts and as such, the Government is entitled to prescribe certain qualifications, criteria/guideline and in terms of G.O.(D).No.229 (Higher Education (E2) Department, dated 03.12.2014, a committee has been constituted for each region to verify the vacancy of each post on various aspects, viz.,

- a) sanction of post
- b) reason for vacancy
- c) need for the post based on work load
- d) students strength in courses as per norms
- e) financial position etc.,



and in respect of Trichy Region, where the College is located, vide proceedings of the second respondent dated 17.12.2014 in R.C.No.12229/G3/2014, a committee consisted of four members has been constituted and as such, the reasons for return of the proposal is perfectly in order.

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5.The learned Judge, after taking into consideration the factual aspects and legal positions, by also taking into consideration of two decisions rendered in

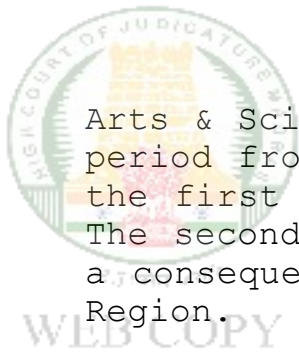
i) **2013 (7) MLJ 641 [P.Ravichandran V. State of Tamil Nadu (DB)]**

ii) **2011 (1) CTC 162 [The Forum of Minority Institutions and Associations V. The State of Tamil Nadu and eight others (DB)]** had observed that even if a Commission was appointed, still the third respondent/third appellant has no authority to keep the application for approval pending, without forwarding it to the Government and accordingly, quashed the impugned proceedings, by permitting the writ petitioner/College to resubmit the application for approval and with a direction to the third respondent to forward the application to the first respondent/first appellant through the second respondent/second appellant for passing appropriate orders, in the light of the above stated two judgments, within a stipulated time. The official respondents, challenging the legality of the impugned order, allowing the writ petition has filed the present writ appeal.

6.Mr.VR.Shanmuganathan, learned Special Government Pleader, appearing for the official respondents 1 to 3/appellants would submit that admittedly, posts are aided and as such, it is open to the Government to find out whether there are any surplus posts available and the said exercise has to be carried out, in terms of G.O.(D).No.229 (Higher Education (E2) Department, dated 03.12.2014 and consequential proceedings dated 17.12.2014, was also passed by the second appellant and he would further submit that the two Division Bench judgments relied on in the impugned judgment had no application to the facts and circumstances of the case and hence, prays for interference.

7.It is a well-settled position of law that in respect of sanctioned posts, where there are vacancies, minority educational institutions need not obtain prior permission, but they can seek approval and accordingly, the petitioner College has submitted a request seeking approval for appointment of 25 Assistant Professors in various departments of their college.

8.The Higher Education (E2) Department passed G.O.(D). No.229, dated 03.12.2014 for the purpose of taking a decision for filling up of 1,379 teaching posts (viz., Assistant Professors, Junior Assistant Professors and Direction of Physical Education) in Government Aided



Arts & Science Government Aided Colleges of Education, between the period from 01.06.2011 to 31.05.2014 and to do the said exercise, the first respondent had constituted a committee for each region. The second appellant herein, in terms of the said G.O, had issued consequential proceedings dated 17.12.2014 in respect of Trichy Region.

9. Though the said committee came to be constituted as early as on 17.12.2014, till date, it failed to carry out any exercise, in terms of the said G.O. Therefore, the consequences would be that the students for want of teaching faculty would suffer.

10. If the appellants/official respondents would really care about the aid granted to the Minority Institutions, the institutions or posts should be properly identified and then, they would have taken all efforts and the scrutiny committee members would have carried out the exercise duly and diligently in a time bound manner. Unfortunately, said exercise has not been carried out, for which, the first respondent/College cannot be faulted with.

11. The learned Judge, in the impugned order, allowing the writ petition, while quashing the impugned order, which was the subject matter of challenge in the writ petition, had granted liberty to the first respondent/College to resubmit the application for approval of appointment. But, in the light of the above stated facts and circumstances, it cannot be found faulted.

12. As and when in terms of G.O.(D).No.229, dated 03.12.2014, the said exercise is carried out, it is open to the concerned official respondents to take appropriate action as to the identification of the excess teaching as well as non-teaching posts and go for redeployment of the said posts/persons.

13. In the result, the writ appeal is dismissed, subject to the above observations, by confirming the order of the learned Single Judge dated 03.09.2014 made in W.P.(MD)No.5486 of 2014. There shall be no order as to costs.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar (CS)



Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

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Government of Tamil Nadu
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Tiruchirapalli District-620 020.

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