



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD) No.25931 of 2019

and

W.M.P(MD) .Nos.22455 and 22457 of 2019

WEB COPY

The Secretary,
St.Ignatius College of Educational
Palayamkottai 627 002.
Tirunelveli District.

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep., by its Secretary,
Department of Higher Education,
Fort St.George, Chennai 600 009.

2.The Director of Collegiate Education,
College Road, Chennai 600 006.

3.The Joint Director of Collegiate Education,
Tirunelveli Region, Tirunelveli 627 002.

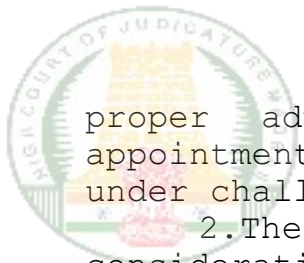
... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the third respondent Joint Director in A.Thi.Mu.No.8595/E2/2018 dated 26.11.2018 quash the same and further direct the third respondent Joint Director to approve forthwith the appointment of Mr.S.Sebastian as Record Clerk in the petitioner's college and disburse the grant-in-aid towards his salary and allowances with effect from the date of his appointment viz., 09.07.2018 with all consequential benefits.

For Petitioners : Mr.Isaac Mohanlal
Senior Counsel for M/s.Isaac Chambers
For Respondents : Mr.C.M.Mari Chelliah Prabhu
Additional Government Pleader

O R D E R

When the petitioner institution, which is the Minority institution, had sought for an approval for appointment of one Mr.S.Sebastian as Record Clerk, the same came to be returned through the impugned order dated 26.11.2018 on the ground that there was no



proper advertisement published in the newspaper before the appointment was made. The said order dated 26.11.2018 has been put under challenge in the present writ petition.

2.The status of a minority institution has already come up for consideration before the Hon'ble Apex Court and in view of the protection granted therein, they continue under such protection in view of Article 30 of the Constitution of India. When the respondents had, in an identical situation, refused grant of approval to a non-teaching staff insofar as similarly placed minority institution on the ground of lack of publicity for appointment, this Court by order dated 16.08.2019 passed in ***W.P.Nos.17511 and 17518 of 2019*** in the case of ***Secretary Nirmala College for Women (Autonomous) Vs., The State of Tamil Nadu, rep., by its Secretary and two others*** had set aside the rejection by holding that insistence on requirement of advertisement for appointment on non-teaching staff in the minority institution is without the authority of law. The relevant portion of the said order reads as hereunder:

'.....

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



3.This Court is also of the similar view that the respondents cannot insist for such advertisement for filling up the post of non-teaching staff in a minority institution and such an issue is covered in the aforesaid decision. As such, the impugned order, returning the petitioner's application on the ground that the advertisement was not made prior to the approval, cannot be sustained.

4.Accordingly, the impugned order dated 26.11.2018 in A.Thi.Mu.No.8595/E2/2018 passed by the third respondent is set aside. Consequently, there shall be a direction to the third respondent herein to pass appropriate orders on the petitioner's proposal dated 19.07.2017 without insisting the requirement of a pre-advertisement to the post of the Record Clerk and thereby, consider the petitioner's claim for approval, subject to meeting out other requirements. Such an action shall be made atleast within a period of two weeks from the date of receipt of a copy of this order.

5.With the above observations, this Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

- 1.The Secretary,
State of Tamil Nadu,
Department of Higher Education,
Fort St.George, Chennai 600 009.
- 2.The Director of Collegiate Education,
College Road, Chennai 600 006.
- 3.The Joint Director of Collegiate Education,
Tirunelveli Region, Tirunelveli 627 002.

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-6902[F]
+1 CC to M/s.Special Govt.Pleader (SR-7036[F]

W.P. (MD) No.25931 of 2019

17.02.2020

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