



WP(MD)No.4636 & 4640 of 2021

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **30.06.2022**

CORAM:

THE HONOURABLE **MR.JUSTICE M.S.RAMESH**

W.P.(MD)Nos.4636 & 4640 of 2021
and W.M.P.(MD)Nos.3747 & 3753 of 2021

The Secretary,
Fatima College (Autonomous),
Mary Land, Madurai – 625 018,
Madurai District.

... Petitioner in
both W.Ps.

/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,
Palam Station Road,
Madurai – 625 002.

... Respondents in
both W.Ps.

Prayer in W.P.(MD)No.4636/2021: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the third respondent



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Joint Director in Oo.Mu.No.9527/E3/2020, dated 05.01.2021, quash the same, and further direct the respondents herein to approve forthwith the appointment of Dr.Sr.Bindu Antony as Assistant Professor in the Department of Commerce in the petitioner's college and disburse the grant-in-aid towards her salaries and allowances w.e.f. 16.08.2016.

Prayer in W.P.(MD)No.4640/2021: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the third respondent Joint Director in Oo.Mu.No.9528/E3/2020, dated 05.01.2021, quash the same, and further direct the respondents herein to approve forthwith the appointment of A.Sarpiya Rani as Assistant Professor in French in the petitioner's college and disburse the grant-in-aid towards her salaries and allowances w.e.f. 13.02.2017.

For Petitioner : Ms.A.Amala
(In both W.Ps)

For Respondents : Mr.V.Nirmal Kumar,
(In both W.Ps) Government Advocate.

COMMON ORDER

The power of the Educational Authorities of the State Government to interfere in the selection process for appointment of the Assistant Professors in a private Minority College, is the issue involved in the present writ petitions.



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Through the orders impugned in the present writ petitions, the authorities have made an attempt to interfere with the selection process of a Minority Institution.

2. When the 'University Grants Commission Regulations, 2000' (hereinafter referred to as UCG Regulations, 2000') were put under challenge before an Hon'ble Division Bench of this Court in the case of ***The Forum of Minority Institutions (FMI) and Associations Vs. The State of Tamil Nadu, Rep. by the Joint Director of Collegiate Education*** reported in ***2011 (1) CTC 162***, it was declared therein that the UCG Regulations, 2000, for constitution of a Selection Committee, were not applicable to Minority Institutions. While holding so, the Hon'ble Division Bench had also dealt with all the Clauses in the UCG Regulations, 2000, including Clause 5.1.5, which provides for the constitution of a Selection Committee in a Minority Educational Institution.

3. The UCG Regulations, 2010, has replicated the aforesaid Clause with regard to the constitution of a Selection Committee in Clause 5.1.4, which is verbatim the same as that of the UCG Regulations, 2000.



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4. When the provision for a Selection Committee under the 2000 Regulations was made inapplicable to Minority Institutions in FMI's case (supra), an identical provision in the 2010 Regulations cannot be given a new interpretation, but rather should be construed to have excluded Minority Institutions from forming Selection Committee. In this background, the Educational Authorities will not have any right to question the selection process or the qualification of the candidates, who were selected therein.

5. In the instant cases, two Assistant Professors viz., Dr.Sr.Bindhu Antony and A.Sarpiya Rani were appointed as Assistant Professors in Commerce and French on 16.08.2016 and 13.02.2017 respectively. On the proposal dated 12.06.2018, submitted by the College Management to the third respondent herein, rejection orders, both dated 05.01.2021, came to be passed, predominantly rejecting the proposal on the grounds that no Selection Committee was constituted; that no subject experts had participated in the selection process; and that the notification for selection was not published in two newspapers. This apart, the third respondent had also questioned the qualification of the selected candidates, stating that the degrees obtained by them are not supported by an



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equivalence certificate and that their prior permission for selection was not obtained.

6. While the learned counsel for the petitioner submitted that the Educational Authorities under the State Government will have no powers to interfere with the selection process of a Minority Institution, the learned Additional Government Pleader placed reliance on the UGC Regulations, 2010 and submitted that since the Regulations covers a Minority Institution also, there is no infirmity in the impugned orders.

7. When the Hon'ble Division Bench in ***Forum of Minority Institutions and Associations's case*** (cited supra) dealt with all these aspects, the declaration that the UGC Regulations, 2000, will not applicable to the Minority Colleges was made based with the following justification:

“4. It is the case of the petitioner that filling up of posts in the member institutions has been sanctioned by the State of Tamil Nadu and in pursuance thereof, member institutions have commenced the process of filling up the vacancies. It is the case of the petitioner that in some cases, vacancies have been filled by the respective institutions and approval of qualifications has been sought for from respective



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Universities. Some of the universities have passed orders rejecting approval of qualifications of appointees on the ground that the Selection Committee was not constituted in accordance with the UGC Regulations, 2000 whereas some of the universities have failed to approve recommendations.

.....

.....

7.

(i)

(ii) the constitution of the Selection Committee under the UGC Regulations, 2000 regarding minimum qualification for appointment and career advancement of teachers in Universities and Colleges with a majority of outsiders nominated by the Respondent Universities interferes with the rights of the members of the petitioner to administer their institutions;

(iii) & (iv)

(v) that the University Grants Commission, New Delhi, has no power to make Regulations in respect of Selection Committees for appointment of teaching staff in the private Colleges, therefore, Notification is void and of no effect.

.....

.....

59. *Thus, a reading of these judgments would show that right of minority institutions to select candidates of their own choice by regulating their process of selection is upheld by the Hon'ble Supreme Court.*



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60. *In view of the settled proposition of law, the contention of learned counsel for the University Grants Commission that by way of amendment of regulations, independence has been given to the minority institutions to select their own people without outside interference, as the right of appointment of teachers out of qualified teachers is to be left to the minority institutions alone cannot be accepted, as the process of selection of teachers cannot be regulated, as it would amount to interference in administration of minority institutions.*

61. *The contention of the learned counsel for the respondents that regulations are in public interest to maintain standard of education also cannot be accepted as the appointment of qualified teachers as per the qualification prescribed by the University Grants Commission by the minority institutions cannot be said to violate the public interest, nor it can be said that the educational standard would not be maintained.*

62. *The right of minority institutions under Section 30 is absolute right being basis structure of the Constitution and therefore, any regulation interfering with the right of administration would not be applicable to the minority institutions, being violative of Article 30(1) of the Constitution.*

63. *The contention that right to administer does not include right to maladministration also cannot be accepted as the minority institutions would be bound by qualification laid down for appointment of teachers and also would be bound to follow other statutory laws necessary for running their institutions to maintain*



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64. *Once the right of appointment of teachers is taken to be the right of administration, which is not even disputed by the respondents, no other conclusion than the one that the impugned regulations would not apply to minority institutions can be arrived at.*

.....

For the reasons stated, the writ petitions are allowed, and declaration is issued, that the impugned regulations for constitution of Selection Committee shall not be applicable to the Minority Institutions. Consequently, Writ in nature of Mandamus is issued directing the respondents to approve the selection made by the minority institutions without reference to Clause 3 of Annexure to UGC Regulations 2000, subject to the selected candidates fulfilling other qualifications, experience etc. No costs. Consequently, all the connected miscellaneous petitions are closed.”

8. The aforesaid extract is self explanatory. Thus, in view of the declaration made by the Hon'ble Division Bench, the Educational Authorities of the State Government will have no powers absolutely to interfere with the selection process, which powers are solely vested with the College Management. Thus, the reasons assigned by the third respondent in the impugned orders that a Selection Committee was not constituted and that there were no subject experts



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during the process of selection and that the notification for selection was not published in two newspapers will tantamount to interfering with the selection process and thus cannot be sustained.

9. Insofar as the reason that the College Management had not sought for prior permission of the authorities for selection are concerned, an Hon'ble Division Bench in the case of ***P.Ravichandran Vs. State of Tamil Nadu, Rep. by Secretary to Government, Department of Higher Education, Chennai and others*** reported in (2013) 7 MLJ 641, had dealt with this aspect as to whether prior permission is mandatory to fill up the vacancies arising in a Minority Institution?

10. In paragraph 20 of the said order, such a requirement was held to be not necessary for a Minority Institution, in the following manner:

“20. In the light of the above findings as well as the decisions, we conclude this Judgment in the following manner:

(1) There is no requirement under the Tamil Nadu Private Colleges (Regulation) Act, 1976 and Tamil Nadu Private Colleges (Regulation) Rules, 1976, to seek prior permission to fill up any vacant post in an aided college, which has already been sanctioned



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(2) If the appointment made by the College Committee in the sanctioned vacant post is in violation of any of the statutory provision, it is open to the Regional Joint Director of Collegiate Education to deny grant-in-aid to the said person appointed in the vacant post.

(3) The teaching staff appointed must be fully qualified, whose qualification is approved by the University to which the college is affiliated. Insofar as the non-teaching staff are concerned, the candidate must possess the qualification prescribed by the Government.”

11. In view of the aforesaid decision, the claim of the respondents that their permission was not obtained before appointing these two teachers cannot be legally unsustainable.

12. Likewise, in the aforesaid decision in ***P. Ravichandran's case*** (cited supra), the Hon'ble Division Bench had also observed that the qualification of the teaching staff, to be appointed, requires to be approved only by the University, to which the college is affiliated. In the instant case, the last reason assigned by the respondents for rejection of the proposal, is that the qualification of these



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candidates is not supported by an equivalence certificate issued by the competent authority. This reasoning is opposed to the observations made by the Hon'ble Division Bench in *P.Ravichandran's case* (cited supra). While the concerned University is the competent authority to approve the qualifications of the teaching staff, the State Governmental Educational Authorities will have no jurisdiction to scrutinize or question such educational qualifications.

13. This apart, another reason assigned in the impugned orders is that, Form-7A, which is an form of agreement between the college and the teacher, has not been enclosed along with the proposal.

14. Section 11 of the Tamil Nadu Private Colleges (Regulation) Act, 1976, provides for the constitution of a College Committee, which provision specifically excludes a minority college from its purview. Rule 11 of the Tamil Nadu Private Colleges (Regulation) Rules, 1976 mandates for an agreement between the college and the teachers in Form-7A. In view of the exclusion of a minority college from the purview of Section 11 the Tamil Nadu Private Colleges (Regulation) Act, 1976, Rule 11 will also be inapplicable insofar as Minority Institutions are concerned. In other words, Rule 11 of the Tamil Nadu Private



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Colleges (Regulation) Rules, 1976, which mandates an agreement in the Form-7A, would be applicable to colleges, other than the Minority Colleges and therefore, the third respondent's action in rejecting the petitioner's proposal on this ground also cannot be sustained.

15. For all the forgoing reasons, the impugned orders passed by the third respondent, both dated 05.01.2021, are set aside. Subsequently, there shall be a direction to the third respondent herein to forthwith pass orders approving the appointment of Dr.Sr.Bindu Antony, as Assistant Professor in Commerce with effect from 16.08.2016 and Ms.A.Sarpiya Rani, as Assistant Professor in French with effect from 13.02.2017. Such orders of approval shall be passed within a period of six (6) weeks from the date of receipt of a copy of this order.

16. These writ petitions stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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30.06.2022

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Internet : Yes

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To

- 1.The Secretary,
State of Tamil Nadu,
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Fort St. George, Chennai – 600 009.
- 2.The Director of Collegiate Education,
College Road, Chennai – 600 006.
- 3.The Joint Director of Collegiate Education,
Palam Station Road,
Madurai – 625 002.



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M.S.RAMESH, J.

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Order made in
W.P.(MD)Nos.4636 & 4640 of 2021
and W.M.P.(MD)Nos.3747 & 3753 of 2021

Dated:
30.06.2022