



W.P.(MD).No.7581 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.07.2022

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.(MD).No.7581 of 2020

and

W.M.P.(MD).No.7069 and 7071 of 2020

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

... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented 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

Prayer : Writ Petition 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 proceedings issued by third respondent Joint



W.P.(MD).No.7581 of 2020

Director in 9848/E3/2019 dated 19.12.2019, quash the same, and further direct the respondents herein to approve forthwith the appointment of 7 teaching staff (Name list annexed) appointed in the petitioner's college and disburse the grant-in-aid towards their salaries and allowances w.e.f. the respective dates of their appointments.

For Petitioner : M/s.A.Amala
For Respondents : Mr.A.Kannan,
Additional Government Pleader.

ORDER

The petitioner College is a minority aided educational institution. On 14.06.2017, the petitioner College had appointed two Assistant Professors in Tamil, one Assistant Professor in Sociology with Computer Application and one Assistant Professor in History in the sanctioned vacancies. Likewise, on 18.12.2017, they had appointed one Assistant Professor in Commerce; on 07.03.2018, one Assistant Professor in Physics; on 18.06.2018, one Assistant Professor in Economics, in the sanctioned vacancies. According to the petitioner, all these candidates were fully qualified to hold the respective posts.

2. When the petitioner College had submitted a proposal to the third respondent, seeking for approval of appointment of the aforesaid seven



W.P.(MD).No.7581 of 2020

teaching staffs, the same came to be rejected by the third respondent, predominantly, on the ground that the College had not obtained prior permission of the department for filling up the vacant posts, that they had not followed the procedure in releasing advertisements for filling up the vacancies and that they had not revealed the process of selection through the interview. All the reasons assigned by the third respondent herein have already been the subject matter of various Writ Petitions, as well as the decisions of the Hon'ble Supreme Court.

3. Insofar as the first reason for refusal that the College had not obtained prior permission of the Department is concerned, the Hon'ble Division Bench of this Court, in the case of ***P.Ravichandran Vs. State of Tamil Nadu, represented by Secretary to Government, Department of Higher Education, Chennai and others***, reported in (2013) 7 MLJ 641, had held that such prior approval is not required insofar as it relates to minority colleges. The relevant portion of the order reads as follows:

“8. The point arises for consideration in this writ appeal is as to whether prior permission is required to be obtained by the management of the Private Aided Colleges to fill up the vacancies of teaching and non-teaching staff arising in a sanctioned post during middle of the academic year, in the absence of any



WEB COPY

prohibitory order issued by the Government for filling up the vacancies.

...17. A Division Bench of Madurai Bench of this Court in W.A.(MD)No.462 of 2006, judgment dated 1.12.2006, considered the scope of Rule 11(1) of the Tamil Nadu Private Colleges (Regulation) Rules, 1976 relying upon the earlier order passed on 13.8.2006, and held that for filling up an existing post in a Private Aided College, no prior approval is necessary as any such appointment shall be subsequently approved by the Department, and at that point of time the Department would have an opportunity to consider the availability of such post and rejection of approval on the ground that no prior approval was obtained before appointment, was set aside. Same is the view taken in in the following orders of this Court:

- (i) W.P.No.30618 of 2005, order dated 21.9.2005;*
- (ii) W.P.No.28396 of 2004, order dated 29.3.2006;*
- (iii) W.A.Nos.92 & 93 of 2008, judgment dated 6.1.2010;*
- (iv) W.P.(MD)No.174 of 2009, order dated 27.4.2010;*
- (v) W.A.Nos.140, 811/2006 & 805/2007, judgment dt.21.10.2010;*
- (vi) W.A.No.2858 of 2010, judgment dated 21.3.2011;*
- (vii) W.A.(MD)No.1088 of 2011, judgment dated 19.10.2011;*
- (viii) W.A.No.2345 of 2011, judgment dated 5.3.2012;*
- (ix) (2012) 5 MLJ 670 (Dr.S.Sukumaran v. State of Tamilnadu) rendered by one of us (NPVJ); and*
- (x) W.A.No.474 of 2013, judgment dated 3.4.2013.*



WEB COPY

Thus, the issue regarding seeking prior permission for filling up the vacant post in aided College within the academic year was already settled in series of decisions and all the above said orders are implemented by the respondents 1 and 2. In such circumstances, it is not open to the respondents to again and again contend that only after getting prior permission from the Director of Collegiate Education, vacant sanctioned posts can be filled up by the management.

...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 for the academic year by the Director of Collegiate Education under Rule 11(1) of the Rules.

(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.



WEB COPY

(4) *The College Committee while filling up the vacant post, should follow the procedures stated in Rule 11(1A) to 11(4)(ii).*

(5) *If there is no rival candidate for any post, the appointment is bound to be approved for the purpose of payment of pay and allowances, by the Regional Joint Director of Collegiate Education.”*

4. Insofar as the other reasons assigned by the respondents for rejection of the proposal are concerned, the same would amount to interfering with the selection process of the Assistant Professors. Such interference to a selection process has been held to be impermissible by the Hon'ble Supreme Court in the case of ***Ahmedabad St.Xavier's College Society Vs. State of Gujarat and another***, reported in ***1974 (1) SCC 717***. This ratio came to be reiterated in a subsequent decision of the Hon'ble Division Bench of this Court in the case of ***the Forum of Minority Institutions and Associations Vs. The State of Tamil Nadu, represented by the Joint Director of Collegiate Education, Chennai and others***, reported in ***2011 (1) CTC 162***. The relevant portion of the order reads as follows:

"24. In support of his contention, learned counsel for the petitioner placed reliance on a judgment of the Hon'ble Supreme Court in the case of Ahmedabad St.Xavier's College



Society vs. State of Gujarat and another reported in (1974) 1
Supreme Court Cases 717, wherein, the Hon'ble Supreme
Court was pleased to lay down as under:

19. The entire controversy centres round the extent of the right of the religious and linguistic minorities to administer their educational institutions. The right to administer is said to consist of four principal matters. First is the right to choose its managing or governing body. It is said that the founders of the minority institution have faith and confidence in their own committee or body consisting of persons elected by them. Second is the right to choose its teachers. It is said that minority institutions want teachers to have compatibility with the ideals, aims and aspirations of the institution. Third is the right not to be compelled to refuse admission to students. In other words, the minority institutions want to have the right to admit students of their choice subject to reasonable regulations about academic qualifications. Fourth is the right to use its properties and assets for the benefit of its own institution.

103. Another conclusion which follows from what has been discussed above is that a law which interferes with a minority's choice of qualified teachers or its disciplinary control over teachers and other members



WEB COPY



W.P.(MD).No.7581 of 2020

of the staff of the institution is void as being violative of Article 30(1). It is, of course, permissible for the State and its educational authorities to prescribe the qualifications of teachers, but once the teachers possessing the requisite qualifications are selected by the minorities for their educational institutions, the State would have no right to veto the selection of those teachers. The selection and appointment of teachers for an educational institution is one of the essential ingredients of the right to manage an educational institution and the minorities can plainly be not denied such right of selection and appointment without infringing Article 30(1). In the case of Rev. Father W. Proost this Court while dealing with Section 48-A of the Bihar Universities Act observed that the said provision completely took away the autonomy of the governing body of the college and virtually vested the control of the college in the University Service Commission. The petitioners in that case were, therefore, held entitled to the protection of Article 30(1) of the Constitution. The provisions of that section have been referred to earlier. According to the section, subject to the approval of University appointment, dismissals, removals, termination of service or reduction in rank of teachers of an affiliated college not belonging to the State



Government would have to be made by the governing body of the college on the recommendation of the University Service Commission. The section further provided that the said Commission would be consulted by the governing body of a college in all disciplinary matters affecting teachers of the college and no action would be taken against or any punishment imposed upon a teacher of a college otherwise than in conformity with the findings of the Commission.

182. It is upon the principal and teachers of a college that the tone and temper of an educational institution depend. On them would depend its reputation, the maintenance of discipline and its efficiency in teaching. The right to choose the principal and to have the teaching conducted by teachers appointed by the management after an overall assessment of their outlook and philosophy is perhaps the most important facet of the right to administer an educational institution. We can perceive no reason why a representative of the University nominated by the Vice-Chancellor should be on the Selection Committee for recruiting the Principal or for the insistence of head of the department besides the representative of the University being on the Selection Committee for recruiting the members of the teaching staff. So long as the persons chosen have the qualifications



WEB COPY



W.P.(MD).No.7581 of 2020

prescribed by the University, the choice must be left to the management. That is part of the fundamental right of the minorities to administer the educational institution established by them.”

*A reliance was also placed in support of the contention on the judgement of the Hon'ble Supreme Court in the case of **Sindhi Education Society and another vs. Chief Secretary, Government of NCT of Delhi and others** reported in (2010) 8 SCC 49, wherein, the Hon'ble Supreme Court has been pleased to lay down as under:*

"101. To appoint a teacher is part of the regular administration and management of the school. Of course, what should be the qualification or eligibility criteria for a teacher to be appointed can be defined and, in fact, has been defined by the Government of NCT of Delhi and within those specified parameters, the right of a linguistic minority institution to appoint a teacher cannot be interfered with. The paramount feature of the above laws was to bring efficiency and excellence in the field of school education and, therefore, it is expected of the minority institutions to select the best teacher to the faculty. To provide and enforce any regulations, which will practically defeat this purpose would have to be avoided. A linguistic minority is entitled to conserve its language and culture by a constitutional mandate. Thus, it must select people who satisfy the prescribed criteria, qualification and eligibility



and at the same time ensure better cultural and linguistic compatibility to the minority institution.

102. At this stage, at the cost of repetition, we may again refer to the judgment of this Court in T.M.A.Pai case, where in para 123, the Court specifically noticed that while it was permissible for the State and its educational authorities to prescribe qualifications of a teacher, once the teachers possessing the requisite qualifications were selected by the minorities for their educational institutions, the State would have no right to veto the selection of the teachers. Further, the Court specifically noticed the view recorded in reference to Kerala Education Bill, 1957 case, and to Clauses 11 and 12 of the Bill in particular; where the learned Judge had declared that, it is the law declared by the Supreme Court in subsequently contested cases as opposed to the Presidential Reference, which would have a binding effect and said: (T.M.A.Pai Case, SCC p.571, para 123)

"123.... '109...The words "as at present advised" as well as the preceding sentence indicate that the view expressed by this Court in Kerala Education Bill, 1957, in this respect was hesitant and tentative and not a final view in the matter.' "

What the Court had expressed in para 123 above, appears to have found favour with the Bench dealing with T.M.A.Pai. In any case, nothing to the contrary was



observed or held in the subsequent judgment by the larger Bench.

103. The concept of equality stated under Article 30(2) has to be read in conjunction with the protection under Article 29 and thus it must then be given effect to achieve excellence in the field of education. Providing of grand-in-aid, which travels from Article 30(2) to the provisions of the DSE Act and Chapter VI of the Rules framed thereunder, is again to be used for the same purpose, subject to regulations which themselves must fall within the permissible legislative competence. The purpose of grant-in-aid cannot be construed so as to destroy, impair or even dilute the very character of the linguistic minority institutions. All these powers must ultimately stand in comity to the provisions of the Constitution, which is the paramount law. The Court will have to strike a balance between different facets relating to grand-in-aid, right to education being the fundamental right, protection available to religious or linguistic minorities under the Constitution and the primary object to improve and provide efficiency and excellence in school education.

104. In our considered view, it will not be permissible to infringe the constitutional protection in exercise of State policy or by a subordinate legislation to frame such which will infringe upon the character or in any way substantially



dilute the right of the minority to administer and manage affairs of its school. Even though in Mohinder Kaur the Bench of this Court held that upon restoration of the minority character of the institution, the provisions of the Act and the Rules framed thereunder would cease to apply to a minority institution, we will would not go that far and would preferably follow the view expressed by the larger Bench of this Court in T.M.A.Pai case and even rely upon other subsequent judgments, which have taken the view that the State has the right to frame such regulations which will achieve the object of the Act. Even if it is assumed that there is no complete eclipse of the DSE Act in the Rules in the case of minority institutions, still Rule 64(1)(b), if enforced, would adversely affect and dilute the right and protection available to the minority school under the Constitution. is part of the fundamental right of the minorities to administer the educational institution established by them.

111. A linguistic minority has constitution and character of its own. A provision of law or a circular, which would be enforced against the general class, may not be enforceable with the same rigours against the minority institution, particularly where it relates to establishment and manage of the school. It has been held that founders of the minority institution have faith and confidence in their own committee or body consisting of the persons selected by



them. Thus, they could choose their managing committee as well as they have a right to choose its teachers. Minority institutions have some kind of autonomy in their administration. This would entail the right to administer effectively and to manage and conduct the affairs of the institution. There is a fine distinction between a restriction on the right of administration and a regulation prescribing the manner of administration. What should be prevented is the maladministration. Just as regulatory measures are necessary for maintaining the educational character and content of the minority institutions, similarly, regulatory measures are necessary for ensuring orderly, efficient and sound administration.

112. Every linguistic minority may have its own social, economic and cultural limitations. It has a constitutional right to conserve such culture and language. Thus, it would have a right to choose teachers, who possess the eligibility and qualifications, as provided, without really being impressed by the fact of their religion and community. Its own limitations may not permit, for cultural, economic or other good reasons, to induct teachers from a particular class or community. The direction, as contemplated under Rule 64(1)(b), could be enforced against the general or majority category of the government-aided schools but, it may not be appropriate to enforce such condition against linguistic minority schools. This may amount to



WEB COPY



W.P.(MD).No.7581 of 2020

interference with their right of choice and, at the same time, may dilute their character of linguistic minority. It would be impermissible in law to bring such actions under the cover of equality which in fact, would diminish the very essence of their character or status. Linguistic and cultural compatibility can be legitimately claimed as one of the desirable features of a linguistic minority in relation to selection of eligible and qualified teachers.

113. A linguistic minority institution is entitled to the protection and the right of equality enshrined in the provisions of the Constitution. The power is vested in the State to frame regulations, with an object to ensure better organisation and development of school education and matters incidental thereto. Such power must operate within its limitation while ensuring that it does not, in any way, dilute or impair the basic character of linguistic minority. Its right to establish and administer has to be construed liberally to bring it in alignment with the constitutional protections available to such communities.

114. The minority society can hardly be compelled to perform acts or deeds which per se would tantamount to infringement of its right to manage and control. In fact, it would tantamount to imposing impermissible restriction. A school which has been established and granted status of a linguistic minority for years, it will not be proper to stop its



WEB COPY



W.P.(MD).No.7581 of 2020

grand-in-aid for the reason that it has failed to comply with a condition or restriction which is impermissible in law, particularly, when the teachers appointed or proposed to be appointed by such institution satisfy the laid down criteria and/or eligibility conditions. The minority has an inbuilt right to appoint persons, which in its opinion are better culturally and linguistically compatible to the institution.

119. Besides that, State actions should be actio quaelibet it sua via and every discharge of its duties, functions and governance should also be within the constitutional framework. This principle equally applies to the Government while acting in the field of reservation as well. It would not be possible for the Courts to permit the State to impinge upon or violate directly or indirectly the constitutional rights and protections granted to various classes including the minorities. Thus, the State may not be well within its constitutional duty to compel the linguistic minority institution to accept a policy decision, enforcement of which will infringe their fundamental right and/or protection. On the contrary, the minority can validly question such a decision of the State in law. The service in an aided linguistic minority school cannot be construed as "a service under the State" even with the aid of Article 12 of the Constitution. Resultantly, we have no hesitation in coming to the conclusion that Rule 64(1)(b) cannot be



W.P.(MD).No.7581 of 2020

enforced against the linguistic minority school. Having answered this question in favour of the appellant and against the State, we do not consider it necessary to go into the constitutional validity or otherwise of Rule 64(1)(b) of the Rules, which question we leave open." "

5. Apparently, the reasons assigned by the respondents in rejecting the petitioner's proposal, predominantly, on the ground that prior permission of the Department was not obtained and that the selection process was not in accordance with the provisions of the Tamil Nadu Private Colleges (Regulation) Act, cannot be sustained in view of the law laid down insofar as it relates to minority colleges are concerned.

6. The yet other reason pointed out in the impugned order and as submitted by the learned Additional Government Pleader, is that the College is mandated to ensure that the number of teachers employed should not exceed the number of posts fixed by the Department from time to time and further, that the petitioner is mandated to send to the competent authority, a statement containing the particulars specified in Clause (c) of Section 4 (2) pertaining to the application for permission for establishment of the College.



W.P.(MD).No.7581 of 2020

7. It is not in dispute that the seven appointments made in the petitioner College, for which the proposal has been sent for approval, arise out of the sanctioned posts. There is no provision under the Tamil Nadu Private Colleges (Regulation) Rules that in case of alleged violation of Rule 11 or Section 9, the authorities are empowered to reject a proposal for approval of an appointment that has already been made in a sanctioned post.

8. This apart, when the Hon'ble Supreme Court as well as this Court, in various decisions, have been consistently limiting the powers of the educational authorities in the selection process as well as the appointments made by a minority aided institution, the reasons assigned by the respondents herein in rejecting the proposal would tantamount to interfering with the selection process itself. As already stated, such interference is prohibited in view of the decision of the Hon'ble Supreme Court in *St.Xavier's College* case (supra) as well as the decision of the Hon'ble Division Bench of this Court in *P.Ravichandran's* case.

9. In the light of the above observations, the impugned order, dated 19.12.2019, on the file of the third respondent is quashed. Consequently, there shall be a direction to the third respondent herein to forthwith approve the



W.P.(MD).No.7581 of 2020

appointment of the seven teaching staff, namely, Dr.J.Susai Jesintha Mercy, Assistant Professor in Tamil with effect from 14.06.2017; Mrs.D.Annie Maria Jancy, Assistant Professor in Tamil with effect from 14.06.2017; Mrs.K.Saritha, Assistant Professor in Sociology with Computer Application with effect from 14.06.2017; Mrs.S.Rajalakshmi, Assistant Professor in History with effect from 14.06.2017; Dr.V.Suganya, Assistant Professor in Commerce with effect from 18.12.2017; Dr.G.Jenita Rani, Assistant Professor in Physics with effect from 07.03.2018 and Dr.K.Selvalakshmi, Assistant Professor in Economics with effect from 18.06.2018 and disburse the grant-in-aid towards their salaries and allowances, within a period of twelve (12) weeks from the date of receipt of a copy of this order.

10. This Writ Petition stands allowed accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

20.07.2022

Index : Yes / No
Internet : Yes/ No
Lm



W.P.(MD).No.7581 of 2020

WEB COPY

To

- 1.The Secretary,
The 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,
Palam Station Road,
Madurai – 625 002.



WEB COPY



W.P.(MD).No.7581 of 2020

M.S.RAMESH, J.

Lm

W.P.(MD).No.7581 of 2020

20.07.2022