



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 02.02.2022

PRONOUNCED ON: 04.02.2022

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THE HONOURABLE MR.JUSTICE **C.V.KARTHIKEYAN**

W.P. (MD)Nos.13488, 13495 and 19374 of 2021

and

W.M.P. (MD)Nos.10437, 10439, 10440, 10448, 10449, 10451, 12610 and
16095 of 2021

W.P. (MD)No.13488 of 2021:-

The Governing Council of American College,
represented by its Secretary,
American College Complex,
Tallakulam, Madurai.

... Petitioner

vs.

1.The State of Tamil Nadu,
represented by its Secretary,
Higher Education (H1) Department,
Fort St.George, Chennai.

2.The Regional Joint Director of Collegiate Education,
Office of the RJD, Madurai, Madurai.

3.The Madurai Kamaraj University,
represented by its Registrar,
Palkalai Nagar, Madurai.

4.R.Prabahar Vedamanickam

... Respondents

(R4 impleaded vide order of this Court in W.M.P.(MD)No.16379 of
2019, dated 12.11.2021)

PRAYER: Writ Petition filed under Article 226 of the Constitution of
India for issuance of Writ of Certiorari to call for the records
relating to the impugned order of the respondent in G.O.Ms.No.5,
Higher Education (H1) Department, dated 11.01.2021 and quash the
same as illegal.

For Petitioner

:Mr.M.Ajmal Khan,
Senior Counsel
for M/s.Ajmal Associates

For R1 and R2

:Mr.Veerakathiravan
Additional Advocate General
assisted by Mr.D.Ghandiraj,



For R3
For R4

Special Government Pleader
:Mr.T.Sakthi Kumaran
:Mr.N.Vijay Narayanan
Senior Counsel
for Mr.Karuppasamy Pandian

W.P. (MD)No.13495 of 2021:-

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Sadakathullah Appa College,
represented by its Secretary,
Rahmath Nagar, Tirunelveli,
Tirunelveli District.

... Petitioner

vs.

1.The State of Tamil Nadu,
represented by its Secretary,
Higher Education (H1) Department,
Fort St.George, Chennai.

2.The Regional Joint Director of Collegiate Education,
Office of the RJD,
18, Tiruchendur Road, Murugankuruchi,
Tirunelveli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records relating to the impugned order of the respondent in G.O.Ms.No.5, Higher Education (H1) Department, dated 11.01.2021 and quash the same as illegal.

For Petitioner	:Mr.M.Ajmal Khan, Senior Counsel for M/s.Ajmal Associates
For R1 and R2	:Mr.Veerakathiravan Additional Advocate General assisted by Mr.D.Ghandiraj, Special Government Pleader

W.P. (MD)No.19374 of 2021:-

R.Prabahar Vedamanickkam

... Petitioner

vs.

1.The State of Tamil Nadu,
represented by its Secretary,
Higher Education (H1) Department,
Fort St.George, Chennai.

2.The Director of Collegiate Education,
Department of Higher Education,
Government of Tamil Nadu.



3.The Governing Council of American College,
represented by its Secretary,
American College Complex, Tallakulam,
Madurai.

4.The Madurai Kamaraj University,
represented by its Registrar,
Palakalai Nagar, Madurai.

5. The University Grants Commission,,
Rep.By its Chairman, Bahadushah Zafar Marg,
New Delhi 110 002 Through its Chairamn

6. Devamani Christoher, Principal,
Amercial College Complex, Tallakulam,
Madurai.

... Respondents

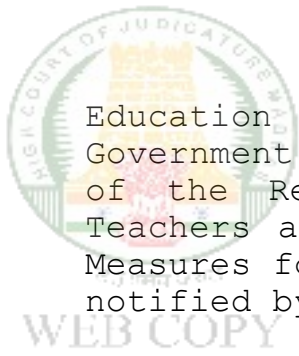
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus directing the respondents to consider the representation dated 29.05.2021 made by the petitioner and consequently direct the 3rd respondent to call for post of Principal and fill up the same in accordance with G.o.Ms. No.5 Higher Education Department dated within a time frame fixed by this Honble Court .

For Petitioner	:Mr.N.Vijay Narayanan Senior Counsel for Mr.Karuppasamy Pandian
For R1 and R2	:Mr.Veerakathiravan Additional Advocate General assisted by Mr.D.Ghandiraj, Special Government Pleader
For R3	:Mr.M.Ajmal Khan Senior Counsel for M/s.Ajmal Associates
For R4	:Mr.T.Sakthi Kumaran

C O M M O N O R D E R

The common issue raised in the above three Writ Petitions is with respect to the applicability or enforcement of G.O.Ms.No.5, Higher Education (H1) Department, dated 11.01.2021 of the first respondent/State of Tamil Nadu represented by its Secretary, Higher Education (H1) Department, Chennai, on the petitioners in W.P.(MD) No.13488 of 2021 and W.P.(MD)No.13495 of 2021 with specific reference to the regulation imposed on the tenure of the respective College Principals.

2.The petitioner in W.P.(MD)No.13488 of 2021, is the American College, Madurai and the petitioner in W.P.(MD)No.13495 of 2021, is the Appa College, Tirunelveli. G.O.Ms.No.5, Higher Education Department, Chennai.



Education (H1) Department, dated 11.01.2021 had been passed by the Government of Tamil Nadu directing adoption with some modifications of the Regulation on Minimum Qualification for appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance and Standards in Higher Education, 2018 notified by the University Grants Commission (UGC) on 18.07.2018.

3.The Writ Petitioners in W.P(MD)No.13488 of 2021 and W.P.(MD)No.13495 of 2021 have raised contentions assailing G.O.Ms.No.5, whereas, the Writ Petitioner in W.P.(MD)No.19374 of 2021 had called upon the contesting respondents thereon to act in accordance with G.O.Ms.No.5 and had sought a Mandamus to be issued accordingly.

Brief facts:-

4.The petitioner in W.P.(MD)No.13488 of 2021, the American College is a minority educational institution and the Writ had been filed by the Governing Council represented by the Secretary, who, as a matter of fact, is also the Principal of the College. The College had been established in the year 1881 by Christian Missionaries/the American Mission and is affiliated to the third respondent/Madurai Kamaraj University. It is recognised as a minority educational institution by the Government of Tamil Nadu. It has hallowed past. It is the belief of the Governing Council that to maintain standards expected, a right has been guaranteed under the Constitution that there would not be direct or indirect interference with the administration of the College by any means whatsoever. The Writ Petition has been filed seeking to preserve such right and its autonomy to administer the College in the standards expected to be maintained.

5.The petitioner in W.P.(MD)No.13495 of 2021, Sadakathullah Appa College, is a religious minority educational institution established and administered by Sadakathullah Educational Society registered under the Societies Registration Act, 1860 (Act 21 of 1860). The College had been recognised by the Government of Tamil Nadu as a minority institution. It is claimed that the College caters to the higher education of the poor and rural students in Tirunelveli and adjoining districts. It offers graduate, post graduate, doctorate and research level programmes. It is affiliated to Manonmaniam Sundaranar University.

6.Both the Writ Petitioners are deeply aggrieved by a particular clause in the Regulation of UGC and in G.O.Ms.No.5 prescribing minimum qualifications for appointment of Teachers and other academic staff and measures for maintenance of standards in higher education. The two Writ Petitioners have taken umbrage over the clause relating to the College Principal, not with respect to the eligibility criteria, but with respect to the tenure to which the Principal can hold office.



7.The Principal of the American College had been appointed on 28.10.2011. He is still functioning as Principal. The Principal of Sadakathullah Appa College had been appointed as Principal on 25.05.2011 and is so functioning as on date.

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8.When things stood thus, the tenure of both the Principals came to be seriously jeopardized by the notification of the UGC which prescribed that a College Principal shall be appointed for an initial period of five years and which term can be extended for another period of five years on the basis of performance assessed by a Committee appointed by the respective Universities and that, after the completion of the said term of maximum of ten years, the incumbent will have to be appointed back to the parent organisation with the designation as Professor and in the cadre of Professor.

9.This notification of the UGC has been claimed to have been taken on board by the State of Tamil Nadu by an Executive Order in G.O.Ms.No.5, Higher Education (H1) Department, dated 11.01.2021. This naturally meant that as on date of the filing of Writ Petitions or atleast as on date, the two Principals apprehended that have far outrun the term which they can hold, namely, ten years. Claiming that this curtailment of their tenure was a direct infringement of the right of a minority institution to administer, the two Writ Petitions have been filed seeking interference with that particular clause in the notification/Government Order relating to the tenure of a Principal of the College.

10.W.P.(MD)No.19374 of 2021 had been filed by an Associate Professor in the Department of Tamil, the American College, Madurai, in the nature of a Mandamus seeking a direction to the third respondent therein/Governing Council of the American College to consider a representation, dated 29.05.2021 given by him and consequently, to direct the said third respondent to invite applications for the post of Principal and fill the same in accordance with G.O.Ms.No.5, Higher Education (H1) Department, dated 11.01.2021, by which Government Order, the UGC Notification, dated 18.07.2018 had been adopted by the Government of Tamil Nadu. The petitioner lays a claim for the post of Principal of the American College and is frustrated by the continuation of the present Principal beyond the period of ten years, even though by the aforesaid Government Order, the tenure was restricted to ten years.

11.W.M.P.(MD)No.12610 of 2021 had been filed by a third party who seeks to implead himself as respondent to W.P.(MD)No.13488 of 2021 and claims that he should also be heard in view of his erstwhile position as Professor in the Department of Zoology in the American College. He claims that the stipulation of a maximum period of ten years in the post of Principal would serve the ends of justice and would improve the quality of higher education.



The Contentions raised in W.P(MD)No.13488 of 2021 and 13495 of 2021:-

12.The Writ Petitioners contend that every minority educational institution is entitled to protection under Article 30(1) of the Constitution of India which guarantees a right to establish and administer the said institution free from State interference. They claimed that the rights guaranteed include:

(i)the right to choose a Governing Body to conduct the affairs of the institution to manage the institution;

(ii)the right to appoint Teaching staff, particularly, the Principal/Head of Academic Staff as well as non-teaching staff and to take disciplinary action against the said persons/employees;

(iii)the right to admit eligible students of their choice and to set up a reasonable fee structure

iv)the right to use the properties and assets of the institution to its benefit.

13.They also claim that this right to establish and administer an institution had been the subject matter of interpretation by various judicial pronouncements and had been upheld and recognised. It had been stated that a Principal was the fulcrum of any educational institution and therefore, appointment and determination of tenure should be vested only with the educational institution and there should not be any interference. This right was to maintain the philosophy and the objects of minority institutions.

14.It had been claimed that though Section 26 of the University Grants Commission Act, 1956, empowers stipulating regulations, such regulations have to be approved by the Parliament. The consequence of a University not complying with any of the regulation stipulated is to withhold the grants, as provided under Section 14 of the Act. It had also been contended that the UGC Regulations are only directory for Universities, Colleges and other higher education institutions established under State legislations and would not be applicable if the regulations are not adopted by the State Government by amending the related State legislations in tune with the regulations.

15.It is further contended that the Universities will have to suitably amend its regulations to incorporate the regulation of the UGC Regulation. It is claimed that the UGC Regulation aforementioned, dated 18.11.2018 had been adopted by the State Government by passing an Executive Order and not by introducing a legislation adopting such regulation. It had also been stated that the two Universities, namely, Madurai Kamaraj University and



respective statutes permitting adoption of the Government Order passed by the State Government.

16.A doubt had therefore been cast over the applicability of the regulations to the two Writ Petition Colleges. It had therefore been stated that the UGC Regulations 2018 would not be applicable to the American College, Madurai and to the Sadakathulla Appa College, Tirunelveli. It had also been stated that in view of the fact that the aforementioned two Colleges are minority educational institutions, the protection guaranteed under Article 30(1) of Constitution of India is sacrosanct and the rights guaranteed under Constitution cannot be frustrated by an Executive Order of the State Government. This would amount to serious infringement of the right of the educational institution to administer the College in accordance with their principles. It had been repeatedly contended that the curtailment of the tenure of the Principal and more particularly, introducing third party assessment of the Principal after a period of five years are direct violations of the rights guaranteed under the Constitution of India.

17.It had therefore been stated that G.O.Ms.No.5, Higher Education (H1) Department, dated 11.01.2021, should be struck down by this Court insofar as the clause determining the tenure of Principal of the two Colleges are concerned.

Contentions of the State Government/Universities:-

18.The Government had issued G.O.Ms.No.5, Higher Education (H1) Department, dated 11.01.2021, to adopt the UGC Regulations 2018 and thereby, making it obligatory on Universities within the State of Tamil Nadu to fall in line with such regulations. This would naturally imply that the Colleges affiliated with the Universities should also have to necessarily adhere to the regulations introduced.

19.The petitioners being aided minority institutions protest such infringement of their fundamental right as guaranteed under Article 30(1) of Constitution of India, they question the restrictions placed on the tenure of a Principal of a minority institution.

20.It is the contention of the State Government that necessary precautions have been taken to preserve the identity of the minority status and as a matter of fact, more ample space has been given to the minority institutions for including members of various grades to participate in the selection of a Principal. It is therefore stated that the minority institutions need not have any apprehension that their right to select a Principal of their choice had been interfered with. It had been stated that the selection of a Principal has to be on a broad based opinioned procedure and the



There was no restriction on the right of the minorities, but the existing right was only being regulated with an intention to bringing about quality and merit.

21.It is also the contention of the Government that the post of a Principal had been recognised in various judgments of the Honourable Supreme Court to be the fulcrum in any educational institution and therefore, much care had been taken for selection or appointment of a particular individual as a Principal which is done only after examination of the credentials with wide participation of the College Council/Society/Trust.

22.The further aspect is that the Principal, if he/she completes the period of five years, then an assessment is done regarding his/her suitability to continue for a further period of five years. This is one of the stipulations of the UGC Regulations 2018, which had been introduced only to enhance the performance and the standard of every educational institution. Such object is inbuilt in the Universities Grants Commission Act, 1956, which is an Act passed by the Parliament. Higher education is very important and to provide quality higher education, a Principal of a College must be beyond reproach. His/her ability would flow down to the Teachers and finally, to the students.

23.It is the further contention of the State Government that it was only after due deliberation, G.O.Ms.No.5, Higher Education (H1) Department, dated 11.01.2021, had been passed adopting the UGC Regulations 2018 to be put in effect by Universities/Colleges/Institutions in the State of Tamil Nadu.

24.Madurai Kamaraj University for their part also contended that their Syndicate had adopted the implementation of the various guidelines and regulations given in G.O.Ms.No.5, dated 11.01.2021, by passing necessary resolution, which would naturally indicate that they also adopted the UGC Regulation 2018. It had been further stated that as affiliated College, the petitioner/the American College will have to adhere to such guidelines and there is no restriction on the fundamental right, but there was only a regulation of the manner in which such fundamental right is exercised. There was no involvement into the administration of the institution.

25.It is the further contention that the Principal-elect, who is thought to be fit to administer has to pass through certain assessments and it was these assessments which have been introduced. It had also been contended that a Principal of minority institution and Principal of any other College should stand on the same footing and there can be no discrimination or difference in the eligibility criteria of the two Principals of two separate Colleges. It had been contended that these Writ Petitions are misconceived and should not be considered by this Court.



Contentions of the petitioner in W.P. (MD)No.19374 of 2021:-

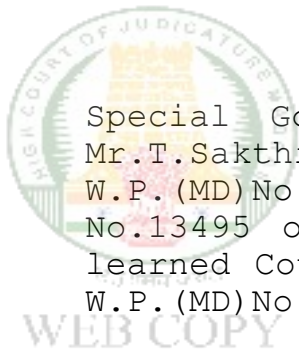
26.The petitioner is also a respondent in W.P.(MD)No.13488 of 2021. He can be termed as a groom in waiting. He had nursed legitimate expectation that the term of the Principal would, at some point of time come to an end by efflux of time, and his expectation was heightened with the introduction of UGC Regulation 2018, which restricted the tenure to a period of maximum ten years. The however Principal had filed the Writ Petition holding that such restriction is violative of Article 30(1) of Constitution of India which provides a fundamental right to a minority institution and this petitioner is caught in a catch 22 situation. He owes allegiance to the minority institution but he also owes allegiance to ensure that the standard of the institution does not fall, owing to the clinging to a post by a particular individual. Such clinging would only lead to stagnation in the thought process and innovation would be the sufferer.

27.It is his contention that there has been no infringement in the selection process of the Principal, but reasonable assessment has been contemplated at the end of five years. It is his contention that such regulation having been adopted by the State Government and in turn by the Syndicate of the Madurai Kamaraj University should be made applicable to the American College and there should be no discrimination among Colleges, because, the aim of these regulations is only to upgrade the existing merit of such Colleges.

28.W.M.P.(MD)No.12610 of 2021 in W.P.(MD)No.13488 of 2021, had been filed seeking to implead a former Professor as a respondent in that Writ Petition. He had also raised contentions that the UGC guidelines should be adopted by the American College owing to the fact that it only regulates the post of Principal. There is a freedom to the institution to appoint a particular individual as a Principal, but it is only just that the said individual is so appointed after he comes through a particular process of evaluation credentials. It is the contention of the said retired Professor that the tenure being restricted to ten years is reasonable and that the Writ Petitions filed by the Colleges should be dismissed.

The Arguments:-

29.Substantiating the aforementioned contentions, arguments were advanced and I must state that it was with much pleasure that I heard sagacious arguments advanced by Mr.M.Ajmal Khan, learned Senior Counsel for the petitioners in W.P.(MD)Nos.13488 and 13495 of 2021, Mr.N.Vijay Narayanan, learned Senior Counsel for the petitioner in W.P.(MD)No.19374 of 2021, Mr.Veerakathiravan, learned Additional Advocate General, assisted by Mr.D.Ghandiraj, learned



Special Government Pleader appearing for the State Government, Mr.T.Sakthi Kumaran, learned Counsel for the second respondent in W.P.(MD)No.13488 of 2021 and the fourth respondent in W.P.(MD)No.13495 of 2021/Madurai Kamaraj University and Mr.Lajapathi Roy, learned Counsel for the petitioner in W.M.P.(MD)No.12610 of 2021 in W.P.(MD)No.13488 of 2021.

30.Mr.M.Ajmal Khan, learned Senior Counsel for the petitioners in W.P.(MD)No.13488 and 13495 of 2021 pointed out the Regulations 2018 of UGC and stated that there was an inbuilt condition which required that within the stipulated period as mentioned therein, the State Government should bring a legislation adopting the said regulation. The learned Senior Counsel stated that thereafter, it was obligatory on the part of the Universities within the particular State to suitably amend the enactments governing them and it was emphasized that these procedures should be followed for the regulations to be adopted in letter and spirit and to be applied to the Colleges affiliated to the Universities within a particular State.

31.The learned Senior Counsel pointed that a similar regulation had been introduced by the UGC in the year 2010 and thereafter, appointment of a Vice Chancellor to the Madurai Kamaraj University of a Professor, Kalyani Mathivanan, was challenged before this Court by filing a Writ of Quo Warranto. The Division Bench held that since the regulations had not been adopted in manner prescribed, the appointment of the said individual as Vice Chancellor, could not be sustained and the Writ Petition was allowed. This dictum had been upheld by the Honourable Supreme Court.

32.The learned Senior Counsel stated that in the present case, the State Government had only passed an Executive Order, namely, G.O.Ms.No.5, Higher Education (H1) Department, dated 11.01.2021 and the learned Senior Counsel very seriously questioned the legality of such an act when a legislation was required to be passed. The learned Senior Counsel also pointed that Madurai Kamaraj University had also not brought about suitable amendment by incorporating the regulations, but that the Syndicate had only passed a resolution adopting the legislation. It was therefore urged that this Court should hold that G.O.Ms.No.5, Higher Education (H1) Department, dated 11.01.2021 cannot be thrust upon Colleges in view of lack of legality surrounding the said Executive Order.

33.It was thereafter primarily and very strongly stressed by the learned Senior Counsel that the very regulation and the consequential Government Order passed, even if it is to be accepted that an Executive Order would be sufficient, cannot and should not be applied to minority institution. The learned Senior Counsel also pointed out Article 30(1) of Constitution of India and stated that the said institution is guaranteed under the said Article is not subject to any

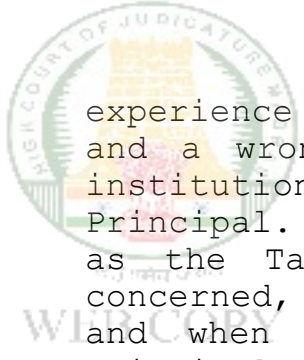


restriction or even regulation. It was a right guaranteed to be enjoyed by the minority institution and there should not be any interference with the same.

34.The learned Senior Counsel pointed out that among other rights guaranteed to minority institutions is the right to administer and this would include the right to appoint persons who are to so administer the institutions. It would also as a corollary, include the right to continue such appointees in service for the tenure which the institution deems to the best advantage of the institution. There cannot be any restriction on the tenure. The learned Senior Counsel also stated that the qualification required is not questioned by the minority institution, but stated that the right to select a particular individual must rest only with the Governing Council or College Committee of the minority institution and that there cannot be any interference either directly or indirectly in such selection process by any third party or by any third party process. Thereafter, if the College Committee or the Governing Council is of the opinion that, if the service of the appointed individual is to be interfered, then, they alone should have such decision making authority and there cannot be a review of such selection at any period of time or as prescribed under the UGC guidelines after five years.

35.It was pointed out that such review was by external agencies and this was a direct intrusion into the right of the minority institution to take an independent decision to continue in service the Principal till they feel competent to do so. The assessment at the end of five years by a third party who may or may not have the welfare of minority institutions at heart would certainly affect the right to administer the institution, which is guaranteed under the Constitution. Thereafter, fixing the tenure at ten years and limiting such tenure to that particular period and directly interfere with the further continuation of the said individual would once again be an assault on the independence of minority institution to administer the College and which administration would include appointment and retention as Principal of the College, a particular individual in whom they have confidence. It was therefore pointed out that the State Government, by introducing the Government Order, which is impugned in the Writ Petition had erred in all aspects while adopting the UGC guidelines with respect to the tenure of a Principal by limiting the tenure to five years in the first instance and thereafter, placing a necessity to assess the performance on the basis of criteria which could be totally alien to the believes of minority institution. This would also indirectly play upon the thought process of such Principal who to pass such assessment might, either voluntarily or involuntarily for sake some of the ideas which are required to administer the minority institution.

36.It was further emphasized that if the tenures were to be
<https://hcservices.gov.in/hcservices/> years, then the institution would loose out on the



experience which the Principal had gained over the past ten years and a wrong incumbent, might not be in a position to take the institution forward as would have been expected by an experienced Principal. The learned Senior Counsel also pointed out that insofar as the Tamil Nadu Private Colleges (Regulation) Act, 1976, is concerned, it is an Act which had been approved by the Parliament and when there are provisions governing the appointment of a Principal and the tenure of a Principal in that particular legislation, then it cannot be overridden by passing an Executive Order in G.O.Ms.No.5. The conditions of service have been given in the said enactment.

37.The learned Senior Counsel pointed out that Article 254 of the Constitution of India is pressed into service when there is conflict between the State legislation and the Central legislation. It was reiterated that the State Government had not brought in any amending legislation, but had only passed an Executive Order. The learned Senior Counsel also pointed out that the Madurai Kamaraj University is also governed by an Act of the year 1965 and the provision of that Act had also not been amended in accordance with the regulation.

38.The learned Senior Counsel also pointed out that the contention of the respondents that the Writ Petitioner in W.P.(MD) No.19374 of 2021 is waiting in the wings cannot be a legal argument, since a junior should give way to a senior so long as competency is the criteria. The learned Senior Counsel therefore urged that this Court should protect the rights and interests of the minority institution whose rights have been guaranteed under the Constitution and hold that G.O.Ms.No.5, dated 11.01.2021 is not applicable with respect to the limitations provided regarding Principals of the minority institutions.

39.Mr.Veerakathiran, learned Additional Advocate General pointed out that the role of a Principal had been discussed by the Honourable Supreme Court in their pronouncements and stated that the institution's independence is being retained and there is no intrusion into the Governing Council or in the Committee. The learned Additional Advocate General stated that the qualifications required to be considered for appointment of a Principal has to be uniform for all Colleges as otherwise, it would lead to a situation where a person who is qualified to be a Principal in one College would be unqualified to be even considered by any other College at some point of time particularly, when the object is to impart education. There must be equal standards and on that particular ground, it cannot be viewed as a minority or a non minority institution. The focus of the amendment is providing better education for the students who come to study in the College. For that purpose, the Principal who is the nucleus and fulcrum around which any educational institution revolves will necessarily have to have some basic and fundamental qualifications and before



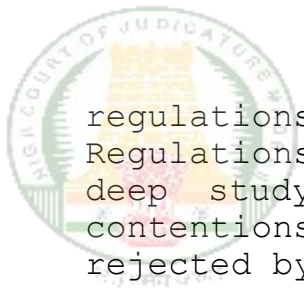
appointment as Principal, there has to be an uniform testing criteria to be in place, which are minority or non minority institution. The test is on the individual and not on the institution as such.

40.It was also pointed by the learned Additional Advocate General that during the selection process, ample leverage has been given to include the members of the minority institution at various levels to participate in the selection process and therefore, without their consent and without their opinion being considered, nobody can be appointed as Principal. The right of the minority institution to administer is recognised and it is only a participative procedures, where the College would also benefit by having a competent person as a Principal. It is only to the advantage of the College and there was no intention of the State Government to intrude into any right enjoyed by the minority institution.

41.The learned Additional Advocate General also pointed out that the only right guaranteed under Article 30(1) of the Constitution was to establish and administer education institutions. The Government had not interfered with the establishment of the minority institution. By way of this Government Order, there is also no interference with respect to the administration of the minority institution. As an institution, there was only a regulation regarding the appointment of the Principal and the assessment of the Principal at the end of five years and putting a cap on the term to hold the post of Principal. A further five years, a reasonable length of time of ten years have been given for any individual, who is selected as Principal.

42.It is also the contention of the learned Additional Advocate General that thereafter the individual is to serve as a Professor and his opportunity to later become Vice Chancellor of a University is still retained. The learned Additional Advocate General stated that there is no other intention of the State Government, but to ensure that the educational quality improves. The object was only to ensure academic excellence. It was also pointed out that the State Government is directly providing funds for aided Colleges. They have then prescribed these conditions in accordance with the UGC guidelines and therefore, no fault can be found by the petitioners in the Government Order adopting the guidelines.

43.Mr.T.Sakthi Kumar, learned Standing Counsel for the Madurai Kamaraj University stated that the Syndicate of the University had also passed a resolution adopting the terms of G.O.Ms.No.5, Higher Education (H1) Department, dated 11.01.2021. The learned Counsel also pointed that the Syndicate by its resolution had also adopted the aforementioned UGC regulations. The learned Counsel then stated that the Writ Petitioners cannot enjoy unlimited period of service and therefore, no unreasonable restriction to their service conditions and



regulations must put in place. It had been pointed that the UGC Regulations 2018 had been passed or adopted by the UGC only after deep study and therefore the learned Counsel stated that the contentions of the Writ Petitioners are mischievous and has to be rejected by this Court.

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44.Mr.N.Vijay Narayanan, learned Senior Counsel appearing on behalf of the petitioner in W.P.(MD)No.19374 of 2021 pointed out that the entire issues revolve around the following aspects:

i)The effect of regulation now introduced on Article 30(1) of the Constitution and whether it restricts or regulates in larger public interest of the higher education of the State.

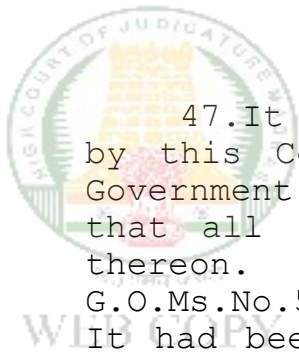
ii)The effect of Private Colleges (Regulation) Act, 1976.

iii)The right of UGC to make regulation under the UGC Act with respect to entry 66 in List I relating to higher education and whether it is only the Parliament that can bring in such regulations.

iv)The post of Principal and its importance in every Government institution which is alone examined and it was pointed out by the learned Senior Counsel that the most crucial post in any College is the Principal and it was only natural that some regulations are put in place. The learned Senior also pointed that even though the petitioners claim that they are appointed in the year 2011 and the regulations were introduced in the year 2018 and it was not applicable to them is not a correct approach. He stated that every quasi-judicial order or an administration order, they may not be retrospective in nature, but will still have a retro-active effect. It would be applicable to the date when it should have been made applicable on any individual whose continues to be service in respect of such introduction or amendment. The learned Senior Counsel pointed out that the Writ Petitioners had completed the tenure of ten years and have to be automatically terminated and a fresh selection of a Principal will have to be done by the two respective Colleges.

45.The learned Senior Counsel then stated that the Writ Petitioners have only questioned G.O.Ms.No.5, dated 11.01.2021 and that for reasons best known to them, they have not questioned or challenged the UGC Regulations, 2018 and unless that is challenged, the petitioners cannot be granted any relief.

46.The learned Senior Counsel also relied upon the judgments of the Honourable Supreme Court and stated that the restriction or regulation is only for the benefit of the College. He stated that if a new Principal comes in, there could be innovative ideas projected and fresh solutions obtained. This would not be possible if a Principal has the impression that he can continue to be Principal till he attains the age of superannuation and naturally, there is always a possibility of stagnation occurring in the minds of such Principal.



47.It was also pointed out that it had been held even earlier by this Court that the UGC guidelines are binding on the State Government and grant in aid colleges. There was also a necessity that all States should adopt the enactments and the regulations thereon. The learned Senior Counsel also pointed out that G.O.Ms.No.5 was a practical and exact replica of the UGC guidelines. It had been pointed out that the Rules have been tweaked to give necessary representations to the institution and their representatives to be part of a selection committee.

48.The learned Senior Counsel also pointed out the provisions of Private Colleges (Regulation) Act and stated that the Rules are silent as to how merit can be assessed. The UGC regulations provide regulations to assess the merit thereby filling any gap left out by the rules of the Private Colleges (Regulation) Act. It was stated that fresh blood can be introduced and effective of innovative ideas, it would surface the advantage of the institution. He also stated that there cannot be a vested right to continue. Law fixes a retirement age and that age is not interfered with. However, only the tenure of the post held during the period of service, which alone was regulated and therefore, the right of the individual is certainly protected. There is no invasion in any official discharge of the duties.

49.The learned Senior Counsel drew an with the Payment of Gratuity Act, which was introduced in the year 1972, an pointed out that if any employee, who had put in 30 years of service retires on the next year, after the introduction of the said Act, he would still get the benefit of 30 years of employment. The past period is considered. Similarly, in the reverse context, if the tenure was for ten years, then advantage cannot be taken of the fact that merely because, the petitioner had been appointed in the year 2011 and the regulation had been introduced in the year 2018 and that the Government Order had issued in the year 2021, they would not be applicable to them and that they can continue further till they attain the age of superannuation irrespective of the fact that the Government Order fixed a tenure of ten years governing the Principal.

50.The learned Senior Counsel further pointed out that the regulations are only for the benefit of a minority institution and wondered as to the prejudice, that would be caused to them since it is only efficiency and competency, which are examined to hold the post and certainly, the institution as such, and this examination of the efficiency of a Principal, would only benefit the students which would in turn reflect upon the administration of the College. Therefore, it was pointed out that it was win-win situation for the Principal and the students.

51.Mr.Lajapathi Roy, learned Counsel for the petitioner who had
<https://hcservices.courts.gov.in/madras> pending application in W.M.P.(MD)No.12610 of 2021 also



advanced arguments and this Court specifically stated that a platform to grind personal grievances is not provided and that the learned Counsel can advance arguments on the issues raised.

52.The learned Counsel pointed out that the Hon'ble Supreme Court had passed another judgment, wherein, they had examined the existing right and compared that with the vested right. It was pointed out by the learned Counsel that Thiagaraja Committee was not brought to the notice of the Division Bench of Bombay High Court which had struck down the UGC guidelines.

53.The learned Counsel pointed out that there were four rights guaranteed, namely, to choose the Governing Body, to choose the Teachers, to admit eligible students and to use the properties, which are alone guaranteed for minority institution and these rights are certainly not interfered with. It was pointed out that the conditions of service as provided, namely, ten years is common and applicable to minority and non minority institutions and it would be extremely unfair for a minority institution to claim that they stand out and seek exemption from such guidelines given for upgrading their own institution. There could be a danger of them failing the assessment test of the institution itself, if their Principal is found wanting owing to periodic assessment not having been done, as stipulated by the UGC guidelines. The learned Counsel therefore stated that the Writ Petitions should be dismissed.

54.Mr.M.Ajmal Khan, learned Senior Counsel in his reply arguments once again pointed out that the regulations are not challenged, but the Government Order was alone challenged because the regulations do not become applicable to the State or the University or the College. They become applicable only when the State Government adopts them and such adoption should be by way of introducing a legislation. Here, since an Executive order has been passed in G.O.Ms.No.5, the petitioners have questioned only the Government Order, which is made applicable to them. It might have drawn its source from the UGC guidelines, but there had been some modifications made and the Government had passed G.O.Ms.No.5 and therefore, the petitioners are well within the rights to question only the Government Order.

55.The learned Senior Counsel also pointed out that the Tamil Nadu Private Colleges (Regulation) Act, 1976, is exclusive to Colleges in Tamil Nadu and that when that legislation is in force and which legislation has been approved by the Parliament, introducing a Government Order directly re-examining the provisions of the said legislation, cannot be countenanced and has to be set aside. The learned Senior Counsel also reemphasized the fact that the Madurai Kamaraj University Act, 1965 had not been amended and only a resolution had been passed by a Syndicate and wondered as to its applicability to any College, much less the petitioner College.

The learned Senior Counsel therefore reiterated that the Writ



Petitions should be allowed.

56.The learned Additional Advocate General in his reply pointed out that the subject matter of the Writ Petitions is only the tenure of the Principal and not the right or the method in which the Principal is to be appointed. Insofar the condition of service is concerned, it was stressed by the learned Additional Advocate General that there cannot be any different yardstick for minority or non minority institution. If the age of superannuation is sixty years, it is sixty years for every Professor and that it cannot be claimed that the service should be extended beyond the period of sixty years merely because he is functioning in a minority institution. The learned Additional Advocate General also pointed out that the regulations are not challenged and the UGC which is the competent authority had not been made a respondent in the Writ Petitions. The learned Additional Advocate General insisted that the Writ Petitions should be dismissed.

57.Mr.T.Sakthi Kumar, learned Standing Counsel for the Madurai Kamaraj University in his reply arguments stated that the tenure of a Principal is only being regulated and the service conditions have been specified in the regulations and the learned Counsel stated that the Syndicate had properly adopted the Government Order to put in effect the regulation of UGC 2018 to be followed by every College across its domain. The learned Counsel also stated that it would only be appropriate that the petitioner College also confirms to the same, since it is only to their benefit. It was once again urged that the Writ Petitions should be dismissed.

58.Mr.Lajapathi Roy, learned Counsel also sought permission to argue again in rejoinder. He pointed out that the petitioners have not actually questioned the selection process, but only the tenure of ten years. The learned Counsel stated that the Principal can always return back as Professor and is certainly not degraded. It was pointed out that the institution will never be headless.

Discussion, Analysis and Determination:-

59.I have carefully considered the arguments and perused the materials on record. Even before I commence, it must be pointed out that the learned Additional Advocate General, learned Senior Counsels and the Counsel who had argued had relied upon precedents and I have only narrated the facts as stated in the arguments.

60.Let me start from the very beginning.

61.The University Grants Commission Act, 1956 (Act 3 of 1956) had received the assent of the President of India on 03.03.1956 and had been published in the gazette of India, Extraordinary, Part-II, Section 1 Page No.423, dated 03.03.1956. The Act provides for the

that purpose, to establish a University Grants Commission.

62. Under the statement of objects and reasons, it had been stated that the University Grants Commission would be a corporate body acting as an expert body with power to recommend measures necessary for the reforms and improvement of University education. This would mean that the University Grants Commission will also have the power to cause an inspection or enquiry to be made on any University established by law in India.

63. Section 2(f) defines "University", which as follows:

"2. Definitions :

(f) "University" means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognised by the Commission in accordance with the regulations made in this behalf under this Act."

64. Section 14 of University Grants Commission Act, 1956 is as follows:

"14. Consequences of failure of Universities to comply with recommendations of the Commission.—If any University 11[grants affiliation in respect of any course of study to any college referred to in sub-section (5) of Section 12-A in contravention of the provisions of that sub-section or] fails within a reasonable time to comply with any recommendation made by the Commission under Section 12 or Section 13 12[or contravenes the provisions of any rule made under clause (f) or clause (g) of sub-section (2) of Section 25, or of any regulation made under clause (e) of clause (f) or clause (g) of Section 26,], the Commission, after taking into consideration the cause, if any, shown by the University 13[for such failure or contravention,], may withhold from the University the grants proposed to be made out of the Fund of the Commission."

65. Section 26 of the Act deals with powers to make regulation and Section 26(1) (e) and (g) are as follows:

"26. Power to make regulations: (1).....

(e) defining the qualifications that should ordinarily be required of any person to be appointed to the teaching staff of the University, having regard to the branch of education in which he is expected to give instruction;

.....

(g) regulating the maintenance of standards and the co-ordination of work or facilities in Universities.



66.It is seen from the above that UGC has the power to make regulations with respect to the qualification of any person to be appointed as teaching staff and to regulate the maintenance of standards in Universities. This would naturally mean that they also have the power to re-fix or re-examine the qualifications which had been determined in accordance with the needs of University education. Under Section 14, if any University contravenes any regulations made under Clause (e) or Clause (g) of Section 26 referred to supra, then grants proposed to be made to the University may be withheld.

67.In exercise of the power under Section 26(e) and (g) of University Grants Commission, 1956, r/w Section 14, the UGC had introduced regulations in the year 2018 called "UGC Regulation 2018, dated 18.07.2018 on Minimum Qualification for appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance and Standards in Higher Education, 2018". These regulations had obtained the assent of the Parliament and have been published in the Gazette of India, Extraordinary, Part III, Section 4, dated 18.07.2018. In the regulation, it had been stated as follows:

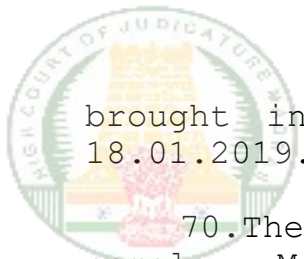
"1.2 These shall apply to every University established or incorporated by or under a Central Act, Provincial Act or a State Act, every Institution including a Constituent or an affiliated College recognized by the Commission, in consultation with the University concerned under Clause (i) of Section 2 of the University Grants Commission Act, 1956 and every Institution deemed to be a University under Section 3 of the said Act.

1.3 These shall come into force from the date of notification."

68.The regulation included determining and fixing the minimum qualification for the post of Professors, Associate Professor and Teachers and other academic staff in Universities, Colleges and also the revision of pay scales. It was further stated as follows:

1.2 Every university or institution deemed to be University, as the case may be, shall as soon as may be, but not later than within six months of the coming into force of these Regulations, take effective steps for the amendment of the statutes, ordinances or other statutory provisions governing it, so as to bring the same in accordance with these Regulations.

69.It is thus seen that every University should within the period of six months of the coming into force of the regulations, take effective steps for amendment of the statutes governing the State University. As stated, the regulation came into effect on and from 18.07.2018. This implied that the Universities should have



brought in amendment to their respective statutes on or before 18.01.2019.

70.The Universities concerned in the instant Writ Petitions, namely, Madurai Kamaraj University and Manonmaniam Sundaranar University have not till this date brought in necessary amendment to their statutes, namely, Madurai Kamaran University Act 1965 (Tamil Nadu Act 33 of 1965) and Manonmaniam Sundaranar University Act, 1990 (Act 3 of 1990).

71.It must be straightaway mentioned that very dishearteningly and I hope without any *mala fide* intention, the petitioner in W.P. (MD)No.13495 of 2021 had not even impleaded the University governing the said Writ Petitioner, namely, Manonmaniam Sundaranar University. Still worse, both the Writ Petitioners have not impleaded the UGC as respondent. This is significant because, the fact that both the Universities have not brought in amendment to their statutes would have stood exposed before the UGC, if the said UGC has been made as respondent to these Writ Petitions. This gives an impression that probably the petitioner Colleges also do not want to stand exposed before the UGC.

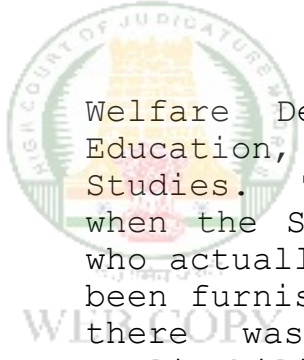
72.A perusal of the MKU Act, 1965, shows that Section 14, gives the authorities of the of the University. A similar provision is in Section 16 of the MSU Act, 1990. In both the provisions aforementioned, the authorities included the Senate and the Syndicate. The composition of the Senate and Syndicate had also been given.

73.Under Section 17 of MKU Act, 1965, the powers of the Senate included to make an amendment or repeal the same. A similar power had been given to the Syndicate in Section 24 of the MSU Act, 1990.

74.Thus, both the legislations contain unbuilt provision to bring about the necessary amendments to their statute and more particularly, since they are Universities as defined under the UGC Act 1956, there was a compulsion on them to bring about necessary amendments to their statutes and to ensure that the statutes are in accordance with UGC Regulation 2018. Both the Universities had not done.

75.The learned Standing Counsel for the Madurai Kamraaj University provided a small input stating that the Syndicate had approved G.O.Ms.No.5, dated 11.01.2021. Such approval will not and cannot be termed as an amendment to the statute, which was what prescribed by the UGC regulation, 2018.

76.It is thus clear that both the Universities have deliberately avoided bringing into effect the UGC regulation 2018. The syndicate which had passed such a resolution consists of Vice Secretaries of Education Department, Health and



Welfare Department, Law Department and Directors of Higher Education, Technical Education and Medical Education and Legal Studies. There are also other members. The details of the dates, when the Syndicate convened the meeting and the number of members who actually attended the meeting and the resolution passed have not been furnished to the Court. It has also not been disclosed whether there was any effective deliberation with respect to the applicability of these regulations to minority institution coming under the said University and particularly in view of the right guaranteed under Article 30(1) of Constitution of India to minority institution to administer their institutions without any interference. It is therefore seen that both the Universities have failed to perform their statutory obligation. I wonder how they will react if grants are withheld by the UGC for failing to amend the statutes as directed under UGC Regulations 2018.

77. For good measure, the Government had passed an Executive Order in G.O.Ms.No.5, Higher Education (H1) Department, dated 11.01.2021, nearly 2½ years after the regulations were notified by UGC. It is thus seen that there was a deliberate step taken by both the Government and the two Universities to effectively avoid the Regulation being introduced and discussed in the Legislative Assembly of the State of Tamil Nadu. But at the same, a Government Order was passed as a facade to project adherence to the regulations, though a Government Order can never be an amendment to any statute.

78. In the background of the aforesaid circumstances, the petitioners in W.P.(MD)Nos.13488 and 13495 of 2021 have expressed deep concern over one particular clause, which directly affected their continuance in service as Principals of the American College, Madurai and the Sadakathullah Appa College, Tirunelveli, respectively.

79. The UGC Regulation, 2018 while touching upon the Principals of Colleges had brought in a regulation, which as follows:

"V. College Principal and Professor (Professor's Grade)

A. Eligibility:

(i) Ph.D. degree

(ii) Professor/Associate Professor with a total service/ experience of at least fifteen years of teaching/research in Universities, Colleges and other institutions of higher education.

(iii) A minimum of 10 research publications in peer-reviewed or UGC-listed journals.

(iv) A minimum of 110 Research Score as per Appendix II, Table 2 B. Tenure

i) A College Principal shall be appointed for a period



of five years, extendable for another term of five years on the basis of performance assessment by a Committee appointed by the University, constituted as per these regulations.

ii) After the completion of his/her term as Principal, the incumbent shall join back his/her parent organization with the designation as Professor and in the grade of the Professor."

80. In accordance with the above, the State of Tamil Nadu in G.O.Ms.No.5, dated 11.01.2021 which is impugned before this Court in both the aforementioned Writ Petitions, have brought in a very similar or if not an exact regulation and that is also extracted below:

"V. College Principal and Professor (Professor's Grade)

A. Eligibility:

(i) Ph.D. degree

(ii) Professor/Associate Professor with a total service/ experience of at least fifteen years of teaching/research in Universities, Colleges and other institutions of higher education.

(iii) A minimum of 10 research publications in peer-reviewed or UGC-listed journals.

(iv) A minimum of 110 Research Score as per Appendix II, Table 2 B. Tenure

i) A College Principal shall be appointed for a period of five years, extendable for another term of five years on the basis of performance assessment by a Committee appointed by the University, constituted as per these regulations.

ii) After the completion of his/her term as Principal, the incumbent shall join back his/her parent organization with the designation as Professor and in the grade of the Professor."

It might appear that the same regulation had been extracted twice over, but it is only to emphasis that the Government had adopted the very same Regulation.

81. Both the Writ Petitioners have no grievance about the eligibility criteria fixed. But they have wept to their hearts content with respect to the tenure stated.

82. It must be mentioned that the Writ Petitioner in W.P.(MD) No.13488 of 2021 had opened up a battle in one front to protect his own service as Principal and another in another front ostensibly to protect the right of the College to choose a person (himself) to administer the College and to ensure that the said person (himself) continues as Principal for ever and ever.



83.Both the Writ Petitioners/Principals claim that at no point of time in their service should their performance ever be assessed by anyone much less the authorities controlling their College, namely, the Universities and the providers of the grant, namely, UGC. They claim that such assessment would be a direct infringement on the right of the minority institution to choose any person of their choice to administer the College. But, I wonder whether they would in the same breath accept if by some mischance, an inappropriate person had been selected as Principal and would then prevent assessment of performance after a period of five years or continue with the said individual even though he is not a proper fit for the seat of the Principal of the College. Any way that is a hypothetical scenario.

84.The tenure extracted above is clear. The terms are simple. The terms are straightforward. It only provides that if any individual is selected as a Principal, the initial appointment should be for five years. It also provides that after five years and on completion of five years there will be an assessment of the performance over the past five years and eligibility/suitability to continue further. It must be kept in mind that the two Writ Petitioners are Principals of educational institution where, assessment of performance is inbuilt in the said institution itself. The concept of assessment is ingrained at the time of establishment of every educational institution. Every student and every teacher is assessed day after day, month after month, quarterly after quarterly, semester after semester and annually after annually. This process continues till the end of term which the student studies or the Teacher continues to work as a teacher. It is not only made to weed out dead wood or those who stagger behind on quality, but also to encourage better performance.

85.In G.O.Ms.No.5, dated 11.01.2021, the method in which a Principal shall be selected and the assessment procedure have both been given. They are as follows:

"VIII.College Principal and Professor:-

The existing procedure of promoting the Associate Professor to the post of Principal on the basis of seniority shall be continued in Government Colleges.

The selection procedure mentioned below shall be applicable to selection of Principals to private colleges including Government Aided Colleges.

A. Selection Committee

(a) The Selection Committee for the post of College Principal and Professor shall have the following composition:

i) Chairperson of the Governing Body to be the Chairperson.

ii) Two members of the Governing Body of the college



to be nominated by the Chairperson of whom one shall be an expert in academic administration.

iii) Two nominees of the Vice-Chancellor who shall be Higher Education experts in the subject/field concerned out of which at least one shall be a person not connected in any manner with the affiliating University. In case of Colleges notified/declared as minority educational institutions, one nominee of the Chairperson of the College from out of a panel of five names, preferably from minority communities, recommended by the Vice-Chancellor of the affiliating university of whom one should be a subject expert.

iv) Three Higher Education experts consisting of the Principal of a College, a Professor and an accomplished educationist not below the rank of a Professor (to be nominated by the Governing Body of the college out of a panel of six experts approved by the relevant statutory body of the university concerned).

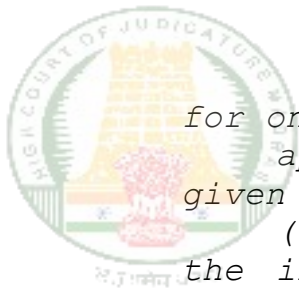
v) An academician representing SC/ST/OBC/Minority/Women/ Differently-abled categories, if any of candidates representing these categories is the applicant, to be nominated by the Vice Chancellor, if any of the above members of the selection committee does not belong to that category.

vi) Two subject-experts not connected with the college to be nominated by the Chairperson of the governing body of the college out of a panel of five names recommended by the Vice Chancellor from the list of subject experts approved by the relevant statutory body of the university concerned. In case of colleges notified/declared as minority educational institutions, two subject experts not connected with the University nominated by the Chairperson of the College governing body out of the -27- panel of five names, preferably from minority communities, recommended by the Vice Chancellor from the list of subject experts approved by the relevant statutory body.

(b) Five members, including two experts, shall constitute the quorum.

(c) All the selection procedures of the selection committee shall be completed on the day/last day of the selection committee meeting itself, wherein, minutes are recorded along with the scoring Proforma and recommendation made on the basis of merit with the list of selected and waitlisted candidates/Panel of names in order of merit, duly signed by all members of the selection committee.

(d) The term of appointment of the College Principal shall be five years, with eligibility for reappointment



for one more term only after an assessment by a Committee appointed by the University as per the composition given in sub-clause (B) of 5.1 (VIII).

(e) After the completion of his/her term as Principal, the incumbent shall join back his/her parent organisation with the designation as Professor and in the grade of the Professor.

B. Committee for Assessment of College Principal and Professor for Second Term

The Committee for assessment to the post of College Principal for second term shall have the following composition:

i) Nominee of the Vice-Chancellor of the affiliating University.

ii) Nominee of the Chairman, University Grants Commission.

The nominees shall be nominated from the Principals of the Colleges with Excellence/College with Potential of Excellence/Autonomous College/NAAC Grade 'A' accredited colleges."

86.The selection process has been interpreted in different ways by the learned Senior Counsels and by the learned Additional Advocate General.

87.The process of having a Selection Committee had been charged as a direct interference with the right of a minority institution to administer, namely, to chose a member of their own choice as guaranteed under Article 30(1) of the Constitution of India by the learned Senior Counsel appearing on behalf of the petitioners and on the other hand viewed as a broad based opinionated selection process by the learned Additional Advocate General, who stated that the Government of Tamil Nadu, while introducing the Government Order, had taken care to see that representatives from minority education institutions are included in the Selection Committee under every category. As a matter of fact, the Chairperson will have the right to veto any choice and have a right to vote if there is a tie among selected candidates. Thus, the final word of selection would by the Chairperson of the Governing Body of the College, in this case, the American College and the Sadakathullah College. It is thus pointed out that more than sufficient space had been given to the minority institution to ensure that their choice of Principal is selected and an opportunity is given to them to also expresses views and such views are expressed only in the interest of institution.

88.The discussion made lead us to examine a first issue, namely,

whether in the absence of amendment to the statute of the two Universities as laid down by the UGC Regulation 2018, the terms or clauses of G.O.Ms.No.5, dated 11.01.2018 can be thrust on the



petitioner Colleges?

89.Only when the answer to the above is held in the affirmative can a meaningful discussion be gone into the next issue namely,

(ii)Whether the selection process and the assessment of process at the time of end of five years of College Principal of the two Colleges is an intrusion into the right guaranteed under Article 30 (1) of the Constitution of India?

90.Let me examine the first issue:

91.It had been pointed out that the Senate in the case of MKU and the Syndicate in the MSU have been given the power to amend or repeal their existing statutes. In the case of MKU, however the Syndicate had passed a resolution adopting G.O.Ms.No.5, dated 11.01.2018. No details are given with respect to the decision taken by the authorities in Manonmanim Sundaranar University.

92.Discussion of the above issue would naturally further extend to examination whether an Executive Order by the State Government would suffice or whether it should have been passed or introduced in the Legislature or at least whether the bill to amend the two statutes involving the two Universities should have been introduced in the Legislature and an amendment brought about.

93.This must also be examined in the background that in Tamil Nadu, the private Colleges are governed by Tamil Nadu Private Colleges (Regulation) Act, 1976.

94.Chapter-IV of the said enactment deals with terms and conditions of service of Teachers and other persons employed in private Colleges.

95.Sections 15 and 16 of the Act are as follows:

"15. Qualifications of teachers and other persons employed in private colleges.- (1) The University may make regulations, statutes or ordinances specifying the qualifications required for the appointment of teachers [xxx]employed in any private college.

[(2) The Government may make rules specifying the qualifications required for appointment to any post, other than teachers, in any private college.]

16. Appointment of teachers and other persons in private colleges.-

(1) No person who does not possess the qualifications specified under section 15 shall, on or after the date of commencement of this Act, be appointed as teacher or other employee in any Private College.



(2) Nothing contained in this section or any regulation, statute or ordinance made under section 15 shall apply to any person who, on or before the date of commencement of this Act, is employed as teacher or other employee in any private college."

96. Section 24(i) is as follows:

"24. Chapter to have overriding effect and certain provisions thereof not to apply to minority colleges.-

(i) other law for the time being in force, or
....."

Section 52 is as follows:

"52. Overriding effect of this Act. - The provision of this Act shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force including any regulation or statute of any University."

97. Rule 11 of Tamil Nadu Private Colleges (Regulation) Rule 1976, provides for conditions of service, etc of Teachers and other persons in a Private College. Rule 11(2)(i) and 11(4)(i) is as follows:

11. Conditions of service, etc.. of teachers and other persons in college.-

(1)

(2) (i) The committee of every college shall enter into an agreement with the teachers form 7-A and with the employees other than teachers in Form 7-C. If the appointment is for a period not exceeding three months, the agreement shall be made in Form 7-B in the case of teachers and in Form 7-D in the case of employees other than teachers.

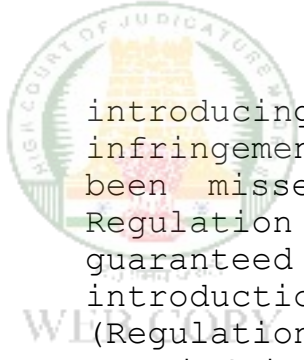
.....

4(i) Promotions in respect of teaching staff shall be made on grounds of merit and ability, seniority, being considered only where merit and ability are approximately equal and in respect of non-teaching staff promotions shall be made on seniority basis, provided other conditions regarding qualification are satisfied

..... "

98. It is seen that the Act also provides and stipulates qualifications and the manner in which promotion can be given. This Act was introduced in the year 1975 and owing to the promulgation of State of Emergency at that time, that Act was approved by the President of India.

99. It is the contention of the learned Senior Counsel for the petitioners that when this particular enactment is in force,
<https://hcservices.ecourts.gov.in/hcservices/>



introducing a new set of guidelines or regulations would be an infringement of the right of a minority institution. But what has been missed out in that argument is that if introducing the Regulation 2018 can be said to be a violation of the rights guaranteed under Article 30(1) of Constitution of India, then the introduction or applicability of the Tamil Nadu Private Colleges (Regulation) Act and Rules themselves should also be considered as an infringement of the right of the minority institution. Therefore, that argument cannot be countenanced.

100.However, the fact that the two Universities had not brought in legislation or amendment to their statute and the Government of Tamil Nadu had also not brought in necessary amendment or introduced the amendments to the two statutes in the Legislature, brings into focus one important fact. If these amendments to the two Acts of the two Universities had been introduced in the Legislature, then there would have been scope for discussion with respect to its applicability to the various categories of educational institution, particularly minority institutions and a discussion on the right guaranteed under Article 30(1) of the Constitution.

101.The arguments putforth before this Court should have been a discussion in the Legislature. The views of Legislators are in fact the voices of people. The legislature could have introduced a binding enactment. They did not have that opportunity. The petitioners have therefore raised a challenge to G.O.Ms.No.5.

102.Thus, a combined failure of the institutions, namely, the legislature of the Government and the executive of the Universities have emboldened the two Colleges to question the introduction of the regulations by way of an Executive Order by the State Government.

103.It is the contention of the learned Additional Advocate General and Mr.N.Vijay Narayanan, learned Senior Counsel that there was no necessity to introduce a legislation in the sense that the Government did not question any of the regulations stipulated by the UGC and therefore, passing a Government Order would suffice. In the same breath, the learned Senior Counsel also faulted the Writ Petitioners in not having questioned the UGC Regulations 2018 by stating that the said Regulations were the source for the passing of Government Order.

104.When the University Grants Commission had brought in UGC Regulations 2010, Dr.Kalayani Mathivanan, was appointed as Vice Chancellor of Madurai Kamaraj University. A Writ of Quo Warranto was filed to show cause under what authority, she continued to hold the office of Vice Chancellor. The post of Vice Chancellor had fallen vacant in the year 2011-12. The Government constituted a Search Committee. On the recommendation of the Search Committee, Dr.Kalyani Mathivanan, was selected and appointed as Vice Chancellor for three years. It was contended in that Writ Petition



that she did not have the minimum qualification or minimum experience as Professor in a University. When the issue reached the Honourable Supreme Court, while examining the List I Entry 66 of the Constitution, it was held as follows:

"54. The question that now arises is whether any of the provisions of the State legislation (the University Act, 1965) and the Statutes framed thereunder are in conflict with the Central legislation i.e. the UGC Act, 1956 including the UGC Regulations, 2010.

55. We find that the post of Vice-Chancellor under the University Act, 1965 is a post of an officer. The UGC Act, 1956 is silent about this aspect. The UGC Regulations, 2000 are also silent in regard to the post of Vice-Chancellor. The provisions regarding Vice-Chancellor have been made for the first time under the UGC Regulations, 2010.

56. We have noticed and held that the UGC Regulations, 2010 are not applicable to the universities, colleges and other higher educational institutions coming under the purview of the State Legislature unless the State Government wish to adopt and implement the Scheme subject to the terms and conditions therein. In this connection, one may refer to Para 8(p) (v) of Appendix I dated 31-12-2008 and Regulation 7.4.0 of the UGC Regulations, 2010.

.....

61. We do not agree with the finding of the Bombay High Court that Regulation 7.3.0 of the UGC Regulations, 2010 is not traceable to clause (e) or (g) of Section 26(1) of the UGC Act, 1956. We also refuse to agree that Regulation 7.3.0 of the UGC Regulations, 2010 being subordinate legislation under the Act of Parliament cannot override the preliminary (sic primary) legislation enacted by the State Legislature. However, the finding of the Bombay High Court that Regulation 7.3.0 has to be treated as recommendatory in nature is upheld insofar as it relates to the universities and colleges under the State legislation."

105. The Honourable Supreme Court had further observed that unless the State Government adopts and implements the scheme of UGC Regulation 2010 would not be applicable to Universities and Colleges. That judgment makes it imperative that legislation should be brought in to confirm applicability of UGC guidelines. In this case,

(i) the State Government had not brought in any legislation to amend the MKU Act or MSU Act in accordance with the UGC Regulation 2018.

(ii) The Senate in the case of MSU and the Syndicate in the case of MKU have also not exercised the power vested with them under their respective statutes to introduce the amendment to their



statutes in accordance with UGC Regulation 2018.

106. The Writ Petitioners to cover up these lacunae have not impleaded the UGC as a party to the Writ Petitions. The Writ Petitioner in W.P.(MD)No.13495 of 2021 had not even impleaded the Manonmaniam Sundaranar University as a respondent. Both the Writ Petitioners have not questioned the UGC Regulations 2018. This is only because, if they had launched an attack on those Regulations, then they would have to implead the UGC as a respondent.

107. The points crystalised above leads to an unsavory opinion that the petitioners and the respondents are actually involved in shadow boxing to stage a litigation to avoid interference by the UGC or insistence by the UGC to apply their Regulations 2018. Thus, there appears to be an oblique motive behind the two Writ Petitions.

108. It is a fact that the Principals of the two Colleges have completed ten years of service and therefore, they apprehend that they may not be able to continue.

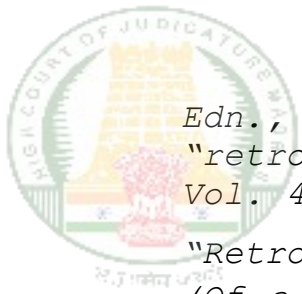
109. In **(2005) 7 SCC 584 [State Bank of India Union (Madras Circle) vs Union of India and others]**, the retrospective and retro-active fact of a legislation had been examined by the Honourable Supreme Court and it was held as follows:

19. Every sovereign legislature possesses the right to make retrospective legislation. The power to make laws includes the power to give it retrospective effect. Craies on Statute Law (7th Edn.) at p. 387 defines retrospective statutes in the following words:

"A statute is to be deemed to be retrospective, which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past."

20. Judicial Dictionary (13th Edn.) by K.J. Aiyar, Butterworth, p. 857, states that the word "retrospective" when used with reference to an enactment may mean (i) affecting an existing contract; or (ii) reopening up of past, closed and completed transaction; or (iii) affecting accrued rights and remedies; or (iv) affecting procedure. Words and Phrases, Permanent Edn., Vol. 37-A, pp. 224-25, defines a "retrospective or retroactive law" as one which takes away or impairs vested or accrued rights acquired under existing laws. A retroactive law takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past.

21. In Advanced Law Lexicon by P. Ramanath Aiyar (3rd



Edn., 2005) the expressions "retroactive" and "retrospective" have been defined as follows at p. 4124, Vol. 4:

"Retroactive.—Acting backward; affecting what is past.

(Of a statute, ruling, etc.) extending in scope or effect to matters that have occurred in the past. — Also termed retrospective. (Black's Law Dictionary, 7th Edn., 1999)

' "Retroactivity" is a term often used by lawyers but rarely defined. On analysis it soon becomes apparent, moreover, that it is used to cover at least two distinct concepts. The first, which may be called "true retroactivity", consists in the application of a new rule of law to an act or transaction which was completed before the rule was promulgated. The second concept, which will be referred to as "quasi-retroactivity", occurs when a new rule of law is applied to an act or transaction in the process of completion.... The foundation of these concepts is the distinction between completed and pending transactions....' T.C. Hartley, *Foundations of European Community Law*, p. 129 (1981).

Retrospective.—Looking back; contemplating what is past.

Having operation from a past time.

'Retrospective' is somewhat ambiguous and that good deal of confusion has been caused by the fact that it is used in more senses than one. In general, however, the courts regard as retrospective any statute which operates on cases or facts coming into existence before its commencement in the sense that it affects, even if for the future only, the character or consequences of transactions previously entered into or of other past conduct. Thus, a statute is not retrospective merely because it affects existing rights; nor is it retrospective merely because a part of the requisite for its action is drawn from a time antecedent to its passing." (Vol. 44, *Halsbury's Laws of England*, 4th Edn., p. 570, para 921.)

110.This position has been reiterated in 2012 (1) SCC 612, *Swami Vivekananda College of Education and others vs Union of India and others*.

111.The Principals apprehended that the axe might fall on theirs heads and therefore, it was necessary for them to create this litigation when there is no statute introduced by their Governing Universities touching upon their tenure. G.O.Ms.No.5, dated 11.01.2018 also specifies as follows:

"1.2.Every University or Institution deemed to be University, as the case may be, shall as soon as may be,

<https://hcservices.ecourts.gov.in/hcservices/>



but not later than within six months of the coming into force of these Regulations, take effective steps for the amendment of the statutes, ordinances or other statutory provisions governing it, so as to bring the same in accordance with these Regulations."

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112.This statement in the Government Order remains only on paper without any intention to determine whether it had been effectively implemented by the Universities. It is thus clear that the the petitioners and the respondents have literally created a stage for their play in order to avoid any enquiry by the UGC regarding to the implementation of Regulation 2018.

113.W.P.(MD)Nos.13488 and 13945 of 2021 will have to suffer an order of dismissal on these grounds alone.

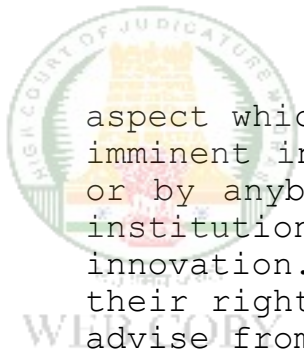
114.W.P.(MD)No.19374 of 2021 has been filed for a Mandamus by a groom in waiting calling upon the Governing Council of the American College to call for applications for the post of Principal and the petitioner is also hopeful that he will be selected as a Principal.

115.The Regulations themselves have not been implemented. No Mandamus can therefore be issued. Therefore, this Writ Petition also has to suffer an order of dismissal.

116.The primary object of the regulation is only to ensure that minority institution do not lay behind in quality as compared with non minority institutions. That is the object of the UGC Regulation 2018. They do not infringe upon the right, but rather they give a methodology in which a Principal can be chosen and give an outer time limit within which anybody holding the post of Principal can effectively discharge their particular work.

117.The assessment at the end of five years is on the individual and does not reflect on the institution. It is for the benefit of the institution that the individual is assessed at the end of five years to find out his/her suitability to continue further. This assessment would prevent any stagnation in the mind of the individual and would trigger thoughts to further innovate and bring about techniques to improve the quality of education. If the minority institutions seek to preserve their exclusive right to administer and thereby to appoint Principal of their choice, they should have raised objections even to the regulation contained in the Tamil Nadu Private Colleges (Regulation) Act, 1975.

118.It is only hoped that every measure to bring about betterment in the fields of education is viewed through microscopes and magnifying glasses. No regulation should be viewed with suspicion but as a regulation introduced with intention to improve the quality. The petitioner should understand that that the only



aspect which is constant is change and as the word reveals change is imminent in every educational institution whether run by minorities or by anybody else to ensure that the Principal who governs those institution is bestowed with skill, knowledge and has an eye for innovation. A reading into the regulations as an infringement to their rights would not help the institutions in the long run. Every advise from experts have to be received with open minds as they only guide the institutions towards a better future.

119.The harangue above does not help in giving a judicial decision since, the following points emerge:

(1)UGC Regulations 2018, dated 18.07.2018, made it mandatory that Universities must amend their statutes within six months in conformity with the regulations.

(2)MKU and MSU have not amended their statute?

(3)The State Government passed G.O.Ms.No.5, dated 11.01.2021.

(4)The Government Order mandated that Universities must amend their statutes in conformity with the Government Order.

(5)Both the MKU and MSU have not amended their statutes.

(6)The Syndicate of MKU has passed a resolution adopting the Government Order. This is not a legislation or amendment of statutes.

(7)There is no information of the steps taken by the MUS to amend its statute.

120.In the aforesaid circumstances, the UGC Regulation 2018 remain only on paper and have not been adopted in letter and spirit by amending the MKU Act, 1965 and MSU Act, 1990. This fact also means that the State Legislature did not have the opportunity to examine the regulations. Only when the statutes are amended, can this Court examine whether such amendments are ultra vires Article 30(1) of Constitution or intra virus Article 30(1) of Constitution. As on date, the UGC Regulation 2018 remain just as a piece of paper. They have not been adopted by the MKU and MSU in manner prescribed. They can therefore not be imposed on Colleges under MKU or MSU.

121.The Writ Petitions have been filed on an imaginary cause of action to only save the skins of the two Principals. It is for that reason, to avoid being impinged by UGC that a shadow legal battle has been initiated and fought in the Court. The petitioners and the respondents both lack *bona fides*

112.In view of the above determination, I refrain from examining the impact of the regulations or the Government Order on Article 30(1) of the Constitution, though arguments at length were advanced.

113.The Writ Petitions fail for lack of bona fide and owing to there being no enactment in force in conformity with UGC Regulations 2018 or G.O.Ms.No.5. Further, the UGC has not been made as a party



114.In the result

(1)W.P.(MD)Nos.13488 and 13495 of 2021 are dismissed. No costs.

(2)W.P(MD)No.19374 of 2021 is also dismissed, since the statutes have not been amended to bring into effect the UGC Regulations or the Government Order and therefore, Mandamus can not be issued. No costs.

(3)W.M.P.(MD)No.12610 of 2021 is consequently dismissed.

(4)Consequently, connected miscellaneous petitions are closed.

115.The Registry is directed to forward a copy of this order to

(1)The Office of the Assistant Solicitor General, Madurai Bench of Madras High Court, with a direction to forward a copy to the University Grants Commission, Bahadur Shah Zafar Marg, New Delhi-110 002

(2)The University Grants Commission, Bahadur Shah Zafar Marg, New Delhi-110 002.

(3)Manonmaniam Sundaranar University, Abishekapatti, Tirunelveli, 627 012.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

cmr
To

1.The Secretary,
State of Tamil Nadu,
Higher Education (H1) Department,
Fort St.George, Chennai.

2.The Director of Collegiate Education,
Department of Higher Education, Government of Tamil Nadu,
Chennai

3.The Regional Joint Director of Collegiate Education,
Office of the RJD, Madurai, Madurai.

4.The Regional Joint Director of Collegiate Education,
Office of the RJD,
18, Tiruchendur Road, Murugankuruchi, Tirunelveli.

5.The Assistant Solicitor General
Madurai Bench of Madras High Court,
Madurai (to forward a copy to University Grants
Commission, New Delhi).



6.The University Grants Commission,
Bahadur Shah Zafar Marg, New Delhi-110 002.

7.The Registrar
Manonmaniam Sundaranar University,
Abisekhapatti, Tirunelveli.

+1 CC to M/s.T.SAKTHI KUMARAN, Advocate (SR-4609[F] dated
07/02/2022)

+1 CC to M/s.SPL.GP (SR-4521[F] dated 07/02/2022)

W.P.(MD)Nos.13488, 13495 and 19374 of 2021
04.02.2022

SK(CO)
KB(16.02.2022) 35P 10C