



W.P.(MD) No.14477 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2022

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD) No.14477 of 2022
and W.M.P.(MD).Nos.10354 & 10355 of 2022

The Secretary,
Nesamony Memorial Christian College,
Marthandam – 629 165,
Kanyakumari District.

... Petitioner

Vs.

- 1.The Director of Collegiate Education,
College Road,
Chennai – 600 006.
- 2.The Joint Director of Collegiate Education,
Palayamkottai,
Tirunelveli District – 627 002.
- 3.Manonmaniam Sundaranar University,
Rep. by its Registrar,
Abishekapatti,
Tirunelveli District – 627 012.

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, calling for the records relating to the impugned proceeding issued by the 3rd respondent University in Ref.



W.P.(MD) No.14477 of 2022

WEB C No.MSU/R/CDC/A3/311/ A.P. / QA / Doc. Req. dated 03.09.2020, quash the same and further direct the 3rd respondent, Manonmaniam Sundaranar University, to grant qualification Approval forthwith to the appointment of Dr.J.Giftlin Iyadurai as Assistant Professor (English) in the petitioner's College w.e.f., 20.01.2020.

For Petitioner : Mr.K.Ragatheesh Kumar

For Respondents : Mr.V.Nirmal Kumar for R1 and R2
Government Advocate

Ms.Jasima Yasmin for
M/s.Ajmal Associates for R3
Standing Counsel

ORDER

When the petitioner College had sent proposals for qualification approval to the respondent University, they had insisted for certain documents including the Selection Committee Minutes through the impugned order, dated 03.09.2020. Such a claim to submit the Selection Committee's Minutes to a Minority Institution, is un-sustainable, owing to the decision of the Honourable Supreme Court as well as several orders of the Division Bench of this Court. Following these decisions, I had an occasion to reiterate the preposition in the petitioner's own case in W.P.(MD).No.1691 of 2020, dated

2/10



W.P.(MD) No.14477 of 2022

23.03.2021 in the following manner.

*“3.The issue with regard to the applicability of the constitution of a selection committee insofar as a minority institution came up for consideration before the Hon'ble Division Bench of this Court in the case of **the Forum of Minority Institutions and Associations Vs. State of Tamil Nadu, represented by the Joint Director of Collegiate Education and others** reported in 2011 91) CTC 162, wherein, the Hon'ble Division Bench had held that the regulations for constitution of selection committee shall not be applicable to the minority institutions. The relevant portion reads thus:*

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



WEB COPY



W.P.(MD) No.14477 of 2022

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

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

63. *The contention that right to administer does not include right to maladministration also cannot be accepted as the Minority Institutions would be bound by qualification laid down for appointment of teachers and also would be bound to follow other statutory laws necessary for running their institutions to maintain educational standard. The only restriction placed is with regard to the right to interfere in the selection of staff of the Minority Institutions.*

64. *Once the right of appointment of teachers is taken to be the right of administration, which is not even disputed by the Respondents, no other conclusion than*



WEB COPY

W.P.(MD) No.14477 of 2022

the one that the impugned Regulations would not apply to Minority Institutions can be arrived at.

65. This Court is bound by the law laid down by the Hon'ble Supreme Court even in case where the question is referred to Constitutional Bench as in the case of State of Rajasthan v. M/s. R.S Sharma and Co., 1988 (4) SCC 353, the Hon'ble Supreme Court was pleased to consider question with regard to the applicability of law when the matter stood referred to the Constitutional Bench and it was held as under:

“7. It was contended before us that the question whether on the ground of absence of reasons, the award is bad per se, is pending consideration by a Constitution Bench of this Court in Jaipur Development Authority v. Firm Chhokhamal Contractor, C.A Nos. 3137-39 of 1985, 3145 of 1985. It was, hence, urged that this should await adjudication on this point by the Constitution Bench. We are unable to accept this contention. In our opinion pendency of this question should not postpone all decision by this Court. One of the cardinal principles of the administration of justice is to ensure quick disposal of disputes in accordance with law, justice and equity. In the instant case the proceedings have been long procrastinated. Indeed, the learned Judge of the



WEB COPY



W.P.(MD) No.14477 of 2022

High Court, after narrating the incidents from 1975 to 1985, concluded in his judgment in March 1988 that was the end of the journey. He was wrong. That was only the end of a chapter in the journey and the appellant wants to begin another chapter in the journey on the plea that the award is not a reasoned one. The bargaining between the parties was entered into in 1974-75 but the award was made on December 8, 1985 i.e a decade after the beginning of the transaction. For the reasons stated, the Writ Petitions are allowed, and declaration is issued, that the impugned Regulations for constitution of Selection Committee shall not be applicable to the Minority Institutions. Consequently, Writ in nature of Mandamus is issued directing the Respondents to approve the selection made by the Minority Institutions without reference to Clause 3 of Annexure to UGC Regulations, 2000, subject to the selected candidates fulfilling other qualifications, experience, etc. No costs. Consequently, all the connected Miscellaneous Petitions are closed.

4.The aforesaid findings of the Honourable Division Bench is self explanatory and hence, the respondent university may not be justified in insisting



W.P.(MD) No.14477 of 2022

WEB COPY

for the constitution of selection committee for the purpose granting qualification approval to the three Assistant Professors of the petitioner's college.

5. In view of the law laid down in the aforesaid decision of the Honourable Division Bench, the impugned proceedings issued by the 3rd respondent University in Ref.No.MSU/R/CD/Minority Coll. /Selc.Proc./Principal. A.P./2018, dated 17.01.2018 and the consequential proceedings denying Qualification Approval in respect of 3 teachings staffs in Ref.No.MSU/R/CDC/A3/311/ QA /A.P.(Reg.) / Doc.req. Dated 19.08.2019 are quashed. Consequently, the petitioner herein is granted liberty to submit a fresh proposal to the third respondent university, seeking for grant of qualification of approval for three Assistant Professors, working in various departments of their college, together with the copy of the present order of this Court and on receipt of the same, the third respondent university shall consider it without insisting for the minutes of the selection committee constituted for this purpose and consider the same on its own merits and take appropriate course of action in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.”



W.P.(MD) No.14477 of 2022

WEB COPY

2.Since the petitioner is a Minority Institution, the claim of the respondent University, for production of the Selection Committee Minutes in connection with the appointments of the Assistant Professors are concerned, may amount to interfering with the selection process of a Minority Institution, which is impermissible and hence, the impugned order cannot be sustained.

3.Accordingly, the impugned proceedings issued by the 3rd respondent University in Ref. No.MSU/R/CDC/A3/311/ A.P. / QA / Doc. Req. dated 03.09.2020, is hereby quashed. Consequently, the petitioner is granted liberty to send a fresh proposal seeking for approval of the appointment of the Assistant Professors along with all documents claimed in the impugned order, dated 03.09.2020, except the Selection Committee Minutes and on receipt of such fresh proposal from the petitioner's College, the third respondent University shall process the same in accordance with law, without insisting for the Selection Committee Minutes, within a period of eight weeks from the receipt of the proposal.



W.P.(MD) No.14477 of 2022

WEB COPY

4.This writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

29.07.2022

Index : Yes / No
Speaking Order/ Non Speaking Order

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To

- 1.The Director of Collegiate Education,
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- 2.The Joint Director of Collegiate Education,
Palayamkottai,
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WEB COPY



W.P.(MD) No.14477 of 2022

M.S.RAMESH,J.

TM

W.P.(MD) No.14477 of 2022

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