



W.P.(MD) No.14802 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.08.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD) No.14802 of 2022

and

W.M.P.(MD).No.10586 of 2022

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

... Petitioner

Vs.

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

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

3.The Joint Director of Collegiate Education,
Palam Station Road,
Madurai-625 002.

... 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 proceedings issued by the third respondent Joint Director of



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WEB COPY Collegiate Education in Oo.Mu.No.5152/E3/2020, dated --.03.2021, quash the same as illegal and further direct the respondents herein to approve forthwith the appointment of Dr.R.Jothi Mani as Assistant Professor in the Department of Physics in the petitioner's College and disburse the grant-in-aid towards her salary and allowances w.e.f. the date of her appointment, i.e., 18.11.2019

For Petitioner : Mr.A.Amala
For Respondents : Mr.S.Shaji Bino
Special Government Pleader

ORDER

The petitioner herein is a Private Minority Aided College. When they had made an appointment of one teaching staff, namely, Dr.R.Jothi Mani as Assistant Professor in the Department of Physics and sought for disbursement of the grant-in-aid towards her salary and allowances from the date of her appointment (i.e.,) 18.11.2019, the same came to be dismissed by the third respondent through the impugned order in Oo.Mu.No.5152/E3/2020 dated --.03.2021, rejecting the proposal citing the following reasons:



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Sl. No.	Impugned Reasons in proceedings of 3rd respondent dated --.03.2021
1.	The incumbent's Higher Secondary School Certificates, University Certificates and the Genuineness certificates issued by the Controller of Examination of the certifying University are not forwarded to the competent authority for approval.
2.	In the case of Mrs.R.Jothimani, Assistant Professor in Physics it is stated in Oo.Mu.No.5152/E3/2020 that the interview was held on 10.01.2019 in which 31 candidates participated and the incumbent was selected but in contra she was appointed on 18.11.2019.
3.	Further it was adduced that as per University Grants Commission, New Delhi Guidelines 2010 in para 5.1.4 relating to appointment of Assistant Professors in Colleges including Private colleges the constitution of Selection Committee has been detailed. Accordingly, the Statutory Body of the Minority Colleges, in view of selecting minority candidates will prepare a Panel consisting of five members, forward it to the Vice Chancellor of the affiliated University and the Vice Chancellor will select two from the Panel and the one of the two shall be a subject Expert. As the college had not followed the UGC guidelines in the selection of staff the approval for the appointment cannot be given.



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4.	As per Section 9(1) and Section 4(3) of Tamil Nadu Private Colleges (Regulation) Act, 1976, Government Aided Colleges to submit their Educational Agency report to the Government however, the petitioner College has not submitted such report.
5.	As per Section 10(2) of Tamil Nadu Private Colleges (Regulation) Act 1976, the Institutions that did not abide by the provisions of the Act or the guidelines the grants in aid in full or in part will be suspended for ever or for the specified period.
6.	As per Rule 11(1) of Tamil Nadu Private Colleges (Regulation) Rules, 1976, “the number of teachers employed in a college shall not exceed the number of posts fixed by the Director, number of students, with reference to the academic requirements and overall financial consideration”.
7.	On account of the above mentioned rule, the Director of Collegiate Education, while permitting the aided colleges to fill the vacant posts shall look into the workload and overall financial consideration of government.
8.	As per G.O.Ms.No.44 of Labour and Employment (T2) Department dated 11.03.2015 any vacancy must be published at least in two dailies, of the two one must be the largest circulated vernacular daily and the other one may be of reasonable standard, but the College has enclosed the advertisement published in only one daily.
9.	Further, as per G.O.Ms.No.144 of Labour and Employment (T2) Department dated 11.03.2015 while advertisements were made in the dailies the number of vacancy has not been mentioned and the maximum age limit for the post of Assistant Professor has also not been mentioned.



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10.	The College has not submitted attendance sheet signed by the 31 number of candidates who participated in the interview as proof. Further the College has not enclosed the marks awarded to the participants in each category in the interview as per the roster recommended by the University Grants Commission Guidelines.
11.	The Selection Committee Report has not disclosed the name of the substitute (the candidate second in rank) next to the selected candidate.
12.	The appointment order issued to the selected candidate by the Secretary of the College has not given the details of the scale of pay admissible to the incumbent.
13.	The Joining Report submitted by the incumbent discloses the date of joining but it did not disclose whether it was in the forenoon or in the afternoon.
14.	The College has not submitted particulars as to the number of candidates applied in response to the advertisement, details of call letters to the candidates for the interview, details of the registered posts to the candidates and the receipts and acknowledgement cards signed by the candidates.
15.	The certificates of marks awarded to the candidates was not enclosed along with the proposal for approval.
16.	The incumbent has qualified herself with M.Sc in Physics through Distant Education from Annamalai University and the Equivalence Certificate to the effect that the degree obtained by the incumbent is equal to the degree obtained through regular study is not enclosed.



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2. This order is put under challenge in the present writ petition. The issue as to whether the Education Authorities can interfere with the selection process of Private Minority School Management has come up for consideration in various cases before the Honourable Supreme Court as well as this Court and in one such decision before the Honourable Division Bench, in the case of ***The Forum of Minority Institution (FMI) and Associations Vs. The State of Tamil Nadu rep. by the Joint Director of Collegiate Education and others*** reported in ***2011 (1) CTC 162***, such interference was held to be impermissible.

3. Following the decision of the Honourable Division Bench, I, in the case of ***The Secretary, Fatima College, Mary Land, Madurai – 625 018, Madurai District Vs. The State of Tamil Nadu, rep. by its Secretary, Department of Higher Education, Fort St. George, Chennai – 600 009 and others*** in ***W.P.(MD).No.4636 & 4640 of 2021***, on 30.06.2022, had an occasion to deal with the similar impugned order of rejection, whereby, the reasons assigned for such rejection were similar to that of the reasons assigned by the respondents in the present writ petition. While quashing the order of rejection



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in *Fatima College's* case, I had followed the decision in the *FMI's* case and held that the rejection of the proposal on the reasons assigned in the rejection order will amount to interference in the selection process of a Minority Institution, which is impermissible. The relevant portion of the orders reads as follows:

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

3. The UCG Regulations, 2010, has replicated



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

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

5. In the instant cases, two Assistant Professors viz., Dr.Sr.Bindhu Antony and A.Sarpiya Rani were appointed as Assistant Professors in Commerce and French on 16.08.2016 and 13.02.2017 respectively. On the proposal dated 12.06.2018, submitted by the College Management to the third respondent herein, rejection orders, both dated 05.01.2021, came to be passed, predominantly rejecting the proposal on the grounds that no Selection Committee was constituted;



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that no subject experts had participated in the selection process; and that the notification for selection was not published in two newspapers. This apart, the third respondent had also questioned the qualification of the selected candidates, stating that the degrees obtained by them are not supported by an equivalence certificate and that their prior permission for selection was not obtained.

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

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

“4. It is the case of the petitioner that filling up of posts in the member institutions has



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been sanctioned by the State of Tamil Nadu and in pursuance thereof, member institutions have commenced the process of filling up the vacancies. It is the case of the petitioner that in some cases, vacancies have been filled by the respective institutions and approval of qualifications has been sought for from respective Universities. Some of the universities have passed orders rejecting approval of qualifications of appointees on the ground that the Selection Committee was not constituted in accordance with the UGC Regulations, 2000 whereas some of the universities have failed to approve recommendations.

.....

.....

7.

(i)

(ii) the constitution of the Selection Committee under the UGC Regulations, 2000 regarding minimum qualification for appointment and career advancement of teachers in Universities and Colleges with a majority of outsiders nominated by the



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Respondent Universities interferes with the rights of the members of the petitioner to administer their institutions;

(iii) & (iv)

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

.....

.....

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

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*



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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.

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

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

63. The contention that right to administer does not include right to



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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 the one that the impugned regulations would not apply to minority institutions can be arrived at.

.....

For the reasons stated, the writ petitions are allowed, and declaration is issued, that the impugned regulations for constitution of Selection Committee shall not be applicable to the Minority Institutions. Consequently, Writ in nature of Mandamus is issued directing the respondents to approve the selection made by the minority institutions without reference to



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Clause 3 of Annexure to UGC Regulations 2000, subject to the selected candidates fulfilling other qualifications, experience etc. No costs. Consequently, all the connected miscellaneous petitions are closed.”

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

9. Insofar as the reason that the College Management had not sought for prior permission of the authorities for selection are concerned, an Hon'ble Division Bench in the case of ***P.Ravichandran Vs. State of Tamil Nadu, Rep. by Secretary to Government, Department of Higher Education,***



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Chennai and others reported in **(2013) 7 MLJ 641**, had dealt with this aspect as to whether prior permission is mandatory to fill up the vacancies arising in a Minority Institution?

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

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

(1) There is no requirement under the Tamil Nadu Private Colleges (Regulation) Act, 1976 and Tamil Nadu Private Colleges (Regulation) Rules, 1976, to seek prior permission to fill up any vacant post in an aided college, which has already been sanctioned for the academic year by the Director of Collegiate Education under Rule 11(1) of the Rules.

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



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post.

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

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

12. Likewise, in the aforesaid decision in ***P. Ravichandran's case*** (cited supra), the Hon'ble Division Bench had also observed that the qualification of the teaching staff, to be appointed, requires to be approved only by the University, to which the college is affiliated. In the instant case, the last reason assigned by the respondents for rejection of the proposal, is that the qualification of these candidates is not supported by an equivalence certificate issued by the competent authority. This reasoning is opposed to the observations made by the Hon'ble Division Bench in ***P. Ravichandran's case*** (cited supra). While the concerned University is the



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competent authority to approve the qualifications of the teaching staff, the State Governmental Educational Authorities will have no jurisdiction to scrutinize or question such educational qualifications.

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

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



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rejecting the petitioner's proposal on this ground also cannot be sustained.”

4. All the reasons assigned in the present impugned order are similar to that of the rejection order in *Fatima College's* case, except for the reason assigned by them that as per G.O.(Ms.) No.44, Labour (m) Employment (T2) Department, dated 11.03.2015, the post should be filled up issuing advertisement to the Newspapers, which is not informal. Even this reason was considered by me in the case of *The Secretary, St. Ignatius College of Education, Palayamkottai – 627 002, Tirunelveli District Vs. The State of Tamil Nadu, rep. by its Secretary, Department of Higher Education, Fort St. George, Chennai – 600 009 and two others* in *W.P.(MD).No.25931 of 2019*, dated 17.04.2020, which reads as follows:

“When the petitioner institution, which is the Minority institution, had sought for an approval for appointment of one Mr.S.Sebastian as Record Clerk, the same came to be returned through the impugned order dated 26.11.2018 on the ground that there was no proper advertisement published in the newspaper before the appointment was made. The said order



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dated 26.11.2018 has been put under challenge in the present writ petition.

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

'.....

11.As rightly contended by the learned Senior Counsel for the petitioner Rule 11(4)(ii) was in relation to the appointment of teaching staff



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by the College Committee. But as far as the Minority Institutions are concerned, the College Committee is not required to be constituted under Section 11 of the Act unlike in respect of the institutions not being Minority institutions. In the absence of such regulation, this Court is unable to countenance the action of the respondents 2 and 3 in refusing to grant approval of the appointments of the seven non-teaching staff in the petitioner institution. The refusal to grant approval for the subject appointments, would therefore, cannot stand the test of judicial scrutiny and the same is liable to be interfered with. The insistence on requirement of advertisement for appointment of non-teaching staff in the Minority Institution is without the authority of law and the same cannot be enforced as against the petitioner institution. The petitioner institution comes under the protective cover, being the minority institution, under Article 30 of the Constitution of India, such protective cover cannot be sought to be uncovered by the



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insistence on a statutory requirement, which first of all cannot be made applicable for the non-teaching staff and secondly such requirement cannot be enforced in the teeth of the Constitutional protection guaranteed to the minority institutions. In fact, the claim of the petitioner is fully covered by the decisions of the Hon'ble Supreme Court of India, cited above.'

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

5.Thus, the reason that the advertisement ought to have been given in the newspapers, cannot be sustained in view of the above said decisions.



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WEB COPY 6. In the light of the above findings, the impugned proceedings issued by the third respondent/Joint Director in Oo.Mu.No.5152/E3/2020, dated --.03.2021, is hereby quashed. Consequently, there shall be a direction to the third respondent herein to pass orders in favour of the petitioner's college approving the appointment of one teaching staff, namely, Dr.R.Jothi Mani as Assistant Professor in the Department of Physics with effect from her date of appointment (i.e.,) 18.11.2019. Such orders shall be passed, at least within a period of twelve weeks from the date of receipt of a copy of this order.

7. This writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Speaking Order/ Non Speaking Order

ssb



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To

- 1.The State of Tamil Nadu
Rep.by its Secretary,
Department of Higher Education,
Fort St.George, Chennai-600 009.
- 2.The Director of Collegiate Education,
College Road, Chennai – 600 006.
- 3.The Joint Director of Collegiate Education,
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M.S.RAMESH,J.

ssb

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