



W.P.(MD) No.16144 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.08.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD) No.16144 of 2022

and

W.M.P.(MD).Nos.11673 & 11674 of 2022

The Principal & Secretary,
St. Mary's College (Autonomous)
Thoothukudi – 628 001,
Thoothukudi District.

... Petitioner

Vs.

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

2.The Joint Director of Collegiate Education,
Tirunelveli Region,
Tirunelveli District.

... 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 2nd respondent Joint Director in Na.Ka.No. 3997/E2/2020, dated 23.02.2022, quash the same as illegal and further direct the 2nd respondent Joint Director to approve forthwith the appointment of 12 teaching staff (Name List annexed) in the petitioner's College and disburse the



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grant-in-aid towards their salary and allowances w.e.f. the respective dates of their appointment.

For Petitioner : Mr.K.Ragatheesh Kumar for
M/s.Isaac Chambers

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 12 teaching staff and sought for disbursement of the grant-in-aid towards their salary and allowances from the date of their respective appointments, the same came to be dismissed by the second respondent through the impugned order dated 23.02.2022, rejecting the proposal citing the following reasons:

Sl. No.	Impugned Reasons in proceedings of 2 nd respondent dated 23.02.2022
1.	The genuineness certificates for 10th, 12th, UG, PG, Ph.D, SLET, NET in respect of all the 12 Assistant Professors;
2.	The details of the Selection Committee Constituted as per the UGC Regulation;
3.	Copy of the Resolution of the Selection Committee;



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4. Interview Call letters, details of the candidates appeared for interview, the marks obtained by the selected candidates.”

2. The details of the appointments of the fifteen teachers are as follows:

S. No	NAME & DESIGNATION	QUALIFICATION	VACANCY POSITION	QUALIFICATION APPROVAL GIVEN BY UNIVERSITY
1	A.Patricia Romila – Asst. Professor (English)	M.A., M.Phil., SET	Retirement of A. Sebasty, Associate Professor (English) on 31.05.2017	Ref.No.MSU/R/CD C/ A6/221/Q-A/A.P. Dated 22.11.2019
2	A.Christina – Asst. Professor (French)	M.A., NET	Retirement of Dr.S. Thenmozhi, Associate Professor (French) on 30.06.2019	Ref.No.MSU/R/CD C/ A6/221/Q-A/A.P. Dated 05.12.2019



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3	D.Vinoba gladis – Asst. Professor (History)	M.A.M.Phil., Ph.D	Retirement of one Mrs.M.Pithchai Savariammal, Associate Professor (History) on 31.05.2013	Ref.No.MSU/R/CD C/ A6/221/Q-A/A.P. Dated 22.11.2019
4	S.S.Anuja – Asst. Professor (History)	M.A.M.Phil. , SET	Retirement of Sister S.Decla, Associate Professor (History) on 31.05.2014	Ref.No.MSU/R/CD C/A6 /221/Q-A/A.P. Dated 22.11.2019
5	T.A.Alfreeda – Asst. Professor (Economics)	M.A., NET	Retirement of Dr.L.Thilagaran i Associate Professor (Economics) on 31.05.2018	Ref.No.MSU/R/CD C/ A6/221/Q-A/A.P. Dated 05.12.2019
6	G. Priscilla Pacifica Asst. Professor (Mathematics)	M.Sc., M.Phil., Ph.D., SET	Retirement of Sister S.Alphonse Roseline Mary, Associate Professor (Mathematics) on 31.05.2018	Ref.No.MSU/R/CD C/A6/221/Q-A/A.P. Dated 05.12.2019
7	P.Dhanalakshmi Asst. Professor (Physics)	M.Sc., SET	Retirement of Mrs. Indrani, Associate Professor (Physics) on 31.05.2012	Ref.No.MSU/R/CD C/ A6/221/Q-A/A.P. Dated 22.11.2019



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8	R. Mary Santhi Asst. Professor (Botany)	M.A., M.Phil Ph.D	Retirement of Dr.S.Maria Victorial Rani Associate Professors (Botany) on 31.05.2017	Ref.No.MSU/R/CD C/ A6/221/Q-A/A.P. Dated 05.12.2019
9	M.Paripooranaselvi – Asst. Professor (Zoology)	M.A., M.Phil., Ph.D., SET	Retirement of Mrs.S.Jesily Associate Professor (Zoology) on 31.05.2019	Ref.No.MSU/R/CD C/ A6/221/Q-A/A.P. Dated 22.11.2019
10	P.Subavathy – Asst. Professor (Zoology)	M.A., M.Phil., Ph.D., SET	Retirement of Dr.R.D.Thilaga Associate Professor (Zoology) on 31.05.2019	Ref.No.MSU/R/CD C/ A6/221/Q-A/A.P. Dated 05.12.2019
11	P.Jaya Mary – Asst. Professor (Commerce)	M.Com., M.Phil., SET	Retirement of Mrs.Ida Roselin Vought, Associate Professor (Commerce) on 31.05.2017	Ref.No.MSU/R/CD C/ A6/221/Q-A/A.P. Dated 05.12.2019
12	A. Saleth Mary Vetriselvi Associate Professor Commerce	M.Com., M.Phil., Ph.D.,	Retirement of Mrs.A.A.Maria Celine, Associate Professor (Commerce) on 31.05.2018	Ref.No.MSU/R/CD C/ A6/221/Q-A/A.P. Dated 22.11.2019



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3. 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.

4. 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 the aforesaid Clause with regard to the constitution of



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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; that no subject experts had participated in the selection



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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 been sanctioned by the State of Tamil Nadu and



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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 Respondent Universities interferes with the



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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 maladministration also cannot be accepted as



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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 Clause 3 of Annexure to UGC Regulations 2000,



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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, Chennai and others*** reported in (2013) 7 MLJ 641,



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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 post.



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(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 competent authority to approve the qualifications of



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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 rejecting the petitioner's proposal on this ground also



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cannot be sustained.”

5. 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 second 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 dated 26.11.2018 has been put under challenge in the



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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 by the College Committee. But as far as the



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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 insistence on a statutory requirement, which



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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.

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

7. In the light of the above findings, the impugned proceedings issued by 2nd respondent/Joint Director in Na.Ka.No.3997/E2/2020, dated



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23.02.2022, is hereby quashed. Consequently, there shall be a direction to the second respondent herein to pass orders in favour of the petitioner's college approving the following appointments with effect from their date of appointment. Such orders shall be passed, at least within a period of twelve weeks from the date of receipt of a copy of this order.

S. No	NAME & DESIGNATION	QUALIFICA-TION	DATE OF APPOINTMENT
1	A.Patricia Romila – Asst. Professor (English)	M.A., M.Phil.,SET	17.06.2019
2	A.Christina – Asst. Professor (French)	M.A., NET	01.07.2019
3	D.Vinoba gladis – Asst. Professor (History)	M.A.M.Phil., Ph.D	17.06.2019
4	S.S.Anuja – Asst. Professor – (History)	M.A.M.Phil. , SET	17.06.2019
5	T.A.Alfreeda – Asst. Professor (Economics)	M.A., NET	17.06.2019
6	G. Priscilla Pacifica Asst. Professor (Mathematics)	M.Sc., M.Phil., Ph.D., SET	17.06.2019
7	P.Dhanalakshmi Asst. Professor (Physics)	M.Sc., SET	17.06.2019
8	R. Mary Santhi Asst. Professor (Botany)	M.A., M.Phil Ph.D	17.06.2019



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9	M.Paripooranaselvi – Asst. Professor (Zoology)	M.A., M.Phil., Ph.D., SET	17.06.2019
10	P.Subavathy – Asst. Professor (Zoology)	M.A., M.Phil., Ph.D., SET	17.06.2019
11	P.Jaya Mary – Asst. Professor (Commerce)	M.Com., M.Phil., SET	17.06.2019
12	A. Saleth Mary Vetriselvi Associate Professor Commerce	M.Com., M.Phil., Ph.D.,	17.06.2019

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

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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,
Tirunelveli Region,
Tirunelveli District.



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