



WP(MD)No.5351 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 18.07.2022

DELIVERED ON : 29.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD)No.5351 of 2018

and

W.M.P.(MD)Nos.5289 & 5290 of 2018

The Manager & Correspondent,
Carpenter Street Middle School,
Gopalasamy Street,
Thoothukudi – 628 001
Thoothukudi District.

... Petitioner

/vs./

- 1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St. George, Chennai – 600 009.
- 2.The Director of Elementary Education,
College Road, Chennai – 600 006.
- 3.The Joint Director of Elementary Education,
College Road, Chennai – 600 006.
- 4.The District Elementary Educational Officer,
Tuticorin at Pudhukottai,
Tuticorin District.
- 5.The Assistant Elementary Educational Officer,
Tuticorin (Urban), Tuticorin District.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 4th respondent District Elementary Educational Officer in Ni.Mu.No.1840/A4/2017 dated 25.07.2017, quash the same insofar as it denies approval for the appointment of D.Arul Prakash as BT Assistant (History) for the period from 18.08.2010 to 19.06.2013 and further direct the 4th respondent District Elementary Educational Officer to give approval to the said period with all attendant benefits including service, salary and Allowances.

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

For Respondents : Mr.A.Kannan,
Additional Government Pleader.

ORDER

The petitioner herein is a Private Minority Aided Educational Institution, which claims to have been established as a Primary School in the year 1865 and later, upgraded as a Middle School in the year 1931. In connection with certain issues with regard to approval of the Management, the school was brought under direct payment of the educational authorities.



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2. On 18.08.2010, the School Management had appointed one Mr.D.Arul Prakash as B.T. Assistant (History) in a sanctioned vacancy, with effect from 18.08.2010 and accordingly, had submitted a proposal to the second respondent herein, seeking for approval of his appointment.

3. Pending consideration of the proposal, the Government, in G.O.Ms.No.96, School Education (NI.VA.2) Department, dated 20.06.2013, had granted minority status to the school management, for a limited period of 5 years. The challenge to limiting the minority status, was allowed by this Court through its order dated 04.02.2015, in W.P. (MD)No.9453 of 2014, whereby the Government Order, restricting the minority status to five years, was set aside. The department's intra-court appeal against the order of the writ Court, came to be dismissed by the Hon'ble Division Bench in W.A.No.38 of 2018, on 05.01.2018.

4. In this background, the respondents have now rejected the petitioner's proposal for approval of the appointment of Mr.D.Arul Prakash, predominantly on the ground that the minority status of the school was declared only on 20.06.2013 through G.O.Ms.No.96, School



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Education (NI.VA.2) Department, dated 20.06.2013 and therefore, approved the appointment of Mr.D.Arul Prakash, with effect from 20.06.2013. The petitioner now claims for approval of the appointment of Mr.D.Arul Prakash from the date of his appointment (i.e.,) from 18.08.2010 to 19.06.2013.

5. The short issue that arises for consideration in the present writ petition is as to whether the appointment of Mr.D.Arul Prakash could be approved from the date of his appointment or from the date on which the school was granted minority status?

6. It is not in dispute that the present Management had appointed Mr.D.Arul Praskh as B.T.ASsistant (History) with effect from 18.08.2010. At that point of time, the school was under direct payment of the Government and hence, the original proposal dated 18.10.2010 for approval of the appointment was returned, on the ground of direct payment.



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7. The fourth respondent herein had approved the transfer of Management in the petitioner's name with effect from 18.09.2006. Consequently, a fresh proposal was submitted to the fourth respondent on 25.09.2013, seeking for approval of the appointment of Mr.D.Arul Prakash, which was approved with effect from 18.08.2010, through the proceedings of the fourth respondent dated 18.02.2014. However, the approval came to be cancelled on 19.05.2014, on the ground of discrepancy in the attendance register of the teacher.

8. The petitioner is a minority school in terms of Article 30 of the Constitution of India and is deemed to be so, from the date of its establishment by a person of a minority community. The declaration of the said institution by the State Government is only a ratification of its existing status. When the respondents had earlier attempted to limit the petitioner's minority status for a period of five years, this Court, in its order passed in W.P.(MD)No.9453 of 2014, dated 04.02.2015, had set aside such restriction, by placing reliance on a decision of the Hon'ble Division Bench of this Court, in the following manner:

“3. The issue as to whether the minority status can be conferred only for a limited period, has been considered and



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decided by this Court on very many occasions holding that such restriction cannot be imposed. A Division Bench of this Court considered the said issue in its recent decision in The Secretary, Jeyaraj Annapackiam College for Woman (Autonomous) Vs. State of Tamil Nadu, Rep. by its Secretary and others reported in (2013) Vol 8 MLJ 509, wherein at paragraph Nos.4, 5 and 6 it has been held as follows:

“4.The issue as to whether the appellant/Society which was already declared by this Court as minority Society / Institution, which was granted minority declaration by the Government for a minimum period, has to be directed to approach the Government for continuing the minority status was considered by this Court by one of us (N.Paul Vasanthakumar, J.), in W.P.No.24606 of 2012 reported in 2012 (2) CWC 728 (The Secretary, Loyala College v. The State of Tamil Nadu). In the said judgment, a Division Bench judgment of this Court reported in (2001) 3 M.L.J. 433 ([Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamingal, Medical, Educational and Charitable Trust, Salem v. State of Tamil Nadu](#)), was followed. Paragraph-5 of the said judgment reported in (2001) 3 M.L.J. 433 runs thus:

“... the Government while considering the Application made by the Appellant, duly took into account the fact that, (i) all the Trustees belong to Ariya Vaisya Telugu speaking Chettiar only from the year 1981 till date; (ii) the Trust has not included any new member in the Trust so far; (iii) the Trust has also stated that the Management is a registered Charitable Trust and the Board of Management belong to Ariya Vaisya Telugu speaking Chettiar; (iv) the additional



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deed executed by the Trust reflects the main objective of subserving the interests of the said minority community; (v) the Founders- Trustees, namely, (a) Thiru. A.Shanmughasundram (b) Tmt.S.Annapoorani and (c) Thiru.Saravanan who became a major at that time, belong to Telugu speaking Ariya Vaisya Chettiar Community and their mother-tongue is Telugu. By the aforesaid order dated 27.10.1997, the Government after verification of the documents produced, issued orders in the name of the Governor declaring the Medical College run by the Appellant as a linguistic minority institution for the purpose of [Article 30\(1\)](#) of the Constitution of India. In the face of the uncontroverted facts and circumstances brought on record, we are of the considered opinion that this is a fit case where the Appellant-Trust is entitled to its rights declared by the Government as a linguistic minority institution, as per G.O.Ms.No.532, dated 27.10.1997 and the Appellant will be eligible to continue to exercise its constitutional rights as recognised by the Government and the same is not liable to be effaced by the subsequent letter of the Government which is impugned in the Writ Petition out of which the present Writ Appeal arises. In conclusion, we hold that if any entity is once declared as minority entitling to the rights envisaged under [Article 30\(1\)](#) of the Constitution of India, unless there is fundamental change of circumstances of suppression of facts, the Government has no power to take away that cherished Constitutional right which is a fundamental right and that too, by an ordinary letter without being preceded by a fair hearing in conformity with the principles of natural justice."

5.The said judgment was also followed by the subsequent decisions of this Court in 2004 WLR 202 and again in the decision reported in (2009) 6 CTC

6.The reason given by the learned single Judge for distinguishing the said judgment is that the matter is pending before the Hon'ble Supreme Court regarding the issue of grant of minority status to linguistic minorities. It is relevant to note



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herein that the appellant College is a religious minority institution, viz. Christian religion. It may be noted that Christians are minorities not only throughout India but also in the State of Tamil Nadu. The same is also made clear in the Government Order issued in G.O.Ms.No.270, Higher Education (JI) Department, dated 17.06.1998. In paragraph 8(vi), it is stated that to decide whether an applicant is a minority or not based on religion or language, the total population of that minority in the State of Tamil Nadu shall be taken into consideration and not the population of that minority in any particular region where the educational institution is situated. Therefore, it is evident that the impugned order restricting minority status which was upheld by the learned single Judge is without noticing the said guidelines issued by the Government itself in G.O.Ms.No.270, Higher Education (JI) Department, dated 17.06.1998. It is also to be noted that the said Government Order, no where states that minority status can be given to a limited period. The Government is also not doubting the claim of minority status of the appellant-College. Hence the order restricting the period is without any rhyme or reason.”

4. Following the above decision of the Division Bench, I hold that the first respondent is not justified in restricting the minority status to the petitioner only for a period of five years.

5. Accordingly, the writ petition is allowed and the impugned order insofar as the same restricting the period of minority status only for five years is set aside. No costs. Consequently, connected miscellaneous petition is closed.”



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The challenge to the aforesaid order, by the Educational Department, before the Hon'ble Division Bench, was dismissed by an order dated 05.01.2018 passed in W.A.(MD)No.38 of 2018.

9. When the status of a minority institution has been declared, such status would revert back to the date of its establishment, since the minority status by itself is enshrined under Article 30 of the Constitution of India, which is not only a constitutional right of the institution, but also a fundamental right. A mere declaration of the existing right would not give rise to a cause of action to the respondents to restrict the minority status from the date of such declaration. Incidentally, the petitioner was constrained to approach this Court, seeking for declaration of the minority status in view of the Government's disinclination to declare such pre-existing status. Likewise, the petitioner was further constrained to challenge the Government Order limiting such minority status to five years and this litigation also was owing to the Government's misinterpretation of this legal position. The consequent passing of G.O.Ms.No.96, School Education (NI.VA.2) Department, dated 20.06.2013, will not amount to a fresh declaration of the minority status



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of the petitioner's school, but rather a ratification of the pre-existing right of the school. Thus, the impugned order, approving the appointment of Mr.D.Arul Prakash from the date of G.O.Ms.No.96, School Education (NI.VA.2) Department, dated 20.06.2013, is not only misconceived, but also illegal.

10. For all the foregoing reasons, the impugned order issued by the fourth respondent, District Elementary Educational Officer in Ni.Mu.No. 1840/A4/2017, dated 25.07.2017, is set aside, insofar as it restricts the approval of such appointment between 18.08.2010 and 19.06.2013. Consequently, there shall be a direction to the fourth respondent herein to pass appropriate orders, approving the petitioner's appointment to the post of B.T.Assistant (History), for the period between 18.08.2010 and 19.06.2013, together with all service, monetary and other attendant benefits, within a period of four (4) weeks from the date of receipt of a copy of this order.



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11. The Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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To

1. The Secretary,
State of Tamil Nadu,
Department of School Education,
Fort St. George, Chennai – 600 009.
2. The Director of Elementary Education,
College Road, Chennai – 600 006.
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M.S.RAMESH, J.

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Order made in
W.P.(MD) No.5351 of 2018
and W.M.P.(MD)Nos.5289 &
5290 of 2018

Dated:
29.08.2022