



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.09.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.21963 of 2021 and
W.M.P.(MD)No.18548 of 2021

Dr.S.Sophia Christina,
Assistant Professor,
Department of English,
St. John's College, Palayamkottai,
Tirunelveli – 627 012.

... Petitioner

Vs.

1. The Manonmaniam Sundaranar University,
Rep. By its Registrar,
Abishekapatti,
Tirunelveli District – 627 012.

2. The Secretary,
St. John's College, Palayamkottai,
Tirunelveli – 627 012.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned circular issued by the 1st respondent University in Ref. No.MSU/R/CD/Minority Coll./Selc.Proc/ Principal.A.P/2018 dated 17.01.2018 and the consequential proceedings in Ref.No.MSU/R/CDC/A4/127/QA/A.P/Doc.Reg./2021 dated 02.08.2021 in so far as the petitioner is concerned, quash the same and further direct the 1st respondent Manonmaniam



Sundaranar University to grant qualification approval forthwith to the appointment of the petitioner in the 2nd respondent college in her respective post in the Department of English with effect from her date of appointment viz., 02.12.2020.

For Petitioner : Mr.T.Cibi Chakraborty

For R-1 : Ms.H.Jasima Yasmin,
for Mr.Mahaboob Athiff.

For R-2 : Mr.P.P.Alwin Balan

* * *

ORDER

Heard the learned counsel on either side.

2. The second respondent college is a minority institution. It is receiving aid from the state. One post of Assistant Professor in English fell vacant. The college constituted a staff selection committee and selected the writ petitioner for the said post and appointed her as Assistant Professor in English with effect from 02.12.2020. The college submitted a proposal to the first respondent for getting qualification approval. The relevant documents were also



enclosed. The first respondent University vide proceedings dated 23.02.2021 returned the proposal. Thereafter, the college management resubmitted the proposal. Again the first respondent University rejected the request and declined to grant approval on the ground that the constitution of the selection committee was not made in accordance with the UGC norms. Challenging the same, the present writ petition has been filed.

3. The issue raised in the writ petition is no longer *res integra*. The Hon'ble Division Bench in the decision reported in **2011 (1) CTC 162 (The Forum of Minority Institutions & Associations V. The State of Tamil Nadu)** had already settled the issue. The relevant paragraph of the aforesaid decision is as follows:-

“ 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



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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.

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



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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.

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. R.S. Sharma and Co. reported in MANU/SC/0497/1988 : (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:



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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 C.A. Nos. 3137-39 of 1985, 3145 of 1985 - Jaipur Development Authority v. Firm Chhokhamal Contractor. 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 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



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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. My attention is also drawn to the order dated 23.03.2021 made in W.P.(MD)No.1691 of 2020 in which the aforesaid decision was followed.



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5. In view of the same, the impugned proceedings are quashed. The second respondent is directed to resubmit the proposal seeking qualification approval before the first respondent within a period of three weeks from the date of receipt of a copy of this order. The first respondent shall consider the said proposal and pass appropriate order on merits and in accordance with law within a period of eight weeks thereafter. The first respondent will not insist that the selection committee should have been constituted in accordance with UGC norms.

6. This writ petition stands allowed on these terms. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Internet : Yes/ No

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Note : Issue order copy on 16.09.2022.



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To:

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Rep. By its Registrar,
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Tirunelveli District – 627 012.
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