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W.P.(MD)NO.23903 OF 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.12.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.23903 of 2022 and
W.M.P.(MD)Nos.17970 & 17971 of 2022

S.Stephen

... Petitioner

Vs.

1. The Director of Collegiate Education,
Institute of Advanced Studies in Education Campus,
No. 577, Anna Salai,
Saidapet,
Chennai-600 015.
2. The Regional Joint Director of Collegiate Education,
Madurai Region,
Palam Station Road,
Madurai-625 002
3. The Governing Council of The American College,
Rep by its President / Bishop of
Madurai-Ramnad Diocese,
AVH Building, 1st Floor,
No. 162, East Veli Street,
Madurai-625 001.
4. The Secretary,
The Governing Council of The American College,
The American College,
Madurai-625 002.
5. The American College,
Rep by its Principal,
Madurai-625 002.



6. The Registrar,
Madurai Kamaraj University,
Palkalai Nagar,
Madurai-625 021.

7. Dr.M.Davamani Christoher,
Associate Professor and Principal of
The American College and
Appointee as Head of PG and
Research Department of Mathematics,
The American College,
Madurai-625 002.

... 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 Order No.PO/06/2022/GC-363/R.No.09/06/2022 dated 15.06.2022 passed by the 4th respondent and quash the same and consequently direct respondents 3 and 4 to re-designate the petitioner as the Head of the P.G. Department of Mathematics, The American College, Madurai, from 15.6.2022 within the time limit that may be stipulated by this Court.

For Petitioner : Mr.Raguvaran Gopalan

For R-1 & R-2 : Mr.N.Sathees Kumar,
Additional Government Pleader.

For R-3 to R-5
& R-7 : Mr.M.Ajmal Khan,
Senior Counsel,
for M/s.Ajmal Associates.

For R-6 : Mr.T.Sakthikumaran

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ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Additional Government Pleader appearing for respondents 1 and 2 and the learned Senior counsel appearing for respondents 3 to 5 and 7 and the learned counsel appearing for the sixth respondent.

2. The writ petitioner joined The American college, Madurai as Assistant Professor in the year 1987. He became an Associate Professor. He has put in 35 years of service. The petitioner was appointed as Head of the Post-Graduate Department of Mathematics on 01.06.2018. While so, without cancelling the petitioner's order of appointment or even notice to him, the seventh respondent had been appointed as the Head of Post-Graduate Research Department (Maths) in The American College with effect from 15.06.2022. The petitioner gave representation to the Regional Joint Director, Madurai Region and copies were marked to various authorities including the private respondents herein. Since it was not



considered, the present writ petition came to be filed.

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3. The learned counsel appearing for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to interfere in the matter.

4. The private respondents have filed counter affidavit. The learned Senior counsel took me through its contents. The primary contention of the learned Senior counsel is that The American College has two Post-Graduate Departments in Mathematics. The Post-Graduate department has been recognised as a research centre where the students can be guided to obtain Ph.D. in Mathematics. The writ petitioner is not having any doctorate. On the other hand, the seventh respondent is holding Doctorate in Mathematics. The learned Senior counsel submitted that during the last four years, no student had joined for Ph.D. Degree in Mathematics and that is why the governing council in its wisdom appointed the seventh respondent as Head. The learned Senior counsel submitted that the writ petitioner can as well be



accommodated as the Head of U.G. Department (Mathematics). He submitted that this post does not carry any extra emolument or rank. Since the petitioner is going to be accommodated in U.G. Department, he need not have any real cause for grievance. In any event, the appointment was made in the best interest of the institution and students. According to the learned Senior counsel, The impugned order does not call for any interference.

5. I carefully considered the rival contentions and went through the materials on record.

6. The issue regarding the appointment of the Head of the Department is governed by G.O.No.1785 Education (H-3) Department dated 05.12.1988. Clause 4 (vii) is as follows:-

“ The Senior most person in the Department of College irrespective of his Ph.D. Qualifications will be nominated and designated as “Senior Lecturer Selection Grade Lecturer Reader and Head of Department” by the Director



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of Collegiate Education and that no special pay will be allowed to that post. ”

This clause was interpreted and construed in quite a few decisions of this Court. One such decision in ***W.P.(MD)No. 7082 of 2011 (S.Kuppusamy V. The Director of Collegiate Education, Chennai and three others)*** has been enclosed in the typed set of papers. Paragraph Nos.5, 8 and 9 of the said order dated 08.02.2011 read as follows:-

5.This court had rejected the case of the petitioner by an order dated 24.9.2007 and in paragraphs 7 and 14, it was observed as follows: "7....This Court dealt with an identical situation in the judgment reported in 1998 (1) CTC 609 [Dr.Mrs.Shams V. The Commissioner of Collegiate Education, Madras and others] wherein it was held that enforcement of G.O.Ms.No.1785 Education Department dated 05.12.1988 is applicable to minority institutions also and this Court gave a direction to fill up the post on seniority basis. The



above said matter was taken on appeal and the Division Bench by its judgment reported in 2001 (2) CTC 84 [The Principal and Secretary, Madras Christian College, Madras and another V. Dr.(Mrs.) Shams and another] dismissed the writ appeal and the relevant passages found in paragraphs 10 to 12 & 14 of the said judgment are usefully extracted below:

Para 10."From the above passage, it is clear that the scheme applies to the teachers of all Colleges either Government or aided in Tamil Nadu unless the individual college specifically exercises an option to remain out of the scheme as provided under the very same scheme. The scheme also directs that all the teachers appointed after the date from which the scheme has been given effect to will be governed by the provisions of the scheme.

Para 11:Under the scheme it is further provided that the senior most person in the Department of the College irrespective of his Ph.D qualification



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will be examined and designated as Senior Lecturer/ Selection Grade Lecturer/Reader and Head of Department by the Director of Collegiate Education that no special pay will be allowed to that post.

Para 12:Therefore, it is clear that the Head of the Department not being a promotion post, which does not carry a special pay, the senior most person in the department has to be nominated and designated as the Head of the Department. The first appellant college had admittedly subscribed itself to the scheme and had accepted the revision of pay scales in terms of the coverage prescribed under the scheme. There is no dispute in this respect that the entire college is receiving the grant as per the revised pay scales introduced by the said Government Order. Having accepted the said coverage and having subjected itself to the conditions stipulated in the scheme, it is too late for the first respondent to contend that such a condition will have no application at all not the



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appellant could avoid the compliance of the said scheme." Para 14: "Therefore, in the light of the said pronouncement having accepted the grant subject to the conditions, and the post being only a designated one which has to be done by the Director of Collegiate Education, it follows that the first appellant herein is bound to follow the rule of seniority as has been ordered in this case. Hence, we do not find any infirmity in the order passed by the learned single Judge and we also hasten to add that it is unnecessary to go into any other contentions."

14.G.O.Ms.No.1785 was made pursuant to the Committee appointed by the University Grants commission, which is a body created in terms of Entry 66 List 1 Schedule 7 of the Constitution of India. University Grants Commission has to set co-ordination standards for institutions of higher learning. The University Grants Commission appointed committees, made several recommendations in respect of the college



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teachers all over India and the said recommendations were accepted by the Government of India. The opinion of the State Governments were also sought for and the State Government appointed a high level committee to go into the recommendations of the committee appointed by the University Grants Commission. It is pursuant to these recommendations, uniform pay scale and service conditions were created for affiliated college teachers all over India. It is only after getting the opinion of all concerned, the recommendations of the Committee were accepted by University Grants Commission in terms of scale of pay, nomenclature of teaching staff, Headship and other conditions of service. It is pursuant to the said exercise, G.O.Ms.No.1785 Education Department dated 05.12.1988 came to be issued,....."

8.Though the management claims that they have gone to the Supreme Court against the said order in SLP(Civil)No.22808 and 22809 of 2011, they



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have not mentioned about any interim order being obtained in the Supreme Court. In any event, this Court as well as the division bench essentially had dealt with the scope of minority right under Article 30(1) of the Constitution and that the senior most person in the department being redesignated as the HOD was not violative of Article 30(1). It is rather unfortunate that the college should again and again file such writ petitions and allow the teachers to come to this court without adhering to the precedent set up by this court. Therefore, this court is not only constrained to mould the relief in favour of the petitioner and give positive direction to the management, but also to impose cost on the management for their conduct in repeatedly raising similar issue.

9.It must also be noted that an identical prayer had been rejected in respect of an another minority institution which is also an autonomous college in The Principal and Secretary, Madras Christian College, Madras and another V. Dr.(Mrs.) Shams



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and another reported in 2001 (2) CTC 84 (cited supra). There must be limit in such litigation. Under these circumstances, instead of directing the first and second respondents to give direction to the third respondent college, since the third respondent college also states that no direction can be given by the Director of the Collegiate Education as he only governed the Government college, this court in exercise of power under Article 226 is constrained to issue a mandamus directing the third respondent to redesignate the petitioner as the Head of the Department of Maths forthwith in the place of the fourth respondent. “

7. The aforesaid Government Order as well as the aforesaid decision clearly answer the contention as regards non-possession of Ph.D. Degree by the petitioner.

8. The petitioner's counsel also draws my attention to the proceedings dated 02.03.2018 issued by the Registrar of Madurai Kamaraj University whereby the Post-Graduate



Department of Mathematics in The American College came to be recognised as one of the research centre leading to Ph.D. Degree in Mathematics. The petitioner was appointed as Head of the said department on 01.06.2018. When the petitioner was appointed as the Head of the Department, the department was already recognised as research centre. The reason ascribed in paragraph No.4 of the counter affidavit for appointing the seventh respondent will therefore not hold good.

9. Looked at from any angle, the impugned order cannot be sustained and it is quashed. This writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

02.12.2022

Index : Yes / No
Internet : Yes/ No

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G.R.SWAMINATHAN,J.

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