



WEB COPY



W.P.No16823 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.01.2023

PRONOUNCED ON : 09.01.2023

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.16823 of 2020
and
W.M.P. No.20869 of 2020

Dr.A. Arogia Mary

... Petitioner

vs.

1. Auxilium College for Women,
Gandhinagar,
Rep. by its Secretary
Vellore 632 006,
Vellore District.

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

3. The Regional Joint Director of
Collegiate Education,
Vellore Region,
Vellore - 632 006.

4. The Thiruvalluvar University
Rep. by its Registrar,
Serkadu,
Vellore - 632 115.



W.P.No16823 of 2020

5. N. Shree Rekha

... Respondents

WEB CO

PRAYER: Writ petition filed under section 226 of Constitution of India for Writ of declaration declaring that the Selection Procedure followed by the 1st respondent for selection and appointment to the post of Librarian in their College and the appointment of the 5th respondent as Librarian in their College, contrary to and without following selection procedures as contemplated in the UGC Regulations, 2018 and not in a fair and transparent manner, as illegal and invalid and consequently direct the 1st respondent College to make appointment to the post of Librarian afresh, strictly in accordance with law and strictly in accordance with the selection procedures as contemplated in the UGC Regulations, 2018 and strictly based on merits of all the candidates, including the petitioner, in a fair and transparent manner and by giving the petitioner preference based on petitioners service as Librarian in the 1st respondent College for more than 17 years award costs.

For Petitioner

: Mr.R. Krishnaswamy

For Respondents

: Mr.D. Ravichander,
Spl. Govt. Pleader for R2 & R3
Mr.Father Xavier
M/s.Father Xavier Associates for R1
Mr.M.C. Swamy
for R4 - No appearance
R5 - Served - No appearance

ORDER

The issue that arises for consideration is whether the Selection Committee constituted by the 1st respondent College which is a Minority institution to appoint a Librarian is proper and whether the appointment of



W.P.No16823 of 2020

the 5th respondent as a Librarian by the 1st respondent College can be challenged by the petitioner in this writ petition.

2. The grievance of the petitioner who also applied for the post of Librarian along with the 5th respondent and many others is that the Selection Committee constituted by the 1st respondent College for selecting a Librarian is improper and not in accordance with U.G.C. Regulations, 2018. The petitioner also contends that she was neither informed about the written examination nor the oral interview in advance, though she had participated in both the written examination and the oral interview under protest.

3. According to the petitioner, since the Selection Committee which has selected the 5th respondent for the post of Librarian has not been constituted in accordance with UGC Regulations, 2018 and the petitioner was not put on notice well in advance about the written examination and the oral interview by the 1st respondent College, the appointment of 5th respondent as a Librarian by the 1st respondent College has to be struck down.



4. The respondents in their respective counter affidavits have denied the contentions of the petitioner.

5. The 1st respondent College in their counter affidavit have categorically contended that the selection process was conducted in a fair and transparent manner. According to them sufficient notice was given to all the aspirants applying for the post about their requirements to pass the written examination as well as in oral interview. According to them only by following the selection procedure as contemplated in the UGC Regulations, the 5th respondent was appointed to the post of Librarian based on the Selection Committee's recommendation. The 1st respondent College also contended that the 5th respondent had secured more marks in the overall assessment than that of the petitioner. The 1st respondent College has also stated that they have constituted a seven member Selection Committee as per the UGC norms, as applicable to Minorities Colleges and the interview was conducted on 30.10.2019. According to them after the interview the petitioner had scored 47 marks and the 5th respondent had scored 53 marks. According to them only based on the good performance of the 5th



W.P.No16823 of 2020

respondent in the written examination as well as in the interview she was selected to the post of Librarian by the 1st respondent College.

6. The 3rd respondent has also filed a counter affidavit reiterating that the 1st respondent College has appointed the 5th respondent only in accordance with UGC Regulations, 2018 which is applicable to Minority Colleges. According to them as per Section 14(1)(B) of Tamil Nadu Private Colleges (Regulation) Act, 1976, the educational Secretary / College committee is the Appointing Authority for the appointment of teaching and non-teaching staff of a Private College and fix their pay and allowances. Therefore, according to them, the 1st respondent has constituted a Selection Committee and selected the 5th respondent for the post of Librarian in the 1st respondent College and has submitted a proposal to the 3rd respondent for approving the said appointment and to enable the 1st respondent College to get grant-in-aid for the post of Librarian. They have stated that only due to the pendency of this writ petition, they have not yet approved the appointment of the 5th respondent in the 1st respondent College to the post of Librarian.



W.P.No16823 of 2020

7. Heard Mr.R. Krishnaswamy, learned counsel for the petitioner, Mr.Father Xavier, learned senior counsel for the 1st respondent and Mr.D.Ravichander, learned Special Government Pleader for the respondents 2 and 3.

8. The learned counsel for the petitioner after drawing the attention of this Court to the Selection Committee constituted by the 1st respondent College for the purpose of selecting a person to the post of Librarian would submit that the same is not in accordance with UGC Regulations. In particular, he referred to Clause IX of the UGC Regulations, 2018, which dealt with constitution of Selection Committees for the post of Directors, Deputy Directors, Assistant Directors and Physical Education and Sports, Librarians, Deputy Librarians and Assistant Librarians. After referring to the said Clause, he would submit that in case of selecting a person to the post of Librarian, in the Selection Committee there must be a practising Librarian. But however, according to him in the Selection Committee constituted by the 1st respondent College there was no practising Librarian. He would also submit that there is no representative from the University in



the Selection Committee and therefore, since the Selection Committee has not been properly constituted in accordance with UGC Regulations, the selection of the 5th respondent to the post of Librarian by the 1st respondent College has to be struck down.

9. The learned counsel for the petitioner also drew the attention of this Court to the minimum qualifications criteria for a Librarian fixed under Regulation 4.7 of the UGC Regulations, 2018 and would submit that a person should possess knowledge of computerisation of a library. According to him, the 5th respondent does not have the required minimum qualification and therefore, she cannot be appointed to the post of Librarian. Though he would rely upon Regulation 4.7 of the UGC Regulations 2018. He would fairly submit that 5th respondent is having the requisite qualification to seek appointment for the post of Librarian in the 1st respondent College. At the same time, the learned counsel for the petitioner would submit that the petitioner is a Ph.D. and is a highly qualified person over and above the 5th respondent and therefore, she ought to have been selected to the post of Librarian by the 1st respondent College.



10. The learned counsel for the petitioner would further submit that only under protest, the petitioner had participated in the written examination as well as in the oral interview conducted by the 1st respondent College, even though the petitioner was not given adequate notice about the written examination as well as the oral interview by the 1st respondent College. In support of the petitioner's contentions, UGC Regulations, 2018 will have to be followed even by a Minority institution, the learned counsel for the petitioner relied upon a decision of the Hon'ble Supreme Court in the case of ***Sk. Mohd. Rafique vs. Managing Committee, Contai Rahamania High Madrasah and others reported in 2020 6 SCC 689.***

11. Per contra, the learned Senior counsel appearing for the 1st respondent after drawing the attention of this Court to the various documents filed by the 1st respondent in their typed set of papers would submit that the petitioner had secured lesser marks than that of the 5th respondent as seen from the comparative merit sheet dated 30.10.2019, He would submit that even though the 1st respondent is a Christian Minority institution, the 5th respondent, who is a Hindu, due to her better performance in the written examination as well as in the oral interview was selected to be



W.P.No16823 of 2020

appointed for the post of Librarian. In fact, he would submit that as seen from the marks awarded to various aspirants, the petitioner being a Christian was awarded 10 grace marks and despite the same she has secured lesser marks than the 5th respondent, who is a Hindu and was not awarded any grace marks. He would submit that as a Minority institution, there is no requirement under the UGC Regulations, 2018 to have a Representative of the University in the Selection Committee.

12. According to him, only in accordance with UGC Regulations and only after satisfying Regulation IX of UGC Regulations relating to constitution of Selection Committee, the Selection Committee was constituted and a Library Director, who had studied Masters in Library Science was also part of the Selection Committee. Therefore, according to him, only by adhering to UGC Regulations 2018, the 5th respondent was selected for being appointed to the post of Librarian based on her good performance in the written examination as well as in the oral interview. According to him, merit alone was the criteria adopted for selecting the 5th respondent to the post of Librarian in the 1st respondent College.



13. The learned Senior counsel for the 1st respondent also relied upon a judgment of the Hon'ble Supreme Court in the case of ***Brahmo Samaj Education Society and others vs. State of W.B. and others reported in 2004 6 SCC 224*** and would submit that independence for the selection of teachers among the qualified candidates is fundamental to the maintenance of the academic and administrative autonomy of a Minority institution. According to him, the 5th respondent, having satisfied the basic qualification requirements to the post of Librarian and also being the first in the merit list, the Selection Committee's decision to appoint the 5th respondent based on her merit and performance cannot be challenged by the petitioner.

14. The learned Special Government Pleader appearing for the 2nd and 3rd respondents would reiterate the submissions made by the learned Senior counsel appearing for the 1st respondent and would submit that only in accordance with UGC Regulations, 2018, the 5th respondent was selected for being appointed to the post of Librarian in the 1st respondent College. He would also submit that Section 14 of Tamil Nadu Private Colleges (Regulation) Act, 1976 empowers the College committee to appoint teaching and non-teaching staff. Therefore, the question of interfering with



W.P.No16823 of 2020

the selection process that too when the 5th respondent has satisfied the qualification and eligibility criteria for being a Librarian will not arise. He would also further submit that only due to pendency of this writ petition, the proposal submitted by the 1st respondent College seeking approval for the appointment of 5th respondent as a Librarian has been kept pending by the 3rd respondent.

Discussion :

15. It is not in dispute that both the petitioner as well as the 5th respondent are qualified to apply for the post of Librarian in the 1st respondent College. Both of them have satisfied the minimum qualification required for direct recruitment to the post of Librarian as per the UGC Regulations, 2018. The constitution of the Selection Committee for the post of Librarian should be as per Regulation IX of the UGC Regulations, 2018.

The said Regulations reads as follows :-

IX. Selection Committees for the posts of Directors, Deputy Directors, Assistant Directors of Physical Education and Sports, Librarians, Deputy Librarians and Assistant Librarians shall be the same as that of Professor, Associate Professor and Assistant Professor, respectively, except that in Library and Physical Education and Sports or Sports Administration, respectively, practicing Librarian / Director Physical Education and Sports, as the case may



W.P.No16823 of 2020

be, shall be associated with the Selection Committee as one of the subject experts.

WEB COPY

16. As seen from the aforementioned Regulations, the Selection Committee shall be the same as that of the Professor, Associate Professor and Assistant Professor respectively except that for a post of Librarian, a practising Librarian shall be associated with the Selection Committee as one of the subject experts. The petitioner contends that a practising Librarian was not part of the Selection Committee and therefore, the selection of the 5th respondent as a Librarian is improper. The said contention has to be rejected in view of the fact that the Selection Committee had Sr. Juliana Agnes Victor, the Director of Library as one of the Selection Committee Member along with six others in accordance with UGC Regulations. Sr. Juliana Agnes Victor is holding a Masters degree in Library Science, which is also not disputed by the petitioner. The 1st respondent categorically contends that she is a Library expert. Excepting for stating that a Library expert was not part of the Selection Committee, the petitioner has not produced any iota of evidence to disprove the categorical assertion made by



W.P.No16823 of 2020

the 1st respondent College that Sr. Juliana Agnes Victor, the Director of Library is a Library expert as required under Regulation IX of UGC Regulations.

17. The 1st respondent College has also produced the comparative merit sheet of the respective aspirants to the post of Librarian. As seen from the merit sheet the petitioner was given grace marks of 10 being a catholic Christian. The same grace marks was not given to the 5th respondent as she is a Hindu. The grace marks was given to the petitioner as the 1st respondent College is a Christian Minority Institution. Despite giving ten grace marks to the petitioner, she has secured only 47 marks, whereas the 5th respondent even without the grace marks has secured 53 marks much higher to that of the petitioner. Based on merit, the 1st respondent has appointed the 5th respondent to the post of Librarian instead of the petitioner.

This Court does not find any infirmity in the same.

18. The judgments relied upon by the learned Senior counsel appearing for the 1st respondent viz., ***Brahmo Samaj Education Society and others vs. State of W.B. and others reported in 2004 6 SCC 224*** also



W.P.No16823 of 2020

makes it clear that the selection and appointment of Teachers based on a prescribed qualification by the State is vested only with the 1st respondent, Minority institution. The State can only prescribe the basic qualifications for Teachers as in the instant case, by way of UGC Regulations, 2018. When the 1st respondent, a minority institution has followed the procedure and has appointed the Selection Committee in accordance with the UGC Regulations, the question of interfering with the appointment of the 5th respondent as a Librarian that too when, it is clear from the available records that only based on merit, she was selected will not arise. The very recent judgment of the Hon'ble Supreme Court in the case of ***Chandana Das (Malakar) v. State of West Bengal and others reported in 2019 7 MLJ 543 (SC)*** makes it clear that the powers of the Selection Committee in a minority institution to appoint teachers cannot be curtailed once the teachers so appointed are duly qualified for appointment. This Court has not found any irregularity in the appointment of the 5th respondent as a Librarian by the 1st respondent minority institution. Therefore applying the ratio laid down by the aforesaid Hon'ble Supreme Court, this Court does not find any merit in this writ petition.

14/20



19. The relevant paragraphs of the ***Brahmo Samaj's*** case referred to *supra* reads as follows:-

7. But that control cannot extend to the day-to-day administration of the institution. It is categorically stated in T.M.A. Pai (SCC at p. 551, para 72) that the State can regulate the method of selection and appointment of teachers after prescribing requisite qualification for the same. Independence for the selection of teachers among the qualified candidates is fundamental to the maintenance of the academic and administrative autonomy of an aided institution. The State can very well provide the basic qualification for teachers. Under the University Grants Commission Act, 1956, the University Grants Commission (UGC) had laid down qualifications to a teaching post in a university by passing Regulations. As per these Regulations UGC conducts National Eligibility Test (NET) for determining teaching eligibility of candidates. UGC has also authorised accredited States to conduct State-Level Eligibility Test (SLET). Only a person who has qualified NET or SLET will be eligible for appointment as a teacher in an aided institution. This is the required basic qualification for a teacher. The petitioners' right to administer includes the right to appoint teachers of their choice among the NET-/SLET-qualified candidates.

20. The petitioner though has relied upon the UGC Regulations 2018 for the purpose of highlighting her contentions that the appointment of the 5th respondent to the post of Librarian is improper and illegal, the learned



W.P.No16823 of 2020

counsel for the petitioner though having taken this Court to various Regulations mentioned in the UGC Regulations, 2018 has been unable to impress upon this Court that any of the said Regulations were violated by the 1st respondent before appointing the 5th respondent to the post of Librarian.

21. The judgments relied upon by the petitioner viz., the decision of the Hon'ble Supreme Court in the case of ***S.K. Mohd. Rafique vs. Managing Committee, Contai Rahamania High Madrasah and others Reported in 2020 6 SCC 689*** as well as the judgment of the Bombay High Court in the case of ***Archdiocesan Board of Education and another vs. Goa University, through its Vice-Chancellor and others reported in 2022, SCC Online Bom 1196*** has no applicability to the facts of the instant case. Insofar as the ***S.K. Mohd. Rafique's*** decision of the Hon'ble Supreme Court is concerned that did not deal with UGC Regulations, 2018 but dealt with different regulations and enactments.



WEB.COM

22. Further as observed earlier, the 1st respondent has not violated any of the UGC Regulations, 2018 and even if regulations referred in ***S.K.Mohd. Rafique's case*** are akin to the UGC Regulations, 2018, the question of interfering with the selection of the 5th respondent as a Librarian does not arise. On the same lines, the judgment of the Bombay High Court referred to supra does not apply to the facts of the instant case as UGC Regulations, 2018 has not been violated by the 1st respondent in the present case.

23. The other contentions raised by the petitioner is that she was not put on advance notice about the written examination and the oral interview to be conducted by the 1st respondent College. The petitioner has participated in both the written examination as well as in the oral interview conducted by the 1st respondent. Though she may contend that she has participated under protest, there is no iota of evidence in support of the said contention. The marks secured by the petitioner is much lesser than the marks secured by the 5th respondent. The petitioner has secured only 47 marks even after giving the grace marks of 10, on account of her catholic Christian community, whereas the 5th respondent has secured 53 marks even without any grace marks. Only based on merit, the 5th respondent has



W.P.No16823 of 2020

been appointed to the post of Librarian by the 1st respondent College. The 3rd respondent has also supported the case of the 1st respondent College.

They have kept the proposal submitted by the 1st respondent seeking for appointment of the 5th respondent as a Librarian pending only due to the pendency of this writ petition, even though they have categorically stated that the selection procedure adopted by the 1st respondent was only in accordance with UGC Regulations, 2018.

24. For the foregoing reasons, this Court does not find any merit in this writ petition. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

09.01.2023

vsi2

Index : Yes/No
Internet : Yes/No
Speaking Order/Non Speaking Order
Neutral citation case : Yes / No



W.P.No16823 of 2020

WEB COPY

To

1. The Secretary
Auxilium College for Women,
Gandhinagar,
Vellore 632 006,
Vellore District.

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

3. The Regional Joint Director of
Collegiate Education,
Vellore Region,
Vellore - 632 006.

4. The Registrar,
The Thiruvalluvar University
Serkadu,
Vellore - 632 115.



WEB COPY



W.P.No16823 of 2020

ABDUL QUDDHOSE, J.

vsi2

Pre-Delivery order in
W.P.No.16823 of 2020

09.01.2023

20/20