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W.P.No.19082 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2023

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.19082 of 2020
and
W.M.P.No.23651 of 2020

The Principal and Secretary
St. Christopher's College of Education,
Vepery, Chennai – 600 007.

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of Higher Education,
Fort St. George, Chennai – 600 009.

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

3.The Regional Joint Director of
Collegiate Education,
Chennai Region, Chennai – 600 015.

... Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 3rd respondent Joint Director to approve forthwith the appointment of Mrs.Hebziba as Assistant Professor in Computer Education in the petitioner college with effect from the date of her appointment viz., 04.04.2019 and disburse the grant-in-aid towards her salary and allowances from the said date.



For Petitioner : Mr.P.Godson Swaminath
For M/s.Isaac Chambers

For Respondents : Mr.S.Silambanan,
Additional Advocate General
Assisted by Mr.T.Chezhiyan
Additional Government Pleader

ORDER

The writ petition has been filed seeking mandamus, directing the 3rd respondent / Regional Joint Director of Collegiate Education to approve the appointment of Assistant Professor in Computer Education in the petitioner-College from the respective date of appointment.

2. Mr.P.Godson Swaminath, learned counsel for the petitioner states that Mrs.M.Hebziba, who was appointed on 04.04.2019 to the vacancy of Assistant Professor in Computer Education Department. Before appointing the individual to the said post, the petitioner-Institution has followed the prescribed method of the selection process and the 2nd respondent did not have any quarrel on the said process.

3. As it appears from the counter affidavit filed by the 2nd respondent, the only reason for not considering the proposal submitted by the petitioner



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for appointment of the said Mrs.M.Hebziba is that the appointment has been done without prior permission from the 2nd respondent through the 3rd respondent. Further objection is that the petitioner Management has not given proper advertisement in the newspapers before recruiting the individual to the said post. However, in letter dated 24.06.2019, it has been stipulated that the aided colleges in appointing persons to the post of Assistant Professors or non-teaching staffs should advertise in newspapers in addition to seeking sponsorship of candidates from the Employment Exchange.

4. Mr.P.Godson Swaminath, learned counsel for the petitioner attracted the attention of this Court to the position on the law settled in this regard by the Hon'ble Division Bench of this Court vide its order dated 05.01.2011 passed in W.P.Nos.34434 of 2008, etc and batch (*The Forum of Minority Institutions and Associations Vs. The State of Tamil Nadu, represented by the Joint Director of Collegiate Education and Others*). The matter under challenge in the said writ petitions is University Grants Commission (UGC) Regulations 2000, which mandates the constitution of a Selection Committee for the appointment of Teachers in the Minority Institutions. During the pendency of the above writ petition, UGC has given the 2010 regulations as



well. However, 2010 regulation has been modified, to the effect that the Minority Institutions are at liberty to select their own College Committee, but the appointment will be done by the Vice Chancellor of the University. Even though the matter under challenge was 2000 regulations, the Court incidentally has to advert the 2010 regulations also. It has been reasserted in the said judgment that the State's Regulatory power in Minority Colleges is restricted to the prescription of qualification and beyond that level, they cannot extend to prescribe the methodology of the recruitment and constitution of Selection Committee, etc.

5. Therefore, the Right to administer and to have a Selection Committee of their own choice for the Minority Institutions have been guaranteed once again. After referring various judgments and doing thread-bear analysis on the issue in the said case, it is concluded as under:

“59. Thus, a reading of these judgments would show that right of Minority Institutions to select candidates of their own choice by regulating their process of selection is upheld by the Hon'ble Supreme Court.

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 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.”

6. The method of appointment and the process of selection are concerned, were also answered in favour of the Minority Institutions. For a better clarification paragraph 26 of the said judgment is extracted here under:

“26. It is the further contention of the learned Counsel for the Petitioner that in the matter of selection and appointment of teaching staff, the State's regulatory power in Minority Colleges is restricted to the prescription of qualification, which cannot extend to the prescription of methodology of recruitment, constitution of Selection Committee, etc. The contention of the learned Counsel for the Petitioner was that right to administer contains



four essential elements:

(a) Right to constitute the Managing Committee/Governing Body with persons on whom the founders have faith and confidence.

(b) Right to select and appoint teachers of choice having not only general qualifications (educational and experience), but compatibility with the minority's ideals, aims, aspirations, outlook, philosophy, language, religion and culture.

(c) Right to admit students of their choice with due regard to merit.

(d) Right to use the assets and properties for the benefit of the institution. Therefore, the right to administer to have a Selection Committee of their choice to administer the Minority Institutions cannot be regulated by the Regulations in case of Minority Institutions.”

7. In substance, it is held that all laws made by the State to regulate the administration of Educational Institutions and grant of aid will apply to minority Educational Institutions also. But if any such Regulations interfere with the overall administrative control of the management over the staff, either directly or indirectly, such regulations to that extent will be inapplicable



to the Minority Institutions. The crystal clear point in this regard is also narrated in the above judgment in paragraph 57, which is extracted hereunder:

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“57. The Hon'ble Supreme Court was further pleased to lay down that extension of Regulations by the state, permissible in respect of employees of minority educational institutions receiving aid from the State could only be to:

- i. the minimum qualifications, experience and other criteria bearing on merit, for making appointments.*
- ii. the service conditions of employees without interfering with the overall administrative control by the management over the staff,*
- iii. a mechanism for redressal of the grievances of the employees,*
- iv. the conditions for the proper utilisation of the aid by the educational institutions, without abridging or diluting the right to establish and administer educational institutions.*

All laws made by the State to regulate the administration of educational institutions and grant of aid will apply to minority educational institutions also. But if any such Regulations



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interfere with the overall administrative control by the management over the staff, or abridges/dilutes, in any other Manner, the right to establish and administer educational institutions, such Regulations, to that extent, will be inapplicable to Minority Institutions.”

8. It is needless to state that such an exclusive treatment has been allowed for the Minority Institutions in view of the Fundamental Rights guaranteed to them under Article 30 of the Constitution of India. Therefore, the autonomy granted to the minority institution can never be compromised and no Regulation of the State, which would encumber the administrative autonomy of the Educational Institutions be approved by the Courts.

9. Time and again in various cases of this Court, the principles laid down in the above judgment has been followed. It is worthwhile to mention an occasion, where a Minority Institution happened to file a Contempt Petition against the Government respondents for having not complied the orders of this Court for approving the appointment i.e., in Contempt Petition No.1763 of 2019. In the said contempt proceedings, it was contested by the answering respondents by taking reliance on the judgment of the Hon'ble



Division Bench of this Court rendered in the case of ***P.Ravichandran vs. State of Tamil Nadu*** in ***W.A.No.2318 of 2011*** dated 11.10.2013 reported in ***2014 (1) CWC 162***.

10. In the above case, it has been held that even though the Director of Collegiate Education cannot insist private aided college management to get prior permission to fill up the vacant post available in the sanctioned category and if the said exercise is done in violation of any of the statutory provision, it is open to the authorities to deny the grant in aid to the said person appointed in that vacant post.

11. In the Contempt Petition, the answering respondents interpreted the above judgment in the light of the Section 11 of the Tamil Nadu Private Colleges (Regulations) Act, 1976 and claimed that if the Minority Institutions make appointments without constituting a College Committee as prescribed under Rule 11 of the Act, it is open to the Government to withhold the approval or deny grant in aid. However, the Court approved the submissions of the petitioners that the answering respondents has given a wrong interpretation to the decision rendered in the *P.Ravichandran's* case and held as under:



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“9. Detailed submissions have been made by Mr.Mohanlal, on the inapplicability of the prescription in Rules 11(1A) to 11(4)(ii), to a private minority college. He takes me through the definition of a 'College Committee' in Section 2 of the Act which directs one to a 'College Committee' referred to in Section 11, which deals with a college committee, its constitution and functions. Section 11 defines the constitution of a College Committee and commences by saying that every private college, not being a minority college, shall have a college committee comprising of certain designated persons. Thus, even within the ambit of private colleges, minority colleges appear to have been carved out as a separate category as far as constitution of a College Committee is concerned. This is perhaps, on account of the freedom in administration that has been extended to minority institutions in terms of Article 31 of the Constitution of India.”

12. Even in *P.Ravichandran's* case it has been held that the College Committee while filling up the vacant post should follow the procedures stated in Rule 11(1A) to 11(4)(ii). The said Rules speak about how



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communal reservations be made for the vacant post. However, the very same Rules exempt Minority Institutions from absorbing the mandate of reservation. In whatever language the Rules are framed, the result is that the Minority Institutions are not bound by any other Government Regulations, which would work upon the autonomy of the institutions in making out the modality for their own administration and fill up the vacancy by following their own selection methods adopted in this regard.

13. In yet another case of *(The State of Tamil Nadu Vs. The Secretary, Nirmala College for Women in W.A.Nos.2096 and 2124 of 2019)* dated 19.07.2019, the Hon'ble Division Bench of this Court held as follows:

“5. The Government issued an order in G.O.Ms.No.219, Higher Education, dated 24.10.2013 directing the Management for outsourcing the vacancies in Group D categories like Sweeper, Scavenger, Cleaner and Gardner. The proposals submitted by the Management was rejected only on the basis of the order in G.O.Ms.No.219 dated 24.10.2013.

6. Rule 11 (1) of the Tamil Nadu Private Colleges (Regulation) Rules, 1976, contain a



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legislative mandate to fix the staff strength every year. Rule 11 (3) provides that in case of regular vacancy, it is open to the Management to fill up the post on regular basis, the only requirement being that the candidate should be qualified.

7. There is no dispute that the Management was entitled to make appointments taking into account four vacancies in the post of Non-teaching staff. The denial of approval was only on account of the order in [G.O.Ms.No.219](#) dated 24.10.2013. There is no question of issuing a Government Order for outsourcing, even in respect of the sanctioned post. When it is made out that the post is sanctioned, the Management is having every right to fill up the post. The Government has no right to say that the post should be filled up only by outsourcing.”

14. In view of the above said reasons, there is no substance in the objection raised by the respondents that the petitioner College has to follow the advertisement procedures for its selection method or that they have to get a prior permission before making any appointment. The respondents did not disagree in the point that the post in which Mrs.M.Hebziba got appointment



is the post not sanctioned to the petitioner's College. In such case, there need not be a hesitation in granting approval to the proposal of the appointment sent by the petitioner.

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15. Hence this Writ Petition stands allowed. The respondents are directed to pass appropriate orders in light of the above order by granting approval within a period of six (6) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

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(2/2)

Jeni
Index : Yes / No
Neutral Citation : Yes / No
Speaking order / Non-speaking order

To

- 1.The Secretary,
The State of Tamil Nadu,
Department of Higher Education,
Fort St. George, Chennai – 600 009.
- 2.The Director of Collegiate Education,
College Road, Chennai – 600 006.
- 3.The Regional Joint Director of
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R.N.MANJULA, J.

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