



W.P.No.21908 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2023

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THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.21908 of 2021

P.Markandan

...

Petitioner

/vs/

1. The Director of Collegiate Education,
DPI Campus, College Road,
Chennai – 600 006.
2. The Regional Joint Director of Collegiate Education,
Vellore Region,
Vellore – 632 006.
3. The Secretary and Correspondent,
Mazharul Uloom College,
Ambur – 635 805,
Tirupattur District.
4. The Principal,
Mazharul Uloom College,
Ambur – 635 805.
5. R.Jothilakshmi
6. J.Premkumar

... Respondents



W.P.No.21908 of 2021

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records pertaining to the order dated 16.07.2020 passed by the third respondent college, quash the same and consequently direct the third respondent to promote the petitioner as Head of Department of Mathematics, with effect from 16.07.2020, award costs.

For Petitioner ... Mr.V.Ajoy Khose
For Respondents ... Mr.G.Nanmaran
Special Govt. Pleader for R1, R2 & R4

Mr.N.Muralikumaran
Senior Counsel
for M/s.McGan Law Firm for R3

Mr.S.Sathish for R5

No appearance for R6

ORDER

This Writ Petition has been filed to quash the records pertaining to the order dated 16.07.2020 passed by the third respondent college and to consequently direct the third respondent to promote the petitioner as “Head of Department of Mathematics”, with effect from 16.07.2020, award costs.



W.P.No.21908 of 2021

2. The petitioner claims himself as the senior most person and he is only the eligible person to be appointed for the designation of 'Head of Department of Mathematics'.

3. The grievance of the petitioner is that the fifth respondent who is junior to him was designated as 'Head of Department of Mathematics' in the third respondent college. The petitioner and the sixth respondent joined the service on the same day and in fact the sixth respondent is senior to the petitioner. The Government has issued an order in G.O.Ms.No.1785, Education Department dated 15.12.1988 by following certain terms and conditions and guidelines in respect of service conditions of the college teachers and specifically stipulate that the senior most person in the Department of Mathematics irrespective of qualification of 'Ph.D.', should be nominated and designated as "Senior Lecturer / Selection Grade Lecturer/ Reader and Head of Department". The said rule was violated and the third respondent college has proceeded to designate the fifth respondent who is much junior to the petitioner as "Head of Department". Hence the petitioner has filed this writ petition seeking to quash the orders



W.P.No.21908 of 2021

of the third respondent dated 16.01.2020 and direct the respondent to promote the petitioner to be designated as Head of Department.

4. Mr.V.Ajoy Khose, the learned counsel for the petitioner submitted that the sixth respondent who was senior to the petitioner has also retired and the petitioner is the only person who is qualified to be designated as “Head of Department of Mathematics”; in fact the second respondent had issued advice to the third respondent to consider the senior most person to be designated as “Head of Department” and the said direction has not been complied.

5. Mr.N.Muralikumaran, the learned Senior Counsel for the third respondent, submitted that the third respondent educational institution being a minority institution would come under the purview of Article 30 of the Constitution of India and hence no rule would bind the third respondent; so far as the third respondent is concerned, he wanted to confer the post of “Head of Department” only upon those persons who are more meritorious; in the opinion of the third respondent, the fifth



W.P.No.21908 of 2021

respondent was seen to be more meritorious and she has been given with the designation of Head of Department; in the Management Committee meeting it has been unanimously resolved to appoint the fifth respondent as the “Head of Department”; and the appointment of the fifth respondent fall under the rules and does not suffer from any factual interference.

6. In support of his above contention, the learned Senior Counsel relied on the following judgments of the Hon’ble Supreme Court:

i) Secy., Malankara Syrian Catholic College Vs. T.Jose and others reported in (2007) 1 SCC 386

ii) IVY C.DA Conceicao Vs. State of Goa and others reported in (2017) 3 SCC 619

iii) Manager, Corporate Educational Agency Vs. James Mathew and others reported in (2017) 15 SCC 595

7. In the case of *Secy., Malankara Syrian Catholic College* (cited supra) it is held as under:

“... 27. It is thus clear that the freedom to choose the person to be appointed as Principal has always been recognised as a vital facet of the right to administer the educational institution. This has not been, in any way, diluted or altered by T.M.A.Pai. Having regard to the key role played by the



Principal in the management and administration of the educational institution, there can be no doubt that the right to choose the Principal is an important part of the right of administration and even if the institution is aided, there can be no interference with the said right. The fact that the institution is aided, there can be no interference with the said right. The fact that the post of Principal/Headmaster is also covered by State aid will make no difference.

28. The appellant contends that the protection extended by Article 30(1) cannot be used against a member of the teaching staff who belongs to the same minority community. It is contended that a minority institution cannot ignore the rights of eligible lecturers belonging to the same community, senior to the person proposed to be selected, merely because the institution has the right to select a Principal of its choice. But this contention ignores the position that the right of the minority to select a Principal of its choice is with reference to the assessment of the person's outlook and philosophy and ability to implement its objects. The management is entitled to appoint the person, who according to them is most suited to head the institution, provided he possesses the qualification prescribed for the posts. The career advancement prospects of the teaching staff, even those belonging to the same community, should have to yield to the right of the management under Article 30(1) to establish and administer educational institutions."

8. Mr.G.Nanmaran, learned Special Government Pleader, submitted that G.O.Ms.No.1785, Education Department dated 05.12.1988, does not relate to promotion or services and it is only with regard to the revision of pay scales; however, in the said Government Order it has been specifically



W.P.No.21908 of 2021

stated that the scheme applies to the teachers in all Colleges (Government and Aided) in Tamil Nadu unless they specifically exercise an option in writing to remain out of this scheme; since the third respondent college had not opted to get any exemption from the application of the scheme or come out of the coverage, now it cannot be claimed by the third respondent that they are not bound by the above scheme because they are minority institutions.

9. In the absence of any special rules to exempt the minority institutions from following the rules of service conditions to teachers, they cannot act on their whims even though they have discretion in the matter of appointments. It is not the claim of the third respondent that it is an autonomous college. The third respondent college is an aided college and it is getting grants from the Government. In such case, the third respondent cannot claim exclusion from the applicability of the scheme so far as it relates to the rule for designating “Head of Department”. As far as the said rule is concerned, irrespective of possessing a Ph.D. qualification in each



W.P.No.21908 of 2021

department, the senior most Lecturers should be designated as “Head of Department”. No other special qualification is required to choose the “Head of Department” by considering any other extraordinary merits or extra educational qualification.

10. The scheme explicitly mentions that it is immaterial even if the senior of the said department does not have a Ph.D. qualification. So the one and only basis on which the “Head of Department” has to be conferred is the rule of seniority and nothing else. In such case the third respondent ought not to have chosen a person who is junior to the petitioner as the “Head of the Department of Mathematics”.

11. There is no quarrel on the point that the petitioner is senior to the fifth respondent and hence in all fairness, he only ought to have been designated as the “Head of Department of Mathematics”. The third respondent had issued the impugned order in violation of the above rules and without complying any fair procedure or reason to overlook the petitioner from getting that leadership. Hence, I feel the impugned order is



W.P.No.21908 of 2021

liable to be set aside.

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12. Accordingly, this Writ Petition is allowed and the order dated 16.07.2020 passed by the third respondent is hereby quashed and the third respondent is directed to promote the petitioner as “Head of Department of Mathematics”, with effect from 16.07.2020. No costs.

30.11.2023

Index: Yes / No
Speaking order / Non-speaking order
bkn

To:

1. The Director of Collegiate Education,
DPI Campus, College Road,
Chennai – 600 006.
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W.P.No.21908 of 2021

R.N.MANJULA ,J.

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W.P.No.21908 of 2021

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