



W.P(MD)No.127 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.06.2023

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.127 of 2021

and

W.M.P(MD)No.118 of 2021

A.Silvester Suren Kumar

... Petitioner

vs.

- 1.The Chief Educational Officer,
Tirunelveli, Tirunelveli District.
- 2.The District Educational Officer,
Palayamkottai, Tirunelveli District.
- 3.The Co-ordinator,
Secondary Education Commission,
Jesuit Madurai Province,
@ St.Mary's Higher Secondary School,
Dindigul, Dindigul District.
- 4.The Correspondent,
St.Xavier's Higher Secondary School,
Palayamkottai, Tirunelveli District.
- 5.A.Ajith

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents 3 and 4 herein to cancel the arbitrary and illegal appointment of the fifth respondent to the



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vacancy post of Physical Education Teacher that occurred due to the promotion of the then incumbent Mr.Charles in the fourth respondent School and further direct the respondents 3 and 4 to consider the candidature of the petitioner and appoint him to the post of Physical Education Teacher in the fourth respondent school by following due Selection Process.

For Petitioner : Mr.T.Cibi Chakraborty

For Respondents : Mr.N.Satheesh Kumar
Additional Government Pleader
for R.1 & R.2

Mr.S.Louis for R.3

Mr.S.C.Herold Singh for R.4

Mrs.F.L.M.Gilda for R.5

ORDER

Heard the learned counsel on either side.

2.The fourth respondent School is an aided minority institution. It issued notification on 05.10.2020 calling for applications from eligible candidates for various posts. One of them was the post of Physical Director (Grade I). Written examination was held on 19.10.2020. Field test was held on the same day. One Charles was found to be meritorious and he was selected for the said post. The fifth respondent herein was ranked No.2 in the selection process and



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he was appointed as Physical Education Teacher in the fourth respondent School on 01.12.2020. Charles was earlier working as Physical Education Teacher and following his appointment as Physical Director, the post of Physical Education Teacher became vacant and in the resulting vacancy, the fifth respondent was appointed on 01.12.2020. Contending that the appointment of the fifth respondent must be cancelled, the present writ petition came to be filed.

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

4.The School Management as well as the appointee have filed counter affidavits. The Department has washed its hands off. According to the Education Department, they have no stake in the matter and that it is a private dispute between the petitioner on the one hand and the Management on the other.

5.The learned counsel appearing for the Management as well as the appointee would contend that there has been no arbitrariness in the appointment



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of the fifth respondent. They point out that the fourth respondent School is a minority institution and hence, it is entitled to protection under Article 30 of the Constitution of India. In this case, selection process was held for the post of Physical Education Director. The fifth respondent was one of the aspirants for the said post. He took part in the selection process. He was ranked No.2. The person who was appointed to the said post was already working as Physical Education Teacher in the very same School. Since the incumbent in the post of Physical Education Teacher was appointed as Physical Education Director, there was a vacancy and in the said vacancy, the fifth respondent who ranked No.2 in the selection process was appointed. It was a transparent process and therefore, the appointment of the fifth respondent cannot be faulted. It was strongly emphasized that the Management of a minority institution was not obliged to call for candidates from the open market and that they can appoint a person of their choice. There can be only one restriction. The appointee must have requisite qualification. The fifth respondent possessed such qualification. Therefore, no case for interference has been made out. The learned counsel appearing for the contesting respondents pressed for dismissal of the writ petition.



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

7.The power and authority of the minority institution to appoint a candidate of its choice was dealt with by the Hon'ble Apex Court in the decision reported in **(2017) 3 SCC 619 (IVY C.DA CONCEICAO Vs STATE OF GOA AND OTHERS)**. After discussing earlier case laws, the following conclusion was arrived at Paragraph No.15. It reads as follow:

“15. The above decisions clearly show that autonomy of a minority institution does not dispense with the requirement to act fairly and in a transparent manner and the High Court in exercise of its power of judicial review is entitled to examine fairness of selection process. Grievance of a citizen that he was treated unfairly cannot be ignored on the ground that a minority institution has autonomy or right of choice. Exercise of right of choice has to be fair, non-discriminatory and rational.”

In the case on hand, the Management had called for applications only for the post of Physical Education Director (Grade I). The selection process conducted on 19.10.2020 was only in respect of the said post. Therefore, the Management could not have chosen a candidate who had participated in the said selection process for filling up the post of Physical Education Teacher. When the Hon'ble



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Apex Court has mandated that transparent and fair procedure has to be adopted, it is not open to the Management to conduct itself otherwise. The appointee is paid out of the public exchequer. While the choice of the candidate and discretion to appoint are vested with the Management, this discretion and choice cannot be exercised in an arbitrary manner. The institution will have to necessarily notify the vacancies and call for applications from the open market. All eligible persons are entitled to participate. The Management will have to apply transparent norms and only thereafter make appointments. In this case, the post of Physical Education Teacher was not even advertised.

8. Therefore, I hold that appointment of the fifth respondent is bad in law. At the same time, the fifth respondent cannot be left remedy less. It was the Management which appointed the fifth respondent in the post of Physical Education Teacher. Therefore, the fourth respondent is directed to pay salary for the period from the date of his appointment to the fifth respondent. It is open to the fourth respondent to advertise the post in question and after a proper selection process, appoint a person of its choice.



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9.This writ petition is allowed accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Internet : Yes / No

NCC : Yes / No

MGA

To

- 1.The Chief Educational Officer,
Tirunelveli, Tirunelveli District.
- 2.The District Educational Officer,
Palayamkottai, Tirunelveli District.



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G.R.SWAMINATHAN, J.

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