



W.P.No.1402 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2024

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P. No.1402 of 2020 and
W.M.P.No.1650 of 2020

P.Z.Kashiful Athar

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Petitioner

Vs.

- 1 The Educational Agency,
Khaderia Aided Primary School,
Vaniyambadi,
Thirupattur District.
- 2 The Block Educational officer,
Natrampalli Block,
Thirupattur District- 635852.
- 3 The District Educational officer,
Vaniyambadi Educational District ,
Thirupattur District- 635601.
- 4 The Chief Educational officer,
Vellore District - 632001
- 5 Mr.U.Basheer Ahamed

...

Respondents



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Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the 3rd Respondent / District Educational officer, Vaniyambadi to issue instructions to the 1st Respondent to cancel the appointment of the 5th Respondent as the Headmaster of the Khaeria Aided Primary School, Vaniyambadi, Tirupattur District and appoint the Petitioner as the Headmistress of the Khaderia Aided Primary School, Vaniymabadi, Thriupatur District.

For Petitioner : Mrs.Nalini Chidambaram
Senior Counsel assisted by
Ms.C.Uma

For Respondents

For R1 and R5 : Mrs.R.Dakshayani Reddy
For R2 to R4 : Mr.V.P.R.Elamparithi

ORDER

The petitioner has filed this Writ Petition, challenging the appointment of the 5th respondent as the Principal of the 1st respondent School.

2. Mrs.Nalini Chidambaram, learned Senior Counsel appearing for Ms.C.Uma, counsel for the petitioner submitted that the petitioner who is much senior to the 5th respondent by 7 years, is fully qualified to the post of Headmistress of the 1st respondent School. The 1st respondent is the



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Minority Urdu School and the petitioner is qualified in Urdu language as well. However, the petitioner was overlooked and the 5th respondent who is junior to her was appointed as a Head Master in the 1st respondent School at the guise of exercising power under Article 30(1) of the Constitution of India. However, the attention was drawn to Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 wherein it is stated that even for the private school teachers, seniority should be considered only on merit and eligibility.

3. The learned Senior counsel placed reliance on the decision of the Hon'ble Division Bench of the Supreme Court in *Sk.Md.Rafique Vs. Managing Committee* reported in **(2020) 6 SCC 689** wherein it has been held that the right of the Minority institution cannot be taken as absolute and unqualified and merit cannot be overlooked. She further submitted that the institution has to achieve excellence in Education when better qualified persons are available and the Minority institutions cannot select teachers with lower index disregarding those who are better qualified.



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4. Mr.V.P.R.Elamparithi, learned Counsel appearing for the Respondents 2 to 4 submitted that in recognition to the right of the minority institution to appoint their Administrative Head and the Headmaster, being an Administrative post, it is well within the discretion of the 1st respondent School, to appoint any one of their choice.

5. Mrs.R.Dakshayani Reddy, learned Senior Counsel appearing for the Respondents 1 and 5 submitted that the decision of the Hon'ble Supreme Court in **(2020) 6 SCC 689** relates to an issue that arose due to the selection of a person for administering the minority school. When the special privileges given in the act for the Minority Institution was challenged in the said case, it was confirmed that the head master of the Minority school can select the management committee and the said committee has got a right to choose the Principal.

6. The learned Senior Counsel appearing for the Respondents 1 and 5 placed reliance on the Judgment of the Hon'ble Supreme Court in ***Secy., Malankara Syrian Catholic College Vs. T.Jose and Ors.***, reported in



(2007) 1 SCC 368 and submitted that the Minority institution has got the right to choose the persons of their choice. The Court held that the principal and the Head master of the School is responsible for functioning of the institution since the post of the Headmaster is a Key post and the relevant paragraph is extracted hereunder:

“24. The importance of the right to appointment of Principals/ Headmasters and teachers of their choice by minorities, as an important part of their fundamental rights under Article 30 was highlighted in St. Xavier's³ thus: (SCC pp. 815-16, para 182)

“182. It is upon the principal and teachers of a college that the tone and temper of an educational institution depend. On them would depend its reputation, the maintenance of discipline and its efficiency in teaching. The right to choose the principal and to have the teaching conducted by teachers appointed by the management after an overall assessment of their outlook and philosophy is perhaps the most important facet of the right to administer an educational institution... So long as the persons chosen have the qualifications prescribed by the University, the choice must be left to the management. That is part of the fundamental right of the minorities to administer the educational institution established by them.”



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7. Reliance was placed on the another Judgment of the Hon'ble Supreme Court in ***Manager, Corporate Educational Agency Vs. James Mathew and ors. reported in (2017) 15 SCC 595*** wherein it has been held as follows:

“5. As far as the selection and appointment of the Headmaster or the Principal, as the case may be, is concerned, this Court in Malankara Syrian Catholic College v. T. Jose³ after referring to all the celebrated cases on minority rights, viz. T.M.A. Pai Foundation v. State of Karnataka, P.A. Inamdar v. State of Maharashtra, State of Kerala v. Very Rev. Mother Provincial, Ahmedabad St. Xavier's College Society v. State of Gujarat, Frank Anthony Public School Employees' Assn. v. Union of India, Sidhrajibhai Sabhai v. State of Gujarat, D.A.V. College v. State of Punjabto, All Saints High School v. State of A.P., St. Stephen's College v. University of Delhi 12, N. Ammad v. Emjay High School¹³, Board of Secondary Education & Teachers Training v. Director of Public Instructions has held in Paras 27 to 29 that the management of a minority aided educational institution is free to appoint the Headmaster or the Principal, as the case may be, of its own choice and has no obligation to appoint the available senior qualified member from the same community.



Paras 27, 28 and 29 are quoted hereunder: (Malankara Syrian b Case, SCC p. 404)

"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. Pait. 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 post of the 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 qualifications 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.

29. Section 57(3) of the Act provides that the post of Principal when filled by promotion is to be made on the basis of seniority-cum- fitness. Section 57(3) trammels the right of the management to take note of merit of the candidate or the outlook and philosophy of the candidate which will determine whether he is supportive of the objects of the institution. Such a provision clearly interferes with the right of the minority management to have a person of their choice as head of the institution and thus violates Article 30(1). Section 57(3) of the Act cannot therefore apply to minority-run educational institutions even if they are aided."



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8. It is submitted that the Minority Institution has got the right under Article 30(1) of the Constitution of India to appoint any person to administer the School. The 1st respondent has assessed the merit and ability of the 5th respondent who had improved the strength of the students studying in the School and he is found to be fit for Managing the School and hence the 1st respondent opted the 5th respondent to be promoted to the post of Principal. Even under Rule 15 (4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, in the matter of promotion seniority will have to be considered only when merit and ability are found to be equal. The priority has to be given in terms of the seniority when merit and ability are equal between the two candidates.

9. It is claimed by the petitioner that the petitioner was qualified in Urdu and the 1st respondent which is a Urdu School is very much in need of the services of the teachers who know Urdu language. The post of Principal is an Administrative Post which involves lot of Management than teaching. Since the communication of the Government are made only in such terms, it is not necessary for the Principal of the Minority Institution



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to be well versed in Urdu. The teacher who qualified in Urdu is important to teach Urdu language to students. The administrative aspect is completely different. The situation involved in the Judgment cited by the counsel for the petitioner 'supra' viz., ***K.Md.Rafique Vs. Managing Committee case*** is completely different from the situation that has arisen on hand. The appointment made by a third party was forced upon the minority institution and that was challenged in the case involved in the above Judgment. It is to be held that the exclusive right of the Minority Institution under Article 30(1) of the Constitution of India shall not be infringed either directly or indirectly by forcing upon them any appointment which was not within their choice. The Judgment cited by the learned counsel for the petitioner 'supra', shows if anyone is found to be more qualified and suitable in terms of merit and ability, nothing can prevent the Management from opting the said person to hold the Administrative post like the Head master or the Principal.

10. As stated supra, Rule 15 (4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 is not applicable to the minority



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institution, when the decision is being made in terms of the good administration convenient to the affairs of the minority institution. Hence, the petitioner cannot claim it as a matter of right that she is a better choice than the 5th respondent and that she alone ought to have been chosen to the post of Head Mistress in view of her seniority.

11. It is submitted by the learned counsel appearing for the 5th respondent that even before the appointment of the 5th respondent as the Head Master of the School, he was holding the post of Principal (in charge) during such time, lot of improvements were made by the 1st respondent, by keeping the interest of the school on a priority.

12. In appreciation of services rendered by the 5th respondent and also by getting satisfied with the merit and ability and other skills which is needed to administer the 1st respondent School, the 1st respondent had chosen the 5th respondent and the said selection is within the right of the Minority Institution protected under Article 30 (1) of the Constitution of India.



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WEB COPY 13. In view of the above, this Writ Petition is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

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Index: Yes / No

Speaking order / Non-speaking order
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To:

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