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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2024

CORAM

THE HONOURABLE MR. JUSTICE BATTU DEVANAND

Writ Petition No.9194 of 2018
& WMP.No.11021 of 2018

The Correspondent,
St. Mathias Higher Secondary School,
Nethaji Nagar, Uppalam,
Puducherry-605 001 ..Petitioner

vs.

1.The Union Territory of Puducherry,
by its Secretary,
Department of Education,
Secretariat, Puducherrry-605 001

2.The Director of School Education/
Government of Puducherry,
Directorate of School Education,
Puducherry-605 005.

3.The Senior Accounts Officer,
Government of Puducherry,
Directorate of School Education,
Puducherry-605 005. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records pertaining to the impugned memorandum dated 23.03.2018 in no.6001/DSE/GIAS/U.III/2017-18, on the file of the second respondent, in

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respect of the petitioner school, and quash the same.

For Petitioner : Mr.Father Xavier Arul Raj, SC for Mr.SR.A.Arulmary

For Respondents : Mr.R.Syed Mustafa, Spl G.P

ORDER

This Writ Petition has been filed, seeking for issuance of a Certiorari, to call for the records pertaining to the impugned memorandum dated 23.03.2018 in no.6001/DSE/GIAS/U.III/2017-18, on the file of the second respondent, in respect of the petitioner school, and quash the same.

2.The brief facts, which led to the filing of the present Writ Petition are as follows:

The petitioner school is established and administered by the society constituted by the Catholic Religious Congregation of "Franciscan Sisters of Saint Aloysius Gonzaga, which is running number of educational institutions in Puducherry union for the welfare of the poor and downtrodden with a special focus on Christian minority. The petitioner school is a Government aided minority school, enjoying minority status. There are totally 25 sanctioned posts, out of which, only 13 have been

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approved and the remaining 12 teachers have been working in sanctioned posts, with a legitimate expectation of approval by the respondents for the years together. The petitioner already submitted the proposal for approval of the teachers who are working in the sanctioned posts to the respondent authorities, but it has been of no avail. While so, the 2nd respondent vide Memorandum dated 23.03.2018, issued order of transfer to one teacher, working in another school, posting her in the petitioner school. The details of transfer are as under:

S.No.	***Name of the PST & School in which working***	***School to which transferred and posted***
1.	N.Solairani, Wiseman Govt.Aided High School, Velrampet	St. Mathias Govt.Aided High School, Uppalam, Puducherry
2.	S.Tamilselvi Wiseman Govt.Aided High School, Velrampet	St. Mathias Govt.Aided High School, Uppalam, Puducherry
3.	A.Jamuna Wiseman Govt.Aided High School, Velrampet	St. Mathias Govt. Aided High School, Uppalam, Puducherry

3.According to the petitioner, the above said transfer and posting of Teachers by deployment to their School from outside the Management is in violation of the right of the minority Institutions, the Petitioner/School submitted a detailed letter, dated 23.03.2018 to the 2nd

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Respondent/Directorate of School Education, Puducherry, explaining that the right of appointment in a minority institution is vested with the minority management and the 2nd respondent cannot unilaterally carry out appointments by deployment in the petitioner institution and such deployment from other schools will displace the teachers who are already working in the petitioner institution for years together and requested not to press the said deployments which are not in accordance with law. However, without accepting the plea of the Petitioner, the 2nd Respondent has unilaterally deployed the teacher from outside to the petitioner school in the name of transfer. The said action of the respondent is in violation of the constitutional protection guaranteed under Article 30(1) of the Constitution and affirmed by the Hon'ble Apex Court in various judgments. Aggrieved by the said Memorandum, the Petitioner is before this Court by way of the present Writ Petition.

4.Learned Senior Counsel appearing for the Petitioner/School contended that the 2nd Respondent, cannot unilaterally carry out appointment of Teachers by deployment in the Petitioner/School and that it will displace the Teachers, who are already working in the

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Petitioner/Schools for so many years.

5.In reply, learned Special Government Pleader (Pondy) appearing for the respondents, submitted that more than 75% of the students studying in the petitioner School are non-minority and that if the School does not have 50% of the students of the minority community, constitutional protection is available under Article 30 of the Constitution of India and having lost the minority status, petitioner cannot contend that the Teachers should have been deployed on account of closure of some of the Schools and that the contention that there are no vacancies, cannot be accepted. He drew the attention of this Court to the decisions of the Apex Court in the cases of "***T.M.A.Pai Foundation vs. State of Karnataka, (1994) 2 SCC 195 and P.A. Inamdar vs. State of Maharashtra"***, (2005) 6 SCC 537 and contended that the petitioner cannot prevent any Teacher from joining the School, as the Petitioner/School is getting aid from the Government.

6.To substantiate his stand, learned Special Government Pleader (Pondy) has relied on a decision of the Apex Court in the case of the "***Ahmedabad St. Xavier's College Society vs. State of Gujarat"*** reported in

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(1974) 1 SCC 717, wherein, it is held as under:

"103. Another conclusion which follows from what has been discussed above is that a law which interferes with a minority's choice of qualified teachers or its disciplinary control over teachers and other members of the staff of the institution is void as being violative of Article 30(1). It is, of course, permissible for the State and its educational authorities to prescribe the qualifications of teachers, but once the teachers possessing the requisite qualifications are selected by the minorities for their educational institutions, the State would have no right to veto the selection of those teachers. The selection and appointment of teachers for an educational institution is one of the essential ingredients of the right to manage an educational institution and the minorities can plainly be not denied such right of selection and appointment without infringing Article 30(1). In the case of Rev. Father W. Proostthis Court while dealing with Section 48-A of the Bihar Universities Act observed that the said provision completely took away the autonomy of the governing body of the college and virtually vested the control of the college in the University Service Commission. The petitioners in that case were, therefore, held entitled to the protection of Article 30(1) of the Constitution. The provisions of that section have been referred to earlier. According to the section, subject to the approval of University appointment, dismissals, removals, termination of service or reduction in rank of teachers of an affiliated college

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not belonging to the State Government would have to be made by the governing body of the college on the recommendation of the University Service Commission. The section further provided that the said Commission would be consulted by the governing body of a college in all disciplinary matters affecting teachers of the college and no action would be taken against or any punishment imposed upon a teacher of a college otherwise than in conformity with the findings of the Commission.

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. We can perceive no reason why a representative of the University nominated by the Vice-Chancellor should be on the Selection Committee for recruiting the Principal or for the insistence of head of the department besides the representative of the University being on the Selection Committee for recruiting the members of the teaching staff. 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. Heard the learned counsel on either side and perused the material placed on record.

8. The issue on hand is whether there is vacancy in the post of Teachers in the Petitioner/School. Undoubtedly, it is open to the respondent to transfer Teachers from other Schools to the Petitioner/School, on account of non-availability of students in other Schools. But, the deployment of Teachers cannot be done to a minority School. A minority School has the right to recruit Teachers and staff on their own. On the ground of non-availability of 50% of the students from the minority community, whether the Petitioner/School will lose their minority status, cannot be gone into the present Writ Petition, as the same is not the subject matter.

9. Taking note of the fact that there are no vacancies of Teachers in the Petitioner/School and that already sufficient number of Teachers are employed in the Petitioner/School and that the petitioner school already submitted proposal for regularization of the teachers to the respondent authorities, this Court is of the view that the respondents cannot force the Petitioner/School to accommodate Teacher, who has been deployed to their

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School, as it is left to the discretion of the Management to employ the Teachers, as the petitioner is enjoying minority status till date.

10. It is needless to mention that if any decision is taken and communicated to the petitioner after hearing them, it is open to them to question the same and this Court cannot render any finding as to whether the petitioner has got minority status as on date, more particularly, while considering the impugned orders in the present Writ Petition. Further, it is open to the Government to transfer the Teachers so deployed, to some other Schools on account of re-deployment.

11.In view of the above, the impugned memorandum dated 23.03.2018 in no.6001/DSE/GIAS/U.III/2017-18 of the second respondent is set aside. The Writ Petition is allowed with the above direction(s) and observation(s).

No costs.

Consequently connected miscellaneous petition is closed.

03.09.2024

Index : Yes/No
Speaking order:Yes/No
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BATTU DEVANAND, J

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To
1.The Union Territory of Puducherry,
by its Secretary,
Department of Education,
Secretariat, Puducherrry-605 001

2.The Director of School Education/
Government of Puducherry,
Directorate of School Education,
Puducherry-605 005.

3.The Senior Accounts Officer,
Government of Puducherry,
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Puducherry-605 005.

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