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W.P.No.10091 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.10091 of 2024
and W.M.P.Nos.11118 and 11120 of 2024

Pachaiyappa's Trust Board,
Rep. by its Secretary,
Pachaiyappa's College Campus,
Chennai - 600 030.

.. Petitioner

Versus

1. The State of Tamil Nadu,
Rep. by the Principal Secretary to Government,
Higher Education Department,
Fort St. George,
Secretariat, Chennai - 600 009.
2. The Director of Collegiate Education,
Department of Collegiate Education,
College Road,
Chennai - 600 006.
3. The Joint Director of Collegiate Education,
Chennai Region,
Chennai - 600 015.



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4. The Registrar,
University of Madras,
Chennai - 600 005.

5. The Registrar,
Annamalai University,
Annamalai Nagar,
Cuddalore District.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Mandamus forbearing the respondents 1 to 3 and their subordinates from interfering with the lawful administration and day to day affairs of the educational institutions run by the petitioner Trust as per the UGC Regulations as well as provisions of Tamil Nadu Private Colleges (Regulation) Act, 1976 and its Rules, and more particularly the petitioner Trust's right to fill up the notified vacancies as per the notification, dated 01.02.2024 in Advertisement No.01/2024.

For Petitioner : Mr.Om Prakash,
Senior Counsel,
for Mr.M.R.Jothimanian

For Respondents : Mr.D.Ravichander,
Special Government Pleader,
Asst. by Mr.R.Kumaravel,
Additional Government Pleader
for RR-1 to 3



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: Mr.Ramanlal,
Additional Advocate General,
Asst. by Mrs.A.Shabnam Banu,
for R4

: Mr.J.Ravindran,
Additional Advocate General,
Asst. by Mr.S.Sithirai Anandam,
for R5

ORDER

This Writ Petition was originally filed with the prayer mentioned above. However, when the matter came up for admission, *Mr.Om Prakash*, learned Senior Counsel for the petitioner would submit that the prayer would be restricted only to sending the expert nominees of the affiliating Universities.

2. When the matter came up for admission, this Court passed the following order on 10.04.2024:-

"When the matter came up for hearing, *Mr.D.Ravichander*, learned Special Government Pleader, taking notice on behalf of the respondents Nos.1 to 3, would submit that the prayer is omnibus in nature. He



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would further submit that the specific issue with regard to the present recruitment has already been resolved by the Division Bench of this Court in W.P.No.3914 of 2024, by order, dated 23.02.2024, whereby, the petitioner management was permitted to proceed with the recruitment.

2. In reply thereof, *Mr.Om Prakash*, learned Senior Counsel for the petitioner would submit that even though it is not specifically stated, the grievance of the petitioner is that the respondent Nos.4 and 5 are not sending their nominees to the Selection Committee as per the original schedule of recruitment and he would restrict the prayer in respect thereof.

3. In view thereof, the learned Counsel for the respondent Nos.4 and 5 Universities seeks time to get specific instructions with regard to sending their nominees to be on the selection panel.

4. At the request of the learned Counsel for the respondent Nos.4 and 5, place this case on 16.04.2024 under the caption "adjourned admission.""

3. There are two affiliating Universities. One is the Madras University and the other is the Annamalai University. After taking time, on instructions, the learned Additional Advocate General for Madras University submitted the communication, dated 15.04.2024 which reads as follows:-

" With reference to the above email, I am to inform you that the Secretary of Pachaiyaappa's Trust Board, Chennai, has requested the University to nominate Vice-Chancellor's nominees and the panel of subject experts for the recruitment of Assistant Professors in various subjects



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for Aided Post is under process according to the G.O.Ms.No.5, dated 11.01.2021. In the absence of the Vice-Chancellor of the University of Madras, the file has been submitted for nomination of various subjects to the Convenor Committee.

After getting the approval of the Selection Committee panel with the Subject experts for appointment of Assistant Professor in various subjects for aided post will be sent to the above said colleges under the Pachaiyappa's Trust, Chennai."

4. It is further submitted that they must be given four weeks to send their nominees.

5. As far as the Annamalai University is concerned, *Mr.J.Ravindran*, learned Additional Advocate General for the Annamalai University, argued the matter expressing apprehensions that since the Joint Director of Collegiate Education has issued a communication, they have to also be in touch with the Government and take a holistic decision in the matter and sought for time. Therefore, this Court passed the following order on 17.04.2024 and the matter is posted today :-

" The order passed by this Court on 10.04.2024 is



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self-explanatory. After issuing notice, when the matter came up for hearing, *Mr.Ramanlal*, learned Additional Advocate General for the fourth respondent/Madras University placed a written communication that in the absence of the Vice Chancellor, the matter was submitted for nomination for various subjects' experts to the Convenor Committee and therefore, after getting the approval of the Selection Committee, the panel with subject experts for appointment of Assistant Professors in various subjects for aided posts will be sent to the Pachaiyappa's Trust.

2. *Mr.J.Ravindran*, the learned Additional Advocate General is appearing on behalf of the fifth respondent/Annamalai University. Pointing out to the letter of the Joint Director of Collegiate Education, Chennai, he would submit that the Annamalai University would like to clarify itself before sending its nominees. He would submit that they should be given a chance to file a counter-affidavit also.

3. In this regard, only upon request of the learned Standing Counsel, by way of giving an opportunity, the matter is posted today.

4. *Prima facie*, this Court sees the role of the Annamalai University is only to send experts like the Madras University. The stand taken on behalf of Annamalai University to oppose the very recruitment appears to be a little beyond their concern. In any event, they could have filed their counter-affidavit today also. Since the learned Additional Advocate General for the fifth respondent requests for time, further time is granted up to 24.04.2024 for filing counter-affidavit.

5. *Mr.D.Ravichander*, learned Special Government Pleader would submit that even though he has no concern regarding the prayer of sending the experts, the allegations are made against the Government in paragraph No.18, whereby, it is alleged that the respondent Nos.2 and 3 have made obstructions is to be countered by them. In this



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regard, it can be seen that the allegations would be relevant only if the original prayer in the Writ Petition is pressed for. Already, this Court had narrowed the scope of the Writ Petition to send experts in respect of the recruitment.

6. In view thereof, place this matter on 24.04.2024 for filing of the counter-affidavit of the fifth respondent."

6. Today, when the matter came up for hearing, *Mr.D.Ravichander*, learned Special Government Pleader for the Government, filed a counter-affidavit. It is his case that while the recruitment has to be done as per the U.G.C Regulations, the respondents are also entitled to know the students strength etc., and already, a communication has been written on 28.02.2024 seeking the particulars as to the students strength, the strength of the teaching and non-teaching staff etc. Therefore, he would submit that the said particulars have to be furnished to the Government.

7. *Mr.J.Ravindran*, the learned Additional Advocate General for the Annamalai University would submit that still the Annamalai University has to make a considered decision about the stand taken by the Government.



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Even though the Division Bench of this Court has ordered that the recruitment can be proceeded with, still Annamalai University, on its own, cannot nominate the experts without consultation of the Government. In any event, he would submit that this Court need not positively direct the Annamalai University and can only direct the appropriate authority to consider the matter and pass orders in accordance with law. He would also submit that since the matter is in the nascent stage, this Court can also extend further time and keep the Writ Petition pending.

8. In reply thereof, *Mr.Om Prakash*, learned Senior Counsel for the petitioner would submit that as far as the claim of the Government regarding the students' strength is concerned, as an authority granting approval and also supervisory authority, it is always open for them to ask for those particulars and those particulars will be periodically furnished to them. According to him, the same has no direct nexus to the present recruitment which is made only with respect to the sanctioned posts. He would also



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further submit that however, the said particulars requested by him would be separately furnished in due course.

9. I have considered the rival submissions made on either side and perused the material records of the case.

10. It can be seen that there is a huge number of 132 vacancies which are against the sanctioned posts. Earlier, when it was contended that the Interim Administrator cannot take steps to fill in the vacancies and also prior approval of the Government should be obtained before issuing the advertisement, the same were the subject matters in W.P.No.3914 of 2024 before the Division Bench of this Court, to which, I am also a party. The said Writ Petition is disposed of by the order, dated 23.02.2024. By the said order, it is decided that no prior approval needs be obtained from the respondents and also since the appointment is to be made only by the College committee and not by the Administrator in his individual capacity. It



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was ordered that the recruitment can be proceeded with. It is essential to

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extract paragraph Nos.16 to 20 of the said order which read as follows :-

" **16.** A Division Bench of this Court in the case of *P.Ravichandran v. State of Tamil Nadu and others, 2013 5 LW 514*, relied upon by learned counsel for the petitioner, has observed that there is no requirement under the Act of 1976 and the Tamil Nadu Private Colleges (Regulation) Rules, 1976 to seek prior permission to fill in the vacant posts in an aided college, which has already been sanctioned for the academic year by the Director of Collegiate Education under Rule 11(1) of the Rules of 1976. In the instant case, the advertisement states that applications are invited against sanctioned posts, meaning thereby that the sanctioned posts are sought to be filled in under the advertisement.

17. As per respondents 1 and 5, 132 posts are vacant. The details of the same are as under:

Sl. No.	Name of the Colleges	Teaching Staff		
		Sanctioned Strength	Existing Strength	Vacant
1	Pachaiyappas's College, Chennai	186	136	50
2	C.Kandaswamy Naidu College for Men, Chennai	35	24	11
3	Chellammal Women's College, Chennai	51	39	12
4	Pachaiyappa's College for Men,	52	39	13



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	Kanchipuram			
5	Pachaiyappa's College for Women, Kanchipuram	33	13	20
6	C.Kandaswamy Naidu College for Women, Cuddalore	60	34	26
	Total	417	285	132

18. The colleges cannot function without Assistant Professors and the staff. 130 posts of Assistant Professors are vacant in six colleges. If the posts are not filled in, the educational activity would be paralysed. The loss would be to the students.

19. In the first place, without ascertaining the real facts, the petition ought not to have been filed. The posts cannot remain vacant for a long period. The petitioner should have thought twice before filing the petition. The delay in filling in the posts would affect the educational standards of the institutions/ colleges. If the colleges are run without the required staff, then it may face dire consequences at the hands of the universities, even to the extent of withdrawal of affiliation.

20. In the light of the above, the writ petition is sans merit and, as such, is dismissed. As we have dismissed the writ petition on merits, we have not considered the aspect of maintainability."

11. It is the primary contention of the learned Senior Counsel for the petitioner that the posts are to be filled as per U.G.C Regulations. The



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relevant U.G.C Regulation reads as follows:-

"V. Assistant Professor in Colleges, including Private and Constituent Colleges:

(a) The Selection Committee for the post of Assistant Professor in Colleges, including Private and constituent Colleges shall consist of the following persons:

i) Chairperson of the Governing Body of the college or his/her nominee from amongst the members of the Governing body, who shall be the Chairperson of the Committee.

ii) The Principal of the College.

iii) Head of the Department/Teacher-incharge of the subject concerned in the College.

iv) **Two nominees of the Vice-Chancellor of the affiliating university, of whom one should be a subject-expert.** In case of colleges notified/declared as a minority educational institution, two nominees of the Chairperson of the college from out of a panel of five names, preferably from the minority community, recommended by the Vice-Chancellor of the affiliating university, from the list of experts suggested by the relevant statutory body of the college, of whom one should be a subject-expert.

v) Two subject-experts not connected with the college who shall be nominated by the Chairperson of the College governing body out of a panel of five names recommended by the Vice-Chancellor from the list of subject experts approved by the relevant statutory body of the university concerned. In case of colleges notified/declared as minority educational Institutions, two subject experts not connected with the University nominated by the Chairperson of the Governing Body of the College out of the panel of five names, preferably from the minority communities, recommended by the Vice-Chancellor from the list of subject experts approved by the relevant statutory body of the College.



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vi) An academician representing SC/ST/OBC/Minority/Women/Differently-abled categories, if any of candidates belonging to any of these categories is the applicant, to be nominated by the Vice-Chancellor, if any of the above members of the selection committee does not belong to that category.

(b) Five members, including two outside subject experts, shall constitute the quorum."

(emphasis supplied)

12. Therefore, the affiliating Universities have to send two nominees, out of which, one should be the subject expert. Already, the notifications were issued, applications were received, they were scrutinised and dates were fixed for the selection process. Only because the affiliating Universities did not send their nominees, it had to be cancelled. Once the nominees are forwarded, the next date of the interview will be fixed and the selection will proceed with. In that view of the matter, there is nothing for the affiliating Universities to contest the recruitment. It is their statutory duty to nominate their experts as per the Regulation V(a)(iv) of the U.G.C Regulations. They have nothing to do with the concerns between the



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Government and the Trust as such. Therefore, when a request is made by an affiliating College to fill up the vacancies regularly, it is their statutory duty to forthwith and immediately consider the same and send the nominees.

13. This is not a case which can brook any delay. The students cannot be without teachers. Therefore, I am unable to accept the contention of *Mr.J.Ravindran*, the learned Additional Advocate General that the matter should be permitted to be decided by the Universities or that further, the matter can be kept pending so that the Government will take any further decision. When the judgment of the Division Bench had categorically held that the recruitment can be proceeded with, the same cannot be stalled indirectly.

14. The submissions made by the learned Senior Counsel for the petitioner that independently of the recruitment process, the particulars as sought for by the letter dated 28.02.2024 will be furnished is recorded.



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15. This Writ Petition is disposed of with the following directions:-

(i) The affiliating Universities namely, the respondent Nos.4 and 5 are directed to send two experts as per the procedure, to enable the petitioner to proceed further with the selection process;

(ii) In any event, the nominations shall be communicated in writing to the petitioner within three weeks from the date of receipt of a copy of this order;

(iii) Thereafter, the petitioner/ the appropriate selection committee shall proceed with the matter in accordance with law and procedure and complete the selection process as expeditiously as possible;

(iv) There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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Index : yes

Speaking order

Neutral Citation : no

<https://www.mhc.tn.gov.in/judis>



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To

1. The Principal Secretary to Government,
Higher Education Department,
Fort St. George,
Secretariat, Chennai - 600 009.
2. The Director of Collegiate Education,
Department of Collegiate Education,
College Road,
Chennai - 600 006.
3. The Joint Director of Collegiate Education,
Chennai Region,
Chennai - 600 015.
4. The Registrar,
University of Madras,
Chennai - 600 005.
5. The Registrar,
Annamalai University,
Annamalai Nagar,
Cuddalore District.



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D.BHARATHA CHAKRAVARTHY, J.

grs

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