



WP(MD) No.14118 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.07.2024**

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD) No.14118 of 2024

and

W.M.P.(MD) Nos.12395 and 12396 of 2024

The Correspondent,
Ponniah Higher Secondary School,
Tiruchirappalli-620 001,
Tiruchirappalli District.

... Petitioner

Vs.

1.The Sate of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort St.George, Chennai-600 009.

2.The Director of School Education,
College Road, Chennai-600 006.

3.The Chief Educational Officer,
Trichy, Trichy District.

4.The District Educational Officer,
Trichy, Trichy District.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the fourth respondent, District Educational Officer in Na.Ka.No. 5770/Aa3/2023 dated .. 09.2023, quash the same and further direct the third and fourth respondents to approve forthwith the promotion of



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Fr.Geevarghese Mathew as Headmaster in the petitioner School with effect from 15.06.2021, with all attendant benefits.

For Petitioner : Mr.M.F.Rooshi Maas
for Isaac Chambers
For Respondents : Mr.M.Siddharthan
Additional Government Pleader

ORDER

The petitioner has filed this writ petition challenging the order of the fourth respondent in Na.Ka.No.5770/Aa3/2023 dated ...09.2023 and to direct the third and fourth respondents to approve the promotion of Fr.Geevarghese Mathew as Headmaster in the petitioner School with effect from 15.06.2021, with all attendant benefits.

2.Heard Mr.M.F.Rooshi Maas, learned counsel for the petitioner, Mr.M.Sidharthan, learned Additional Government Pleader for the respondents.

3.By consent of both parties, this writ petition is taken up for final disposal at the stage of admission itself.

4.The petitioner is a recognized Aided Minority Educational Institution. In that School, the post of Headmaster fell



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vacant on 10.07.2018 and to fill up the said vacant post, the School had appointed one Fr.Geevarghese Mathew, who was working as P.G.Assistant in the petitioner School and sent a proposal for getting necessary approval to the fourth respondent. The said proposal was returned for want of additional particulars.

5.The learned counsel for the petitioner submits that being a minority institution, the petitioner School had discretion to choose the petitioner to be appointed as 'Headmaster'. Rule 15 (4) of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974 only mandates promotion based on merit and ability and not seniority based promotion in an Aided Schools. Therefore, the School after analyzing the merit and ability of all the incumbents, had appointed the petitioner as Headmaster. Further, the particulars regarding unwillingness letters from the Senior Teachers for promotion is not at all required to be furnished under any Act and Rules for seeking approval of an appointment made in an Aided School.

6.In this regard, it is appropriate to refer the judgment passed by the Hon'ble Supreme Court in the case of ***Secretary, Malankarasyrian Cantholic Vs. T.Jose and Others reported in (2007)***



1 SCC 386. So far as the administrative post like Headmasters are concerned, the concerned minority institutions are at liberty to exercise their own discretion and that it is a fundamental right enshrined under Article 30 of the constitution of India. The relevant paragraphs of the said Judgement are extracted hereunder:

“24. The importance of the right to appointment of Principals/Head-masters and teachers of their choice by minorities, as an important part of their fundamental rights under Article 30 was highlighted in St. Xavier (supra) thus :

"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."

25. In N.Ammad (supra) the appellant contended that he being the senior-most graduate teacher of an aided minority school, he should be appointed as the Headmaster and none else. He relied on Rule 44A of the Kerala Education Rules which provided that appointment of Headmaster shall ordinarily be according to seniority, from the seniority list prepared and maintained under clauses (a) and (b) of



Rule 34. This Court held:

"18. Selection and appointment of Headmaster in a school (or Principal of a college) are of prime importance in administration of that educational institution. The Headmaster is the key post in the running of the school. He is the hub on which all the spokes of the school are set around whom they rotate to generate result. A school is personified through its Headmaster and he is the focal point on which outsiders look at the school. A bad Headmaster can spoil the entire institution, an efficient and honest Headmaster can improve it by leaps and bounds. The functional efficacy of a school very much depends upon the efficiency and dedication of its Headmaster. This pristine precept remains unchanged despite many changes taking place in the structural patterns of education over the years.

*19. How important is the post of Headmaster of a school has been pithily stated by a Full Bench of the Kerala High Court in **Aldo Maria Patroni v. E.C. Kesavan (AIR 1965 Ker 75)**. Chief Justice M.S. Menon has, in a style which is inimitable, stated thus :*

"The post of the headmaster is of pivotal importance in the life of a school. Around him wheels the tone and temper of the institution; on him depends the continuity of its traditions, the maintenance of discipline and the efficiency of its teaching. The right to choose the headmaster is perhaps the most important facet of the right to administer a school, and we must hold that the imposition of any trammel thereon - except to the extent of prescribing the requisite qualifications and experience - cannot but be considered as a violation of the right guaranteed by Article 30(1) of the Constitution. To hold otherwise will be to make the right 'a teasing illusion, a promise of unreality.'"



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Thereafter, this Court concluded that the management of minority institution is free to find out a qualified person either from the staff of the same institution or from outside, to fill up the vacancy; and that the management's right to choose a qualified person as the Headmaster of the school is well insulated by the protective cover of Article 30(1) of the Constitution and it cannot be chiselled out through any legislative act or executive rule except for fixing up the qualifications and conditions of service for the post; and that any such statutory or executive feat would be violative of the fundamental right enshrined in Article 30(1) and would therefore be void. This Court further observed that if the management of the school is not given the wide freedom to choose the person for holding the keypost of Principal subject, of course, to the restriction regarding qualifications to be prescribed by the State, the right to administer the School would get much diminished.

26. In Board of Secondary Education and Teachers Training (supra), this Court held :

"3. The decisions of this Court make it clear that in the matter of appointment of the Principal, the management of a minority educational institution has a choice. It has been held that one of the incidents of the right to administer a minority educational institution is the selection of the Principal. Any rules which takes away this right of the management have been held to be interfering with the right guaranteed by Article 30 of the Constitution. In this case, both Julius Prasad selected by the management and the third respondent are qualified and eligible for appointment as Principal according to rules. The question is whether the management is not entitled to select a person of their choice. The decisions of this court including the decision in State of Kerala v. Very Rev. Mother



Provincial [1970 (2) SCC 417] and Ahmedabad St. Xavier's College Society v. State of Gujarat make it clear that this right of the minority educational institution cannot be taken away by any rules or regulations or by any enactment made by the State. We are, therefore, of the opinion that the High Court was not right in holding otherwise. The State has undoubtedly the power to regulate the affairs of the minority educational institutions also in the interest of discipline and excellence. But in that process, the aforesaid right of the management cannot be taken away, even if the Government is giving hundred per cent grant."

27. *It is thus clear that the freedom to choose the person to be appointed as Principal has always been recognized as a vital facet of the right to administer the educational institution. This has not been, in any way, diluted or altered by TMA 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 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.”

6. The fact that the petitioner / School is a minority Institution is not denied. Under such circumstances, the petitioner is at liberty to choose a Teacher of their own choice by considering the merit and ability of the Teacher, who is already working in that School and also considering the administrative convenience of the School to be appointed to the post of Headmaster. Since the impugned order is not passed without considering the above facts and entitlement of the petitioner, the impugned order is liable to be set aside

7. In view of the above, the Writ Petition stands allowed and the impugned order passed by the fourth respondent in Na.Ka.No. 5770/Aa3/2023 dated ...09.2023 is set aside and this Court directs the third and fourth respondents to approve forthwith the appointment of Fr.Geevarghese Mathew as ‘Head Master’ in the petitioner school w.e.f.



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15.06.2021 with all attendant benefits including arrears of salary. No costs. Consequently, the connected miscellaneous petitions are closed.

01.07.2024

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
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To

- 1.The Secretary,
Department of School Education,
Fort St.George, Chennai-600 009.
- 2.The Director of School Education,
College Road, Chennai-600 006.
- 3.The Chief Educational Officer,
Trichy, Trichy District.
- 4.The District Educational Officer,
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R.N.MANJULA, J.

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