



W.P.(MD)No.27474 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 27.11.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.27474 of 2024

and

W.M.P.(MD)Nos.23294 and 23296 of 2024

1.Janab S.Kadhar Moideen
2.Janab Mohamed Sikkandar

... Petitioners

Vs.

- 1.The Tamil Nadu Wakf Board,
Represented by its Chief Executive Officer,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai.
- 2.The Superintendent of Wakfs,
Ramanathapuram Division, Madurai.
- 3.The Chief Educational Officer,
Virudhunagar District,
Virudhunagar.
- 4.The District Educational Officer,
Virudhunagar District, Virudhunagar.
- 5.Al-Ameen Muslim Higher Secondary School,
Represented through its Correspondent,
Madurai Road, Aruppukottai,
Virudhunagar District.



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6.A.Samsudeen

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, forbearing the respondents 3 and 4 from approving any appointment made in 5th respondent School by the Ad-hoc Committee of the Nallur Mohaideen Aandavar Sunnath Wal Jammath Pallivasal, Aruppukottai.

For Petitioners	: Mr.S.Selva Aditya
For Respondents 1 & 2	: Mr.K.K.Senthil
For Respondents 3 & 4	: Mr.T.Amjad Khan, Government Advocate
For 5 th Respondent	: Mr.K.Dinesh
For 6 th Respondent	: Mr.N.Barathi

ORDER

This Writ Petition has been filed, requiring to forbearing the respondents 3 and 4 from approving any appointment made in the 5th respondent School by the Adhoc Committee of Nallur Mohaideen Aandavar Sunnath Wal Jammath Pallivasal, Aruppukottai.

2.Heard the learned counsels on either side and carefully perused the materials available on record.

3.The learned counsel appearing for the petitioner submitted that the petitioners are the Vice President and Treasurer of Adhoc Committee of Nallur Mohaideen Aandavar Sunnath Wal Jammath Pallivasal, Aruppukottai. They



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have properties and they are running a Co education School in Aruppukottai, that is, fifth respondent herein. The earlier Mutawalli was elected for the year 2013 – 2016 and thereafter due to certain internal dispute, the election was not conducted. In view of the same, a Writ Petition came to be filed in W.P. (MD)No.18191 of 2019 to conduct election and this Court by order dated 23.03.2022, issued a direction to the respondents to conduct election within a period of six months and further direction to the Wakf Board to appoint retired Judges of this Court as observers in the election. In the meanwhile, yet another Writ Petition is filed, an order of interim stay has been granted by this Court by order dated 30.06.2023, which is still in force. The first respondent by order dated 08.02.2021, appointed an Adhoc Committee consisting of 10 members to administer of Wakf and the fifth respondent School as an interim measure. The claim of the petitioners is that, the Adhoc interim Committee, which came to be appointed as an interim measure by the first respondent Wakf Board, do not have any authority to make appointments in the fifth respondent School and they are only entitled to administer the School as a stop gap arrangement.

4.For which, he relied upon the order passed by this Court in W.P. (MD)No.15201 of 2024 and this Court, by order dated 08.08.2024, has observed as follows:-



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“9. The Hon'ble Full Bench in the decision reported in D. Bright Joseph v. Church of South India (CSI) Synod Secretariat and ors [2024 (2) CTC 369] had held that CSI Diocese is also discharging public duties. Appointment of teachers in aided institutions is obviously a public duty. CSI Tirunelveli Diocese is no doubt a minority institution entitled to protection under Article 30 of the Constitution of India. But appointments have to be made as per their own rules and regulations. At present, there is a sort of vacuum in the administration and management of CSI Tirunelveli Diocese. The tenure of the democratically elected bodies has come to an end. The administrators appointed by the Hon'ble High Court are also not in a position to assume the day to day functions and responsibilities. In any event, a caretaker management cannot take policy decisions. Only a regularly and duly constituted body can conduct recruitment process and fill up vacancies. Till then, only ad hoc measures can be taken. For instance, when the tenure of the elected Board of a cooperative society has expired and it is managed by a Special Officer, he cannot enrol new members (vide & Nithiyanantham vs State Of Tamil Nadu (2006) 1. LW 363 (FB). The current situation in Tirunelveli Diocese is only a stopgap arrangement. I, therefore, hold that while the first respondent can take interim measures to meet the exigencies of the situation, he cannot make regular appointments.

14. Applying Hohfeldian approach, it is reasonable to hold that the right to receive State aid towards teaching grant is coupled with obligation to appoint the best possible competent teachers. This obligation can be discharged only if the field of choice of candidates is sufficiently wide. If the diocesan policy is to appoint teachers from



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out of their diocesan list based on seniority, it would certainly not be conducive to good administration. No doubt, the management of the minority institution shall make the appointment. But it should properly notify the vacancies so that every eligible candidate irrespective of their caste, religious and denominational background can apply. Of course, all this can come to a naught if the recruitment process is rigged and predetermined. That is why, the element of transparency must be injected. The managements must make clear the norms for selection. The interview proceedings must be fully videographed. Any aggrieved candidate must have access to information as to how the selection was done.”

5.Relying upon the said judgment, the learned counsel appearing for the petitioner submitted that the interim Adhoc Committee ought not to have appointed one Headmistress, namely Najeema and ought not to have sent approval to the respondents 3 and 4 and pressed for allowing the Writ Petition.

6.Per contra the fifth respondent has filed counter and the learned counsel appearing for the 5th respondent submitted that one Syed Ali Fatima has already been appointed by the Adhoc Committee on 21.06.2022 and the said candidate is the daughter in law of the first respondent herein. Having not raised any objection for the said appointment of Mrs.Syed Ali Fatima, while the proposal was forwarded to the respondents 3 and 4 for the approval of the



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appointment of Syed Ali Fatima, now the attitude of the petitioners' to object the appointment of Najeema as Headmistress alone would show case the malafide of the petitioners. The learned counsel further insisted that already a proposal in this regard with respect to both the candidates is pending before the respondents 3 and 4 and it is for the respondents 3 and 4 to take final call and the petitioners cannot interfere in the matter of approval of appointees, which is pending with the respondents 3 and 4 in any manner. If appointment is not made in the appropriate time, the entire administration of the School in imparting education to the children will be collapsed.

7.The sixth respondent has filed a counter and the learned counsel appearing for the sixth respondent submitted that the appointment has been made in terms of the resolutions of Adhoc Committee, on the basis of resolution resolved by the majority of the Adhoc Committee.

8.The learned counsel appearing for the respondents 1 and 2 submitted that this is all because of the internal dispute, which has emanated within the members of the Adhoc Committee, which was appointed as an interim measure, if at all they have any dispute, the same has to be addressed before the Wakf Tribunal under Section 83 of the Wakf Act, 1995. A negative Mandamus



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cannot be sought for by the petitioner invoking under Article 226 of the Constitution of India.

9.The learned Government Advocate appearing for the respondents 3 and 4 submitted that prior to the appointment of the Adhoc Committee in the year 2021, the School was drawn under the direct payment of the education authorities. Once the Adhoc Committee came to be appointed in the year 2021, direct payment was recalled. However, as far as appointments are concerned, already proposal with respect to the appointment of Najeema as BT Assistant and Syed Ali Fatima as Headmistress has been received by the authorities and was returned for fulfilling certain defects.

10.For which, the learned counsels for the respondents 5 and 6 submitted that the said return of proposal was challenged before this Court in W.P. (MD)No.20638 of 2024 and this order by order dated 10.09.2024, directed the education authorities to decide the proposal on merits and in accordance with law, in the light of the Annexure 5 of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974. However, as far as the order passed by this Court in W.P.(MD)No.20638 of 2024 is concerned, the same was with respect to the rejection of the proposal sent by the Correspondent of the 5th respondent



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School for want of TET qualification. The eligibility of Adhoc Committee to make appointments during the interregnum in the 5th respondent should not have been tested before this Court in W.P.(MD)No.20638 of 2024. In view of the order passed by this Court in W.P.(MD)No.15201 of 2024, this Court is of the considered view that the appointments even if made, by the Adhoc Committee should have been done by properly notifying the vacancies and thereafter, conducting an appropriate selection process. Following which, the proposal of appointment could be sent to the authorities for proper approval. However, in this case, the learned counsel for the 5th respondent fairly conceded that both the vacancies were not notified.

11.For which, the learned Government Advocate appearing for the respondents 3 and 4 submitted that the fifth respondent School is a minority Institution and they have discretion to appoint any candidate of their choice and the educational authorities cannot poke their nose in the matter of appointment as to the choice of the candidates made by the School Committee and that apart, he also submitted that as far as the appointment of Headmistress is concerned, only if any other qualified candidate for being appointed as Headmistress raises an objection for the appointment of the proposed candidate, in such a scenario, the education authorities could have a right to test the validity of the



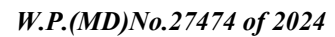
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appointment of the proposed candidates. However, in the instance case, no such objection has been made.

12.The learned counsel for the petitioners submitted that relying upon the undated complaint made by the Teachers and office staffs of the fifth respondent School regarding the appointment of the proposed candidate as Headmistress and their irregularities in the School submitted that the submission of the learned Government Advocate is incorrect and the appointment of the Najeema as Headmistress is not without objection.

13.For which, the learned counsel for the fifth respondent submitted that a consent letter has been given by all the Teachers who are serving in the fifth respondent School for appointment of Najeema as Headmistress.

14.In view of the rival submissions, this Court is of the considered view that both the appointments were made without notifying the vacancies. Fully fortified by the order of this Court in W.P.(MD)No.15201 of 2024, even if the Management of the fifth respondent School is a minority institution, the vacancies ought to have been properly notified so that every eligible candidate could apply and ought to have conducted the selection process in a transparent



15. In view of the submission made by the learned Government Advocate that the authorities cannot go into the matters as to the authority of Adhoc Committee to make appointments whenever vacancy occurs, this Court is of the considered view that in such case, the educational authorities cannot test the validity of the appointment by the Adhoc Committee. Hence, this Court requires the fifth respondent to notify the vacancies of BT Assistant (Maths) and Headmistress afresh and initiate selection process in a transparent manner.



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16. However, the entire gamut of facts before this Court would reveal that the petitioners have objected to the appointment of Najeema as Headmistress only because of indifference between the Adhoc Committee consisting of total number of 10 members of whom already one member has passed away and two members are inactive in the matter of administration of the Adhoc Committee. It is also brought to the notice of this Court that the said Najeema who is appointed as Headmistress, is the wife of the Secretary of the current Adhoc Committee. There will be a specific direction to the Adhoc Committee to approach the Wakf Tribunal to resolve the indifferences and the respondents 1 and 2 shall take a final call as to the internal dispute prevailing in the Adhoc Committee of Nallur Mohaideen Aandavar Sunnath Wal Jammath Pallivasal, Aruppukottai. The first respondent shall take a final call as to who should function as the Correspondent of the fifth respondent School and on such decision been taken by the first respondent, the Correspondent shall notify both the vacancies afresh and conduct proper selection process in a transparent manner.



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17. Accordingly, the Writ Petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

27.11.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn

To

1. The Chief Educational Officer,
Virudhunagar District,
Virudhunagar.
2. The District Educational Officer,
Virudhunagar District, Virudhunagar.



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L.VICTORIA GOWRI, J.

Mrn

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