



W.P.(MD)No.31049 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.06.2024

CORAM

THE HONOURABLE MS JUSTICE R.N.MANJULA

W.P.(MD)No.31049 of 2023

and

W.M.P.(MD).Nos.26616 & 26619 of 2023

The Correspondent,
St.Antony's High School,
Melanmarainadu-626 127,
Virudhunagar District.

... Petitioner

Vs.

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

2.The Director of School Education,
College Road,
Chennai - 600 009.

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

4.The District Educational Officer,
Sivakasi, Virudhunagar District.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the third respondent CEO in Pa.Mu.No. 4765/A2/2020, dated 15.02.2022 and the consequential proceedings of the fourth respondent DEO in O.Mu.No.779/Aa1/2022 dated 13.07.2022 quash the same and further direct the third and fourth respondents to approve forthwith the appointment of Rev.Fr.Antony Justin as Head Master in the petitioner school w.e.f. 01.06.2018 with all attendant benefits including arrears of salary.

For Petitioner : Mr.K.Ragatheesh Kumar,
for M/s.Isaac Chambers

For Respondents : Mr.M.Siddharthan,
Additional Government Pleader

ORDER

Heard Mr.K.Ragatheesh Kumar, learned counsel appearing for the petitioner and Mr.M.Siddharthan, learned Additional Government Pleader appearing for the respondents.

2. The petitioner School has appointed one Antony Justin from some other school under the same management. The said Antony Justin was already working as P.G. Assistant in the petitioner School. The proposal sent for



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approving the said appointment has not been granted citing the reason that the post of Headmaster ought to have been filled by promotion from the teachers already existed in the School or by way of deployment of surplus teachers from other Schools in the over all District.

3. Mr.K.Ragatheesh Kumar, learned counsel appearing for the petitioner submitted that the petitioner School being a minority institution had discretion to choose the petitioner to appoint him as 'Headmaster' in view of the fact that the teachers who are serving in the petitioner / School are not willing for getting promotion to the post of Headmaster. He further submitted that since the petitioner School is under the corporate management of the Sivakasi Don Bosco Society a minority institution, had chosen the teachers of some other School under the same management for appointment. The above facts have not been considered by the respondents while passing the impugned order.

4. 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



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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



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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.



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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.'"

Thereafter, this Court concluded that the management of minority institution is free to find out a qualified person either from the staff of the



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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 key-post 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



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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.”

5. The fact that the petitioner / School is a minority institution is not denied. Under such circumstances, when the Teachers already working in the petitioner / School are not willing to get promotion to the post of Headmaster, the petitioner is at liberty to choose a teacher of their own choice by considering the administrative convenience of the School to be appointed to the post of Headmaster. Since the impugned orders are not passed without considering the above facts and entitlement of the petitioner, the impugned orders are liable to be set aside.



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6. In view of the above, the Writ Petition stands **allowed** and the impugned orders passed by the third respondent in Pa.Mu.No.4765/A2/2020, dated 15.02.2022 and the consequential proceedings of the fourth respondent in O.Mu.No.779/Aa1/2022 dated 13.07.2022 are set aside and this Court directs the third and fourth respondents to approve forthwith the appointment of Rev.Fr.Antony Justin as 'Head Master' in the petitioner school w.e.f. 01.06.2018 with all attendant benefits including arrears of salary. No costs. Consequently, the connected miscellaneous petitions are closed.

25.06.2024

NCC:yes/no

Index:yes/no

Internet:yes/no

TSG

To

1.The Secretary,
State of Tamil Nadu,
Department of School Education,
Fort. St. George, Chennai -600 009.

2.The Director of School Education,
College Road,
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R.N.MANJULA, J.

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