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Rev. Appl. Nos.115 & 116 of 2021
in W.A. Nos. 2882 and 2878 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 22.04.2025

Delivered On : 29.04.2025

CORAM

THE HON'BLE MR. JUSTICE S.S. SUNDAR

and

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Review Application Nos.115 & 116 of 2021

in

Writ Appeal No. 2882 of 2019 and 2878 of 2019

Rev. Aplw.No.115 of 2021

The Association of St. Christopher's
College of Education,
Rep. By its Secretary
63, EVK Sampath Road,
Vepery, Chennai – 7

.. Review Applicant

Versus

1.The Govt. of Tamil Nadu,
Rep. By its Secretary,
Department of School Education,
Fort St. George,
Chennai – 9.

2. The Joint Director of School
Education (Higher Secondary),
DPI Campus,
College Road, Chennai – 6.

3. The Chief Educational Officer,
Panagal Building,
Saidapet,
Chennai – 600 015.



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4. District Educational Officer
Chennai North
Ambethkar School (upstairs)
Gandhi Irvin Bridge,
Chennai – 600 008

5. Mrs. M.Ramani Jebathai
W/o. Chellasley

.. Respondents

Rev. Appl.No.116 of 2021

Mrs. Marian Usha Rani
Bentinck Hr. Sec. School for Girls
Vepery, Chennai – 7.

.. Review Applicant

Versus

1. The Govt. of Tamil Nadu,
Rep. By its Secretary,
Department of School Education,
Fort St. George,
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2. The Joint Director of School
Education (Higher Secondary),
DPI Campus,
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5. The Association of St. Christopher's
College of Education,
Rep. By its Secretary
63, EVK Sampath Road,
Vepery, Chennai – 7.

6. Mrs. M.Ramani Jebathai
W/o. Chellasamy

.. Respondents

Review Applications are filed under Order 47 r/w. Section 114 of Civil Procedure Code, seeking to review the common judgment of this Court dated 16.04.2021 made in W.A. Nos. 2882 & 2878 of 2019.

For Review Applicant	:	Fr. Xavier Arulraj, Senior Advocate for M/s. Father Xavier Associates in Rev. Appl. No. 115 of 2021 & 5 th Respondent in Rev. Appl. No.116 of 2021 M/s. G. Bala and Daisy in Review Application No. 116 of 2021
For Respondents 1 to 4 in both Review Applications	:	Mr. J. C. Durairaj Additional Government Pleader
For Respondent 5 in Rev.Appl. 115 of 2021	:	Mr. V. Govardhanan
For Respondent 6 in Rev.Appl. No.116 of 2021	:	Mr. R. Subburaj

COMMON ORDER

SATHI KUMAR SUKUMARA KURUP, J.

Both these Review Applications arise out the common judgment dated 16.04.2021 passed in Writ Appeal No. 2882 of 2019 and 2878 of 2019



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respectively.

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2. The aforesaid Writ Appeals were filed as against the common order dated 18.07.2019 passed in Writ Petition No. 9620 and 9612 of 2014 respectively. Out of the two writ petitions mentioned above, the first writ petition in WP No. 9612 of 2014 has been filed by the Association of St. Christophers College of Education, Chennai praying to quash the proceedings dated 12.03.2014 of the second respondent as well as the consequential proceedings dated 14.03.2014 of the fourth respondent and after quashing the orders to issue a consequential direction to direct the official respondents to accord approval for appointment of Mrs. N. Marian Usha Rani as Headmistress in Bentinck Higher Secondary School, Vepery, Chennai with effect from 01.09.2013.

3. The second writ petition in WP No. 9620 of 2014 has been filed by Mrs. N. Marian Usha Rani for the very same prayer to quash the proceedings dated 12.03.2014 of the second respondent as well as the consequential proceedings dated 14.03.2014 of the fourth respondent and after quashing the orders to issue a consequential direction to direct the official respondents to accord approval for her appointment as Headmistress in



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Bentinck Higher Secondary School, Vepery, Chennai with effect from
01.09.2013.

4. For disposal of these Review Applications, certain facts, which are absolutely germane and necessary are elucidated hereunder.

5. The Bentinck Higher Secondary School for Girls, Vepery, Chennai 600 007 is run by the Association of Saint Christopher. The same management runs the Saint Christopher College of Education at No.63, EVK Sampath Road, Vepery, Purasawalkam, Chennai - 600 007. On the retirement of Mrs.Chella Nachiyar on 31.08.2013, a post of Headmistress fell vacant. Therefore, advertisement was published in The Hindu newspaper on 09.06.2013, calling for applications for filling up the post of Headmistress. The advertisement reads that “wanted qualified Christian Women candidate for appointment as Headmistress”. In response, applications were received by the Management and ultimately, the management zeroed in on Mrs. N. Marian Usha Rani as Headmistress of the school on 24.07.2013. One of the teachers, who was already working in the same school as a PG Assistant by name Mrs.Ramani Jabathai also applied for the post. According to Mrs. Ramani Jabathai, Mrs. Marian Usha Rani did not possess the prescribed qualifications.



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Therefore, Mrs. Ramani Jebathai sent a representation dated 17.09.2013 to the official respondents not to accord approval of appointment of Mrs. N. Marian Usha Rani. Notwithstanding the sending of representation, Mrs. Ramani Jebathai also filed WP No. 31245 of 2013 before this Court praying to quash the order dated 24.07.2013 appointing Mrs. Marian Usha Rani as Headmistress of the School. By order dated 20.11.2013, this Court, finding that Mrs. Ramani Jebathai has already filed a statutory appeal on 09.11.2013, disposed of the writ petition with a direction to the appellate authority to dispose of the appeal. Pursuant to such direction, the Joint Director of School Education (Secondary Education), after hearing the Management of the School and the two teachers namely Mrs. N. Marian Usha Rani as well as Mrs. Ramani Jebathai, passed the order dated 12.03.2014 cancelling the appointment of Mrs. N. Marian Usha Rani as Headmistress of the School with a direction to the Management of the School to appoint a person with all the requisite qualification as Headmistress. Challenging the order dated 12.03.2014 of the Joint Director of School Education (Secondary Education), the two writ petitions, aforesaid, have been filed before the learned single Judge.

6. By a common order dated 18.07.2019, the learned Judge



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dismissed the writ petitions by concluding that in the advertisement issued by the management, it was not specifically mentioned that the age limit for appointment to the post of Headmistress is applicable only for outside candidates, due to which several eligible teachers working in the school were deprived from submitting their applications. Similarly, the eligibility criteria for the in-service candidates has not been mentioned in the advertisement. Therefore, while dismissing the writ petitions, confirming the order passed in the statutory appeal, it was concluded that the selection process is vitiated inasmuch as the in-service candidates working in the school could not participate in the selection process.

7. Aggrieved by the common order dated 18.07.2019 in WP Nos. 9620 and 9612 of 2014, Writ Appeal Nos. 2878 and 2882 of 2019 were filed before the Division Bench of this Court.

8. The contentions raised on behalf of the appellant in the Writ Appeals before the Division Bench are summarised below:-

(i) Bentinck Hr. Sec. School for Girls Vepery, Chennai - 600 007 is a Christian Minority institution established in the year 1937. In the said School, the post of Headmistress fell vacant due to retirement of the incumbent



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teacher. The Management constituted a selection committee for appointing an eligible candidate from among the staff of the school as well as candidates from the open market. The committee conducted interview and ultimately zeroed in on Mrs. N. Marian Usha Rani as Headmistress of the school. The above said Mrs. N. Marian Usha Rani was already working in the school as B.T. Assistant and she possess all the requisite qualification with rich experience. The selection of Mrs. N. Marian Usha Rani was on merits and ability as assessed by the selection committee and therefore it is valid and proper. Pursuant to such selection, she joined the post of Headmistress on 01.09.2013 and has been discharging her duties.

(ii) At the time when proposals were forwarded for according approval of appointment of Mrs. N. Marian Usha Rani, Mrs. Ramani Jebathai preferred an appeal to the Joint Director of School Education (Secondary Education) besides preferring a writ petition in WP No. 31245 of 2013. Pursuant to the directions issued by this Court in WP No. 31245 of 2013 on 20.11.2013, the Joint Director of School Education (Secondary Education) rejected the approval sought for appointment of Mrs. N. Marian Usha Rani on untenable grounds.

(iii) It is further contended that the Joint Director of School Education (Secondary Education) has no power as an appellate authority under Section



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41 of the Tamil Nadu Recognised Private Schools Regulation Act, 1973 to allow the appeal as it has been struck down by an order dated 24.09.1976 in WP No. 522 of 1975 by holding that when the school was established and administered by the religious linguistic minority community as guaranteed under Article 30 (1) and 26 of the Constitution of India the Tamil Nadu Recognised Private Schools (Regulation) Act, 1975 (Act 29 of 1974) and the Tamil Nadu Recognised Private School (Regulation) Rules 1974 framed under the Act are ultra vires of Article 19 (1) (a) (f) and 30 (1) of the Constitution of India inasmuch are not applicable as the said Act and the Rules infringe the rights of the minority institutions.

(iv) It was also contended that the order passed by the Joint Director of School Education (Secondary Education) proceeds as if Mrs. N. Marian Usha Rani does not satisfy the age limit of 48 years as on 01.06.2013 and the management ought to have conducted interview of all the qualified Post Graduate Assistants, including non-Christians working in the School is legally untenable. The Joint Director of School Education (Secondary Education) did not consider the fact that appointment of Mrs. N. Marian Usha Rani is preceded by an interview and the selection process was followed by an advertisement in the newspaper and upon following all the procedures established by law. While so, the Joint Director of School Education ought not



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to have interfered with the selection and appointment of Mrs. N. Marian Usha Rani as Headmistress of the School.

(v) In support of this contention, the learned Counsel for the appellant placed reliance on the decision of the Honourable Supreme Court in the case of *Manager, Corporate Educational Agency vs. James Mathew and others* reported in *(2017) 15 Supreme Court Cases 595* wherein it has been held that when once the management of a minority educational institution makes a choice of a qualified person to the post of Principal, the Court cannot go into the merits of the choice of the rationality or propriety of the process of choice. Further, reliance was made to the qualification prescribed in Annexure V (VI) (I) of the Tamil Nadu Recognised Private Schools (Regulation) Act read with Rule 8 of the Tamil Nadu Minority School (Recognition and Payment of Grant) Rules that a Headmaster or Headmistress of a Higher Secondary School shall possess a Masters Degree of a University in the State for teaching any of the languages under Parts I and II or subjects under Part III, Group A of the syllabus for Higher Secondary Courses or a Masters Degree of equivalent standard in any one of the subjects or languages specified in the said syllabus or a certificate issued by the University of Chennai for having undergone the Certificate Course in Science and Humanities for Graduate Teachers in High Schools during the year 1960-1964. In this case, Mrs. N. Marian Usha Rani



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duly satisfy the qualifications prescribed in the aforesaid Act and Rules. She possess a B.Sc., (Chemistry) Degree, B.Ed., and M.A. (Economics) and M.Ed., The individual has possess teaching experience of 24 years as B.T. Assistant in the same school and therefore, her selection is proper.

(vi) The appellants also contended that the contesting fifth respondent placed reliance on Rule 15 (4) (ii) of the Act which only provides that those who are working in the feeder category post has to be considered for appointment. In this case, consideration of those working in feeder category posts will not be applicable to minority institutions. A minority institution can prescribe the qualification and mode of selection in a manner they prefers over which the appellate authority cannot interfere. Such an interference or restriction will be an encroachment into the right of administration and it is legally impermissible. To buttress this submission, reliance was placed on the Full Bench decision of this Court in *The Saliar Mahajan Higher Secondary School vs. The Joint Director* reported in 1995 *Writ Law Reporter* 277 to contend that Rules framed for recruitment of staff in Higher Secondary Schools are only administrative Rules and they cannot be treated as statutory Rules. It is further contended that Rule 15 (4) (ii) of the Rules falls under the said category that the feeder category for the post of Headmistress of a Higher Secondary School, who are class I employees of the Government servant, does



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not bind the minority schools, as it has no statutory force.

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9. Opposing the aforesaid submissions, before the Division Bench of this Court in the Writ Appeals, the learned Government Advocate contended that pursuant to the directions issued by this Court in WP No. 31245 of 2013 filed by Mrs. Ramani Jebathai, the Joint Director of School Education (Secondary Education) conducted an enquiry. The Joint Director of School Education (Secondary Education), after enquiry, concluded that Mrs.N. Marian Usha Rani has not completed 48 years of age as on 01.06.2013 as required in the notification dated 09.06.2013 issued by the Management in the newspaper. Further, there is no evidence made available to show that the application of Mrs. N. Marian Usha Rani was sent by registered post as required in the advertisement dated 01.06.2013. Further, it was noticed that Mrs. N. Marian Usha Rani never worked as a Post Graduate Assistant and not taken any class for higher secondary through out her career in Bentinck Higher Secondary School, Vepery. At the relevant point of time, Mrs. N. Marian Usha Rani was working as B.T. Assistant and she was not a Post Graduate Teacher as per the notification issued by the management of the School. Therefore, it was concluded that Mrs. N. Marian Usha Rani did not fulfil the statutory requirements prescribed under Rule 15 (4) (i) of the Tamil Nadu Recognised



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Private School (Regulation) Act. The Writ Court, considering the reasons assigned by the Joint Director of School Education (Secondary Education), has rightly dismissed the writ petitions and therefore, she prayed for dismissal of the writ appeals.

10. The learned Counsel appearing for the contesting candidate namely Mrs. Ramani Jebathai contended before the Division Bench that for the purpose of selecting a suitable candidate for the post of Headmistress, a selection committee was constituted on 10.05.2013. On 05.06.2013, the selection committee framed the qualification for appointment to the post of Headmistress and also fixed the mode of submission of application. As per the prescribed qualification, a candidate should have completed atleast 48 years of age as on 01.06.2013 and those who are interested to apply for the post must submit the application by registered post to the management. Accordingly, an advertisement was issued prescribing the above qualification in The Hindu on 09.06.2013. According to the Management, the age limit was relaxed in respect of in-service candidates through a office note dated 12.06.2013, but it was not displayed in the notice board or any of the in-service candidates has any knowledge about the so-called office note. Even the so-called office note, over which reliance was placed by the management, was not produced before



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the Joint Director of School Education during the enquiry. An office note was produced subsequently in the writ petition and it was signed by Miss.D.D.D.Chellanachiar, who was not competent to sign it as the selection committee alone is competent to sign any such office note. The selection committee has not authorised the management to issue such a office note. It is in those circumstances, the Writ Court concluded that the application of Mrs. Marian Usha Rani was not sent through registered post, as required and further she did not possess the prescribed age limit for appointment to the post of Headmistress and her appointment is contrary to the notification issued by the management.

11. Now, the present Review Applications have been filed on the ground that the interference over the appointment of Mrs. N. Marian Usha Rani by the appellate authority is legally not tenable because the appellate authority has no power to interfere with the affairs of the management of a minority institution.

12. Father Xavier Arulraj, learned Senior Counsel appearing for the Review Applicant would contend that the Division Bench of this Court, in Paragraph No.29 of the Judgment dated 16.04.2021 under review, observed



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that “it is true that as a minority institution, the appellant school is vested with certain privileges and rights guaranteed under the constitution. It is also true that they have a right to choose and appoint teachers and in such event, Rule 15 (4) (i) of Tamil Nadu Private School (Regulation) Act, cannot be applied to their case.” Having observed so, the Division Bench, in subsequent paragraph No. 34 of the same judgment observed that *“on the date of the application, she was not the Headmistress of the High School under the management in a different school. If that be the case, Marian Usha Rani being appointed straight away as Headmistress of Bentick Higher Secondary School could have been accepted. But that is not the case here. It is true Marian Usha Rani is a PG Assistant but as per the requirement, those who have basic qualification in particular discipline shall acquire PG in the very same discipline, whether it is Tamil, English, History, Commerce, Maths, Physics, Chemistry, Botany, Zoology. Whatever shall be the subject, in the same subject, PG degree should have been obtained. Only then he/she is eligible to be appointed as PG Assistant. Here Marian Usha Rani had acquired PG degree in economics, in different subject, whereas basic qualification is Chemistry and B.Ed., degree in Mathematics and M.A. in Economics. Therefore, her claim to the post of Headmistress cannot be justified.”*



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13. By pointing out the observations made in the aforesaid paragraphs, the learned Senior Counsel for the Review Applicants contended that on the one hand, the Division Bench concluded that the rights and privileges guaranteed to a minority institution cannot be tweaked into by the Government under the garb of exercise of their statutory powers. But in the latter paragraph, a contrary view was taken and consequently the Writ appeals were dismissed. The learned Senior Counsel also contended that the cross-degree obtained by Mrs. N. Marian Usha Rani will not be a disqualification to deny her promotion inasmuch as it was not mentioned in the advertisement issued for filling up the post. Thus, the observation that the basic qualification in respect of P.G. Assistants for the post of Headmistress has to be in the same discipline goes beyond the statutory prescription of qualification. In other words, the Division Bench had re-written the terms of eligibility or suitability for appointment to the post by rendering a different finding. This according to the learned Senior Counsel for the Review Applicants is an error apparent on the face of the record and it warrants a review.

14. The learned Senior Counsel for the Review Applicants relied on the following reported ruling of the Hon'ble Supreme Court:

(i) ***N.Ammed V. The Manager, Emjay High School*** reported in (1998)



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6 SCC 674 .

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(ii) *The Secretary, Malankara Syrian Catholic College v. T.Jose and Others* reported in (2007) 1 SCC 386.

(iii) *Manager, Corporate Educational Agency v. James Mathew and others* reported in (2017) 15 SCC 595.

(iv) *Eka Ratchagar Sabai Higher Secondary School and another vs. K. Sumathi* reported in 2007 4 L.W. 617.

(v) *A.Belavendran vs. The Joint Director* in W.A.No.556 of 2008.

(vi) *S.Duraipandian vs. The Government of Tamil Nadu* reported in (1989) 1 LLJ 23 Mad.

(vii) *Ahmedabad St. Xavier's College Society v. State of Gujarat* reported in (1974) 1 SCC 717.

15. By placing reliance on the above decisions, it is contended that the State Government does not have any right to interfere in the Management of the Minority Educational Institution. It is further contended by the learned Senior Counsel for the Review Applicant that the Management had convened the Selection Committee and it is within the discretion of the Selection Committee to relax the age for in-service candidates taking note of various parameters, including the rich experience gained by the candidate. It is



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because the Headmasters/Headmistress of the Minority Institution are different from Headmasters/Headmistress of Government School. This is a Minority Institution which specifically covers the Minority Community. The Headmasters/Headmistress of such institution shall be a person professing faith of such Minority community to which Christian values are added. The candidate/Mrs. N. Marian Usha Rani was found to be a fit candidate as per the Selection Committee as she holds Post Graduate Degree in Education. Therefore, she is fit to occupy the Post of Headmistress of St. Bentinck Higher Secondary School, under the Management of the School.

16. As per the advertisement in the Hindu dated 09.06.2013 the candidates applying for the Post of Headmaster/Headmistress should have completed 48 years on the date of Application. It is a qualification decided by the Association of Saint Christopher College of Education. But in appropriate cases, for in-service candidate, the Selection Committee was vested with a discretion to relax the age. Accordingly, the Review Applicant was considered even though she was three months short of 48 years on the date of the Application. Such a selection made by the Selection Committee ought not to have been interfered with by the Writ Court.



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17. The learned Senior Counsel for the Review Applicant further submits that applications from in-service candidates were also invited, by affixing it in the notice board of the Teachers/Staff room whereby in-service candidates were also given notice of the selection process. Still the in-service candidates did not apply or none of them had filed any Writ Petition challenging the selection except the Writ Petitioner/Mrs. Ramani Jebathai who was a Post Graduate Teacher in Tamil. The Writ Petitioner was also not the senior most teacher in the same School. There are several teachers senior to her but she alone questioned the selection procedure and she alone gave a representation to the Joint Director of School Education (Secondary Education) and pending Writ Appeal, she retired from service. During the period of pendency of Writ Appeal, there was interim stay thereby Mrs. N. Marian Usha Rani had been functioning as a Headmistress of the School from the date of admission of the Writ Appeal, till date. She was not granted the pay of Headmistress of School based on the proceedings of the Additional Directorate of School Education.

18. Lastly, the learned Senior Counsel for the Review Applicant submitted that the selected candidate Mrs. N. Marian Usha Rani is holding the post of Headmistress from 01.09.2013. For the past more than a decade, she is



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holding the said post during the pendency of the litigation. Further, Mrs.N.Marian Usha Rani is having few months of left over service. Therefore, at this stage, on the principles of equity and for having discharged the post for more than ten years, Mrs. N. Marian Usha Rani may be permitted to continue the post so that she can peacefully retire. Therefore, the learned Senior Counsel seeks to review the Judgment in W.A. No. 2882 of 2019 regarding the conflict in Paragraph Nos.29 and 33 and seeks to allow this Review Application.

19. On the above contentions, we have heard the learned Additional Government Advocate who had only submitted that the present Review Applications are filed to re-argue the case. The Division Bench of this Court had taken into account all relevant aspects while dismissing the writ appeals. There is no error apparent on the face of the judgment of the Division Bench of this Court which warrants a review by this Court.

20. The learned Additional Government Pleader appearing for the Official Respondents submitted that the Joint Director of School Education (Secondary Education) was within its powers to conduct enquiry when he had received the representation from the teachers of the very same School that they



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were not given opportunity, only Mrs. Ramani Jebathai challenged it by way of Writ Petition. During arguments, based on the records, the learned Judge of the Writ Court had passed considered order thereby the appointment was set aside. In the Appeal, the Division Bench had confirmed the finding of the Writ Court.

21. The learned Additional Government Pleader had placed reliance on the latest ruling of the Hon'ble Division Bench in ***W.A.No.2320 of 2021, dated 19.08.2024 (Mark Donald Carron Vs. The State Government of Tamil Nadu, Rep. by its Secretary, Education Department (Higher Education), Fort St. George, Chennai – 600 009 and six others.)*** wherein it has been observed as follows:-

“13. Therefore, now the issues becomes narrow down as to the refusal to grant approval by the 4th respondent is in accordance with law. It is pertinent to mention here that the 4th respondent refused to grant approval on the ground that the petitioner did not posses the required qualification. According to Annexure V of the Tamil Nadu Private Schools (Regulation) Act, the following qualification for appointment to the post of Headmaster in the Higher Secondary School stipulated:-

<i>Name of the post</i>	<i>Qualification</i>
<i>I.Headmaster or Headmistress (Higher Secondary Schools)</i>	<i>i) [A Master's Degree of a University in the State for teaching any of the languages under Parts I and II or subjects under Part III, Group “A” of the syllabus for Higher Secondary Courses or a Master's Degree of equivalent standard in any one of the subjects or languages, specified in the said syllabus or a certificate issued by the University of Madras for having under the Certificate</i>



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<i>Name of the post</i>	<i>Qualification</i>
	<i>Course in Science and Humanities for Graduate Teachers in High Schools during the year 1960-1964;]</i> <i>ii) B.T. Or B.Ed. Degree or its equivalent</i> <i>iii) Experience for a period of not less than ten years as B.T.Schools Assistant or Pandit in a Secondary School or Training School or Higher Secondary School recognised by the Director of School Education.</i> <i>Provided that the experience in the category of Headmaster and Headmistress in a school recognised by the Director of School Education shall be taken into account for calculating the experience in the category of B.T.Assistant.iii) Experience for a period of not less than ten years as B.T.Schools Assistant or Pandit in a Secondary School or Training School or Higher Secondary School recognised by the Director of School Education. Provided that the experience in the category of Headmaster and Headmistress in a school recognised by the Director of School Education shall be taken into account for calculating the experience in the category of B.T.Assistant.</i>

14. Subsequently, the said qualification has been reviewed vide letter in Rc.No.1057/W8/93 dated 08.07.1996, which has been communicated to all CEO/DEO's as per Govt. lr.58270/HS/95-1 dated 7.6.96 and the reviewed qualifications for the post of Higher Secondary School Headmaster is:-

- “1. Post Graduation with B.ED/B.T qualification
With
2. 10 years teaching experience as B.T.Asst.
With
3. Experience in feeder category of High School Head Master (or) Head Master in any Teacher training School.
4. P.G.Asst., in any recognised school with service not less than 5 years.”*

15. Therefore, it is obvious that a person to be appointed as the Headmaster of Higher Secondary School must have a Post



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Graduation degree with 10 years teaching experience and with experience in feeder category viz., as a High School Headmaster or Headmaster in any Teacher training School. Whereas, the petitioner was initially appointed on 29.08.2003 as Junior Grade Secondary Grade Teacher. Therefore, the petitioner was not at all a B.T Assistant. At this juncture, the learned Senior Counsel would invite the attention of this Court in respect of the endorsement made in the service register of the petitioner as Junior Grade B.T. Assistant with effect from 01.06.2006. However, as rightly contended by the learned Special Government Pleader, there are no entries in the service register to infer any promotion of the petitioner to the cadre of Junior Grade B.T. Assistant. But, the entry in service register signify his promotion as the Middle Grade Assistant. Therefore, the main plank of the arguments put forth by the respondents that the petitioner did not have a requisite qualification, is well merited. Thus, we do not find any infirmity in refusing to grant approval for the petitioner to be appointed as Higher Secondary School Headmaster. Thus, there are no ground to interfere with the order of the Writ Court.”

Similar arguments were raised that the claim that the minority institution is within its power to appoint Headmaster/Headmistress was rejected by the Hon'ble Division Bench in the above case.

22. Mr. V. Govardhnan, the learned Counsel appearing for the fifth Respondent in Review Application No. 115 of 2021 and sixth respondent in Review Application No. 116 of 2021 would contended that the submissions made by the learned Senior Counsel for the Review Petitioner/Writ Applicant, the Association of St. Christopher College of Education are not correct. The learned Counsel submitted that the typed set in Rev.Appl. Nos.115 & 116 of



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2021 will expose the claim made by the learned Senior Counsel regarding the selection of the candidates as Headmaster/Headmistress of the School. It is his contention that as per the advertisement in the Hindu dated 09.06.2013, the candidates who apply for the Post of Headmaster/Headmistress should have completed 48 years of age, shall be qualified to teach Higher Secondary classes, either in the subject or language under Part I, II, III. Here, the candidate is not qualified to teach the Higher Secondary classes as her basic degree was in B.Sc., Chemistry, her P.G was in M.A. Economics and B.Ed., & M.Ed.

23. Further, as per the advertisement in the Hindu, the candidates applying for the Post of Headmaster/Headmistress should have completed 10 years of teaching experience. She is an Assistant Teacher handling high school class. She had no experience as prescribed in the advertisement in the Hindu i.e., 10 years of experience in teaching Higher Secondary education. The prescribed qualification was given a go-by for appointment by the Selection Committee and therefore, interference of the Court was warranted. Further, he submitted that the candidates were instructed to send their applications by registered postal cover, addressed to the Secretary, Association of St. Christopher College of Education. There is no proof that Mrs. N. Marian Usha



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Rani applied through registered post.

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24. However, only after the Writ Petitioner/Mrs. Ramani Jabathai gave a representation to the Joint Director of School Education (Secondary Education), the Joint Director of School Education (Secondary Education) called for a report from the School Management regarding selection of Headmaster/Headmistress. On receipt of the report, it was noticed that the in-service candidates were not called to participate in the selection process, except Mrs. N. Marian Usha Rani. This would only indicate that Mrs. N. Marian Usha Rani was already selected and the advertisement is only an eye wash. In the enquiry conducted by the the Joint Director of School Education (Secondary Education), the Management of the School created documents as though they had given a circular to the in-service candidates to participate in the selection process. If really such a circular was issued, many of the in-service candidates would have applied. When the enquiry was conducted many of them stated that due to the age criterion of 48 years, they could not apply. Thus, the selection of Mrs. N. Marian Usha Rani was not transparent. The Management of the Minority Institution misused the privileges conferred to them and indulged in creation of documents to justify their demeanour, particularly the so-called Circular said to have been issued by the



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Management. Thus, the selection of Mrs. N. Marian Usha Rani is not in accordance with the Act and Rules. It is not known as to how she had sent her application and the Management also did not say anything about it in the Writ Petition and in the Writ Appeal. Further, the claim of the Senior Counsel for the Review Petitioner that she had not received salary is not correct and she is receiving the salary as a Teacher. At the time of admission of W.P.No.9612 & 9620 of 2014, it was submitted by the learned Counsel appearing for the fifth respondent/Ramani Jabathai that in any event, the Petitioner (Mrs. N. Marian Usha Rani) should not claim any service benefits based on the interim order. However, it was observed that it is open to him to urge all the questions at the time when the writ petition is heard finally. Finally the W.P.Nos.9612 & 9620 of 2014 were dismissed. Therefore, the claim of the learned Senior Counsel for the Review Applicant that Mrs. Marian Usha Rani has not received salary will not hold good.

25. As to the merits of the case, even if the submission of the learned Senior Counsel are accepted, she is not eligible on the date of application. The Management had created documents to appoint her as though they had issued circular. The claim of such circular itself has to be rejected as it is a self serving document. After having issued notification prescribing qualification,



the Management did not follow the conditions imposed in the advertisement for selection.

26. The learned Counsel for the contesting Respondent/Mrs.Ramani Jabathai invited the attention of this Court to the observation of the learned Judge of this Court while disposing of the W.P. No. 9620 and 9612 of 2014 in paragraphs 10 to 18, which reads as under:-

“10. Therefore, if any violation of procedure contemplated under the Rule for selection and appointment to the post of Headmistress, even though by minority institution, the educational authorities have ample power to interfere with the appointment and pass appropriate orders.

11. On the facts on hand, in the advertisement, dated 16.9.2003, it has been mentioned that the age limit is 48 years as on 1.6.2013. Admittedly, the 5th respondent has not crossed the age of 48 years. The learned Senior counsel appearing for the petitioner Management drew the attention of this Court by relying upon the Office Note, dated 12.6.2013 wherein it is stated that the age limit notified in the advertisement is applicable to only those who are directly recruited from outside and the in-service candidates, on selection, will be appointed on promotion by the Selection Committee.

12. According to the learned Senior counsel appearing for the petitioner, Office note is sufficient that there is no age limit for appointing in-service candidates as Headmistress of the Petitioner School.

13. "Office Note" is only for the purpose of internal administration. The said age criteria as stated in Office Note has not been indicated or mentioned in the advertisement or Notice Board or any other materials placed before this Court. The applications are also invited from the in-service candidates of the school without fixing the age limit, through promotion to the post of Headmistress.



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14. *The learned Government Advocate appearing for the respondents 1 to 4 produced records pertaining to the appointment of the petitioner in W.P.No.9620 of 2014. The Management has forwarded the proposal for approval to the 4th respondent with necessary documents. In the said proposal, the petitioner Management requested the 4th respondent to approve Tmt.N.Marian Usha Rani as Headmistress and Correspondent of the petitioner's School. It is seen from the records, the Management also received reply from one Mrs.D.Suguna, P.G. Assistant (Tamil) wherein she has stated that even though she was interested in applying for the post of Headmistress, since she is more qualified and experienced in the higher Secondary section, she does not want to go against the law, in this particular context. Seniors having more qualifications working in higher Secondary section are eligible for promotion to the Post of Headmistress. One Mrs.Josephine Usha, P.G. Assistant (English) in her reply has also made similar statement to the Management. Mrs.Kezia Robinson, P.G. Assistant, Physics Mrs.Y.Adhin Vijila, P.G. Assistant (Chemistry), Mrs.P.Sophia Selvakumari, P.G. Assistant (Zoology) and Mrs.N.Koil Rathy, P.G. Assistant (History) in their reply, have stated that they did not apply for the post of Headmistress and Correspondent. Mrs.S.Jansi Flora, P.G. Assistant (Mathematics), by her letter, dated 14.10.2013, has specifically stated that she is not eligible for the post of Headmistress as per the age criteria and hence, she did not apply for the said post.*

15. *The aforesaid statements made by the P.G. Teachers in the petitioner's School, would show that the in-service Teachers are not aware that the age limit of 48 years, prescribed for the post of Headmistress in the advertisement is not applicable to them. In the advertisement, the Management has fixed the age limit for appointment to the post of Headmistress. However, the Management failed to mention in the advertisement that the age limit is applicable only for the outside candidates by way of direct recruitment. Even for the sake of argument, there is no mention about the eligibility criteria for the inservice candidates in the Office Note, but the Office Note is prepared only for the purpose of internal administration. There is no materials placed before this Court that applications were invited from the in-service candidates also, for appointment to the post of Headmistress through promotion with specific clause stating that age limit as fixed in the advertisement is not applicable to the inservice candidates. Therefore, the contention of the learned Senior counsel for*



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the petitioner Management that in the Office Note, no age limit was prescribed for the in-service candidates could not be accepted, since no material has been produced before this Court to show that the "Office Note" was communicated to the eligible Teachers or displayed in the Notice Board. The statement made by the P.G. Teachers of the petitioner School itself is evident that they did not apply for the said post since they have not crossed the age of 48 years, whereas other Teachers made a statement that they did not apply for the post of Headmistress of the School. The learned Senior counsel appearing for the petitioner submitted that under the Constitutional Scheme, a "minority Institution" is free to select and appoint Headmistress of the School, without being bound by the principle of seniority alone. Therefore, according to the learned Senior counsel, selection for the post of Headmistress shall not be interfered in so far as the minority Institution is concerned as held by the Hon'ble Supreme Court in the decisions cited supra.

16. It is clear from the records that the Management has not placed any materials to show that the "Office Note" inviting applications from the in-service candidates has been communicated to the P.G. Teachers who are working in the said School, nor the Management has considered the eligible candidates who are working as P.G. Teachers in their School, for promotion to the post of Headmistress by the Management Committee. On the contrary, Mrs.N.Marian Usha Rani, was appointed to the post of Headmistress of the School even though she has not satisfied the age limit fixed in the advertisement and more so, without proper communication to the other eligible Teachers working in the School. A perusal of record shows that numerous Teachers, who are qualified to the Post of Headmistress and working in the school, have not applied for the said post, because of age limit prescribed in the advertisement. Further, no internal communication was issued to the eligible Teachers. A careful reading of the qualification mentioned in the advertisement, makes it clear that it is only for direct recruitment for the post of Headmistress of the petitioner school. But there is no mention that in-service candidates shall also apply to the post of Headmistress.

*17. In so far as the petitioner minority Institution is concerned, the Institution has not followed fair procedure in the selection process to the post of Headmistress of the School. Therefore, this Court has the power of judicial review to examine the fairness of selection process conducted by the petitioner School. The Hon'ble Supreme Court in **IVY***



C.DA CONCEICAO VS. STATE OF GOA AND OTHERS [(2017) 3 SCC 619] categorically held that grievance of a citizen that he was treated unfairly cannot be ignored on the ground that a minority Institution has autonomy or right of choice. Exercise of right of choice has to be fair, non-discriminatory and rational. When there is violation of right of an individual eligible candidate by the minority Institution by not adopting fair procedure, then it is liable to be tested in exercise of power of judicial review under Article 226 of the Constitution.

18. Therefore, in the light of the aforesaid judgments and the facts and circumstances of the case, the petitioner Management has not adopted fair procedure in the selection process for appointment to the post of Headmistress of the School by giving equal opportunity to the in-service Teachers of the School. There is no materials placed to show that applications from all the in-service Teachers for recruitment to the post of Headmistress of the School were invited. Thus, the contentions of the petitioner Management are negatived and the same are rejected. The impugned order passed by the respondent is perfectly valid and there is no scope to interfere with the order passed by the respondent department.”

27. He further submitted that the findings of the learned Judge was confirmed in Appeal in W.A. Nos. 2878 and 2882 of 2019 by the Writ Appellate Court. The Writ Appeal filed by Review Applicants as Appellant in Writ Appeal was dismissed after elaborate discussion. The learned Counsel would further submit that there is no error apparent on the face of the records warranting a review. The Division Bench, after elaborate discussion, concurred with the decision of the learned single Judge in dismissing the writ petitions. The Division Bench also dealt with factual aspects as well as legal aspects and held that when the procedures adopted by a minority institution is not transparent and it had pre-determined the outcome of the selection process,



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interference of the Government as well as the Court is inevitable. In the present case, upon finding that the procedures adopted were not transparent and there are meritorious and suitable candidates available but kept away from the selection process, the Division Bench dismissed the writ appeals.

28. The learned Counsel further submitted that advertisement issued by the Review applicant/Association of Saint Christopher College of Education in the Hindu newspaper dated 09.06.2013 inviting the candidates for appointment reflects the very same qualification prescribed in the Tamil Nadu Recognized Private Schools (Regulation) Rules. It is further stated that Mrs. N. Marian Usha Rani was qualified with B.Sc., (Chemistry), B.T in Chemistry, B.Ed, M.A Economics and M.Ed., in Mathematics which is not one of the prescribed qualifications for consideration of appointment. She has not worked as a teacher handling either Arts or Science subject in the Higher Secondary Classes. The qualifications obtained by Mrs. N. Marian Usha Rani is a cross-major and she is disqualified for appointment to the post. This was rightly pointed out by the Division Bench of this Court while dismissing the writ appeals preferred by the appellants. On the other hand, Mrs. Ramani Jabathai was holding the qualification of B.A in Tamil and M.A in Tamil and she was handling higher secondary classes for Tamil on the date of her



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application for the post of Headmistress in Bentinck Higher Secondary School for Girls. Therefore, it is contended that the Division Bench of this Court is wholly justified in dismissing the writ appeals and he prayed for dismissal of the Review Applications.

29. We have heard the learned Senior Counsel appearing for the Review Applicant in Review Application No. 115 of 2021, the learned Counsel appearing for the Review Applicant in Review Application No. 116 of 2021, the learned Additional Government Pleader appearing for the official respondents and the learned Counsel appearing for the contesting respondent and perused the materials placed on record.

30. Before dealing with the rival submissions, we think that it is worthwhile to refer to the findings rendered by the Division Bench of this Court while dismissing the writ appeals filed by the Review Applicants. The relevant paragraphs are extracted hereunder:-

“22. It is seen from the records that only three Teachers from the same school had applied for the post of Headmistress and they are Marian Usha Rani, Ramani Jabathai and Jasmin Patience Willington. Out of the three teachers, the Management zeroed in on Mrs. Marian Usha Rani as Headmistress. Such appointment of Mrs. Marian Usha Rani was questioned by the contesting respondent Ramani Jebathai by preferring a statutory appeal to the Joint Director of School Education, who, after conducting enquiry, refused to accord approval to the appointment of Mrs.



Marian Usha Rani.

23. It is seen that the contesting respondent Mrs. Ramani Jebathai, is a Post Graduate Assistant from the same school. She also submitted her application, but she was not selected. She was holding PG in Economics and was teaching Higher Secondary Classes in the very same School. Therefore, she had approached the Joint Director of School Education with a statutory appeal objecting to accord approval for appointment of Mrs. Marian Usha Rani.

24. The Director of School Education concluded that Mrs. Marian Usha Rani was a teacher in the very same school. She was a Chemistry Teacher qualified with B.Sc (Chemistry) and B.Ed and teaching as a B.Ed Assistant. It was noticed that she was not a Post Graduate Teacher and therefore not qualified to hold the post of Headmistress as per the paper publication.

25. It is an admitted fact that Mrs. Marian Usha Rani did not complete 48 years of age as on 01.06.2013. In the advertisement issued by the Management of the School, it was specifically stated that candidates should have completed 48 years of age as on 01.06.2013. Having issued such an advertisement, the Management cannot now alter such condition in selecting Mrs. Marian Usha Rani. The notification dated 01.06.2013 binds the selection of Mrs. Marian Usha Rani. However, it is stated that by way of office note, the age relaxation was considered for in-service candidate. Admittedly, the office note was not signed by the selection committee, but the outgoing Headmistress. Even before the Joint Director of School Education, the office note was not produced, but it was produced for the first time before the Writ Court. Therefore, in the absence of fulfilling the age criteria, the selection and appointment of Mrs. Marian Usha Rani, in our opinion, is contrary to the terms and conditions of appointment. It is well settled that after entering into the arena, changing the rules of the game is not well founded as it would deprive the other candidates from participating the selection. In our opinion, such a age relaxation by way of office note would vitiate the entire selection process.

26. It is seen from the materials placed before us that the teachers who had PG degree in the subject and who are teaching in the school did not apply to the post of Headmistress under the impression that that they did not complete 48 years of age, as notified. This would only indicate that they are not aware of the office note said to have been displayed in the notice Board on 12.06.2012. As mentioned above, the office note dated 12.06.2012 was signed by the outgoing Headmistress and not by the Selection Committee. With the result, those who did not apply in spite of having the prescribed qualification of 10 years experience in teaching and P.G degree in the subject taught in the Higher Secondary classes, History,



Economics, Tamil, English, Physics, Chemistry, Maths, Commerce were deprived of an opportunity to participate in the selection process and they were kept out by the management itself. Therefore, we conclude that all those who are eligible had not been given an opportunity to participate in the selection process. Therefore, with an ulterior motive to keep out qualified candidates, the management of the School had cleverly published the advertisement stating that the candidate should have completed 48 years, but such age prescribed in the notification was relaxed by way of an Office note. On consideration of the circumstances leading to the appointment of Marian Usha Rani, we are of the view that Mrs. Marian Usha Rani was not appointed by following a transparent selection process. What had been stated in the paper publication was not followed by the Management. If there had been an open clause in the paper advertisement that in house teachers who are experienced also are eligible to apply and relaxation of age will be applicable to them, then, several teachers would have applied for the post. Further, it is seen that the appointment order of Marian Usha Rani in Page 5 of the typed set of the fifth respondent mentions that it is a case of appointment on promotion. This would only indicates that the Management has not chosen to consider the other teachers who had been working as a PG Assistant in the very same school belonging to the same religion. If the argument of the learned Senior Counsel for the appellant is to be accepted that except Marian Usha Rani, other candidates were non~christians and therefore, the appellant had to appoint only Marian Usha Rani has to be rejected. A perusal of the typed sets furnished by the appellant and the fifth respondent would go to show that those who were not selected also belonged to the Minority Religion.

27. It is seen hat Mrs. Ramani Jebathai, the contesting respondent, has now attained the age of superannuation. But that cannot justify the appointment of Marian Usha Rani who was not properly appointed by the Management by following the norms. It is also seen that pending disposal of the writ petition, this Court granted interim stay on condition that the interim stay shall not be used as a weapon at the time of final hearing in the Writ Petition. Therefore, the retirement of Mrs. Ramani Jebathai, contesting respondent in this case, during the pendency of the writ appeals, will not have any bearing in adjudicating these appeals.

28. It is admitted that the application of Mrs. Marian Usha Rani was not sent by registered post, as required in the advertisement issued by the school management. The contesting respondent Ramani Jebathai, even though was teaching in the very same school, applied through Registered Post, but Marian Usha Rani did not apply through Registered Post. Her application was sent directly to the convener of the selection committee.



This creates a doubt as to the manner in which the management had conducted the selection process. The selection process was pre-planned to appoint only Mrs. Marian Usha Rani as Headmistress. When advertisement was issued, opportunity should be given to all eligible candidates to participate and the gay abandon in which the management had selected and appointed Mrs. Marian Usha Rani cannot be appreciated. In fact, the teachers who could not participate in the selection process due to the age restrictions imposed by the management had sent their representation to the Joint Director of School Education. The Joint Director of School Education conducted an enquiry. In the enquiry, the management could not place the file relating to the selection process. Therefore, the learned Single Judge rightly concluded that the Management of the School had not acted fairly in the matter of appointment of a Headmistress for the School.

29. It is true that as a minority institution, the appellant school is vested with certain privileges and rights guaranteed under the Constitution. It is also true that they have a right to choose and appoint teachers and in such event, Rule 15 4 (i) of Tamil Nadu Private School Regulation Act cannot be applied to their case. However, it is not be noted that such privilege or right conferred to a minority institution cannot be taken advantage to discard transparent procedures from being followed in the matter of selection of a candidate, much to the chagrin of the other teachers. Thus, when there is violation of established procedures contemplated under law, even by a minority institution, interference of the Court is warranted.

30. We wish to observe that without considering the qualified Christian Candidates who are in possession of the qualification and experience and who had been teaching in the very same institutions, the management had wasted time and money in contesting the present litigation. When the candidate who has basic degree in particular subject and PG degree in the very same subject alone can be appointed as PG Assistant in Higher Secondary School to handle Higher Secondary Classes and the Headmistress of the Higher Secondary School shall be a PG Assistant and when there are PG Assistants available in the very same school, keeping them out of the selection process before the advertisement was given out by the management for the appointment of Headmistress, is unfair. If the teachers of the very same school are not kept out and those who responded to the public advertisement by sending applications had been interviewed and selected, based on their qualifications, then this litigation would not have arisen. The Management of the School used the advertisement as a ploy to keep out the qualified PG teachers in the very same School from applying the same. If it had invited applications and if



non-service candidates are to be considered and relaxation could be granted, it should be specified in the public advertisement also. It should have been mentioned in the notice put up on the School notice board. Only during the arguments, the learned Counsel for the appellant states that the Management of the Minority School have discretion to relax the qualification. As per the reported ruling relied on by the learned Counsel for the appellant herein in (i) TMA Pai Case (ii) (Eka Ratchagar Sabai Higher Secondary School & another Vs. K.Sumathi) 2007~4~L.W.617 (iii) N.Ammed Vs. The Manager, Emjay High School (1998) 6 SCC 674 (iv) The Secretary, Malankara Syrian Catholic College vs T.Jose & Ors (2007) 1 SCC 386, the minority institution has the right to choose Headmaster/Headmistress. Whether, the school had followed their own procedures and their own prescribed qualified, is the question involved in this case. Otherwise, there is no need for the Minority Institutions to send approval to the Director of the School Education. Whatever done by the Management can be simply approved by the Government. The public authorities have some control over the affairs of the Minority Institutions which receives aid from the Government. Therefore, the action of the minority Institutions is subject to the scrutiny of the State. If no other Christians are available then the appointment of the Marian Usha Rani could be accepted. But there were a number of Christians available in the very same school in the cadre of PG Assistants with sufficient teaching experience, but they were kept out on the ground of age restrictions. On the other hand, Marian Usha Rani, who had not completed 48 years, who was a B.T Assistant teaching class upto 10th Standard and who was a teacher in Chemistry but not qualified as PG Assistant had been appointed as a Headmistress of the Higher Secondary School.

31. As per the submission of the learned Counsel for the appellant, the Government has no authority to enquire into the process of appointment. The Minority Institutions have the discretion to appoint any one belonging to the Minority Community so as to protect their culture. This kind of arguments of the learned Counsel for the appellant, Father Xavier cannot at all be accepted. When the education Institution is an aided Education, the salary of the teachers is spent from public money. Therefore, the Government has control, a limited and restricted control. Being a Minority Institution, they can appoint teachers who are qualified and the qualification is stated by the Management themselves. While so, it is for the Government to verify whether by its own standards or by the standards of the Management themselves, the qualifications prescribed by the management was valid and the due process or fair process was followed by the Minority Education Institution in the selection of the Headmistress.

32. The fifth respondent herein is a BT Assistant and PG in Tamil,



but she was not selected though she was qualified on the date of the selection process. Now, she had superannuated during the pendency of Writ Petition. The Subsequent conduct of the Management of Saint Christopher College of Education in obtaining letters from PG Assistants who had prescribed qualification but did not apply amounts is only to justify the manner in which the selection process was conducted. This is found to be unfair on the part of the management of the Saint Christopher College of Education. Therefore, the arguments put forth by the learned Counsel for the appellant relying on the decisions mentioned supra will not be applicable to this case.

33. The arguments of the learned Counsel for the appellant that the Government has no say in the appointment of the teachers and Headmistress of the Minority Institutions as their rights, as minority institution, have to be protected, also cannot be accepted as they had been kept out of the selection process by the Management of the School though they were found to be of the same community as Minority Christians. When they have teaching experience, when they have PG qualification in the basic degree and had been teaching in the very same school for not less than 10 years, based on the conditions that they have not completed 48 years, they were kept out. That be the case, inviting application from Marian Usha Rani who had not completed 48 years on the date of the application is itself violation of the condition stipulated by the management. The principle of estoppel applies here. The school has caused an advertisement goes to prove that those who are teaching in the very same school as PG Assistant are not qualified but, the candidate, who is not a PG Assistant in the very same school had been appointed as Headmistress. As per Rule 15 (4) of the Tamil Nadu Private School Regulations Act for appointing Headmistress in a Government School or aided Private School of Headmaster can be appointed by promotion as Headmistress of Higher Secondary School which is not the case regarding the Marian Usha Rani. Rule 15 (4) prescribes educational qualification for appointment of Headmaster/Headmistress which are as follows:~

(i) Those who have been already serving as Headmaster/Headmistress of any recognized school.

(ii) Those who had been working as High School Headmaster/Headmistress can also be posted as Headmaster/Headmistress of Saint Bentinck School. It is considered as promotion for Headmaster/Headmistress from High School to Higher Secondary School.

(iii) The persons who had completed the Post Graduation and having Degree in Education. Those who have Post Graduate qualification as PG teachers and who possess B.Ed.

34. In this case, on the date of the application, she was not the



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Headmistress of the High School under the Management in a different School. If that be the case, Marian Usha Rani being appointed straight away as Headmistress of Bentick Higher Secondary School could have been accepted. But, that is not the case here. It is true, Marian Usha Rani is a PG Assistant but as per the requirement, those who have basic qualification in particular discipline shall acquire PG in the very same discipline, whether it is Tamil, English, History, Commerce, Maths, Physics, Chemistry, Botany, Zoology. Whatever shall be the subject, in the same subject, PG degree should have been obtained. Only then he/she is eligible to be appointed as PG Assistant. Here, Marian Usha Rani had acquired PG degree in Economics, in different subject, whereas basic qualification is Chemistry and B.Ed., degree in Mathematics and M.A in Economics. Therefore, her claim to the post of Headmistress cannot be justified.

35. For all the reasons mentioned above, we confirm the order dated 18.07.2019 made in W.P. Nos. 9620 & 9612 of 2014. The writ appeals are dismissed. No costs. Connected miscellaneous petition (s) is/are closed.”

31. It is this judgment of the Division Bench which is sought to be reviewed by the Review Applicants.

32. Admittedly, the Management Committee has given an advertisement in the Hindu dated 09.06.2013 calling upon candidates having prescribed qualification to be appointed as Headmistress of the Bentinck Girls Higher Secondary School, Purasaiwakkam. As per the qualification prescribed in the advertisement in “The Hindu”, those who have “(i) A Master's Degree of any University recognized by the UGC in Language or Subjects; (ii) B.T. or B.Ed., Degree of any University recognized by the UGC; (iii) Experience of not less than ten years as B.Ed., Assistant in a Secondary School, Training



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School or Higher Secondary School; and (v) Should have completed at least 48 years of age as on 1st June 2013”, shall apply. This advertisement is as per Rule 15(4)(d)(ii) of the Tamil Nadu Private Schools (Regulation) Act and Rules. It was further stated that those who have experience of minimum 10 years in handling Higher Secondary classes shall be a Christian having Christian values.

33. It is the contention of the Review Applicant Management that it is the prerogative of the minority Management to choose the person in whom they repose their confidence. As regards applicability of few rules in respect of minority institutions, the judgment of the Hon'ble Supreme Court in *Ahmedabad St. Xavier's College Society vs. State of Gujarat* reported in (1974) 1 SCC 717 and the Judgment of the eleven-Judges Bench of the Hon'ble Supreme Court in *T.M.A. Pai Foundation vs. State of Karnataka* reported in (2002) 8 SCC 481 are relied upon. It is true that in *Ahmedabad St. Xavier's College Society* case, the Hon'ble Supreme Court has also held that it is desirable to regulate everything in educational and academic matters for achieving excellence and uniformity in standards of education. The checks on the administration is to ensure that the administration is efficient and sound and it will serve the academic needs of the institution. However, the Larger



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Bench of the Hon'ble Supreme Court in ***T.M.A. Pai Foundation*** case, has accepted the principle that the right of minority institution 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 the most important facet of the right to administer an educational institution and that the choice must be left to the minority management is approved.

34. In this case, the order impugned in the Writ Petition dated 12.03.2014 is an order cancelling the appointment of Mrs. N. Marian Usha Rani. The appointment was held to be irregular on the following three grounds:

“i) The appointment of Ms.Marian Usha Rani as headmistress is in violation of Rule 15(4)(d)(ii) of the Tamil Nadu Private Schools (Regulation) Rules, 1974, as she doesn't come from the feeder category of Headmasters of high Schools or Teacher Training Institutes or from the eligible P.G.Assts. of Language or Subject.

(ii) The action of the Management having not invited the eligible P.G.Assts. and non-Christians, for the interview, is against their fundamental right. Though the particular School is a Minority School, the Management might have invited all the eligible P.G.Assts. for the post of selection of Headmistress, before selecting anyone.



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iii) It is stated in the advertisement in the news paper that the eligible candidate ought to have completed 48 years as on 01.06.2013 and whereas the person appointed made by the Management, Ms.Marian Usha Rani (born on 08.10.1965) has not completed 48 years as on 01.06.2013”.

35. The first reason relying upon Rule 15(4)(d)(ii) of the Tamil Nadu Private Schools (Regulation) Rules is illegal inasmuch as Rule 15(4)(d)(ii) is not applicable to minority institutions. Even before this Court none of the respondents have argued by referring to the first reason stated in the order impugned. The fact that Mrs. N. Marian Usha Rani had the prescribed qualification at the time of appointment is not disputed. In view of the several judgments taking uniform view, the finding that Mrs. N. Marian Usha Rani is not eligible on account of cross major is an error apparent on the face of record. When Rule 15(4)(d)(ii) of the Tamil Nadu Private Schools (Regulation) Rules is not applicable, the appointment of Mrs. N. Marian Usha Rani cannot be challenged for violation of this rule as the choice of appointment is the prerogative of the minority institution. However, the contention of the Respondents in the Writ Petition as well as in the appeal is about a fair procedure. Even though in the advertisement dated 01.06.2013



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calling for applications from outside the institution, minimum age was prescribed as 48, it is contented by the Management that the age restriction was relaxed in the case of in-service candidates. There is no statutory requirement of minimum age as 48. Even though the learned Counsel appearing for the contesting respondent/Mrs.Ramani Jebathai relied upon the advertisement, it was brought to the notice of the Writ Court that there was a circular displayed in the notice board of the institution relaxing the condition regarding age limit. Though the learned Counsel appearing for the contesting respondent/Mrs.Ramani Jebathai submitted that such notification was not published, this Court has no reason to discard the documents relied upon by the Management. The learned Counsel appearing for the contesting respondent/Mrs.Ramani Jebathai submitted that the contents of the notification stated to have been affixed in the notice board and the notification that was communicated to the Correspondent to be circulated to the Selection Committee are slightly different and that therefore, the contention of the Review Applicant Management cannot be accepted.

36. We have carefully considered the notification as published in the notice board and the notification that was communicated to the Correspondent to be circulated to the Selection Committee are one and the same. Since the



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copy of the notification communicated to the Secretary and the School Committee refers to marking of copy to him, that cannot be taken as two different notifications. This Court has no reason to reject the contention of the Review Applicant Management that the age limit prescribed in the advertisement was relaxed in the case of in-service candidates. The Division Bench while dismissing the Writ Appeal Nos.2878 and 2872 of 2019 relied upon Rule 15(4)(d)(ii) of the Tamil Nadu Private Schools (Regulation) Rules which prescribes educational qualification for appointment of Headmaster/Headmistress. For the post of Headmistress, the qualification prescribed is Post Graduation and degree in Education. In the present case, Mrs. N. Marian Usha Rani has the prescribed qualification. Therefore, the finding of Division Bench that Mrs.N.Marian Usha Rani did not have the prescribed qualification as she had acquired P.G. Degree in Economics is not valid even as per the qualification prescribed under the statute. Therefore, the observation that Mrs.N.Marian Ush Rani did not have the prescribed qualification for the post of Headmistress is an error apparent on the face of record. Once the teacher has prescribed qualification, the only point that is urged by the Respondent is that a fair procedure was not followed in the matter of appointing Mrs. N.Marian Usha Rani. This Court is also convinced that that Management has displayed a notification in the notice board. However, in



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the matter of appointment of teachers or principal fair procedure should be adopted in the interest of securing better administration and standard. The grievance of the contesting respondent/Mrs. Ramani Jebathai is that she did not participate in the process of selection as she was not aware of such relaxation and that she would have applied to the post of Headmistress if she was also aware of such relaxation. The contesting respondent/Mrs. Ramani Jebathai had raised her objection challenging the appointment of Mrs.N.Marian Usha Rani based on her credentials. However, we find that Mrs.N.Marian Usha Rani had the prescribed qualification. It is the prerogative of the minority Management to choose its Headmistress or teacher, the official respondents are not supposed to interfere with the selection of candidates by citing Rule 15(4)(d)(ii) of the Tamil Nadu Private Schools (Regulation) Act and Rules. At the same time, we are not convinced that the way in which the Review Applicant Management just issued a circular. It is seen that the circular or information about age relaxation to in-service candidates was fairly communicated to all the teachers. Merely because other teachers in the minority institution are not challenged or questioned the appointment, this Court is unable to reject the contention of the contesting respondent/Mrs. Ramani Jebathai that she would have been selected in case she had participated in the process of selection. However, Mrs. N. Marian Usha Rani



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had acted as Headmistress for more than 11 years. It is now learnt that the Review Applicant Management has a good and high reputation in terms of quality of education. Even the learned Additional Government Pleader accepts the fact that the institution commands the same reputation till date.

37. In such circumstances, this Court is inclined to allow the Review Applications and the judgment dated 16.04.2021 passed in Writ Appeal No.2878 and 2882 of 2019 is set aside and modified in the following lines:

(i) The impugned orders dated 12.03.2014 and the consequential order dated 14.03.2014 challenged in the Writ Petitions in W.P.Nos.9612 and 9620 of 2024 are set aside. The Writ Petitions filed by the Review Applicants in W.P.Nos.9612 and 9620 of 2024 are allowed as prayed for.

(ii) The official respondents are directed to approve the appointment of Mrs. N. Marian Usha Rani with effect from the date of her appointment.

(iii) Mrs. N. Marian Usha Rani is entitled to receive salary in the post of Headmistress and other benefits with effect from the date of her appointment.



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(iv) The review applicant Management is directed to pay a sum of Rs.2,00,000/- (Rupees Two Lakhs only) or the sum equivalent to the difference in pay between the salary as Headmistress and the pay of Mrs. Ramani Jebathai from the date of appointment of Mrs. N. Marian Usha Rani and the date of retirement of Mrs. Ramani Jebathai whichever is high to the contesting respondent/Mrs. Ramani Jebathai who has retired from service, as the Review Applicant Management has failed to establish a fair opportunity to Mrs.Ramani Jebathai. There shall be no order as to costs.

(S.S.S.R.J) (S.S.K.J)
29.04.2025

Index : Yes / No
Internet : Yes / No
Speaking Order / Non-Speaking Order
Neutral Citation : Yes / No
DH/SRM



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To

1. The Govt. of Tamil Nadu,
Rep. By its Secretary,
Department of School Education,
Fort St. George,
Chennai – 9.
2. The Joint Director of School
Education (Higher Secondary),
DPI Campus,
College Road,
Chennai – 6.
3. The Chief Educational Officer,
Panagal Building,
Saidapet,
Chennai – 600 015.
4. District Educational Officer
Chennai North
Ambethkar School (upstairs)
Gandhi Irvin Bridge,
Chennai – 600 008.
5. The Association of St. Christopher's
College of Education,
Rep. By its Secretary
63, EVK Sampath Road,
Vepery, Chennai – 7.



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S.S.SUNDAR, J

and

SATHI KUMAR SUKUMARA KURUP, J

DH/SRM

Common order made in
Rev. Appl. Nos.115 & 116 of 2021
in W.A.Nos.2882 & 2878 of 2019

29.04.2025