

WP(MD)No.15201 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.08.2024

Pronounced on : 08.08.2024

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)No.15201 of 2024

and

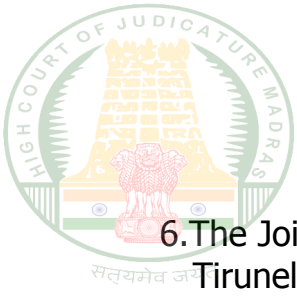
WMP(MD)No.13305 of 2024

C.Manohar Thangaraj

... Petitioner

Vs.

- 1.Rt.Rev.ARGST Barnabas
The Bishop, Diocese of Tirunelveli,
No.16, North High Ground Road,
Palayamkottai, Tirunelveli – 627 002.
- 2.The Chairman,
Tirunelveli Diocese Trut Association,
Diocesan Office, Palayamkottai,
Tirunelveli – 627 002.
- 3.The Lay Secretary,
Diocese of Tirunelveli,
Palayamkottai, Tirunelveli – 627 002.
- 4.The Church of South India,
Rep.by Administrator,
No.5, Whites Road, Royapettah,
Chennai - 15.
- 5.Arthur Sadhanandhan,
Administrative Secretary,
Diocese of Tirunelveli, Tirunelveli.



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6.The Joint Director of Collegiate Education,
Tirunelveli.

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7.The Commissioner of School Education,
Tirunelveli.

... Respondents

8.The Manager,
TDTA High and Higher Secondary
Schools, Tirunelveli.

9.The Manager,
TDTA Primary Schools,
Tirunelveli.

(8th and 9th respondents were suo motu
impleaded vide order dated 18.07.2024)

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to forber the first respondent from taking any decision unilaterlly regarding the appointment of Teachers/Correspondents to the educational institutions run by the Diocese of Tirunelveli and aided by the grant of Government.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondents : Mr.P.P.Alwin Balan for R1

Mr.S.Parthasarathy for R3

Mr.G.V.Vairam Santhosh
Additional Government Pleader for R6 & R7

Mr.V.Prabhakar, Senior Counsel
for K.K.Udayakumar for R8 and R9



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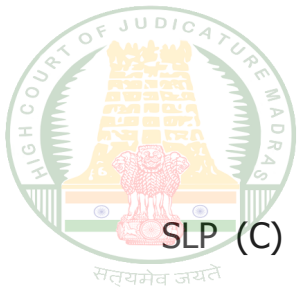
ORDER

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Can a Hasina or Hema hope to be appointed as teachers in any of the educational institutions run by CSI Diocese of Tirunelveli ? The outcome of this writ petition depends on the answer to the above question.

2.The Tirunelveli Diocese of Church of South India is a congregation of Christians in Tirunelveli and Tenkasi Districts. It is an unregistered body. It is governed by its own rules codified as Constitution of Tirunelveli Diocese. The properties of the Diocese are owned by Tirunelveli Diocese Trust Association which is an incorporated company having its own Memorandum and Articles of Association. The Diocese has established several educational institutions from primary level to colleges. They have been declared as minority institutions. They receive grant from the government to meet the salary expenses of the teaching and non-teaching staff. The annual grant received by the diocese from the government would run to Rs.600.00 crores. UGC is also extending its financial assistance. There are around 249 primary schools, 74 middle schools, 3 High Schools, 11 Higher Secondary Schools and 2 colleges. There are also teacher training institutes and college of education.

3.The Church of South India is the apex body. The Hon'ble Division Bench of the Madras High Court in OSA No.237 of 2023 vide order dated 12.04.2024 appointed administrators for CSI. This was put to challenge in

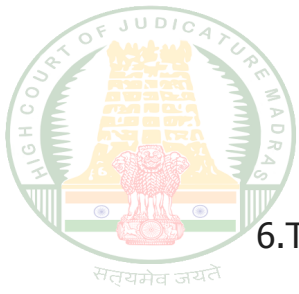


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SLP (C) No.12208 of 2024. The Hon'ble Supreme Court vide order dated 22.05.2024 directed that the administrators shall not take any decision either with regard to the holding of election or administration of Church of South India or the CSI Trust Association. The SLP is still pending. Earlier the administrators vide communication dated 03.05.2024 appointed an administrative committee headed by the fifth respondent as its Secretary. The three years' term of the diocesan council had also expired on 12.04.2024. Even the extended period by virtue of Rule 12 D of Chapter VIII of the Diocesan Constitution came to an end on 12.07.2024.

4.The petitioner who was elected as the treasurer of Tirunelveli Diocese alleges that taking advantage of the amorphous nature of the situation, the Rt.Rev.Bishop is unilaterally appointing correspondents for the various educational institutions and also taking steps to fill up the teacher vacancies. In order to forbear the first respondent from taking any decision on his own regarding the appointment of teachers/correspondents to the aided educational institutions run by the Diocese of Tirunelveli, this writ petition has been filed.

5.The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of this writ petition and called upon this Court to grant relief as prayed for.



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6.The first respondent as well as the ninth respondent have filed counter affidavits. The learned Senior Counsel appearing for R8 and R9 as well as the learned counsel appearing for the first respondent and other contesting respondents vehemently contested the contentions put forth by the writ petitioner's counsel. According to them, the petitioner lacks the locus standi to maintain this writ petition. They also submitted that the writ petition suffers from the vice of non-joinder of necessary parties. They point out that as per the Constitution of the Diocese, the correspondents are vested with the power to appoint the teachers. The correspondents have not been made as parties. The learned Senior Counsel took me through the various provisions of the Constitution governing the Diocese of Tirunelveli as well as the Constitutions governing the Governing Boards. It was also contended that cause of action has not arisen. The allegation that appointments would be made arbitrarily was denied. It was pointed out that the manager and correspondents of the schools appoint teachers based on the diocesan seniority list. The standing of the petitioner was questioned on the ground that his tenure got expired on 12.04.2024 itself. The contesting respondents prayed for dismissal of this writ petition.

7.I carefully considered the rival contentions and went through the materials on record. Rule 6 of Chapter VI of the Constitution deals with the powers of the correspondent. Rule 6(i) is as follows :



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“The correspondent shall appoint members of the teaching and clerical staff, subject in the case of ordained person to a reference to the Bishop. The appointment shall be reported to the Governing Board at its next meeting. Where such a member of the staff has been in service more than a year his name shall be brought up for confirmation to the Governing Board which shall decide the matter.”

Apart from the above Constitution, there are Constitution of the Governing Boards of the Colleges in the Diocese and the Constitution of the Governing Boards of Educational Institutions (other than Colleges) under the control of the Standing Committee on Higher Education. In both these Constitutions, there are specific provisions dealing with appointments of teaching and non-teaching staff. As on date, there is no clarity regarding the composition of the Governing Boards. The question that calls for consideration is whether in these circumstances, the recruitment process for filling up the teacher vacancies can be taken up.

8.The contesting respondents claim that the writ petition has been prematurely filed and that there is no cause of action. The next objection is that since the correspondents have been vested with the power to make appointments, seeking relief against the Rt.Rev.Bishop is misplaced. Both these objections deserve to be overruled. In the typed set of papers, the letter dated 19.06.2024 signed by the Manager of TTDA, High and Higher



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Secondary Schools and approved by the Rt.Rev.Bishop, Tirunelveli Diocese has been enclosed. This letter calls for applications for making appointments in the B.T vacancies. The letter reads as follows :

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**CHURCH OF SOUTH INDIA
DIOCESE OF TIRUNELVELI**

Rev. J. F. SUTHERSON
MANAGER
TDA Higher Secondaries, Secondary
Schools & Teacher Training Institutes


Diocesan Office
Palayamkottai - 627 002
Cell No : 9488326908
Email : tindiorngthas@gmail.com

19.06.2024

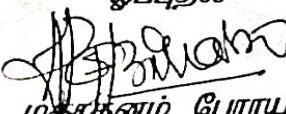
அனைத்த சேகர குருமார் அவர்கள்
திருநெல்வேலி திருமண்டலம்

நமது திருமண்டல உயர்நிலை மற்றும் மேல்நிலைப்பள்ளிகளின் பட்டதாரி ஆசிரியர்களின் பணியிடங்கள் (BT vacancy) க்கு வேலைவாய்ப்புகள் இருப்பதால் ஏற்கனவே திருமண்டல காத்திருப்போர் பட்டியலில் பெயர் பதிவு செய்து இருப்பவர்கள் **TET II Paper (ஆசிரியர் தகுதி தேர்வு தரள் - II)**-ல் தேர்ச்சி பெற்றவர்கள் 06.07.2024 க்கு முன் திருமண்டல உயர்நிலை மற்றும் மேல்நிலைப்பள்ளிகளின் மேலாளர் அலுவலகத்தில் விண்ணப்பங்களை சமர்ப்பிக்குமாறு கேட்டுக்கொள்ளப்படுகிறார்கள்.

இந்த அறிவிப்பை தயவு செய்து 23.06.2024 மற்றும் 30.06.2024 ஆராதனைகளில் அறிவிப்பு கொடுக்கும்படி அன்புடன் கேட்டுக்கொள்கிறோம்.


மேலாளர் 19.06.24

TDA உயர்நிலை மற்றும் மேல்நிலைப்பள்ளிகள்

ஓப்புதல்

மகாக்ஷம் பேராயர்
திருநெல்வேலி திருமண்டலம்



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As per Chapter VI of the Diocesan Constitution, there shall be a Manager of all Higher Secondary, Secondary Training and Special Schools in the Diocese appointed by the Bishop. The Bishop shall be the Manager of the Colleges of the Diocese. The Standing Committee on Higher Education will recommend to the Manager with regard to the appointment of the correspondents. It is too obvious from the scheme of things that the correspondents of the institutions are clearly under the Rt.Rev.Bishop. When the Rt.Rev.Bishop himself issues circular inviting applications from candidates for filling up the vacancies in teaching posts, the petitioner is justified in entertaining an apprehension that recruitment drive is afoot.

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



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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 [K.Nithiyantham vs State Of Tamil Nadu \(2006\) 1 L.W 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.

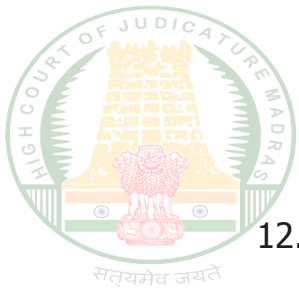
10. There is a larger issue at stake. When the petitioner alleged that the first respondent proposes to make arbitrary appointments, in Paragraph 6 of the counter affidavit, the Rt.Rev.Bishop averred that it is the duty of the Manager and Correspondents of the Schools to appoint teachers based on the diocesan seniority list. The learned Senior Counsel appearing for the respondents 8 and 9 passed on a bulky booklet containing the List of candidates for appointments in TDTA Hr Secondary, Secondary, Spl.Schools and Teacher Training Institutes 2023-2024.

11. Article 30 of the Constitution of India states that all minorities,



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whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. This provision has been considered by the Hon'ble Supreme Court of India in a number of decisions. The right to administer includes the right to choose its teachers (AIR 1974 SC 1389 St.Xavier's College v. State of Gujarat). The right to administer would of course not include the right to maladminister. In ***IVY C.da Conceicao v. State of Goa (2017) 3 SCC 619***, the Hon'ble Supreme Court held that autonomy of a minority institution does not dispense with the requirement to act fairly and in a transparent manner and the High Court in exercise of its power of judicial review is entitled to examine the fairness of selection process. 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. While under the Constitutional scheme, a minority institution is free to select and appointment its staff, whether the appointment has been made fairly and reasonably and whether there is violation of right of an individual eligible candidate by the minority institution by not adopting fair procedure is liable to be tested in exercise of power of judicial review under Article 226 of the Constitution. The above ruling rendered in 2017 holds good even today and in terms of Article 141 of the Constitution of India is the law of the land.



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12. One can take judicial notice of the fact that it is a publicly held belief that appointments in aided private educational institutions are governed by commercial considerations. There are a few honourable exceptions. The moment has arrived to enact the "Transparency in Appointments of Staff in Private Aided Educational Institutions Act".

13. The issue cannot be approached from the perspective of the managements alone. Educational institutions are there to cater to the needs of the students. A student is entitled to be taught by competent teachers. It is the duty of the management to fulfil this right. State is paying the teachers' salaries only with the expectation that the institutions will produce students of caliber and character. Article 51-A(j) states that it shall be the duty of every citizen of India to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement. In ***State of Kerala v. Very Rev. Mother Provincial (1970) 2 SCC 417***, it was held that the right of the State to regulate education, educational standards and allied matters cannot be denied. The minority institutions cannot be allowed to fall below the standards of excellence expected of educational institutions, or under the guise of exclusive right of management, to decline to follow the general pattern. While the management must be left to them, they may be compelled to keep in step with others.

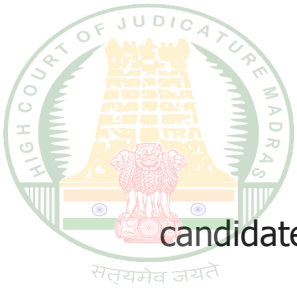


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14. Applying Hohfeldian approach, it is reasonable to hold that the right to receive State aid towards teaching grant is coupled with obligation to appoint the best possible competent teachers. This obligation can be discharged only if the field of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

15. In this case, by way of an affidavit, it had been admitted that candidates will be appointed from out of the diocesan seniority list. Hasina and Hema will not even be considered for appointment. I, therefore, hold that the entire process of appointment is unconstitutional. The appointment process obtaining as on date is patently discriminatory. To say that only a



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candidate of a particular religious denomination is entitled to apply for a post runs counter to constitutional morality. When the salary is paid out of the State exchequer, the elementary principles of secularism demand that the process of appointment is thrown open to all eligible candidates.

16.For the above twin reasons, the writ petition is allowed as prayed for.

No costs. Connected miscellaneous petition is closed.

08.08.2024

skm

To

- 1.The Joint Director of Collegiate Education,
Tirunelveli.
- 2.The Commissioner of School Education,
Tirunelveli.



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G.R.SWAMINATHAN, J.

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