

**(2000) 12 MAD CK 0070**

**In the Madras High Court**

**Case No : Writ Petition No. 8875 of 2000**

Association of Evening Classes Teaching Staff (Pachiappas  
College, Chennai)

**APPELLANT**

**Vs**

The Director of Collegiate Education, College Road,  
Chennai-6 and 11 others

**RESPONDENT**

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**Date of Decision : 22-12-2000**

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16, 226

Tamil Nadu Private Colleges (Regulation) Rules, 1976 — Rule 11(4)

**Citation : (2000) 12 MAD CK 0070**

**Hon'ble Judges : K. Govindarajan, J**

**Bench : Single Bench**

**Advocate :** Mr. K. Chandru, for Mr. D. Hariparanthaman, for the Appellant; Mrs. P. Selvi, Government Advocate, Mr. N.R. Chandran, for Mr. M. Devandran and Mrs. Nalini Chidambaram, for Mr. S. Silambanan, for the Respondent

**Final Decision : Dismissed**

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## **Judgement**

1. The petitioner-association has filed this writ petition seeking to issue a writ of mandamus, directing the respondents 2 and 3 to consider the

claims of all teachers taking Evening Classes in the Pachiappa's College. Chennai for various posts for which requisition has been sent to

employment exchanges and select the candidates in accordance with law.

2. According to the petitioner-association when a teaching post is filled up by direct recruitment according to Rule 11(4(ii) of the Tamil Nadu

Private Colleges (Regulation) Rules, 1976, (hereinafter called ""the Rules"" the vacancy should be filled up by calling for applications from qualified

persons through press and also by calling a list of candidates from the employment exchange. The petitioner-association also has relied on

G.O.Ms.No. 1785, Education, dated 5.12.1988 and G.O.Ms. No. 111 Higher Education Department dated 24.3.99 in support of their case. It is

also case of the petitioner that the registration in the Employment Exchange is though with the State Level Professional and Executive Employment

Exchange, list of candidates is being sponsored to the posts which is available in the Districts in which a person has registered his name. By

adopting the same method the persons who registered in the said Exchange with Chennai address will not be sponsored for the vacancies arise in

the institutions at Kancheepuram and Cuddalore, though all the colleges come under the same management. It is the specific case of the petitioner-

association that the respondents 2 and 3 are calling for names from the respective Districts for colleges situated in those districts which arbitrary

and violative of Articles 14 and 16 of the Constitution and also opposed to Rule 11(4)(ii) of the said Rules. The same is also contrary to G.O.Ms.

No. 1785 Education, dated 5.12.98 and G.O.Ms. No. 111, Higher Education Department, dated 24.3.99.

3. All these averments are made on assumption and also in view of the fact that the concerned authorities have not given any reply for their

representation. The fact remains, the interview was conducted for appointment of the lecturers in the vacancies, and in view of the pendency of the

writ petition, the respondents 2 and 3 could not appoint the teachers on the basis of selection.

4. The 1st respondent filed a counter stating that as per the judgment dated 17.2.95 of the Division Bench of this Court in W.P. No. 879 of 1993

the Government issued an order in G.O.Ms. No. 873, Education, Science and Technology, dated 13.11.95 to the effect that private aided

educational institutions shall make all appointments in their institutions through the employment exchange only. In the counter the proceedings of the

Director of Collegiate Education dated 18.5.98 instructing the management not to make appointments in the vacancies of Lecturers in the Day

College from out of the evening college teachers has also been referred to.

5. The respondents 4 to 12 impleaded as parties in W.M.P. No. 19635 of 2000 also filed affidavit. The respondents 5 to 8 are the members of

the petitioner-association and they claimed that they have not authorised one Dr. K. Abbu who is representing the petitioner-association in the writ

petition to file the writ petition on behalf of the petitioner-association. They have also stated that in the list filed along with the writ petition, their

names also has been mentioned as members of the association. On that basis they have claimed that the writ petition cannot be construed as filed

on behalf of the members and for the benefit of the members and so the writ petition has to be rejected on that ground. In the affidavit they have

supported the procedure followed by the management stating that such procedure has been followed in accordance with law. According to them,

the recruitment should be made by giving advertisement only if eligible candidates are not sponsored by the employment exchange.

6. The 3rd respondent, Administrator General filed a report in this writ petition. It is denied by him that the teachers working in the evening college

are eligible to be appointed in the day college merely on the basis they are working in the evening college. At the first instance, as per the Rules, the

2nd respondent has to call for the list from the employment exchange by following communal reservations and only when the employment exchange

furnishes the non-availability certificate for the specified communal reservations and faculty, the 2nd respondent will make the press advertisement.

So, the question of making direct recruitment through press does not arise at this stage. According to him, the college committee had conducted

interviews in 5 colleges between 1.6.2000 and 9.6.2000 and appointments have been withheld in view of the pendency of the writ petition.

7. For the appointment of lecturers in various faculties in the colleges of the Pachaiyappa's Trust, the 2nd respondent has sent a communication on

7.1.2000 asking the Assistant Director, Professional and Executive Employment Exchange, R.K. Mutt Road, Mylapore, Chennai to furnish the list

of candidates fully qualified for the lecturer post before February/March, 2000. They have enclosed the necessary pro forma particulars along with

the said letter. Again on 9.2.2000, the 2nd respondent requested the Assistant Director to sponsor the list of candidates for the post of lecturer in

Physics excluding the list sent already so as to enable him to select suitable candidates by interview. On the basis of such request, the employment

exchange seems to have sent the list of names for the purpose of selection. According to the 2nd respondent, interviews have been conducted and

are waiting orders from this Court for making every appointment. At this stage, the petitioner-association has filed this writ petition.

8. The learned senior counsel appearing for the respondents 4 to 12 raised a preliminary objection stating that this writ petition at the instance of the petitioner-association cannot be sustained, as the petitioner-association can file writ petition only for the benefit of all the members, and some of the members, namely, respondents 5 to 8, are not aggrieved by the procedure followed by the 2nd respondent-trust for the purpose of appointment of lecturers, and, on that basis the learned senior counsel submitted that this writ petition has to be dismissed as not maintainable.

9. The learned senior counsel appearing for the petitioner in replying to the preliminary objection submitted that this writ petition is filed for the benefit of the members only and so the submission of the learned senior counsel appearing for respondents 4 to 12 cannot be countenanced. As rightly submitted by the learned Senior Counsel appearing for the respondents 4 to 12, the petitioner-association cannot agitate the matter which is not acceptable to all the members, as some members are willing to accept the procedure contemplated by the 2nd respondent-trust for appointment of lecturers. The learned senior counsel for respondents 4 to 12 has also submitted that there is no resolution at all authorising the deponent to file this writ petition. Though an affidavit was filed by the deponent to say that there was a resolution and though the learned senior counsel for the petitioner submitted that he would produce the copy of the resolution, no such copy was produced before this Court, So I have to take it that no resolution was passed authorising the deponent to file this writ petition. So, this writ petition at the instance of the association cannot be sustained as some of the members have come forward with the plea that the same is against their interest.

10. The learned senior counsel appearing for the petitioner submitted that since the colleges in question are governed by the University Grants Commission Act and any circular issued by the University Grants Commission will bind on the colleges. The learned senior counsel has also submitted that on the basis of the University Grants Commissioner's recommendations, the Government of Tamil Nadu also issued an order in G.O.Ms. No. 1785, Education Department, dated 5.12.88. The learned Senior Counsel relying on the said Government Order submitted that as per the said order the recruitment to the post of lecturers in the colleges shall be on the basis of merit through All-India advertisement and selection

provided that lecturers who fulfil the criteria prescribed in this scheme will be eligible for further promotion. On the basis of the said clause in the

Government Order, the learned senior counsel also submitted that the recruitment for the post of Lecturers can be made only by advertisement in

All-India basis. He has also relied on the Government Order dated 24.3.99 in which the same clause which is contemplated in the said earlier G.O.

is also contemplated for the purpose of recruitment and qualification. In the Explanation to the said clause, it is stated that insofar as aided colleges

are concerned, the direct recruitment for the posts of Lecturers/Principals shall be in accordance with the University Grants Commission's

guidelines given in Annexure-II." Relying on these Government Orders, the learned senior counsel submitted that the Rule 11(4)(ii) of the said

Rules should be read in consonance with the said Government Orders. According to him, for the purpose of direct recruitment, application should

be called for from qualified persons both through press and by calling for list of candidates from the employment exchange. According to him, the

word "or" occurred in the said Rule should be read as "and" by which alone the abovesaid Government Orders issued on the basis of the

University Grants Commission's recommendations can be implemented. It is his further submission that the authorities have called for the list from

the District Employment Exchange, though the colleges under the 2nd respondent-trust situated in different Districts.

11. The learned Senior Counsel appearing for the respondents 2 and 3 submitted that the procedure now followed is strictly in accordance with

the Rule 11(4) of the said Rules. Any Government Order passed contrary to the Statute Rules cannot be relied on. According to the learned senior

counsel, though the Government Orders relied on by the learned senior counsel for the petitioner were issued on the basis of the University Grants

Commission's recommendations, it cannot have any statutory force, when the statutory Rules specifically contemplates the procedure and the said

Rule has not been challenged.

12. Though the University Grants Commission is the supreme body insofar as the Universities are concerned, as "Education" including technical

education, medical education and universities all come under Entry 25, List III of the Seventh Schedule. But is subject to the power of the

Parliament to legislate under Entries 63 to 66 of List I to the Seventh Schedule. Entry 66 gives power to the Union Government to see that a

required standard of higher education in the country is maintained. So, it is in the national interest the legislation in regard to Education has been

discussed in the Lists I and III of the VII Schedule. Exercising such powers, the Parliament has enacted the University Grants Commission Act,

and on the basis of the recommendations of the said Commission, the Government used to issue orders. On that basis, the petitioner-association

now claims that applications of the qualified candidates should be called for only by publishing the advertisement in the press.

13. In support of their submission, the learned Senior Counsel has relied on the decision in *Excise Supdt. Malkapatnam v. K.B.N. Visweshwara*

*Rao & ors.*, 1997 (1) LLJ 567. In the said decision the Apex Court has held that "the appropriate department or undertaking or establishment

should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on

radio, television and employment news bulletins and then consider the cases of all the candidates who have applied.

14. The learned senior counsel has also relied on the decision in *National Life Insurance Employees' Association v. The Life Insurance*

*Corporation of India*, 1989 W.L.R. 420 where in the learned Judges have dealt with the appointment in the Life Insurance Corporation of India,

Madras Division, who called for applications for filling up 120 vacancies in the cadre of Assistances. In the advertisement it was stated that only

candidates registered with Employment Exchanges of Chingleput, South Arcot, North Arcot Districts and also Union territory of Pondicherry will

be eligible for appointment". The said condition came up for consideration before the Division Bench. While considering the same, the Division

Bench has held that the respondent had restricted it only to 4 employment exchange and hence it is irrational and illegal. But the abovesaid two

decisions cited by the learned senior counsel for the petitioner will not apply to the facts of the present case.

15. In the present case, the method of appointment has been stipulated under the Statutory Rules. The same has been stipulated under Rule 11(4)

(ii) of the said Rules, which is as follows:-

11(4)(ii). The Committee shall fill up the posts by promotion or by direct recruitment. The Committee shall, while making promotion, consider the claims of all the qualified teachers in that college. If, however, none of the qualified teachers in the college is found suitable for promotion, the vacancy shall be filled up by direct recruitment by calling for applications from qualified persons through the press or by calling for a list of candidates from the Employment Exchange by following the rule of reservation ordered by the Government from time to time for direct recruitment".

In view of the abovesaid specific stipulation regarding the method of appointment by direct recruitment, it cannot be said at this stage that the 2nd respondent should ignore the said rule and follow the different procedure. The learned senior counsel for the petitioner tried to submit that the word "or" occurred in the Rules should be read as "and". I do not find any necessity to read the said provision as stated by the learned senior counsel to that effect is only on the basis of the Government Order issued on the basis of the University Grants Commission's recommendations. Though the Government has passed the said orders, they have not taken any steps to amend the provision, though the provision was incorporated on

21.10.86. Under the said provision two choices have been given to the management, to call for the applications. They can call for applications either by publication in the press or by calling for a list of candidates from the employment exchange. This method also has been approved by the Government by issuing various Government Orders on the basis of reasonings.

16. The decision relied on by the learned senior counsel for the petitioner in *Excise Supdt. Malkapatnam v. K.B.N. Visweshwara Rao & ors*, 1997 (I) LLJ 567 deals with the appointment in the Excise Department. Such appointment is protected under Article 16 of the Constitution.

Similarly even with respect to the appointment dealt with in the decision in *National Life Insurance Employees' Association v. The Life Insurance Corporation of India*, 1989 WLR 420 is also protected under Article 16 of the Constitution. The Division Bench has also relied on Article 16 to come to the conclusion that the method followed was illegal. It cannot be disputed that the appointment for private colleges is not protected under Article 16 of the Constitution. So the said decisions will not apply to the facts of

the present case.

17. On the other hand while considering the Government Orders, relating to the method of appointment, the Division Bench of this court in the

decision in *State of Tamil Nadu etc. and 93 others v. The Tamil Nadu Recognized Private Schools Managements' Assn., etc.*, 1995 W.L.R. 499, has

held as follows:-

7. G.O.Ms. 2085, dated 20th September, 1982 relates to private colleges. It directs that the recruitment of personnel in private colleges receiving

aid would be through Employment Exchange by way of notifying the vacancies to the concerned Employment Exchange in respect of appointments

to all categories of staff in the aided colleges and that the Tamil Nadu Private Colleges (Regulation) Rules, 1976 framed under the Tamil Nadu

Private Colleges (Regulation) Act, 1976 should be amended to that effect.

8. Thus, it is clear from the aforesaid G.Os. that any college or school run by a private educational agency receiving aid should fill up the vacancies

on obtaining the list from the Employment Exchange intimates that no candidates is available, then, it has to seek permission from the concerned

Department and proceed with the recruitment from the open market.

18. Similar principle has been approved in the decision reported in *Assn. of Association of Management of Hindu Educational Institutions, Tamil*

*Nadu*, by Secretary, Dr. V.S. Narasimman, Shri Ramakrishna Ashram, Madurai. Vs. State of Tamil Nadu and two others, .

19. In view of the specified provision under the said Rule which is not under challenge and also in view of the Division Bench decision of this Court

(supra), the method followed by the respondents 2 and 3 to call for applications through employment exchange cannot be said to be illegal or

contrary to any provisions. When the statutory rule is in force, any other Government Order cannot be put into service against the spirit of statutory

provision. The scope of the provision has already been decided by the Division Bench of this Court and it was held that the list has to be called

from the employment exchange and if it could not send the list, then the application can be called for from open market after getting permission

from the Department. So, the submission of the learned senior counsel for the petitioner contrary to the decision of the Division Bench of this court

cannot be accepted on the basis of the Government Orders dated 5.12.98 and

24.3.91.

20. The next submission of the learned senior counsel for the petitioner is that the 2nd respondent has called for the list only from the concerned

Districts and so such procedure cannot be sustained in law. As submitted by the learned senior counsel for the 2nd and 3rd respondents, they have

called for the names from the professional and Executive Employment Exchange which is the only Exchange established for the purpose of

registering candidates eligible to be appointed as lecturers. From the file I am able to see that the 2nd respondent has not restricted to send the

names from particular district alone. Even if the learned senior counsel for the petitioner is correct in saying that the Exchange has sent such a list

only on the basis of the residence of the candidates in that district, same cannot be a ground to set aside the method followed for the petitioner. If

the Exchange has committed a mistake by not following the correct method in sending the list, the same has to be challenged making the concerned

officer as party to the writ petition which has not been done in this case. So, at this stage without impleading the concerned officer, the list sent by

the Employment Exchange cannot be indirectly challenged.

21. In view of the above discussion, I do not find any merits in this writ petition and the same is dismissed. No costs. The connected W.M.Ps. are

also dismissed.