In the High Court of Judicature at Madras

Reserved on	Delivered on :
20.3.2025	**27.3.2025**

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Writ Petition Nos.18165, 18315, 18923, 19271, 19318 & 19319 of 2023 and 24801 of 2024 & WMP.Nos.17361, 17363, 17523, 17524, 18155, 18158, 18518, 18520, 18579, 18582, 18588 & 18591 of 2023 & 27149 of 2024

The Principal & Secretary,
Women's Christian College
(Autonomous), Tambaram
East, Chennai-14. ...Petitioner in WP.Nos.18165 & 18315 of 2023

The Principal Secretary,
Madras Christian College
(Autonomous), Tambaram
East, Chennai-14. ...Petitioner in WP.No.18923 of 2023

The Secretary & Correspondent,
Loyola College (Autonomous),
Nungambakkam, Chennai-34. ...Petitioner in WP.No.19271 of 2023

The Secretary, Stella Maris
College (Autonomous), No.17,
Cathedral Road, Chennai-86. ...Petitioner in WP.Nos.19318 & 19319 of 2023

The Secretary, Sacred Heart
Arts & Science College,
Perani-605651, Tindivanam
Taluk, Villupuram District. ...Petitioner in WP.No.24801 of 2024

Vs

1.The State of Tamil Nadu, rep.
by its Secretary, Department
of Higher Education, Fort St.
George, Chennai-9.

2.The Director of Collegiate
Education, Anna Salai,
Saidapet, Chennai-15. ...R1 & R2 in all the WPs

3.The Regional Joint Director
of Collegiate Education,
Chennai Region, Chennai-15. ...R3 in WP.Nos. 18165, 18315, 18923, 19271, 19318 & 19319 of 2023

4.The Joint Director of Collegiate
Education, Vellore Region,
Vellore District-635006. ...R3 in WP.No. 24801 of 2024

5.The University of Madras,
rep.by its Registrar,
Chepauk, Chennai-5. ...R4 in WP.Nos.

18165, 18315,
18923, 19271,
19318 & 19319
of 2023

6.The Annamalai University,
rep.by its Registrar,
Annamalai Nagar,
Chidambaram, Cuddalore
District-608002. ...R4 in WP.No.
24801 of 2024

7.The University Grants
Commission, rep.by its
Secretary, Bahadur Shah
Zafar Marg, New Delhi
110002. ...R5 in WP.Nos.
18165, 18315,
18923, 19271,
19318 & 19319
of 2023

PETITIONS under Article 226 of The Constitution of India praying for the issuance of

(i) a Writ of Certiorarified Mandamus to call for the records relating to the impugned orders issued by the 4th respondent - University vide letter No.A-II/JPR/UGC Regulation 2018/2021/137 dated 03.8.2021, letter No.A-II/JPR/UGC Regulation 2018/Minority/ 2021/172 dated 06.10.2021 and vide No.AII/JPR/Assistant Professor/ minority college/2022/320 dated 17.11.2022, quash the same and

further direct the 4th respondent - University to give qualification-approval forthwith to the 17 Assistant Professors (name list annexed) in the petitioner college without reference to the provisions relating to the Selection of Teachers provided at paragraphs 5 and 6 of the UGC Regulations on Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2018 & G.O.Ms.No. 5, Higher Education (H1) Department dated 11.1.2021 (WP.No.18165 of 2023);

(ii) a Writ of Certiorarified Mandamus to call for the records relating to the impugned orders issued by the 4th respondent - University vide letter No.A-II/JPR/UGC Regulation 2018/2021/137 dated 03.8.2021, letter No.A-II/JPR/UGC Regulation 2018/Minority/ 2021/172 dated 06.10.2021 and vide No.AII/JPR/AP/WCC/2023/064 dated 12.4.2023, quash the same and further direct the 4th respondent - University to give qualification-approval forthwith to the 3 Assistant Professors (name list annexed) in the petitioner college without reference to the provisions relating to the Selection of Teachers provided at paragraphs 5 and 6 of the UGC Regulations on Minimum Qualifications for Appointment of Teachers and other

Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2018 & G.O.Ms.No. 5, Higher Education (H1) Department dated 11.1.2021 (W.P.No.18315 of 2023);

(iii) a Writ of Certiorarified Mandamus to call for the records relating to the impugned orders issued by the 4th respondent University vide Letter No.A-II/JPR/UGC Regulation 2018/2021/137 dated 03.8.2021, Letter No.A-II/JPR/UGC Regulation 2018/Minority/ 2021/172 dated 06.10.2021 and vide No.A-II/JPR/Assistant Professor/ Minority College/2022/299 dated 10.11.2022, quash the same and further direct the 4th respondent - University to give qualification approval forthwith to the 23 Assistant Professors (name list annexed) in the petitioner college without reference to the provisions relating to Selection of Teachers provided at paragraphs 5 and 6 of the UGC Regulations on Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2018 & G.O.Ms.No. 5, Higher Education (H1) Department dated 11.1.2021 (WP.No.18923 of 2023);

(iv) a Writ of Certiorarified Mandamus to call for the records

relating to the impugned orders issued by the 4th respondent University vide letter No.A-II/JPR/UGC Regulation 2018/2021/137 dated 03.8.2021, letter No.A-II/JPR/UGC Regulation 2018/Minority/ 2021/172 dated 06.10.2021 and vide No.A-II/JPR/Assistant Professor/ Minority College/2022/319 dated 17.11.2022, quash the same and further direct the 4th respondent University to give qualification approval forthwith to the 35 Assistant Professors (name list annexed) in the petitioner college without reference to the provisions relating to Selection of Teachers provided at Paragraphs 5 and 6 of the UGC Regulations of Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2018 & G.O.Ms.No. 5, Higher Education (H1) Department dated 11.1.2021 (WP.No.19271 of 2023);

(v) a Writ of Certiorarified Mandamus to for the records relating to the impugned orders issued by the 4th respondent University vide Letter No.A-II/JPR/UGC Regulation 2018/2021/137 dated 03.8.2021, Letter No.A-II/JPR/UGC Regulation 2018/Minority/2021/172 dated 06.10.2021 and vide No.A-II/JPR/Assistant Professor/Minority College/ 2022/316 dated 11.11.2022, quash the same and further direct the

4th respondent University to give qualification approval forthwith to the 6 Assistant Professors (name list annexed) in the petitioner college without reference to the provisions relating to Selection of Teachers provided at Paragraphs 5 and 6 of the UGC Regulations of Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2018 & G.O.Ms.No. 5, Higher Education (H1) Department dated 11.1.2021 (WP.No.19318 of 2023);

(vi) a Writ of Certiorarified Mandamus to call for the records relating to the impugned orders issued by the 4th respondent University vide Letter No.A-II/JPR/UGC Regulation 2018/2021/137 dated 03.8.2021, Letter No.A-II/JPR/UGC Regulation 2018/Minority/ 2021/172 dated 06.10.2021 and vide No.A-II/JPR/AP/Approval/Stella Maris College/2022/053 dated 28.3.2023, quash the same and further direct the 4th respondent University to give qualification-approval forthwith to Dr.Sr.Furtado Luiza Fatima as Assistant Professor in the Department of Fine Arts in the petitioner college without reference to the provisions relating to Selection of Teachers provided at Paragraphs 5 and 6 of the UGC Regulations of Minimum Qualifications for

Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2018 & G.O.Ms.No.5, Higher Education (H1) Department dated 11.1.2021 (WP.No.19319 of 2023); and

(vii) a Writ of Mandamus directing the 4th respondent university to grant qualification approval forthwith to Dr.S.David Sounder as Principal in the petitioner college with effect from 22.6.2023 without reference to the provisions relating to Selection of Principal and Teachers provided at paragraphs VIII(A) of the UGC Regulations on Minimum Qualifications for Appointment of Principal, Teachers and other Academic staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education 2018 and G.O.Ms.No.5 Higher Education (H1) Department dated 11.1.2021 (WP.No.24801 of 2024).

For Petitioner in all the WPs	:	Mr.Isaac Mohanlal, SC for M/s.Isaac Chambers
For State	:	Mr.D.Ravichandran, SGP
For University of Madras	:	Mrs.V.Sudha, Standing Counsel

For Annamalai University : Mr.S.Sithirai Anandham, Standing Counsel

For UGC : Mr.AR.L.Sundaresan, ASGI assisted by Mr.B.Rabu Manohar, Standing Counsel

COMMON ORDER

Four autonomous colleges, which are all, admittedly, minority run institutions, have filed six writ petitions in W.P.Nos.18165, 18315, 18923, 19271, 19318 & 19319 of 2023 challenging the proceedings of the University of Madras refusing to grant approval for the appointment of 66 persons to the post of Assistant Professor.

2. One non autonomous college has filed WP.No.24801 of 2024 seeking a direction to the Annamalai University to grant approval for appointment to the post of Principal.

3. The refusal was on the ground that the selection to the posts of (a) Assistant Professor and (b) Principal, as the case may be, was not made through a properly constituted Selection Committee as

mandated under the University Grants Commission (UGC) Regulations, 2018, which were adopted by the State Government in G.O.Ms.No.5 dated 11.1.2021.

4. When W.P.Nos.18165, 19271, 19318 & 19319 of 2023 & 24801 of 2024 came up for hearing on 12.9.2024, this Court passed the following common order :

> *"Heard learned counsel appearing on either side.*
>
> *2. Writ Petition Nos.18165, 19271, 19318 & 19319 of 2023 have been filed by the educational institutions challenging the orders passed by the University refusing to approve the qualification of the Assistant Professors on the ground that the selection was made without following paragraph Nos.5 and 6 of the UGC Regulations, 2018.*
>
> *3. Writ Petition No.24801 of 2024 has been filed by an educational institution for issuance of a writ of mandamus directing the University to grant qualification approval to the Principal of the petitioner college without reference to the relevant paragraphs in the UGC Regulation.*
>
> *4. The main issue that is involved in all these five writ petitions is as to whether the fundamental right that is guaranteed to the minority institutions*

under Article 30(1) of the Constitution of India can be tampered with/interfered by way of mandating the adherence to the Regulations of UGC. The UGC Regulation dated 18.07.2018 stipulates a particular procedure to be followed in Clause 5.1(V) insofar as Assistant Professor is concerned and Clause 5.1(VIII) insofar as the Principal is concerned.

5. Before coming into force of the 2018 Regulations, the 2010 Regulations were in force. Even before that, 2000 Regulations were in force. While dealing with such a mandate that was imposed by the relevant Regulation, the Division Bench of this Court in The Forum of Minority Institutions and Associations v. The State of Tamil Nadu and others [2011 (1) CTC 162] went into the entire gamut of cases decided by the Apex Court and culled out the following principles at paragraph No.57 of the judgment:

'57. The Hon'ble Supreme Court was further pleased to lay down that extension of Regulations by the state, permissible in respect of employees of minority educational institutions receiving aid from the State could only be to:

(i) the minimum qualifications, experience and other criteria bearing on merit, for making appointments,

(ii) the service conditions of employees without interfering with the overall administrative

control by the management over the staff,

(iii) a mechanism for redressal of the grievances of the employees, (iv)the conditions for the proper utilisation of the aid by the educational institutions, without abridging or diluting the right to establish and administer educational institutions.'

6. The Division Bench ultimately directed the respondents therein to approve the selection made by the minority institutions without reference to the relevant clause in the UGC Regulations 2000 subject to the selected candidates fulfilling the other qualifications.

7. The above law spelt out by the Division Bench was subsequently followed in W.P.(MD) No.18989 of 2022 dated 29.08.2022 and W.P.(MD) No.21964 of 2021, dated 13.09.2022.

8. Learned Standing Counsel appearing on behalf of the Madras University and Annamalai University submitted that there is a difference between the earlier UGC Regulation and the present Regulation that wasbrought into force in the year 2018. It was submitted that the 2018 Regulation has now mandated that the Regulations must be followed by all Universities established under the Central Act/State Act and every institution including a Constituent or an affiliated college recognized by the UGC. In view of the

same, it was contended that the petitioner institution in all these writ petitions are bound by these Regulations and they have to necessarily satisfy the mandate prescribed under the relevant clauses in the Regulation.

9. In the considered view of this Court, the language that has been employed in the Regulations of the years 2000 and 2018 will not really change the law that has been declared by the Apex Court. Even if a mandate has been imposed by the Regulations, that will not in anyway take away the fundamental right that has been guaranteed to the minority institutions under Article 30(1) of the Constitution of India. In view of the same, such mandate imposed by the UGC Regulations will have to be necessarily read down when it comes to the minority institutions. Therefore, it is not necessary for the minority institutions to every time challenge a Regulation that is brought into force in the light of the settled law by the Apex Court in the earlier judgments reiterating the fundamental right that has been guaranteed to the minority institutions.

10. This Court was inclined to dispose of these writ petitions in the light of the law declared by the Apex Court and which was subsequently followed up by this Court consistently. However, learned Standing Counsel appearing on behalf of

the Madras University and Annamalai University submitted that this Court can get a clarification from the UGC in this regard and thereafter, pass a final order in all these writ petitions.

11. When the earlier orders were passed in W.P.(MD) Nos.21964 of 2021 and 18989 of 2022, the UGC was not a party. Therefore, in order to conclusively put an end to this issue, this Court is inclined to hear the UGC and pass final orders.

12. Mr.B.Rabu Manohar, learned Standing Counsel, shall take specific instructions in this regard and make his submissions. On hearing the learned Standing Counsel, this Court will pass final orders in all these writ petitions.

Post these writ petitions along with W.P.Nos.18315 & 18923 of 2023 under the caption 'Part Heard Cases' on 23.09.2024 at 02.15 p.m."

5. The matters were thereafter listed for hearing on 23.9.2024 and the learned Additional Solicitor General appearing on behalf of the UGC requested for some time to enable them to file a counter affidavit in these writ petitions. Accordingly, an opportunity was given to the UGC to file a counter affidavit. Further, the counter affidavits were filed on 17.10.2024.

6. When all the above writ petitions were listed for hearing on 29.10.2024, the following common order was passed by this Court :

> *"This Court has already heard the learned Senior Counsel appearing on behalf of the petitioners. These writ petitions were listed today for hearing the learned Additional Solicitor General appearing on behalf of UGC. Due to paucity of time, this Court is not in a position to hear these writ petitions.*
>
> *2. The learned counsel for the petitioners, learned Standing Counsel for UGC, learned Additional Government Pleader appearing for the Government and also the learned Standing Counsel appearing for the University submitted that they will file a joint memo before the Registry to enable me to continue hearing these cases. On such memo being filed, the Registry shall place it before my Lord the Hon'ble Chief Justice and after obtaining necessary orders, these writ petitions can be listed before me."*

7. Pursuant to the said order dated 29.10.2024, a note was prepared and placed before My Lord the Hon'ble Chief Justice and based on the administrative order passed by the Hon'ble Chief Justice,

all these writ petitions were listed for final hearing before this Court.

8. Heard the learned Senior Counsel appearing on behalf of the petitioners, the learned Special Government Pleader appearing for the State, the respective learned Standing Counsel appearing for the University of Madras and the Annamalai University and the learned Additional Solicitor General assisted by the learned Standing Counsel appearing for the UGC.

9. The grievance of the petitioner colleges is that the UGC Regulations, 2018, which were adopted by the State Government in G.O.Ms.No.5 dated 11.1.2021, cannot be put against the minority institutions by insisting for the selection process to be adopted by constituting a Selection Committee and that such insistence will violate the Fundamental Right guaranteed to the minority institutions under Article 30(1) of The Constitution of India (CoI).

10. In view of the same, the petitioners have questioned the proceedings of the University of Madras and the Annamalai University, as the case may be, refusing to grant approval for selection of candidates to the posts of (a) Assistant Professor and (b) Principal, as

the case may be and sought for a direction to the University of Madras and the Annamalai University, as the case may be, to grant approval without reference to the provisions relating to the selection of teachers as provided under Regulation No.5.1.V and VIII(A) of the UGC Regulations, 2018 and G.O.Ms.No.5 dated 11.1.2021.

11. The UGC filed a counter wherein they took a stand that the UGC Regulations, 2018 are applicable to all the institutions including minority institutions, whether aided or self financing, that for minority institutions, the Selection Committee is appointed from the list of persons suggested by the minority institutions as provided under the UGC Regulations and that they are aimed at maintaining standards in higher education as in the universities and the colleges and it does not, in any way, interfere with the Fundamental Rights guaranteed under Article 30(1) of The CoI. Accordingly, they sought for dismissal of these writ petitions.

12. The State and the Universities have taken a stand in the respective counters that no approval can be granted for the appointments made unless the selection is made in accordance with

the mandate provided under the UGC Regulations, 2018, which were adopted by the State Government in G.O.Ms.No.5 dated 11.1.2021 and that therefore, the selection made by the petitioner colleges is unsustainable. Ultimately, they also sought for dismissal of these writ petitions.

13. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the impugned orders.

14. The issue that is involved in all these writ petitions is as to whether both the UGC Regulations on Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2018 as well as the Government Order passed in G.O.Ms.No.5 dated 11.1.2021 adopting the UGC Regulations, 2018 and providing the guidelines on the selection procedure through the constitution of a Selection Committee in line with the UGC Regulations, 2018 infringe upon the Fundamental Right guaranteed under Article 30(1) of The CoI and whether they require a separate challenge by

means of a Writ of Declaration to consider this issue.

15. The incidental question that has to be addressed is as to whether the UGC Regulations, 2018 are aimed at maintaining standards in higher education in universities and colleges and therefore, do not interfere with the Rights guaranteed under Article 30(1) of The CoI.

16. The Additional Solicitor General appearing on behalf of the UGC raised a preliminary objection on the ground that the petitioners have merely challenged the decision taken by the concerned universities refusing to grant approval for appointment to the posts of (a) Assistant Professor and (b) Principal, as the case may be, on the ground that the selection process was not done through a properly constituted Committee as mandated under the UGC Regulations, 2018 and have sought for a consequential direction to the concerned universities to grant approval without reference to the UGC Regulations, 2018 as well as G.O.Ms.No.5 dated 11.1.2021 not challenging the relevant Regulations and that therefore, this Court should not go into the validity of both the UGC Regulations, 2018 as well as the said Government Order adopting the UGC Regulations,

2018 nor read down the Regulations to suit the convenience of the minority institutions.

17. To substantiate this submission, the Additional Solicitor General appearing on behalf of the UGC relied upon the judgment of the Apex Court in the case of ***Arup Bhuyan Vs. State of Assam & Another [reported in 2023 (8) SCC 745]***.

18. The Additional Solicitor General appearing on behalf of the UGC further submitted that when a Constitutional Court is called upon to test the validity of the provision or to read down a provision, to save that provision from being declared as unconstitutional, a specific relief must be sought for and an opportunity must be given to the Law Maker to defend themselves, failing which, the said exercise should not be undertaken.

19. In the light of the preliminary objection raised by the learned Additional Solicitor General appearing on behalf of the UGC, the same has to be dealt with by this Court before going into the other issues.

20. In order to deal with the preliminary objection raised, it is imperative to take note of the relevant Regulations, which dealt with the selection to the posts of (a) Assistant Professor and (b) Principal, as the case may be, and see if there is any marked difference between the earlier UGC Regulations and the UGC Regulations, 2018.

21. For a proper understanding, the relevant procedure that was provided under the UGC Regulations of the years 2000, 2010 and 2018 is extracted as hereunder :

2000	***2010***	***2018***
Process for filing up the Vacancy in the post of Assistant Professors in the college		
In the year 2000 under the UGC Guidelines, while the position of Assistant Professor was not provided, instead the role of Lecturer was mentioned.	*5.1.1 Assistant Professor in the University: (a) The Selection Committee for the post of Assistant Professor in the University shall have the following composition.* *1. The Vice Chancellor shall be the Chairperson of the Selection Committee.* *2. Three experts in the concerned subject nominated by the Vice Chancellor out of the panel of names approved by the relevant statutory body of the university concerned. 3. Dean of the concerned Faculty, wherever applicable* *4. Head/Chairperson of the Department/School.* *5. An academician nominated by the Visitor/Chancellor, wherever applicable.* *6. An academician representing SC/ST/OBC/Minority/Women/Di*	*5.1.V.* *(a) The Selection Committee for the post of Assistant Professor in Colleges, including Private and constituent Colleges shall consist of the following persons:* *i) Chairperson of the Governing Body of the college or his/her nominee from amongst the members of the Governing body, who shall be the Chairperson of the Committee.* *ii) The Principal of the College.* *iii) Head of the Department/Teacher-in charge of the subject concerned in the College.* *iv) Two nominees of the Vice-Chancellor of the affiliating university, of whom one should be a subject-expert. In case of colleges notified/ declared as a minority educational institution, two nominees of the Chairperson of*

	fferently-abled categories to be nominated by the Vice Chancellor or Acting Vice Chancellor, if any of the candidates representing these categories is the applicant and if any of the above members of the selection committee do not belong to that category. *(b) At least four members, including two outside subject experts shall constitute the quorum.* *5.1.4 Assistant Professor in Colleges including Private Colleges:* *1. Chairperson of the Governing Body of the college or his/her nominee from among the members of the Governing body to be the Chairperson of the Selection Committee.* *2. The Principal of the College.* *3. Head of the Department of the concerned subject in the College.* *4. Two nominees of the Vice Chancellor of the affiliating university of whom one should be a subject expert. In case of colleges notified/declared as minority educational institutions, two nominees of the Chairperson of the college from out of a panel of five names, preferably from minority communities, recommended by the Vice Chancellor of the affiliating university from the list of experts suggested by the relevant statutory body of the college, of whom one should be a subject expert.* *5. Two subject-experts not connected with the college to be nominated by the Chairperson of the governing body of the college out of a panel of five names*	*the college from out of a panel of five names, preferably from the minority community, recommended by the Vice-Chancellor of the affiliating university, from the list of experts suggested by the relevant statutory body of the college, of whom one should be a subject-expert.* *v) Two subject-experts not connected with the college who shall be nominated by the Chairperson of the College governing body out of a panel of five names recommended by the Vice-Chancellor from the list of subject experts approved by the relevant statutory body. of the university concerned. In case of colleges notified/declared as minority educational Institutions, two subject experts not connected with the University nominated by the Chairperson of the Governing Body of the College out of the panel of five names, preferably from the minority communities, recommended by the Vice-Chancellor from the list of subject experts approved by the relevant statutory body of the College.* *vi) An academician representing SC/ST/OBC/Minority/Women/ Differently-abled categories, if any of candidates belonging to any of these categories is the applicant, to be nominated by the Vice-Chancellor, if any of the above members of the selection committee does not belong to that category.* *(b) Five members, including two outside subject experts, shall constitute the quorum.*

	recommended by the Vice Chancellor from the list of subject experts approved by the relevant statutory body of the university concerned. In case of colleges notified/declared as minority educational Institutions, two subject experts not connected with the University to be nominated by the Chairperson of the Governing Body of the College out of the panel of five names, preferably from minority communities, recommended by the Vice Chancellor from the list of subject experts approved by the relevant statutory body of the College. *6. An academician representing SC/ST/OBC/Minority/Women/Differently-abled categories, if any of candidates representing these categories is the applicant, to be nominated by the Vice Chancellor, if any of the above members of the selection committee do not belong to that category.* *(b) To constitute the quorum for the meeting, five of which at least two must be from out of the three subject-experts shall be present.* *(c) For all levels of teaching positions in Government colleges, the State Public Services Commissions / Teacher Recruitment Boards must invite three subject experts for which the concerned University, be involved in the selection process by the State PSC.* *(d) For all levels of teaching positions in Constituent college(s) of a university, the selection committee norms shall be similar to that of the posts of departments of the university.*	

Process for filing up the Vacancy in the post of Principal in the Private colleges

3.5.0 *I. Chairperson of the Governing Board as Chairperson.* *2. One member of the Governing Board to be nominated by the Chairperson.* *3. Two Vice Chancellor's nominees, out of whom one should be an expert.* *4. Three experts consisting of the Principal of a college, a Professor and an accomplished educationist not below the rank of a professor (to be nominated by the Governing Board) out of a pane Jf experts approved by the Vice Chancellor.* *At least four members, including two experts, should constitute the quorum.* *The process of selection should involve the following* *a) Assessment of aptitude for teaching and research* *b) Ability to communicate clearly and effectively*	*5.1.6* *1. Chairperson of the Governing Body as Chairperson.* *2. Two members of the Governing Body of the college to be nominated by the Chairperson of whom one shall be an expert in academic administration.* *3. One nominee of the Vice Chancellor who shall be a Higher Education expert. In case of Colleges notified/declared as minority educational institutions, one nominee of the Chairperson of the College from out of a panel of five names, preferably from minority communities, recommended by the Vice-Chancellor of the affiliating university of whom one should be a subject expert.* *4. Three experts consisting of the Principal of a college, a Professor and an accomplished educationist not below the rank of a Professor (to be nominated by 36 the Governing Body of the college) out of a panel of six experts approved by the relevant statutory body of the university concerned.* *5. An academician representing SC/ST/OBC/Minority/Women/Differently-abled categories, if any of candidates representing these categories is the applicant, to be nominated by the Vice Chancellor, if any of the above members of the selection committee do not belong to that category.* *(b) At least five members, including two experts, should constitute the quorum.* *(c) All the selection procedures of the selection committee*	*VIII.* *(a) The Selection Committee for the post of College Principal and Professor* *shall have the following composition:* *i) Chairperson of the Governing Body to be the Chairperson.* *ii) Two members of the Governing Body of the college to be nominated by the Chairperson of whom one shall be an expert in academic administration.* *iii) Two nominees of the Vice-Chancellor who shall be Higher Education experts in the subject/field concerned out of which at least one shall be a person not connected in any manner with the affiliating University. In case of Colleges notified/declared as minority educational institutions, one nominee of the Chairperson of the College from out of a panel of five names, preferably from minority communities, recommended by the Vice-Chancellor of the affiliating university of whom one should be a subject expert.* *iv) Three Higher Education experts consisting of the Principal of them College, a Professor and an accomplished educationist not below the rank of a Professor (to be nominated by the Governing Body of the college out of a panel of six experts approved by the relevant statutory body of the university concerned).* *v) An academician representing SC/ST/OBC/Minority/Women/Differently-abled categories, if any of candidates representing these categories is the applicant, to be nominated by the Vice-Chancellor, if any of the above members of the selection committee does not belong to that category.*

c) Ability to analyze and discuss. *d) Optional: Ability to communicate may be assessed by requiring the candidate to participate in. a group discussion or by exposure to a class room situation/ lecture, wherever it is possible.*	*shall be completed on the day of the selection committee meeting itself, wherein, minutes are recorded along with the scoring proforma and recommendation made on the basis of merit with the list of selected and waitlisted candidates/Panel of names in order of merit, duly signed by all members of the selection committee.* *(d) The term of appointment of the college principal shall be FIVE years with eligibility for reappointment for one more term only after a similar selection committee process.*	*vi) Two subject-experts not connected with the college to be nominated by the Chairperson of the governing body of the college out of a panel of five names recommended by the Vice Chancellor from the list of subject experts approved by the relevant statutory body of the university concerned. In case of colleges notified/declared as minority educational institutions, two subject experts not connected with the University nominated by the Chairperson of the College governing body out of the panel of five names, preferably from minority communities, recommended by the Vice Chancellor from the list of subject experts approved by the relevant statutory body.* *(b) Five members, including two experts, shall constitute the quorum.* *(c) All the selection procedures of the selection committee shall be completed on the day/last day of the selection committee meeting itself, wherein, minutes are recorded along with the scoring Proforma and recommendation made on the basis of merit with the list of selected and wait-listed candidates/Panel of names in order of merit, duly signed by all members of the selection committee.* *(d) The term of appointment of the College Principal shall be five years, with eligibility for reappointment for one more term only after an assessment by a Committee appointed by the University as per the composition given in sub-clause (B) of 5.1 (VIII).* *(e) After the completion of his/her term as Principal, the incumbent shall join back his/her parent organization with the designation*

		as Professor and in the grade of the Professor. *B. Committee for Assessment of College Principal and Professor for Second Term* *The Committee for assessment to the post of College Principal for second term shall have the following composition:* *i) Nominee of the Vice-Chancellor of the affiliating University.* *ii) Nominee of the Chairman, University Grants Commission.* *The nominees shall be nominated from the Principals of the Colleges with Excellence/College with Potential of Excellence/Autonomous College/NAAC Grade 'A' accredited colleges.*

22. The reason for incorporating the above tabulation is to see if the UGC Regulations, 2018 have brought in any major change in the constitution of the Committee for selection to the posts of (a) Assistant Professor and (b) Principal, as the case may be. This is in view of the fact that the validity of the Regulations of the years 2000 and 2010 were gone into by a Division Bench of this Court in the case of ***the Forum of Minority Institutions and Associations Vs. State of Tamil Nadu [reported in 2011 (1) CTC 162]*** and it was ultimately declared that the constitution of a Selection Committee as provided under the impugned Regulations is not applicable to the minority

institutions and accordingly, a direction was given to the universities to approve the selection made by the minority institutions without reference to the relevant UGC Regulations subject to the selected candidates fulfilling all the other necessary qualifications and experience.

23. When the subsequent Regulations namely the Regulations, 2018 were brought into force by the UGC for constitution of a Committee for selection of candidates, if no change has been brought about in the relevant Regulations or/and more stringent Regulations are brought about in the New Regulations, it is not necessary for the minority institutions to once again challenge the New Regulations. In other words, where the law has been declared by this Court in the earlier judgment while considering the UGC Regulations of the year 2000/2010 and the subsequent Regulations issued in the year 2018 do not bring about any substantive change and/or introduce more stringent conditions, it is not necessary for the minority institutions to repeatedly keep questioning every other fresh Regulations issued by the UGC.

24. This is in view of the fact that the earlier law declared by this Court by relying upon the judgments of the Hon'ble Apex Court will equally apply to the present UGC Regulations also and therefore, it is not necessary to once again seek for a Writ of Declaration afresh in this regard.

25. What is important is to give an opportunity to the UGC before taking a decision and the said requisite has been satisfied in this case by adding the UGC as a party respondent and hearing them after they filed a detailed counter affidavit. In fact, the learned Additional Solicitor General has appeared on behalf of the UGC in this case.

26. On a careful reading of the relevant UGC Regulations, which have been captured supra, it is seen that for the post of Assistant Professor, there is no marked change in the constitution of the Selection Committee between the UGC Regulations of the years 2010 and 2018. In so far as the post of Principal is concerned, the UGC Regulations, 2018 have brought in a more stringent selection process whereby out of 10 members (11 members, if Clause (v) is also added),

only three are insiders and all the rest are nominees recommended by the Vice Chancellor and majority of them are outsiders. Therefore, the same test that was applied by the Division Bench in the earlier judgment will be applicable while examining the constitution of the Selection Committee for the post of Principal of the college.

27. Article 30(1) of The CoI gives the linguistic or religious minorities the following two rights namely :

(a) the right to establish and

(b) the right to administer educational institutions of their choice.

28. The real import of Articles 29(2) and 30(1) of The CoI is that they contemplate a minority institution with a sprinkle of outsiders admitted into it. In other words, by admitting a non member into it, the minority institution does not shed its character and cease to be a minority institution. In the case in hand, the two terms employed under Article 30(1) assume a lot of significance. They are (i) "***administer***"; and (ii) "***establish***" and these two terms must be read conjunctively.

29. Article 30(1) of The CoI postulates that the religious community will have the right to establish and administer educational institutions of their choice meaning thereby that where a religious minority establishes an educational institution, it will have the right to administer that. The right to administer has been given to the minority so that it can mould the institution as it thinks fit and in accordance with its ideals of how the interest of the community, in general, and the institution, in particular, will be best served. Article 30(1) is intended to instil confidence in minorities against any executive or legislative encroachment of their right to establish and administer educational institutions of their choice. Even though Article 30(1) is styled as a right, it is more in the nature of protection for minorities.

30. Having understood the purport of Article 30(1) of The CoI, this Court can straight away go into the earlier judgment of the Division Bench of this Court in the case of ***the Forum of Minority Institutions and Associations*** wherein, after taking note of the earlier judgments of the Hon'ble Apex Court in the cases of

(a) ***In Re : The Kerala Education Bill, 1957 [reported in AIR 1958 SC 956],***

(b) ***Kesavananda Bharati Sripadagalvaru Vs. State of Kerala [reported in 1973 (4) SCC 225],***

(c) ***The Ahmedabad St.Xaviers College Society & Another Vs. State Of Gujarat & Another [reported in 1974 (1) SCC 717]***;

(d) ***T.M.A. Pai Foundation Vs. State of Karnataka [reported in 2002 (8) SCC 481]***

and

(e) ***P.A. Inamdar & Others Vs. State Of Maharashtra & Others [reported in 2005 (6) SCC 537],***

it has been held as follows :

> *"57. The Hon'ble Supreme Court was further pleased to lay down that extension of Regulations by the state, permissible in respect of employees of minority educational institutions receiving aid from the State could only be to:*
>
> *(i) the minimum qualifications, experience and other criteria bearing on merit, for making appointments,*

(ii) the service conditions of employees without interfering with the overall administrative control by the management over the staff,

(iii) a mechanism for redressal of the grievances of the employees,

(iv) the conditions for the proper utilisation of the aid by the educational institutions, without abridging or diluting the right to establish and administer educational institutions.

All laws made by the State to regulate the administration of educational institutions and grant of aid will apply to minority educational institutions also. But if any such Regulations interfere with the overall administrative control by the management over the staff, or abridges/dilutes, in any other manner, the right to establish and administer educational institutions, such Regulations, to that extent, will be inapplicable to Minority Institutions.

…….

59. Thus, a reading of these judgments would show that right of Minority Institutions to select candidates of their own choice by regulating their process of selection is upheld by the Hon'ble Supreme Court.

60. In view of the settled proposition of law, the contention of learned Counsel for the University Grants Commission that by way of amendment of Regulations, independence has been given to the

Minority Institutions to select their own people without outside interference, as the right of appointment of teachers out of qualified teachers is to be left to the Minority Institutions alone cannot be accepted, as the process of selection of teachers cannot regulated, as it would amount to interference in administration of Minority Institutions.

61. The contention of the learned Counsel for the Respondents that Regulations are in public interest to maintain standard of education also cannot be accepted as the appointment of qualified teachers as per the qualification prescribed by the University Grants Commission by the Minority Institutions cannot be said to violate the public interest, nor it can be said that the educational standard would not be maintained.

62. The right of Minority Institutions under Article 30 is absolute right being basic structure of the Constitution and therefore, any regulation interfering with the right of administration would not be applicable to the Minority Institutions, being violative of Article 30(1) of the Constitution.

63. The contention that right to administer does not include right to maladministration also cannot be accepted as the Minority Institutions would be bound by qualification laid down for appointment of teachers and also would be bound

to follow other statutory laws necessary for running their institutions to maintain educational standard. The only restriction placed is with regard to the right to interfere in the selection of staff of the Minority Institutions.

64. Once the right of appointment of teachers is taken to be the right of administration, which is not even disputed by the Respondents, no other conclusion than the one that the impugned Regulations would not apply to Minority Institutions can be arrived at."

31. The Division Bench of this Court found that the UGC Regulations, 2000 and the subsequent Regulations, 2010 interfered with the rights of administration of the minority institutions by imposing certain conditions in the constitution of the Selection Committee and that the same is violative of Article 30(1) of The CoI. The Division Bench also held that once the right of appointment of teachers is taken to be the right of administration, the impugned guidelines would not apply to the minority institutions. Thus, the Division Bench directed the respondents to approve the selection made by the minority institutions without reference to the relevant UGC Regulations.

32. The law laid down by the Division Bench of this Court was based on the earlier judgments of the Hon'ble Supreme Court on this issue. It operates till date and it has not been changed or modified or reversed. Therefore, the judgment of the Division Bench of this Court will govern the field and as a Single Judge, this Court is bound by the same.

33. In the light of the above discussions, this Court holds that the minority institutions need not repeatedly challenge the UGC Regulations as and when the New Regulations are brought forth unless a substantive change has been brought about in the New Regulations, which is not the case in hand. Therefore, the applicability of the selection process prescribed in the UGC Regulations, 2018 can be tested in the anvil of the earlier judgment of the Division Bench of this Court in the case of ***the Forum of Minority Institutions and Associations.*** Thus, the preliminary objection raised by the learned Additional Solicitor General is rejected.

34. The subsequent judgments of the Hon’ble Apex Court that were brought to the notice of this Court in the cases of

(a) SK.Md.Rafique Vs. Management Committee Contai Rahamania High Madrasah & Others [reported in 2020 (6) SCC 689],

(b) Chandana Das Vs. State of West Bengal [reported in 2020 (13) SCC 411] and

(c) Meher Fatima Hussain Vs. Jamia Milia Islamia & Others [reported in 2024 SCC OnLine SC 536],

need not be gone into since even they tested the concerned provisions/regulations of other States based on the earlier judgments of the Supreme Court referred supra at para 30.

35. The relevant UGC Regulations that have been captured in the above tabulation involving the selection to the posts of (a) Assistant Professor and (b) Principal of a college, as the case may be, by applying the same to a minority institution, directly interfere with the overall administrative control by the management, which dilute/ abridge the right to establish and administer educational institutions

guaranteed to the minority institutions.

36. The Division Bench of this Court, in the case of ***the Forum of Minority Institutions and Associations***, in paragraph 57 of the judgment, summarized the extent, to which, the State can lay down the Regulations in respect of employees of the minority educational institutions. The reasoning given by the Division Bench in so far as the non applicability of the selection process to the post of Assistant Professor in the minority institutions is concerned, by considering the UGC Regulations, 2010, will equally apply under the UGC Regulations, 2018 since it is almost the same procedure that has been prescribed in the constitution of the Selection Committee.

37. In so far as the post of Principal of a college is concerned, the constitution of the Selection Committee is even more stringent and it clearly brings in a lot of outsiders into the Selection Committee, who are recommended by the Vice Chancellor and it virtually infringes upon the Constitutional protection guaranteed to the minority institutions. It does not really matter if a few of those outsiders belong to some minority communities. It also dilutes the rights of the minority

institutions to administer and manage their affairs. Hence, the same reasoning that was given by the Division Bench of this Court will apply to the Selection Committee that is contemplated under the UGC Regulations, 2018 also.

38. In view of the above, both the UGC Regulations on Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2018 as well as the Government Order passed in G.O.Ms.No.5 dated 11.1.2021 adopting the UGC Regulations, 2018 and providing the guidelines on the selection procedure through the constitution of a Selection Committee in line with the UGC Regulations, 2018 infringe upon the Fundamental Right guaranteed under Article 30(1) of The CoI and that they do not require a separate challenge by means of a Writ of Declaration to consider this issue. As a consequence, this Court holds that the UGC Regulations, 2018 will not apply to the minority institutions. The issue is answered accordingly

39. In the considered view of this Court, the impugned proceedings of both the Universities refusing to grant approval for

appointment are only based on the relevant UGC Regulations that stipulate the constitution of the Selection Committee in a particular manner, which has been held by this Court to infringe upon the rights of the minority institutions. Therefore, once this Court holds that the UGC Regulations, 2018 will not apply to the minority institutions, the reasoning given by the both the Universities denying approval for the appointment to the posts of (a) Assistant Professor and (b) Principal of the college, as the case may be, must also fail. The Government Order issued by the State Government in G.O.Ms.No.5 dated 11.1.2021 is nothing but an adoption of the UGC Regulations, 2018 and the constitution of the Selection Committee provided under this Government Order is only an extract of what is provided under the UGC Regulations, 2018. Ex consequenti, the relevant Government Order providing for such constitution of the Selection Committee also will not stand.

40. The dawn of India's independence heralded a profound commitment to safeguarding the rights of minorities, instilling a sense of security amid apprehensions about their future in a newly sovereign nation. The Constitution of India, a beacon of hope, enshrined these

assurances, particularly through Article 30(1), which guarantees minorities the right to establish and administer educational institutions of their choice. This provision was not merely a legal formality. It was a promise made by the framers to protect the cultural and educational identities of minority communities. In instances where these rights are threatened, it is imperative that Constitutional Courts intervene decisively to reaffirm this commitment ensuring that the foundational ideals of justice and equality are upheld. The Judiciary must recognize its pivotal role in restoring confidence among minorities, acting as a guardian of the rights that were pledged to them, thus reinforcing the very essence of India's democratic ethos and its dedication to unity in diversity.

41. In the upshot, the writ petitions are allowed and the impugned orders passed by both the University of Madras and the Annamalai University, as the case may be, are hereby quashed. This Court directs both the University of Madras and the Annamalai University to grant approval to the selection made by the petitioners to the posts of (a) Assistant Professor and (b) Principal, as the case may be, without reference to (i) Regulation No.5.1.V and VIII(A) of the UGC

Regulations, 2018 on Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2018 and (ii) the Government Order passed in G.O.Ms.No.5 dated 11.1.2021 adopting the UGC Regulations, 2018, ***subject to the selected candidates fulfilling the other qualifications, experience, etc.*** Necessary orders shall be passed by both the University of Madras and the Annamalai University, as the case may be, within a period of four weeks from the date of receipt of a copy of this order. It goes without saying that on such approval being granted, the respective candidates will be entitled to fixation of salary applicable to the respective posts and arrears of salary from the respective date of their appointment. No costs. Consequently, the connected WMPs are closed.

27.3.2025

Index : Yes
Neutral Citation : Yes

To
1.The State of Tamil Nadu, rep.
by its Secretary, Department
of Higher Education, Fort St.
George, Chennai-9.

2.The Director of Collegiate
Education, Anna Salai,
Saidapet, Chennai-15.

3.The Regional Joint Director
of Collegiate Education,
Chennai Region, Chennai-15.

4.The Joint Director of Collegiate
Education, Vellore Region,
Vellore District-635006.

5.The University of Madras,
rep.by its Registrar,
Chepauk, Chennai-5.

6.The Annamalai University,
rep.by its Registrar,
Annamalai Nagar,
Chidambaram, Cuddalore
District-608002.

7.The University Grants
Commission, rep.by its
Secretary, Bahadur Shah
Zafar Marg, New Delhi
110002.

RS

N.ANAND VENKATESH,J

RS

W.P.No.18165 of 2023
etc. cases

27.3.2025