

(2011) 03 MAD CK 0174

In the Madras High Court

Case No : Writ Petition No. 8831 of 2007

A. Waheeda Begam

APPELLANT

Vs

Director of School Education, Chief Educational Officer,
District Educational Officer and Secretary H.P.F. High School

RESPONDENT

Date of Decision : 14-03-2011

Acts Referred:

Citation : (2011) 03 MAD CK 0174

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : C. Selvaraju for S. Mani, for the Appellant; Dhakshayani Reddy, Government Advocate for R1 to R3 and C.S. Dhanasekaran, for R4, for the Respondent

Final Decision : Allowed

Judgement

P. Jyothimani, J.—The Petitioner was appointed as a Junior Assistant in the fourth Respondent school, which was originally a middle school

and subsequently upgraded as a high school from the academic year 1984-85, in the sanctioned vacancy as per G.O. Ms. No. 1088, Education

Department dated 20.8.84. Based on the said Government Order, the fourth Respondent school, which was having the students strength of 250,

was eligible for one post of Junior Assistant and it was in that post, the fourth Respondent management has appointed the Petitioner. After the

appointment, the fourth Respondent management has made representations to the educational authorities for approving the appointment and the

third Respondent, to whom the application was made, has forwarded the papers to the second Respondent who, in his turn, has forwarded the

same to the first Respondent, the Director of School Education. Initially the first

Respondent has taken a stand that the salary was being paid by the fourth Respondent management and therefore approval is not required. However, on the representation made by the fourth Respondent management for approval of appointment from the original date of appointment, certain particulars were called for. Since no order was passed, earlier the Petitioner approached this Court by filing W.P. No. 36652 of 2006 and this Court by order dated 28.9.2006 has directed the Respondents to consider the proposal sent by the fourth Respondent dated 10.11.2005. It was thereafter the first Respondent has passed the impugned order dated 11.12.2006 rejecting the claim of the management for approval of appointment of the Petitioner as Junior Assistant on two grounds, namely, that the Petitioner was not appointed by sponsorship from the employment exchange and while appointing the Petitioner, roster has not been followed. Admittedly, the post of Junior Assistant in the fourth Respondent school is only one post. If the cadre is consisting of only one post, there is no question of reservation. It is well settled that in a single post cadre, the reservation principle is not applicable. That was also reiterated by the Hon'ble Apex Court in the judgment in S.R. Murthy Vs. State of Karnataka and Others, , wherein the Apex Court, while following a Constitution Bench decision in Post Graduate Institute of Medical Education and Research, Chandigarh Vs. Faculty Association and Others, , has held as follows:

3. The Constitution Bench of this Court in the case of Post Graduate Institute of Medical Education and Research v. Faculty Assn., has held, after discussing all decisions on this question, that:

34. In a single post cadre, reservation at any point of time on account of rotation of roster is bound to bring about a situation where such a single post in the cadre will be kept reserved exclusively for the members of the backward classes and in total exclusion of the general members of the public. Such total exclusion of general members of the public and cent per cent reservation for the backward classes is not permitted within the constitutional framework.

4. In the light of this ratio since the post in question was a single post, the application of the roster for the purpose of promotion was not permissible.

2. As far as the other aspect based on which the impugned order has been passed by the first Respondent, namely, that the Petitioner's

appointment was not sponsored through employment exchange is concerned, while referring to the Tamil Nadu Recognised Private Schools

Regulation Act and the Rules made there under, the Hon'ble First Bench of this Court in the decision in *The State of Tamil Nadu rep. by its*

Commissioner and Secretary to Government, Education Department, Fort St. George, Madras-9 and Ors. v. The Tamil Nadu Recognised Private

Schools Managers Association rep. by its Joint Secretary Pulavar R. Palanisamy and Ors. 1995 Writ L.R. 499, has held that in case where the

appointment has been made long ago and the incumbent has been functioning, such appointment cannot be found fault with, unless there is a fault

on the part of the appointee who has made either misrepresentation and so on. It was further held that simply because the appointment was made

from the open market and not from sponsorship through employment exchange, the appointment cannot be set aside. The Division Bench has held

as follows:

20. We see merit in this submission. These writ petitions have been pending for the last several years. There has been an interim order passed in

these writ petitions. As a result thereof, recruitments have been made by private educational institutions, without going through Employment

Exchanges. The appointees cannot be considered to be at fault, therefore they should not be made to suffer. Hence, we are of the view that the

appointments so far made upto this day should not be affected by this decision or by the impugned Government Orders and the approval sought

for by private educational institutions in respect of appointment already made, shall be considered on merits and without reference to the fact that

such appointments have been made from open market and not from the candidates sponsored by Employment Exchanges.

3. In fact, a Full Bench of this Court in the decision in *R. Sivakumari v. Ramanathapuram Mavatta Payirchipetra Edainilai Asiriyargal Sangam,*

(2007) 6 MLJ 1583, following the judgment of the Apex Court in *Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N.*

Visweshwara Rao and Others, , has held that sponsorship through employment exchange is only one of the sources and cannot be held to be an

exclusive source for the appointing authority, which is entitled to invite large number of people from outside by publication also. N. Paul

Vasanthakumar, J., in a recent judgment in P. Nageswaran, Madurai District v. District Elementary Educational Officer, Madurai and Anr. (2008)

1 MLJ 1332, while eliciting the said Full Bench judgment, has held as follows:

5. The learned Counsel further submits that the matter in issue is covered by the judgment of Division Bench of this Court in W.A. No. 696 of

1998 dated 12.11.2002 and a Full Bench of this Court in R. Sivakumari v. Ramanathapuram Mavatta Payirchipetra Edainilai Asiriyargal Sangam

(2007) 6 MLJ 1583 : 2007 (5) CTC 561. In the said judgments, the Division Bench as well as the Full Bench, following the judgment of the

Supreme Court in Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others, , held that the

sponsorship through employment office can be a source and not an exclusive source and the Appointing Authorities are empowered to invite

applications through Paper Publication and other modes and if appointments are made by giving opportunity to all the candidates to apply, the

same is permissible appointments are bound to be approved.

4. In view of such categorical legal position, there is absolutely no difficulty to conclude that the reasons assigned by the first Respondent in not

approving the appointment of the Petitioner in the fourth Respondent school as Junior Assistant from the date of her appointment are not

sustainable in law. Accordingly, the impugned order stands set aside with a direction to the first Respondent to pass appropriate orders as to the

appointment of the Petitioner as Junior Assistant in the fourth Respondent school from the date of her appointment subject to fulfilment of eligibility

norms and after verifying that it is within the sanctioned strength. Such orders shall be passed by the first Respondent within a period of four weeks

from the date of receipt of a copy of this order. The writ petition stands allowed. Consequently, M.P. No. 1 of 2007 is closed. No costs.