

(2002) 08 MAD CK 0055

In the Madras High Court

Case No : Writ Petition No. 9708 of 1995

B. Thirunavukkarasu

APPELLANT

Vs

The District Collector and Chattram Administrator-cum-President, Rajah's Higher Secondary School Committee, Thanjavur, The Rajah's Higher Secondary School, R. Paneerselvam and K. Selvaraj

RESPONDENT

Date of Decision : 08-08-2002

Acts Referred:

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 17, 18
Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 — Rule 14

Citation : (2002) 08 MAD CK 0055

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Single Bench

Advocate : K. Chandru, for G. Jeremiah, for the Appellant; R. Muthukumaraswamy, for S. Kasirajan, for respondents 1 and 2, V. Velumani, Addl. Govt. Pleader for respondent 3rd and V. Venkataswamy for respondent 4th., for the Respondent

Judgement

K.P. Sivasubramaniam, J.—This writ petition has been filed by a Selection Grade P.G. Assistant in the second respondent School.

According to him, he possesses M.A.,M.Ed.qualification and he was initially appointed on 1.12.1972 as a B.T.Assistant. He was promoted as

P.G.Assistant on 7.12.1984 and he continues to hold the post of P.G.Assistant. The second respondent school is an aided private institution

governed by the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, (hereinafter called ""the Act""). On 30.6.1994,

the post of Headmaster of the School s fell vacant due to the superannuation of the previous incumbent. He was fully qualified for the said post. He

applied for the said post. Though the post fell vacant on 30.6.1994, no process

was initiated for filling up the vacancy. All of a sudden a meeting of the School Committee was called for on 24.3.1995 to consider the appointment of Headmaster. The School Committee which was duly constituted met on 24.3.1995 and resolved to constitute a sub-Committee to interview the three candidates who had applied for the post of Head Master. The School Committee had directed the Sub-committee to recommend the appointment of Headmaster on the basis of merit and ability of the candidates. The candidates were initially informed that an interview would be conducted on 7.4.1995 and subsequently it was cancelled and that they were called to appear on 17.4.1995 for verification of the original certificates. On 17.4.1995 when he appeared before the Sub-Committee and produced the certificates, no interview was conducted nor any question was put to him. The Sub-Committee consisted of only one person namely, P.A. to the Chief Educational Officer, Thanjavur, who was not a member of the School Committee. Therefore, it was not a properly constituted School Committee. On the basis of the recommendations of the Sub-Committee, the second respondent had appointed the fourth respondent on his own accord without even placing the recommendations of the Sub-Committee before the entire School Committee. Therefore, the entire action of the respondents in appointing the fourth respondent was contrary to the provisions of the Act and Rules. Though the petitioner had forwarded representations there was no proper response from the respondents. The petitioner would further state that although Rule 15(4A) provides a remedy by way of appeal, the same was not efficacious for the reasons that the impugned order was passed in violation of the Rules and that the Appellate Authority was subordinate in service to the first respondent.

2. In the counter of the first respondent, it is contended that the fourth respondent was a directly appointed P.G.Assistant with effect from 21.10.1990 with total service of 13 years and the fifth respondent was also appointed as P.G.Assistant on 9.2.1983 with total service of 11 years. The petitioner was promoted as P.G.Assistant only on 7.12.1984 with a total service of nine years and as such the petitioner was the junior-most among the three candidates and the fourth respondent, who was senior-most among the three candidates, was selected. The constitution of the

Sub-Committee was quite legal consisting of two persons namely, P.A. to the District Collector, P.G. Assistant representing the School Committee and third one P.A. to the Chief Educational Officer, Thanjavur. Though the last one was not one of the members of the School Committee, he was brought into Sub-Committee so as to verify and clarify different Rules and proceedings of the Education Department. An interview was conducted and questions were put to all the candidates and certificates of each candidate were duly scrutinised. It was not correct to state that the recommendation of the Sub-Committee was not placed before the School Committee. Following the recommendations, the same was submitted to the School Committee and orders were obtained by circulation. The selection report was also circulated among the members of the School Committee for their acceptance and the same was approved by the majority of the members of the School Committee. Only on the approval by the School Committee, orders appointing the fourth respondent were issued. Therefore, the procedure of appointment was fully satisfied by the Rules and Regulations.

3. In the counter, reasons have also been given for choosing the fourth respondent which are as follows:-

(1) He has worked as Assistant Headmaster for nearly 3 years and Headmaster (incharge) for nearly 10 months in an efficient manner.

(2) He has passed Account Test for Executive Officers which is considered as additional qualification.

(3) He has served as Parent Teacher Association Treasurer.

(4) He has arranged for cultural programme during VIII World Tamil Conference and got appreciation letter from the District Revenue Officer,

Chief Educational Officer and Commissioner, Thanjavur Municipality.

(5) He has taken part in Arivoli Iyakkam.

(6) Participated in World Aids awareness day.

(7) Worked as Chief Superintendent of Examination.

(8) Obtained satisfactory report in the Audit and in the Inspection report by Chief Educational Officer.

(9) Merit and ability certificate from previous two school secretaries, two Headmasters, Vice-Chancellor, M.P. and M.L.A.

4. In the counter filed on behalf of the third respondent also, the very same pleadings have been stated.

5. In the counter of the fourth respondent, selected candidate, he has contended that he was the senior-most among the three candidates whose

claims were considered by the School Committee. He would also contend that the constitution of the sub-committee was justified and there was

no illegality. There was proper delegation by the School Committee in favour of the sub-committee and the recommendation of the sub-Committee

was duly considered by the School Committee and there was no error in the procedure thus adopted.

6. Mr.K.Chandru, learned Senior Counsel appearing for the petitioner, raised the following points:-

(i) In terms of the provisions under the Act and Rules the appointment can be made only by the School Committee and u/s 18 of the Act, it is only

the Committee which was endowed with the powers to carry out the functions enlisted thereunder which includes the power to appoint teachers

and other employees.

(ii) Admittedly, one of the members of the Sub-Committee was a stranger namely, Personal Assistant to the Chief Educational Officer, Thanjavur.

Even if a Sub Committee could be constituted, no stranger can be inducted.

(iii) The procedure of obtaining an approval by circulating the resolution is ultra vires of the provisions of the Act and in this context, learned senior

counsel relies on the judgment of E.Padmanabhan,J. in RANGANATHAN, C. v. THE PRESIDENT/SECRETARY OF SCHOOL

COMMITTEE, ETC. & ANOTHER 1997 W.L.R., 489. He would further submit that the process adopted by the respondents was totally illegal

and a perusal of the counter itself would disclose that there were certain other extraneous pressures in choosing the fourth respondent on the

recommendation of the local M.L.A. and M.P. This had become possible only because of the adoption of unusual procedure of constituting a Sub-

Committee and obtaining orders on circulation.

7. Mr.R.Muthukumaraswamy, learned Senior counsel appearing for the official respondent as well as the School, would contend that there was no

illegality in the delegation of the process of selection to a properly constituted sub-committee. The decision to entrust the process of selection to the

Sub-Committee was taken by the School Committee itself. Learned Senior counsel would also submit that there was nothing wrong in a third person having taken part in the selection process.

8. In this context, learned Senior counsel would refer to Section 17 of the Act which is to the effect that the School Committee shall meet and observe such rules of procedure in regard to the transaction of business at its meeting as may be prescribed. Therefore, the delegation of the function of interviewing the candidates to a Sub-Committee was within the powers of the School Committee. He would also draw a comparison to the usual process of appointing Enquiry Officers whenever disciplinary proceedings are initiated against the employees. On the strength of the said analogy, learned Senior counsel would contend that the involvement of a third person or seeking the assistance of a third person cannot vitiate the entire proceedings, so long as the ultimate decision is taken by the School Committee.

9. As regards the orders obtained by circulating files, learned Senior Counsel contends that the decision of E.Padmanabhan,J. as aforesaid will not apply as the said case related to a disciplinary proceeding and not selection and appointment of a Head Master. Therefore, the said ruling will not apply to the facts of the present case.

10.I have also heard learned counsel for the fourth respondent who would submit that the fourth respondent was the seniormost person and as such his selection was perfectly justified. It was open to the School Committee to assess the comparative merits and the decision of the competent authority to devise the process of selection cannot be questioned before the Court.

11. I have considered the submissions of both sides. As far as the constitution of the Sub-Committee is concerned, I am inclined to accept the contention raised on behalf of the respondents considering that u/s 17 of the Act, the School Committee was free to evolve its own procedure. For the same reason, I am also unable to conclude that there was any illegality in seeking the assistance of an outsider as one of the members of the Sub-Committee. It is stated that his assistance was utilised so as to be fully conversant with the Rules and Regulations. As long as the ultimate decision is properly taken by the School Committee, the mere fact that functions

of the selection process was left to a Sub-Committee cannot result in vitiating the entire proceedings. The function of the Sub-Committee, was only to evaluate and place their recommendation for consideration by the School Committee.

12. However, I am unable to sustain the action of the respondents in having obtained orders on circulation. A perusal of Section 18 of the Act as

well as Rule 14 of the Tamil Nadu Private Schools (Regulations) Rules, 1974 reveals that they do not contemplate decisions of the School

Committee being taken by circulation of files. While Section 18 states that the School Committee shall be the responsible body for the educational

agency and is authorised to carry out the functions enlisted therein, Rule 14 of the Rules deals with the Meeting of the School Committee. In terms

of the said Rule, meetings shall be conducted after giving at least seven days clear notice in writing and at least 50 per cent of the total members of

the committee are present. No other process of the School Committee for taking a decision and that too by circulation of files is contemplated

under the Rules. This issue has been dealt with by E.Padmanabhan,J. in the aforesaid judgment and held that there was no provision which would

enable the institution to get a resolution passed by the School Committee by circulation. The School Committee being the creature of the statute

has to act according to the Rules and it cannot act in a different manner.

13. Apart from the aforesaid reason, it has to be borne in mind that the very purpose of convening of the meeting of the School Committee is to

have a proper discussion on the pros and cons of the issues to be deliberated by the School Committee. In contrast, circulation of files will not

justify the required democratic manner of functioning of the Committee, in the absence of proper discussion among the members and

communication of the objections or reasons to support or to oppose a resolution. In the present case, it is also seen that certain officials have been

casting a shadow on the independence of the School Committee. Apart from the fact that the decision was taken by a Sub-Committee consisting

of a stranger, recommendations of a Member of Parliament and a Member of Legislative Assembly also appears to have weighed with the

recommendations of the Sub-Committee. This fact is admitted in the counter itself and reliance is placed on the recommendations of the Vice-

Chancellor, Member of Parliament, Member of Legislative Assembly in favour of the fourth respondent. These features are totally unwarranted

and would vitiate the proceedings. These features assume importance, especially in the context of obtaining views of the members of the School

Committee by circulation of files. The School Committee has to independently apply its mind in a collective manner and without being constrained

by any restriction, should be able to take the decision after due discussions, which is totally absent in the present case. Though the constitution of

the Sub-Committee by itself may not be illegal, the manner in which the school Committee had dealt with the matter, reveals that the School

Committee appears to have abandoned its powers very probably due to the presence of officials in the Sub-Committee and the recommendations

in favour of the fourth respondent by extraneous sources.

14. Therefore, the petitioner is entitled to succeed on the ground that the ultimate decision taken by the School Committee by not following the

procedure contemplated under Rule 14, is violative of the provisions of the Act and Rules and hence, cannot be sustained.

15. In the result, the petitioner is entitled to succeed. However, this Court cannot direct the appointment of the petitioner automatically on setting

aside the impugned selection of the fourth respondent. There has to be a proper assessment of merits of all the candidates by a properly

constituted School Committee in terms of the provisions of the Act and Rules. Therefore, while setting aside the order of appointment of the fourth

respondent, the respondents are directed to forthwith convene the School Committee meeting and to issue fresh orders after calling for a meeting

of the School Committee. The School Committee is directed to convene a meeting for the said purpose and pass appropriate orders within a

period of 30 days from the date of receipt of copy of this order. The writ petition is ordered accordingly. No costs.