

(2011) 12 MAD CK 0249
In the Madras High Court
Case No : Writ Petition (MD) No. 2440 of 2011

C. Shanthi

APPELLANT

Vs

The District Educational Officer, Tenkasi, The Joint Director of School Education, DPI Campus, College Road, Chennai-600 006 and The Secretary, Meenakshi Sundaram Memorial Higher Secondary School, Idaikal-627 804 Tirunelveli District

RESPONDENT

Date of Decision : 21-12-2011

Acts Referred:

Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 — Rule 15(7), 15(9)

Citation : (2011) 12 MAD CK 0249

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : V. Ramajagadeesan, for the Appellant; M. Govindan, Special Government Pleader for Respondents 1 and 2 and Mr. S. Chellam, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice K. Chandru

1. The petitioner has filed the present Writ Petition seeking for a direction to approve her appointment in the post of B.T. Assistant (History) in the third respondent school.
2. In the Writ Petition, notice of motion was ordered on 02.03.2011. On notice from this Court, the first respondent, the District Educational Officer, Tenkasi has filed a counter-affidavit dated 12.03.2011. The third respondent school has also filed a counter-affidavit dated- Nil (December, 2011) together with the supporting documents.
3. It is not clear as to why the petitioner's school did not file any Writ Petition seeking for approval for the appointment made in favour of the petitioner and it had driven the petitioner for getting a direction from this Court for grant of

approval. Such a plea at the hands of a teacher cannot be entertained, as in such matters, it is only the school, which can be said to be an aggrieved party and who will locus standi to question the actions of the department. In any event, it must be noted that the third respondent school is an Aided Private School governed by the provisions of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 and the 1974 Rules framed thereunder. Admittedly, it is not a minority school.

4. It is seen from the records that the post of B.T. Assistant (History) became vacant in the third respondent school. Therefore, they requested the District Employment Office, Tirunelveli to forward the names of qualified candidates belonging to Scheduled Castes Arunthathiyar community [for short "SCA Community"]. The District Employment Office, Tirunelveli, by a covering letter dated 07.10.2009, forwarded the names of three candidates by name A. Murugan, P. Mathivathanan and J. Sundari and all of them belonged to the same District. The third respondent School Management asked those candidates to appear for an interview. The so-called Selection Committee conducted an interview and awarded marks.

5. Since the third respondent was not satisfied with the list sent by the District Employment Office, they made another requisition to the District Employment Officer on 21.11.2009. The District Employment Officer sponsored the names of five Scheduled Castes candidates. Apart from the requisition from the District Employment Office, it transpires that the third respondent school has also given an advertisement in the Tamil Newspaper "Dinamalar" dated 12.01.2010 and considered the names of those candidates also. In the advertisement published both on 06.11.2009 and 12.01.2010, the third respondent school merely stated that the Scheduled Castes candidates can apply, but preference will be given to Arunthathiyar community within the Scheduled Castes. Therefore, it cannot be said that it was an advertisement exclusively meant for the SCA Candidates for filling up the post. First time, when the third respondent conducted an interview, it was done along with three employment exchange candidates and three other candidates, who had applied pursuant to the advertisement.

6. It is significant to note that the petitioner was not an applicant, pursuant to the advertisement made on 06.11.2009 but only pursuant to the advertisement dated 12.01.2010, she had applied. In the second interview held by the third respondent, out of five names sponsored by the Employment Exchange [one person by name A. Sujatha had absented herself] along with four candidates, the Management interviewed five other candidates including the petitioner.

7. It is the case of the third respondent Management that the petitioner had secured 52.5 marks, whereas the candidate sponsored by the District Employment Office, by name K. Subbuthai had secured 51.6 marks. The third respondent had volunteered to furnish the interview marks given at the time of interview held on 30.01.2010. Marks were given under different heads. It is necessary to extract the same in respect of the petitioner, who was an applicant,

pursuant to the advertisement dated 12.01.2010 and K. Subbuthai whose name was sponsored by the Employment Exchange, which is as follows:

S. No.

NAME

CERTIF I-CATE VERIFI-CATION (30)

SUBJECT VIVA (20)

GK (10)

PERSONA-LITY TEST (10)

TEACH -ING EFFICI ENCY (30)

TOTAL (100)

1

SUBBUTHAI.K.

21

16

1

1

12.6

51.6

2

OMITTED

3

OMITTED

4

OMITTED

5

OMITTED

6

OMITTED

7

OMITTED

8

OMITTED

9

SHANTHI.C.

6

18

4

4

20.5

52.5

8. The third respondent Management claims that based upon the Selection Committee's recommendation, the petitioner was appointed on 01.02.2010 and her name was sent for approval. However, by an order dated 15.11.2010, the proposal for approval was returned by the District Educational Officer, Tenkasi, the first respondent stating that the appointment was contrary to G.O.Ms.No.65, Personnel and Administrative Reforms (K) Department, dated 27.05.2009. It was the case of the School Management that reliance placed upon G.O.Ms.No.65, Personnel and Administrative Reforms (K) Department, dated 27.05.2009 was unconstitutional and it was claimed that If SCA candidate is not available, the post can be filled up by SC candidate and since the petitioner belonged to Scheduled Caste, there was no illegality in the appointment made. A reference was also made to G.O.Ms.No.61, Adi Dravidar and Tribal Welfare (TD2) Department, dated 29.05.2009, wherein it is stated that the seats to be allotted to Arunthathiyars on preferential basis shall be offered on a horizontal rotation, viz., 2nd, 32nd and 66th places. The preferential seats if filled up, it does not mean that the other qualified Arunthathiyars cannot compete with the rest of the Scheduled Castes members on inter-se merit basis. Thereafter, the Government Order stated that the vice versa was also valid, viz., that if no qualified Arunthathiyars are available to fill up the preferential seats, it did not mean that the vacancies arose shall not be filled up with the Scheduled Castes members on merit basis.

9. While the first portion of the rule framed under G.O.Ms.No.61, Adi Dravidar and Tribal Welfare (TD2) Department, dated 29.05.2009 may be valid, but it cannot be said about the second portion viz., the vacancy meant for SCA will go to other Scheduled Caste community. In the present case, it must be noted that it is not a case where there is no SCA candidate available for filling up the posts. In fact, the second list sent by the District Employment Office showed the name of one K. Subbuthai, who even as per the Management standard, did extremely well and scored 51.6 marks by the interview committee. By giving certain marks

in the name of certain personality test, it is not clear as to what the Management was aiming at. In fact, the other heads, for which, marks were given are certificate verification, subject viva, general knowledge and teaching efficiency. But the question of personality test conducted, for which, marks were awarded showed suspicion about the conduct of the third respondent Management. By reserving 30 marks for certificate verification, the Management had reserved 70 marks for the interview, which itself shows that the attempt of the third respondent Management was to select their own candidate.

10. When the Employment Exchange in the first round sent names, the third respondent interviewed all the candidates and claimed in the counter-affidavit that they had secured less than 25% marks and were to be rejected. But, during the second time, when the sponsored employment exchange candidate had secured more than 50% marks, they have rejected her, for reasons best known to them. The Management awarded 4 marks under the head of "personality test" to the petitioner, whereas the said Subbuthai was given only 1 mark, thereby driving one to presume that there was highhandedness on the part of the interview committee to give extra marks, so as to select their own candidate, who was from the open market. The petitioner was not even an applicant when an advertisement was made for the first time. The names sent were returned to the Employment Exchange. The attempt of the third respondent Management to seek for names only from one District Level Employment Exchange is wholly erroneous and it is not the true spirit of the Rules framed under the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974 and more particularly, under Rule 15(7) and 15(9), which read as follows:

15(7).-Every private school, not being a minority school, shall reserve 18 per cent of the vacancies in teaching as well as non-teaching staff candidates belonging to Scheduled Castes and Scheduled Tribes.

15(9) (i) The claims of the candidates belonging to Backward Classes, Scheduled Castes and Scheduled Tribes shall also be considered for the remaining 32 per cent of unreserved vacancies which are filled on the basis of merit. Where a candidate belonging to Backward Classes, Scheduled Castes or Scheduled Tribes is selected on the basis of merit in the said 32 percentage of unreserved vacancies, the number of percentage, reserved for Backward Classes, Scheduled Castes and Scheduled Tribes, as the case may be, shall not in any way be affected.

(ii) If a qualified and suitable candidate belonging to any of the Scheduled Castes and Scheduled Tribes or Backward Classes is not available for selection for appointment in the turn allotted for them in the cycle the turn so allotted to the Backward Classes shall lapse and the vacancy shall be filled by the next turn in the order of rotation. But, the turn so reserved for Scheduled Castes and Scheduled Tribes shall not lapse and the number of candidates to be selected in that recruitment shall be reduced by the number of Scheduled Castes and Scheduled Tribes candidates not available for selection against the turn reserved

for them the unfilled vacancies reserved for Scheduled Castes and Scheduled Tribes shall be carried over to the next recruitment and selection for appointment to that post in the next recruitment shall be made first for the carried over turn and then the normal rotation shall be followed. If qualified Scheduled Castes or Scheduled Tribes candidates are not available even then, the carried over turn shall lapse and the vacancy shall be filled by the next turn in the order of rotation.

11. In the present case, neither the petitioner nor the third respondent had challenged the order dated 15.11.2010 issued by the first respondent. The order is not even produced before this Court. The action of the Management in calling for names only from one District Level Employment Exchange, Tirunelveli itself was improper. If no candidates were available in a particular Employment Exchange, then the Management must have sought for names from other Employment Exchanges or from the State Level Employment Exchange, as the roster point is exclusively meant for candidates belonging to SCA community.

12. A Division Bench of this Court had considered the question of calling for names of candidates only from the District Level Employment Exchange even for a lower post, i.e., Secondary Grade Teacher vide its judgment in Unemployed Secondary Grade Teachers Welfare Association v. State of Tamil Nadu reported in 2008(4) LLN 560. Therefore, in the present case, the conduct of the third respondent Management is suspected. When they got the names for the second time, they should have considered the name of the candidate, who was well qualified for such appointment. But the stand of the Management rejecting the name of the candidates sponsored by the Employment Exchange on flimsy reasons cannot be appreciated. By reserving themselves right to grant extra marks to be awarded in the interview itself creates an imbalance and it was arbitrary.

13. Under the said circumstances, this Court finds that there is no case made out for entertaining the present Writ Petition. Hence, the Writ Petition stands dismissed. No costs.