
(1996) 02 MAD CK 0011
In the Madras High Court

D. Sekaran

APPELLANT

Vs

The Director of School Education and Others

RESPONDENT

Date of Decision : 16-02-1996

Acts Referred:

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 2(7)

Citation : (1996) 1 MLJ 585

Hon'ble Judges : AR. Lakshmanan, J

Bench : Division Bench

Judgement

AR. Lakshmanan, J.—By consent of both parties, the main writ petition itself is taken up for final hearing. Heard Mr. K. Chandru, learned

Counsel appearing for the petitioner and Mrs. B. Saraswathy Prasad, learned Additional Government Pleader (Education) for the respondents.

2. This writ petition has been filed for issue of a writ in the nature of certiorarified mandamus, to call the records from the first respondent. The

Director of School Education, Madras-6, pertaining to his proceedings in reference No.Na.Ka. No. 1815/D2/89, to quash the same and to direct

the respondents to forbear from terminating the services of the petitioner as Wood Works Instructor from the third respondent school and for

costs.

3. Under the impugned communication, the first respondent passed an order dated 29.1.1990 stating that the post of the petitioner cannot be

approved on the ground that his S.S.L.C. certificate cannot be taken as a completed S.S.L.C. and that only a person who undergoes study from

6th standard to 11th standard or 6th standard to 10th standard alone can be considered as S.S.L.C. completed.

4. In view of the same the first respondent had not approved the post of the petitioner and has also directed the second respondent to fill up the post with a fully qualified candidate in his post. This Court in W.M.P. No. 3165 of 1990 granted interim stay of the said communication. It is contended that the petitioner belong to Scheduled Caste community and he studied upto 9th standard in V.M. Board High School, Periakulam. Subsequently, he joined the Industrial Training Institute, Sengottai in the carpentry trade and qualified himself in the said trade. After obtaining the I.T.I. certificate, the petitioner joined the teacher training course in Pasumalai and obtained Technical Teacher Certificate. Subsequently, under the open school education system, the petitioner appeared for the secondary school certificate examination in 1986, but he failed in that examination. With all the educational qualifications that the petitioner had he got himself registered in the employment exchange on 10.2.1985. The third respondent-school is a private school within the meaning of Section 2(7) of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. This school is also receiving Government aid and the staff salary is assessed for cent per cent grant. u/s 19 of the Act, the Government is empowered to prescribe qualifications for teachers and other persons employed in the private schools. Accordingly, the Government of Tamil Nadu by virtue of the powers vested u/s 56 have framed rules called as the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974. Under Rule 15(6), the Government has directed the persons employed in private schools should possess the qualification specified in Annexure V of the Rules. Under item 9 of Annexure-V the qualification prescribed for the post of Wood Work Instructor as (1) S.S.L.C. completed, and (2) Industrial School Certificate and Technical Teacher's Certificate. While so, the post of Wood Work Instructor in the third respondent school became vacant and they called for a list from the District Employment Exchange, Dindigul. But by a communication dated 28.7.1987 the said employment exchange informed that no person with completed S.S.L.C. was available and that persons with 8th standard and other technical training certificate alone was available. Accordingly, the names were also sent by the employment exchange officer by his communication dated 20.8.1987 which contain the name of the petitioner.

5. The petitioner was called for an interview by a letter dated 25.8.1987 sent by the third respondent. As the third respondent school was at that

time in dire need, the petitioner was appointed as Wood Work Instructor and accordingly he joined in the said post with effect from 2.9.1987.

Subsequent to his joining in the third respondent school as the petitioner did not have the S.S.L.C. certificate no salary was claimed from the

Government for his post. But yet, he was discharging the duties of Wood Work Instructor. Even the third respondent school management did not

pay any salary and paid a token amount for the services of the petitioner. The petitioner was told that unless he completed his S.S.L.C. and

produce a certificate to that effect, the education department authorities will not approve his post. The petitioner thereafter wrote his S.S.L.C.

examination once again and passed the same in October, 1988. Subsequent to his completing S.S.L.C. he became fully eligible to hold the post of

Wood Work Instructor from the date of his passing the said examination. Thereafter proposals were sent to the second respondent and his post

was approved with effect from 15.10.1988 and amounts were also permitted to be drawn from his salary. It is submitted that from that day

onwards the petitioner has been working in the third respondent-school with full approval and was also getting salary from the Government grant.

In the mean time repeated instructions were also received from the office of the second respondent asking the school management to open a

Service Register for the petitioner. As the service register was not opened, the petitioner is not getting his normal increments. In the mean time a

correspondence was addressed from the office the second respondent to the first respondent, regarding sanction of increments and opening a

service register for his post. On the basis of the said communication, the first respondent passed the impugned order stating that the post cannot be

approved on the alleged reason that his S.S.L.C. certificate cannot be taken as a completed S.S.L.C. and that only a person who undergoes study

from 6th standard to 11th standard or 6th standard to 10th standard alone can be considered as S.S.L.C. completed. In view of the same, the first

respondent had not approved his post and has also directed the second respondent to fill up the post with a fully qualified candidate in his post. In

pursuance of the communication dated 29.1.1990, the third respondent by an order dated 17.2.1990 has directed to handover the charge and get

relieved from the school and also to refund the amount already received as his salary. Since the action of the respondents in terminating his services

was unjust and illegal, the petitioner has filed the above writ petition for the relief prayed for in the writ petition.

6. Mr. K. Chandru, learned Counsel for the petitioner reiterated the contention raised in the affidavit and argued that the first respondent has failed

to see that the petitioner is fully qualified to hold his post in terms of Annexure V prescribed under Rule 15(6) of the Tamil Nadu Recognised

Private Schools (Regulation) Rules, 1974, which provides qualification, conditions of service of teachers and other persons.

In this case, we are concerned with Rule 15(6), which reads as follows:

The teachers and other persons employed in private schools shall possess the qualifications specified in Annexure V.

The relevant portion of Annexure V of the Rules is extracted below:

Qualifications for appointment as teachers in Private Schools (Regulations):

7. The Teachers and other persons employed in Private Schools shall possess the qualifications prescribed in Annexure V of the Rules. Annexure

V prescribed qualifications for appointment as Teachers in the Private Schools. In this case, we are concerned with the post, namely, Wood Work

Instructor, and the Qualification for the same is extracted above. It is not in dispute that the petitioner satisfies the required qualifications namely,

S.S.L.C. complete and Technical Teacher's Certificate and also Industrial School Certificate.

8. On a consideration of the above Rule and the qualifications Prescribed in Annexure V, I am of the opinion that the interpretation of the first

respondent that the petitioner has not completed S.S.L.C. is wrong and the certificate produced by the petitioner clearly shows that he has

completed S.S.L.C. Even the orders issued by the Government of Tamil Nadu in G.O.Ms. No. 1333, Education Department, dated 3.9.1986

authorises a person possessing S.S.L.C. certificate obtained through open school education system to be eligible for further qualification such as

higher secondary etc. The relevant portion in G.O.Ms. No. 1333, Education Department, dated 3.9.1986 is extracted below:

....

3. The Government accept the recommendation of the Director of School

Education and SCERT and direct that in addition to the qualification referred to in paragraph 2 above the following qualification under the Open School Education System of Tamil Nadu be also considered equivalent to the qualifications specified against it for academic purposes, i.e. for admission to the First Year of the Higher Secondary Course in Schools in Tamil Nadu:

However, it is seen the impugned order, which gives a contrary view in respect of the above mentioned Government Order and the Annexure V of

the Rules referred to above.

9. Under the provisions of the Private Schools Act, there is no distinction between S.S.L.C. holder of Open School Education System and a

holder who had attended regular courses all the years. Even persons who have passed B.A. courses in correspondence are appointed as Graduate

Teachers with full approval of the first respondent.

10. To a query put to the learned Additional Government Pleader, whether the petitioner is lacking any basis qualification, she said that the

petitioner is not lacking any basic qualifications. In fact, the respondents in their counter at page 6 have stated that the appointment of the petitioner

was approved from 15.10.1988. In any event, the interpretation introduced by the first respondent in my opinion is not authorised either under the

Act or under the rules with reference to the actual attendance of course. Any change in the qualification will have to be made by the Government

by making necessary amendments to the Rules. As rightly pointed out by Mr. K. Chandru, that the impugned order of the first respondent is also

opposed to the principles of natural justice and inasmuch as the petitioner was regularly appointed and was receiving salary from the Government

grant. The order of termination was passed by the third respondent, who is only a Headmaster and who is not authorised to discharge such

functions under the Act, as the third respondent is a private school. It is also stated that the second respondent has approved the appointment of

one A. Jeyakumar, who passed S.S.L.C. in the open school system and he is at present working in the First Ward Panchayat Union School at

Vatlagundu. I am of the opinion that the interpretation given by the first respondent in his communication dated 29.1.1990 that the petitioner's post

cannot be approved on the alleged reason that S.S.L.C. cannot be taken as a

completed S.S.L.C. is wholly erroneous and is liable to be set aside.

Therefore, the writ petitioner is allowed and the order impugned dated 29.1.1990 is quashed and consequently the respondents are directed not to

terminate the services of the petitioner as Wood Work Instructor from the third respondent-school. However, there will be no order as to costs.