
(2008) 09 MAD CK 0028

In the Madras High Court

Case No : Writ Petition No. 4001 of 2001

E. Muthu Kala

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 08-09-2008

Acts Referred:

Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 — Rule 15, 15(7), 15(8), 15(9)

Citation : (2008) 09 MAD CK 0028

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : A. Sankarasubramanian, for the Appellant; T. Seenivasan, Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

M. Jaichandren, J.—Heard the learned Counsel appearing for the petitioner and the learned Additional Government Pleader appearing for

the respondents 1 to 3.

2. The petitioner has stated that she was appointed as a Secondary Grade Teacher in the 4th respondent school, on 17.4.96. Her appointment had

been duly approved by the second respondent in his Letter Na.Ka.5251/A3/96, dated 15.10.1996. The third respondent had also approved the

appointment of the petitioner. On 27.8.99, the third respondent, by his proceedings, in Na.Ka.1558/A1/98, had ordered the stoppage of payment

of salary to the petitioner. The reason stated in the proceedings of the third respondent is that the petitioner's appointment is against the Rules and

therefore, it requires the necessary ratification from the Government. On 13.11.98, the second respondent had sent a communication to the fourth

respondent stating that a sum of Rs. 87,056/- which had been paid to the petitioner as salary, from 17.4.96 till the month of March 1998, should be recovered from her and to be paid to the Government. The reason given is that the petitioner had been appointed in the vacancy meant for the candidate belonging to the Most Backward Community. Instead the petitioner who belongs to the Backward Community had been appointed and therefore, the said appointment is irregular.

3. It has been further stated that according to G.O.Ms. No. 1248, dated 12.11.79, the roster system should be followed only in respect of the schools where there are more than 10 posts. Initially, the said Government Order was applicable to the schools under the management of the

Government. Later, the said Government Order was made applicable to Private Aided schools as well as by a Government Order in G.O.Ms.

No. 162, dated 21.9.99, it had been made clear that for appointments made up to 21.9.99, the exemption from the roster system ordered in

G.O.1248, dated 12.11.79, is applicable. Accordingly, the Government Order in G.O.Ms. No. 162, dated 21.9.99, with regard to the roster

system cannot be enforced in respect of the fourth respondent school. Therefore, the impugned orders of the second respondent, dated 13.11.98

and 27.8.99, are illegal and liable to be set aside.

4. In the counter affidavit filed on behalf of the second respondent, it has been stated that the petitioner had been appointed in the fourth

respondent school, on 17.4.96. Her appointment was made in violation of the rules of reservation prescribed by the Government, with regard to

the appointment of teachers in aided non-minority schools, as embodied in Rule 15 of the Tamilnadu Recognised Private Schools (Regulation)

Rules, 1974, and G.O.Ms. No. 206, Personnel and Administrative Reforms, (PER-R) Department, dated 7.4.89. The petitioner belongs to a

Backward Class community, whereas the turn in which she was appointed was reserved for the Most Backward Class community. Since her

appointment was made in violation of the rules prescribed by the Government, the very approval of her appointment accorded by the second

respondent in his Rc. No. 5251/A3/96, dated 15.10.96, was irregular as the second respondent is not vested with the powers to modify or alter

the cycle of turns prescribed under the rules of reservation.

5. Based on the orders passed by the second respondent, the third respondent had assessed and released the grant to the petitioner from 17.4.96

to 31.7.99. Later, it was stopped pursuant to the objections raised by the Assistant Director, Departmental of Audit, Tirunelveli, during the course

of audit of the accounts of the office of the third respondent for the years 1996-97 and 1997-98.

6. The fourth respondent school, which is a non-minority school, governed by the provisions of the Tamil nadu Recognised Private Schools

(Regulation) Act and Rules. Rule 15(7)(8)(9) clearly lays down the rules of reservation, as set out therein and as modified in G.O.Ms. No. 206,

Personnel and Administrative Reforms (Per-R) Department, dated 7.4.89, have to be strictly adhered to in the matter of appointments in the aided

non-minority schools. G.O.Ms. No. 1248, dated 12.11.79 and G.O.Ms. No. 162, dated 21.9.99, have no relevance to the point in issue, nor the

number of teachers employed in the fourth respondent school has any bearing to the rules of reservation incorporated under Rule 15(7)(8)(9) of

the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974.

7. In G.O. No. 280, Personnel and Administrative Reforms Department, dated 13.8.92, the 51st turn was reserved for a schedule tribe candidate

and there was no change in the cycle of turns already prescribed in G.O.Ms. No. 206, Personnel and Administrative Reforms, dated 7.4.89. From

the year 1990, four appointments of secondary grade teachers had been made in the fourth respondent school against the first four turns. The

petitioner was appointed under the 5th turn in the cycle of reservation. The fifth turn had been set apart for the Most Backward Class community

candidates. Since the petitioner who was appointed in the fifth turn belongs to a Backward class community her appointment was wrong and it is in

violation of the rules of reservation.

8. The main contention of the learned Counsel for the petitioner is that the roster system was applicable only for the schools where there are more

than 10 posts. Therefore, it would not be applicable to the appointment of the petitioner in the fourth respondent school. Further, the respondents

ought to have followed the principles of natural justice by giving an opportunity of being heard to the petitioner before the impugned orders had

been passed against her.

9. The learned Counsel appearing for the petitioner had further submitted that even though the petitioner has got her appointment in another school,

there is a possibility of the salary paid to her, from 17.4.96 till the month of March 1998, is likely to be recovered, since her appointment as a

secondary grade teacher in the fourth respondent school had not been approved, as alleged by the respondents.

10. The learned Counsel appearing on behalf of the respondents had submitted that the petitioner's appointment in the fourth respondent school

had not been approved by the respondents, since she belongs to a Backward Class community and she had been wrongly appointed in the turn

reserved for a candidate belonging to the Most Backward Class Community. It has been further stated that the apprehension of the petitioner that

the salary paid to her, between 17.4.96 and March 1998, would be recovered from her is not sustainable as no orders have been passed by the

fourth respondent school till date. Even if such orders are passed by the respondents to recover the amounts already paid to her as salary, for the

period from 17.4.96 till the month of March 1998, it would be open to the petitioner to challenge the same.

11. In view of the submissions made by the learned counsels appearing for the petitioner, as well as for the respondents 1 to 3 and on a perusal of

the records available, this Court is of the view that there is no merit or substance in the writ petition filed by the petitioner. There is nothing shown

on behalf of the petitioner for this Court to interfere with the impugned orders of the third respondent, since her appointment is found to be

improper as it did not conform to the rules of reservation, as contemplated by the Tamilnadu Recognised Private Schools (Regulation) Act and the

Rules framed there under and the Government order in G.O.Ms. No. 206, Personnel and Administrative Reforms, dated 7.4.89.

12. In such circumstances, the writ petition is liable to be dismissed. Accordingly, it is dismissed. However, it goes without saying that it is open to

the petitioner to challenge the order passed by the fourth respondent school attempting to recover the salary paid to the petitioner for the period

from 17.4.96 till the month of March 1998, when she was employed as a Secondary Grade Teacher in the fourth respondent school, in the manner

known to law. No costs.