

(1999) 01 MAD CK 0048

In the Madras High Court

Case No : Writ Petition No. 18719 of 1997 and W.M.P. No. 29503 of 1997

Hindu Middle School

APPELLANT

Vs

The Assistant Educational Officer and The District Elementary
Educational Officer

RESPONDENT

Date of Decision : 08-01-1999

Acts Referred:

Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 — Rule 15, 15(3),
15(4)

Citation : (1999) 01 MAD CK 0048

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : S. Elamurugan, for the Appellant; Rathinam, Government Advocate,
for the Respondent

Final Decision : Dismissed

Judgement

S.S. Subramani, J.—Petitioner seeks issuance of Writ of Certiorarified Mandamus calling for the records relating to the proceedings of

second Respondent made in Na. Ka. No. 338 A6/97 dated 3.9.1997 and quash the same and direct Respondents to approve the appointment of

P. Sujatha in the Petitioner's School from 1.9.1995 and consequently direct Respondents to release the teaching grant for the period from

1.9.1995 to 103.1997 and pass such further orders.

2. The impugned order of the Respondent read thus,

3. In the Petitioner's School, a vacancy of secondary grade teacher arose on 31.8.1995 due to retirement of the earlier incumbent. Petitioner

appointed one Sujatha in that post and she was discharging her duties from 1.9.1995. The appointment was sought to be approved by second

Respondent. But first Respondent had returned the papers on 4.7.1996, for which Petitioner sent a representation on 3.11.1996 addressing the same to second Respondent. In the meanwhile, Sujatha also left the service of Petitioner-School and in that place one L. Prema was appointed and the same was approved from 11.3.1997.

4. The grievance of the Petitioner is that the appointment of Sujatha for the period 1.9.1995 to 10.3.1997 was not approved and consequently grant was also not paid. Only reason for rejecting the claim of Petitioner is that before appointing Sujatha, prior permission was not obtained from the Department. According to Petitioner, the stand taken by the Respondents is not correct. It is said that prior permission is necessary only in cases of promotion from any other School or by direct recruitment for the promotion post. When Sujatha is not appointed to the promotion post, there is no question of seeking permission. The impugned order therefore requires interference of this Court.

5. Rule 15 of the Tamil Nadu Private Schools (Regulation) Act 1973 provides for qualifications, conditions of service of teachers and other persons. Sub-rule 3 and 4 of Rule 15 are relevant for our purpose. It reads thus, Rule 15(3): In a regular vacancy a fully qualified candidate shall be appointed only on a regular basis. However, in a temporary vacancy, i.e., leave vacancy deputation for training or suspension of the teacher's certificate, a teacher or other person may be appointed for a specified period. In such cases the agreement to be executed shall be in Form VII (B).

(4) (i) Promotions shall be made on grounds of merit and ability, seniority being considered only when merit and ability are approximately equal.

(ii) Appointments to the various categories of teachers shall be made in the following methods:

(i) promotion from among the qualified teachers in that School;

(ii) if no qualified and suitable candidate is available by method (i) as above.

(a) appointment of other persons employed in that Schools, provided they are fully qualified to hold the post of teachers;

(b) appointment of teachers from any other School;

(c) direct recruitment. In the case of appointment from any other School or by direct recruitment, the School Committee shall obtain the prior

permission of the District Educational Officer in respect of Pre-Primary, Primary and Middle School and that of the Chief Educational Officer in

respect of High Schools and Higher Secondary Schools, Teachers' Training Institutions setting out the reasons for such appointment. In respect of

Corporate Body running more than one School, the Schools under that body shall be treated as one unit for purpose of this Rule.

According to Petitioner, since it is the case of retirement vacancy, Sub-rule (3) alone will apply and therefore prior permission is not required. It is

not a case of promotion, but a fresh appointment. It is also submitted by the learned Counsel that Sub-rule (4) of Rule 15 only deals with

Promotion and only in that case prior permission is required from the Department.

6. I do not think that the submission of learned Counsel for Petitioner could be accepted. A reading of Sub-rule (4) shows, it is not only in the case

of promotion, but also in the case of other appointments. Promotion will be made on the grounds of merit and ability and seniority is considered

only when merit and ability are equal.

7. Clause (ii) to Sub-rule (4) deals with appointment to various categories of teachers. That clause has no application for promotion. Such

appointment will be made by promoting from among the qualified teachers in the School and if no qualified and suitable teachers are available,

appointment of other persons employed in the School, provided if they are fully qualified to hold the post and appointment of teachers from any

other School, would arise. When suitable candidate is not available either by promotion from among qualified teachers or from other persons

employed in that School or for appointment from any other School, the School is entitled to appoint teacher by direct recruitment. If it is a case of

direct recruitment, the School Committee must obtain prior permission from the District Educational Officer or other authorities under the Act.

8. Admittedly, in this case, Sujatha is not an existing staff of the School nor she has been serving as teacher in any other School. She has been

appointed by direct recruitment only. When the Rules provide that prior sanction has to be obtained, appointment made in violation thereafter

cannot be approved.

9. In this case, Sujatha's appointment was not approved since prior permission

was not obtained. So long as her appointment is not approved, there cannot be any question of disbursing grant.

10. There is a purpose behind the provision. The authorities are entitled to know that the Schools do not violate Sub-rule 4 before granting permission for direct recruitment. The authorities must satisfy themselves that there is no qualified teacher in that School to be promoted nor there is any other staff in that School, who is fully qualified to hold that post or that there is no other teacher from any other School to fill that vacancy.

Only on satisfying these conditions, direct recruitment can be allowed. That is why statute directs prior permission to be obtained.

11. Once it is held that Petitioner appointed Sujatha without prior permission, authorities are justified in not approving her appointment and also not disbursing grant.

12. In the result, the Writ Petition has no merit and the same is dismissed. No costs. Consequently, W.M.P. No. 29503 of 1997 is also dismissed.