
(2009) 02 MAD CK 0213

In the Madras High Court

Case No : Writ Petition No's. 19856 of 2004 and 21732 of 2005

K. Gangadharan, N.R. Balakrishnan and M.N. Raveendran

APPELLANT

Vs

The District Elementary Educational Officer, The Assistant
Elementary Educational Officer and M.R. Raju
P.M.
Hameed Vs The District Elementary Educational Officer, The
Assistant Elementary Educational Officer and The Tamil Nadu
Administrative Tribunal

RESPONDENT

Date of Decision : 03-02-2009

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2009) 5 MLJ 698

Hon'ble Judges : P.K. Misra, J;K. Chandru, J

Bench : Division Bench

Advocate : P. Rajendran, for the Appellant; Rajasekar, Additional Government
Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—This writ petition is filed by three teachers, who are Malayalam Pandits working in Gudalur Taluk of Nilgiris District. The prayer in the writ petition is for a direction to the respondents to implement O.A. No. 1953 of 1989, dated 9.10.1990. By the aforesaid O.A., the Tribunal entertained a petition from four other teachers. The operative portion of the said order reads as follows:

Therefore, Rule 5 of the Special Rules itself is quite clear in the matter. Further, it is conceded by the respondents that by virtue of the applicants having passed the second class language test (Full test) in Tamil, they can be posted to bilingual schools offering Malayalam and Tamil media of instruction where they can very well manage the administrative and academic functions. Under such circumstances, reliance placed by the respondents on Rule 5 of the Special Rules for maintaining separate seniority list is totally unfounded. The contention raised by the applicant that only a combined seniority list for Secondary Grade Teachers

should be maintained and promotion effected for the post of Headmaster in the Primary Schools from the said combined Seniority List is in accordance with the Special Rules. No doubt, it is open to the respondents to prescribe any test qualifications for promotion as Headmaster, like passing the Second Class Language Test in Tamil. But the Rules do not contemplate maintenance of a separate seniority list among the Secondary Grade Teachers depending upon the media of instructions in which they were trained. We have, therefore, no hesitation to come to the conclusion that the practice of maintaining a separate Seniority list for Tamil, Malayalam and Kannada Teachers in the Gudalur Taluk in Nilgiris District is contrary to the Special Rules and is, therefore, illegal. Consequentially, we direct the respondents to maintain a common seniority list among the Secondary Grade Teachers and promote them as Headmasters in the Primary Schools whenever vacancy arises in accordance with their seniority in such a list, subject to the condition that they satisfy the other qualifications, if any, prescribed under the Rules. The order dated 30.9.1989 promoting the third respondent, a junior to the applicants, is also against the provisions contained in the Special Rules and is, therefore, quashed. Application allowed. No order as to costs.

Therefore, the above direction of the Tribunal was that the maintenance of the common seniority list among the language pundits including Malayalam, Tamil and Kannada, will not amount to any violation of Rule 5 of the Special Rules. If once the common seniority is maintained, there is no impediment for those persons to be promoted to the post of the Primary School Headmaster, if they had completed the second language test (Full test in Tamil). The respondent-State did not file any appeal against the said order. On the contrary, subsequent to the pronouncement of the said order, the Director of Elementary Education issued a proceedings dated 20.5.2003 virtually nullifying the earlier orders passed by the Tribunal. It was stated by the department that the Malayalam Medium Headmaster cannot teach a Tamil Medium class and give correct pronouncement in Tamil and it is the same case of Tamil Medium Headmaster in respect of Malayalam Medium class and therefore in the circular dated 20.5.2003, which was brought into effect from 1.1.2003, it was stated that a Tamil Medium Headmaster will be appointed in a Tamil Medium school and Malayalam Medium person appointed as Headmaster of Malayalam Medium School but in respect of following common seniorty, all language pandits will be considered for the post of Headmaster in bilingual schools. In the light of this instruction given by the Director of School Education, the Department was denying promotion to the petitioners on the ground that they are Pandits of Malayalam Medium Primary Schools and therefore, they cannot be appointed for vacancies in Tamil Medium Primary Schools in Gudalur District.

2. Mr. Rajasekar, learned Additional Government Pleader appearing for the respondents fairly stated that no appeal was filed against the said order but on the contrary, the Director's instruction is more pragmatic and has been given in the interest of students. A counter affidavit has also been filed to that effect

justifying the issuance of the circular by the Director. It is also stated that subsequent to the circular, the very same Tribunal dismissed the O.A. No. 4190 of 1992 on 18.11.2003 agreeing with the reasoning given by the Director. The order of the said Tribunal is the subject matter of challenge in W.P. No. 21732 of 2005. Since it is related to the earlier case, both the writ petitions were heard and a common order is being passed.

3. In O.A. No. 1953 of 1989, dated 9.10.1990, the Tribunal examined the applicability of the Special Rule vis-a-vis, the desirability of appointing the language pandits in any school as Headmaster without the discrimination on the basis of the medium in which they are teaching. The Tribunal also held that such of those Malayalam teachers, who have passed Tamil alone have been provided the Headmaster Post and therefore, there is no difficulty in maintaining a common seniority list in respect of Gudalur District, wherein substantial number of malayalis are residing. In the absence of any challenge to the Tribunal's order, the respondent-State is bound to implement the said order unless the Rules are amended by the State in terms of introducing amendment by exercising the power under Article 309 of the Constitution of India. In the present case, such a rule has not been brought in. Therefore, the respondent-State is bound to implement the orders of the Tribunal. Hence, W.P. No. 19856 of 2004 stands allowed as prayed for.

4. Writ Petition No. 21732 of 2005 is directed against the consequential order of the Tribunal in O.A. No. 4190 of 1992, dated 18.11.2003.

5. A perusal of the said order shows that the matter was heard by the Vice Chairman of the Tribunal and there is no reference to the earlier Tribunal's order. The respondents have not brought to the notice of the earlier order passed by the Tribunal, that too by a two Bench and because of this reason, the Tribunal went on its own and was convinced with the reasoning given by the Director vide his communication dated 20.5.2003. Since this Court has already allowed the other writ petition and directed the previous order of the Tribunal to be implemented, the reasoning found in O.A. No. 4190 of 1992, dated 18.11.2003 cannot be countenanced by this Court. Hence, the order of the Tribunal stands set aside and the writ petition stands allowed.

6. In the result, both the writ petitions stand allowed, but there will be no order as to costs.