

(2006) 10 MAD CK 0027

In the Madras High Court

Case No : W.A. No. 485 of 2005 and W.P. (MD) No. 406 of 2005

P. Thurai Pandian Headmaster, S.M.R.V. Higher Secondary School

APPELLANT

Vs

K. Subramanian and Others
K. Subramanian Vs The Joint Director Higher Secondary Education and Others

RESPONDENT

Date of Decision : 12-10-2006

Acts Referred:

Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 — Rule 12, 13, 13(3), 15, 15(4)

Citation : (2007) WritLR 258

Hon'ble Judges : S. Manikumar, J;P. Sathasivam, J

Bench : Division Bench

Advocate : R. Muthukumarasamy for S. Srinivasan, in W.A. No. 485 of 2005 and S. Subbiah, in W.P. No. 406 of 2005, for the Appellant; R. Muthukumarasamy for S. Srinivasan, for 5th Respondent in W.P. No. 406 of 2005, S. Subbiah, for R. 1 in W.A. No. 485 of 2005, Shanthi Rakkappan, Government Advocate for R. 2 and R. 3 in W.A. No. 406 of 2005 and for R1 and R2 in W.A. No. 485 of 2005, Nalini Chidambaram for Gladys Danniell, for R.4 in Writ Appeal and R. 3 in W.P. No. 406 of 2005 and V.C. Janardhanan, for R. 5 in Writ Appeal and R.4 in W.P. No. 406 of 2005, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—P. Thurai Pandian, 5th respondent in Writ Petition No. 38969 of 2004 is the appellant. The above writ appeal is

directed against the common order, dated 22.02.2005, of the learned single Judge, made in WP. No. 38969 of 2005, in and by which, the learned

Judge, after setting aside the impugned order, directed the third respondent therein, School Committee, S.M.R.V.H.S. School, Vadasery, to

consider all the eligible candidates for appointment to the post of Headmaster by strictly following the procedure enumerated under Rule 15(4) of

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

2. The writ petitioner K. Subramanian, aggrieved by the proceedings of the District Educational Officer, Kanyakumari District, Nagercoil, second

respondent, dated 28.12.2004, filed another Writ Petition in W.P. No. 406 of 2005 seeking to quash the said order and to direct the second

respondent District Educational Officer to grant approval for his appointment as Headmaster of S.M.R.V.H.S. School, Vadasery, Nagercoil, with

effect from 30.06.2003 with all benefits.

3. Since the issues involved in the writ appeal and the writ petition are one and the same relating to promotion to the post of Headmaster of a

Higher Secondary School; and the appellant as well as the petitioner are the contenders; both the writ appeal and the writ petition are being

disposed of by the following common order.

4. The 5th respondent in WP. No. 38969 of 2004 is the appellant in writ appeal No. 485 of 2005 and the first respondent in the writ appeal is the

writ petitioner in WP. No. 38969 of 2004 and also petitioner in writ petition No. 406 of 2005, which has been transferred from the file of Madurai

Bench.

5. For the sake of convenience, we shall refer the parties as arrayed in W.P. No. 38969 of 2004.

6. According to the petitioner K.Subramanian, he is a Master Degree holder in Commerce and he also obtained B.Ed. Degree. He joined on

25.07.1979 as P.G. Commerce Teacher in S.M.R.V.H.S. School, Vadasery, Nagercoil (herein after referred to as "School"), which is a private

but aided school under the provisions of the Tamil Nadu Recognition of Private Schools (Regulation) Act (in short, "the Act"). He completed more

than 25 years of service. There was a vacancy to the post of Headmaster. The School Committee nominated by the Educational Agency had to

select and appoint a Headmaster to the School. There were some disputes between the Secretary and the Correspondent of the School. The

Secretary of the School Committee, favoured selection and appointment of the 5th respondent/P. Thurai Pandian (appellant in WA. No. 485 of

2005). In the secret ballot, the petitioner had secured 5 votes and the 5th respondent secured 4 votes and it was resolved to appoint the petitioner

as Headmaster of the School subject to approval by the District Educational Officer. The petitioner assumed office of the Headmaster of the School with effect from 30.06.2003.

7. Since the District Educational Officer did not accord approval, the petitioner filed WP. No. 23157 of 2003, seeking appropriate direction. In

that writ petition, direction was issued to consider the request for approval of appointment of the petitioner as Headmaster on merits and in

accordance with law. The said order was passed on 20.08.2003. The 5th respondent also filed WP. No. 18309 of 2003. In view of the order

passed in WP. No. 23157 of 2003, the writ petition filed by the 5th respondent was also disposed of as redundant. Against the said order, the 5th

respondent preferred WA. No. 3490 of 2003. The Hon"ble First Bench of this Court, by judgment dated 29.10.2003, directed the first

respondent/Joint Director to dispose of the appeal under Rule 15(4-A) of the Tamil Nadu Recognised Private Schools (Regulation) Rules within

three months. Ultimately, the first respondent, by his order dated 17.12.2004, found the 5th respondent more eligible to be the Headmaster of the

school than the petitioner and, on that basis, declared that the appointment of the petitioner as Headmaster of the school by the School President is

not valid. Questioning the same, the writ petitioner, K. Subramanian filed WP. No. 38969 of 2004.

8. The petitioner K.Subramanian also filed WP. No. 406 of 2005, before the Madurai Bench, seeking to quash the proceedings of the District

Educational Officer, Nagercoil, dated 28.12.2004, and also prayed for direction to the second respondent to grant approval for his appointment

as Headmaster of the School with effect from 30.06.2003, on similar grounds. There is no need to repeat the factual details.

9. Though the School and V. Subramanian, then Secretary of the School Committee, respondents 3 and 4 in WP. No. 38969 of 2004, have filed

separate counter affidavits, in view of the fact that the controversy is between the petitioner and the 5th respondent, we are of the view that there is

no need to refer the factual details stated in the counter affidavits.

10. The 5th respondent, viz., P. Thurai Pandian, filed a counter affidavit, wherein it is stated that after the retirement of one P. Subramanian,

Headmaster, the post of Headmaster fell vacant from 06.01.2003 and therefore,

he applied for the said post. The petitioner had also applied for the said post. The School Committee with a mala fide intention, had adopted secret ballot and appointed the petitioner as Headmaster without considering the merit and ability of the 5th respondent, who was appointed on 25.10.1979 as P.G. Teacher with qualifications of M.A., B.Ed. The services of the 5th respondent were regularised with effect from the same date. He moved to selection grade on 25.10.1989 and to Special Grade on 25.10.1999. On the date of consideration, his qualifications were M.A., M.Ed., M.Phil, M.T.M. In spite of qualifications and experience of the 5th respondent, the School Committee appointed the petitioner as Headmaster. However, differing with the view of the School Committee, the Secretary who is the authority under the Act, had appointed the 5th respondent as Headmaster in-charge of the school and as such the 5th respondent is continuing in the said post from 9.7.2003. The appointment of the 5th respondent was also approved by the District Educational Officer, Nagercoil.

11. The learned single Judge considered WP. No. 38969 of 2004 filed by K. Subramanian as well as WP. No. 5475 of 2004 filed by the same person questioning the proceedings of the District Educational Officer, Nagercoil, dated 15.09.2003 and WP. No. 26880 of 2003 filed by the School, questioning the very same order. The learned Judge, after taking note of the relevant provisions, the claim of the petitioner as well as the 5th respondent, decision of the School Committee, and the ultimate order of the first respondent Joint Director, concluded that, in the absence of proper consideration by the School Committee, which is the authority to select and appoint in terms of Section 18(1)(b) of the Act and Rule 15(4) of the Rules, the proceedings of the District Educational Officer is vitiated and allowed WP. No. 38969 of 2004, directing the School Committee to consider afresh of all the eligible candidates for appointment to the post of Headmaster, strictly following the procedure as per the Rules as well as the Division Bench decision of this Court in WA. No. 749 of 1993. In view of the said order, the learned Judge dismissed WP. Nos. 5475 of 2004 and 26880 of 2003. Questioning the above said common order of the learned Judge, 5th respondent alone preferred writ appeal. In view of the fact that the issues raised in WP. No. 38969 of 2004 and WP. No. 406 of 2005

are one and the same, depending on the outcome of the above writ appeal, WP. No. 406 of 2005 would be disposed of.

12. The only point for consideration is, whether the learned Judge is justified in remitting the matter to the School Committee for consideration of selection and appointment to the post of Headmaster.

13. In order to answer the above question, it is useful to refer relevant provisions relating to the issue in question. Section 2(8) defines "School

Committee" in relation to Private School, which means a committee constituted u/s 15 of the Act. Section 18 enumerates the functions of the

School Committee and responsibility of Educational Agency under the Act.

Section 18:

Functions of the School Committee and responsibility of educational agency under the Act.:

(1) Subject to the provisions of this Act and the Rules made thereunder, the school committee shall have the following functions, namely,

(a) to carry on the general administration of the private school excluding the properties and funds of the private school:

(b) to appoint teachers and other employees of the private school, fix their pay and allowances and define their duties and the conditions of their

service; and

(c) to take disciplinary action against teachers and other employees of the private school.

(2) The educational agency shall be bound by anything done by the school committee in the discharge of the functions of that committee under this

Act.

(3) For the purpose of this Act, any decision or action taken by the school committee in respect of any matter over which the school committee

has jurisdiction shall be deemed to be the decision or action taken by the educational agency.

14. As per Rule 13 of the Rules, it is the duty of the Educational Agency to nominate one of its representatives as Secretary of the School

Committee. Sub- rule (3) of Rule 13 makes it clear that the Secretary of the School Committee shall function for and on behalf of the School

Committee and the educational agency. Rule 15 speaks about the qualifications,

conditions of service of teachers and other persons. Sub-rule (4)

of Rule 15 makes it clear that promotion shall be made on the basis of merit and ability and seniority would be considered when merit and ability are approximately equal.

15. The administration of school is a complex job. The aim of every educational institution should be to maintain excellency in standard of education. This aim can be fulfilled only when there is absolute discipline not only among the students, but also among teaching and non-teaching staff of the school. The functions of the School Committee as enumerated in Section 18 would go to show that the School Committee is mainly intended to protect the properties, to appoint qualified staff and to enforce discipline in the school. The constitution of School Committee is governed by Rule 12 of the Rules.

16. Rule 15(4) of the Rules makes it clear that the post of Headmaster should be filled up only from the following categories:

- (i) Headmaster of High School
- (ii) Post Graduate Assistant in academic subjects; and
- (iii) Post Graduate Assistant in languages.

17. It is not in dispute that, on the date of consideration for the post of Headmaster in third respondent school, only two persons, viz., K.

Subramanian, writ petitioner and P. Thurai Pandian, 5th respondent in W.P. No. 38969 of 2004, were eligible and they were considered by the

School Committee. The materials placed show that the School Committee, in its proceedings dated 27.6.2003, promoted K. Subramanian from

the post of P.G. Commerce Assistant to the post of Headmaster of the school with effect from 30.6.2003. However, in the appeal filed by P.

Thurai Pandian, the Joint Director, Higher Secondary School Education, Chennai, in his proceedings, dated 17.12.2004, disapproved the selection

of K. Subramanian as Headmaster of the school by the President of the School Committee and declared that P. Thurai Pandian is eligible to be the

Headmaster of the said school. We have already referred to Rule 15(4) which amply shows that promotion shall be made on the basis of merit and

ability and seniority would be considered only when merit and ability are approximately equal. Likewise, we have also referred to relevant

provisions of the Act and Rules relating to constitution and functioning of the School Committee. In other words, the statute recognised the role of

the School Committee as paramount in the administration of school.

18. In this context, we intend to highlight the decision of the School Committee, namely, the decision of the President of School Committee, dated

27.6.2003, as well as the decision of the Joint Director, Higher Secondary Education, Chennai dated 17.12.2004. The relevant portion of the

decision of School Committee dated 27.6.2003 reads as under:

Proceedings of the School Committee of S.M.R.V.H.S.S. Nagercoil, dated 27.6.2003.

x x x x

x x x x

Whereas, Mr. K. Subramonian was appointed as P.G. Teacher in the school on 25th July 1979, Mr. Thurai Pandian was appointed only

subsequently on October, 1979. Again the school committee compared also the results produced by the students of both of them in the public

examinations since their appointments. But for one year the school produced centum results in the subject of Commerce, which was handled by

Mr. K. Subramonian whereas the result was flop in the subject of English handled by Mr. Thurai Pandian, during many years. Again the marks

ratio obtained by the plus 2 students of commerce during several years was also excellent whereas the marks obtained by the plus 2 students in

English was normally deplorable.

Besides the school committee also took into consideration the fact that Mr. K. Subramanian applied to the committee for appointing him to the

post on the previous occasion also when then head Mrs. S. Bhagavathiammal retired from service on 28.2.2002. But for reasons best known to

him alone, the Secretary of the school committee appointed Mr. P. Subramoniam in that vacancy and therefore Mr. K. Subramonian appealed to

the Joint Director (H.S.) of school education, Madras, seeking justice.

In pursuance of his appeal, the Joint Director (HS) called for the records from the school and passed an order in his proceedings Mu.Mu. No.

25276/w8/2002 dated 23.10.2002 and passed orders in favour of the appellant Mr. K. Subramonian. Still the order was not implemented due to

the legal battle pending between P. Subramonian & K. Subramonian. Therefore, the school committee cannot sit in judgment over the matter

which is already pending before the Hon"ble Judiciary. Moreover, Mr. P. Subramonian is now retired and the present question relates only to he

filling up of the vacancy caused by the retirement of Mr. P. Subramonian on 31.5.2003. However, the observation of the Joint Director (HS) of

School Education, in its above said proceedings that the date of appointment of Mr. K. Subramonian as P.G. Teacher is 25.7.1979 amply

evidences that Mr. K. Subramonian possesses the necessary minimum qualification of 10 years and that he is senior to Mr. P. Thurai Pandian.

Considering all the above facts circumstances, evidences and law, it was resolved in the meeting of the school committee held on 27.6.2003 to

promote and appoint Mr. K. Subramonian as the Head Master of the school with immediate effect....

The relevant portion of the decision of the Joint Director (Higher Secondary Education), Chennai is as follows:

Proceedings of the Joint Director (Higher

Secondary Education), Chennai-6

Na.Ka. No. 122003/W8/2003 dated 17.12.2004

x x x x

x x x x

x x x x

Both the applicants attended the enquiry conducted on 14.6.2004 at the office of the Appellate Authority [Joint Director (H.S.)] and submitted

their declaration in writing.

Considering the declarations submitted by both the applicants the Joint Director (H.S) ordered the Chief Educational Officer, Nagercoil to enquire

and send a detailed report about the merit and ability of both.

As per the second letter cited in the reference, the Chief Educational Officer, Nagercoil stated that Mr. K. Subramonian achieved less percentage

of result in his subjects than Mr. P. Thurai Pandian from the academic years 2001-2002 to 2003=2004 and Mr. K. Subramonian indulged in

unwanted activities like not participating in Parent Teacher Association meeting, Independence Day celebrations and Teacher Association meetings

and also refusing to sign in the circulars related to school work. The School Management issued memos to Mr. K. Subramonian seeking

explanation to activities like being absent to duty without prior intimation, delay in going to the classes, etc. It is stated that these irregularities are

examples for his inability to manage even a classroom.

The Chief Educational Officer reported that the School Management had warned Mr. K. Subramonian for his unwanted activities like not

extending co-operation for the Annual School Inspection by the CEO and entering into wordy quarrel with the former Headmistress.

The Chief Educational Officer visited the school on 26.10.2004 and specially inspected their classroom teaching and the ability to maintain

discipline among their students and also got statements from both.

Analyzing these reports, it is identified that Mr. P. Thurai Pandian is eligible for the post of Headmaster in the above Higher Secondary School

based on merit and ability.

As per the Tamil Nadu Private School (Regulation) Act, 1974 Rule No. 15(4)(i) when merit and ability are approximately equal, seniority may be

considered.

In this case, Mr. K. Subramonian is far below Mr. P. Thurai Pandian in merit and ability. In seniority also he is junior to Mr. P. Durai Pandian.

So, from the above findings, Mr. P. Thurai Pandian is eligible to be the Headmaster of the above school. Hence, it is hereby declared that the

appointment of Mr. K. Subramonian as the Headmaster of the school by the school President Thiru. V. Ramalingam is not valid.

19. On an analysis of the conclusion of the School Committee, that is, the decision of the President of the School Committee as well as the

decision of the Joint Director (HS), we find that both the authorities have not dealt with the matter in detail in terms of the provisions and we are

reluctant to say that both the candidates are not superior to each other and both of them are having certain favourable features. In this regard, it is

useful to refer to the Division Bench decision of this Court rendered in W.A. No. 749 of 1993 dated 8.7.1993. In fact, the learned Single Judge

very much relied on the said decision and based his conclusion only on the principles enunciated therein. As rightly observed by the Division

Bench, in order to satisfy or to act in accordance with Sub-rule (4) of Rule 15 of

the Rules, the Committee must place on its records or the proceedings of the Committee must disclose that the selected candidate is more meritorious and is also superior in his ability than the one who is not selected. To put it in clear words, the records or the proceedings of the School Committee must show that the selected candidate is more meritorious and superior in his ability than the person who is not selected. By applying the above principles, we are of the view that both the School Committee and the Joint Director failed to assess the merit and ability in all aspects including their professional standards. Though the above said proceeding of the School Committee, dated 27.6.2003, refers to the plus and minus of both the candidates, as rightly pointed out by the learned Judge, the resolution of the School Committee does not refer to all the details. Further, the President and other members alone signed the said proceedings. It is not in dispute that the selection and appointment of Headmaster is not a mere decision of the majority members of the School Committee. If we consider the decision of the Joint Director (H.S.), which we have extracted above, though certain adverse remarks were made against K. Subramanian, there is no reference at all to the achievements and academic performance of the other contender, i.e., P. Thurai Pandian. In such circumstances, we are of the view that the decision of the Joint Director (H.S.) also cannot be accepted as it lacks compliance of Rule 15(4) of the Rules.

20. Further, as rightly pointed out by Mrs. Nalini Chidambaram, learned senior counsel appearing for the School Committee, before taking a decision, the Joint Director (JS) obtained a report from the Chief Educational Officer, Nagercoil about the merit and ability of both the candidates. However, according to learned senior counsel, copy of the report was not furnished to any of the parties. As pointed out, first of all, there is no information about other candidate, i.e., P.Thurai Pandian and secondly, it is the grievance of the contesting respondents that the report was obtained behind their back and a copy of the report was not given to them. The above grievance cannot be ignored lightly. The proceeding of the Joint Director (HS) does not reflect as to how the Chief Educational Officer assessed the merit and ability of both the candidates, i.e., K. Subramanian and P. Thurai Pandian. We have already observed that the report

speaks only about K. Subramanian and there is no reference as to

P. Thurai Pandian. In such circumstances and in view of the importance of the post of Headmaster of a Higher Secondary School, we are in

agreement with the conclusion arrived at by the learned Judge that it is for the School Committee to take an appropriate decision.

20. It was argued that the appellate authority, namely, the Joint Director (HS), has ample power to decide the question of filling up of the post of

Headmaster on the basis of merit and ability, and hence, the learned Judge should not have interfered with the decision of the appellate authority.

Chapter VIII of the Act deals with appeal and revision. Section 41 provides that a person aggrieved may prefer appeal to the authority prescribed.

Section 43 speaks about the limitation and power of the appellate authority. Sub-section (2) of Section 43 prescribes the procedure for disposal of

appeal by the appellate authority. It further shows that the appellate authority has to provide opportunity to the parties concerned to make

representation and if it is necessary and required, the authority is free to conduct enquiry and taking note of the circumstances of the case, pass

order which is just and equitable. We are not under-estimating the power of the appellate authority. In fact, the appellate authority has to follow the

procedure scrupulously and pass order which is just and equitable, after affording opportunity to both the parties. We have already highlighted the

grievance projected by Mrs. Nalini Chidambaram, learned senior counsel for the School Committee that report was obtained from the Chief

Educational Officer, Nagercoil, behind their back and that they were not supplied with copy of the report to refute the adverse remarks, if any.

Apart from this, as already highlighted by us, there is also defect in the assessment of both eligible candidates by the School Committee as well as

the appellate authority. In such circumstances, we are of the considered view that the only way to solve the issue is to remit the matter back to the

original authority, viz., the School Committee to select a candidate, who is more meritorious and also superior in ability, and take a decision afresh.

As rightly observed by the learned Judge, the School Committee has to consider all the eligible candidates for the post of Headmaster of the

school strictly following the procedure as laid down in Rule 15(4) of the Rules as well as the principles laid down in W.A. No. 749 of 1993 dated

8.7.1993. The said process shall be completed within a period of eight weeks from the date of receipt of a copy of this judgment.

With the above directions, the writ appeal and the writ petition are dismissed. No costs. Connected miscellaneous petitions are closed.