

(2000) 06 MAD CK 0057
In the Madras High Court
Case No : Writ Appeal No. 92 of 1998

P.V. Prajeetha

APPELLANT

Vs

The District Educational Officer and Others

RESPONDENT

Date of Decision : 05-06-2000

Acts Referred:

Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 — Rule 15, 51(1)

Citation : (2000) 06 MAD CK 0057

Hon'ble Judges : Jayasimha Babu, J; F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : K.N. Thampi, for the Appellant; M. Rathinam, Government Advocate on behalf of Respondents 1 to 4 and N.C. Ramesh, for 5th Respondent, for the Respondent

Final Decision : Dismissed

Judgement

R. Jayasimha Babu, J.—It is unfortunate that the Petitioner finds herself left in midstream by reason of the inaction on the part of her employer who had failed to apply for sanction for the post to which appointment was offered to the Petitioner. An order of appointment was issued to the Petitioner appointing her as a drawing teacher way back in the year 1990. In that order it was also mentioned that the order is subject to the approval of the Education Department.

2. The approval which the employer thought it would secure was not given. In fact the employer did not even make a formal application for the sanction before making the appointment nor had the employer written to the competent authority viz. the Director of School Education to sanction the post and simultaneously approve the appointment made thereto. The employer appears to have merely relied upon the letters of the District Educational Officer who had fixed the teachers strength for the school including one Drawing Master and for filling up of which he also appears to have granted permission. The employer did not even, though it is presumably aware of the law, apply to the Director of School Education for sanction of the post before making the appointment. It

merely secured the list of candidates from the Employment Exchange and thereafter made the appointment. The Petitioner being the person so chosen to be appointed, the Petitioner was not made aware of the fact that she was appointed to a post which had not been sanctioned.

3. The authority concerned viz, The Director of School Education, who alone, under Rule 51 (1) of the Rules framed under the Tamil Nadu Recognised Private School Regulations Act 1973, is competent to sanction the post, by his proceedings dated 19.11.1993 declined to approve the appointment to a post which had not been sanctioned. It is at this stage the Petitioner rushed to this Court challenging that order and inter alia seeking the setting aside of that order and seeking a further direction to the Authority to approve the appointment already made, with effect from the date on which the appointment had been made.

4. The learned single Judge having dismissed the petition, the Petitioner is before us in appeal.

5. Counsel for the Petitioner contended that for no fault of the Petitioner she is being penalised. The Petitioner had shown her suitability for appointment and had been chosen at an open selection, had performed her work diligently, and though she did not contribute anything to the predicament in which she is now placed, she is being asked to quit the job which she had faithfully performed for several years.

6. Though the Petitioner deserves sympathy, we cannot, on that score alone, compel the State to approve the appointment given to her by the private employer, without securing sanction for the post from the State and even in the face of the fact that not even an application for sanction for such post had been made by the employer and the employer had not been aggrieved by the order of the Director of School Education which has been impugned here by the writ Petitioner.

7. Under Rule 15 to which we have already referred, sanction of a post can only be made by the Director of School Education and the School in which the teachers are employed are not to employ teachers in excess of the posts for which sanction has been accorded. The Rule does not contemplate the school making any appointment and thereafter placing a fait accompli before the Director and compel him to accord sanction. It is no doubt true that under the relevant Rules, the academic requirements of the institutions though important since the teachers are paid by the Government artd. because of the financial constraints of the State which governs the grant, the State is empowered to withhold the sanction. Though it may be in favour of the Petitioner that there was a need of the Drawing Master in the School, such a need by its own does not result in sanction being automatically granted by the State. The authority is entitled to have all relevant information's placed before it and is only thereafter that it is required to apply its mind to the question as to whether sanction is to

be given or to be withheld. No proposal appears to have been so made to the Director of School Education for sanction of the post of a Drawing Master.

8. It was submitted before us by the Learned Counsel for the Government that the Government spends a huge sum of money for education and that in fact the largest allocation made, from the State Revenue, is for the purpose of education and while according sanction to the posts, the Government must necessarily keep in view the priorities in terms of discipline for which teachers are to be provided. It is not disputed that all the teachers required, must be appointed for every school, but the financial constrain of the State cannot be wished away. Rule 15, therefore advisedly makes a reference to the financial constraints as well. Though it is normally to be accepted that the State will provide for all the teachers required for all the schools, there may well be cases where the State's inability to so provide may have to be recognised by reason of financial constraint which the State is facing. Private school on that score are not to deny quality education to the Students whom they enroll. It is for them to find out resources of their own to employ additional teachers required to ensure that pupils in their school receive education of high quality. Private schools cannot transfer all their burdens to the shoulder of the State. They are also required to make their own efforts.

9. The employer in this case has clearly been negligent, to say the least, in not having applied for and secured sanction before making an appointment. That conduct on the part of the employer deprives the Petitioner of any right to compel the State to accord sanction, merely because the Petitioner has served the institution for some years. A copy of the letter of appointment sent to the concerned authorities does not have the same effect as an application for sanction of posts.

10. The State Government cannot be faulted for not considering the letter of appointment as an application for sanction. The Director of School Education was well within his powers in pointing out that the appointment had been made without securing a sanction for the post and on that score decline to approve the appointment. The learned single Judge, in our opinion, has rightly held that the impugned order is not liable to be quashed.

11. Regarding the salary payable to the Petitioner, that is a matter which the Petitioner has to work out with the employer who has received the benefit of the Petitioner's service, a service which it was not entitled to be given freely. It is for the employer to compensate the Petitioner in a suitable manner.

12. We would have, at this point, dismissed the writ appeal without further ado. However, we must record the further submission of the Learned Counsel for the Appellant that a post of drawing master which has been sanctioned in one of the schools run by the same employer is falling vacant in the coming academic year and therefore having regard to the long experience already gained by the Petitioner in the school run by the same employer, the Petitioner may be

considered for appointment to that post. This submission, in our view, merits sympathetic consideration. Learned Counsel for the employer also fairly stated that the employer would have no objection to consider the case of the Petitioner for such an appointment.

13. Having regard to the fact that the Petitioner has served as a Drawing Master for almost 10 years, we direct the Petitioner's present employer to sympathetically consider the case of the Petitioner for appointment to the post of Drawing Master for which post, it is submitted before us that, sanction has been accorded and which is to fall vacant in the coming academic year at one of the other schools run by the same employer. The State shall also accord approval for such appointment if the Petitioner were to be appointed to that post by her employer.