

(2008) 04 MAD CK 0065

In the Madras High Court

Case No : Writ Appeal No. 900 of 2007 and M.P. No. 1 of 2007

R. Kuttiswamy

APPELLANT

Vs

Joint Director of School Education (Secondary Education),
District Educational Officer, Secretary, Sabhanayaga Mudaliar
Higher Secondary School and Government of Tamil Nadu

RESPONDENT

Date of Decision : 30-04-2008

Acts Referred:

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

Citation : (2008) 04 MAD CK 0065

Hon'ble Judges : M. Venugopal, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : C. Selvaraj for V. Babu, for the Appellant; S. Gopinathan, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

Elipe Dharma Rao, J.—The writ appeal is filed against the order of the learned single judge dismissing the writ petition wherein it was filed

against the order of the 1st respondent dated 9.5.2002 rejecting the appeal petition of Thiru R. Kuttisamy dated 24.8.1994 on the ground that the

District Educational Officer, Mayiladuthurai passed an order on 8.8.1994 approving the appointment of the petitioner with effect from 1.2.1994

and on the ground that the appointment of the petitioner was made without obtaining the prior permission of Chief Educational Officer, Nagai and

the appointment was not made as per Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974. The order of the

District Educational Officer was passed on the basis of the order passed by this Court dated 26.7.2001 in W.P. No. 12117/1995 wherein the

abovesaid writ petition was filed against the order of the District Educational Officer dated 8.8.1994 in which the appointment of the petitioner was approved with effect from 1.2.1994 on the ground that against the order of appointment of the writ petitioner, two persons have filed appeals and those appeals were withdrawn on 1.2.1994. After withdrawal of the appeals, the order of approval was passed dated 8.8.1994, against which the appeal was filed. The appeal was rejected confirming the order of the District Educational Officer by order dated 9.5.2002 against which the Writ Petition was filed. The learned single Judge on consideration of the provision of law contained in Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 which stipulates that for filling up the vacancy, approval of the Department is a must and no approval is obtained from the Department before appointing the writ petitioner and the since the third respondent school is the appointing authority, liability solely vests with the school and department only gives grant in the case of any such appointment, rejected the Writ Petition. Against which the present Writ Appeal is filed.

2. Heard the learned senior counsel for the appellant and the learned Additional Government Pleader.

3. It is seen from the Rule 15(4) which deals with the appointment of teachers only, nothing is stated in the entire rule about the appointment of the non-teaching staff. The learned Additional Government Pleader has not placed any clarification issued by the Government extending the abovesaid provision of law to the appointment of any other posts in the private schools. Therefore, when the rule is confined to the appointment of teachers in the private schools, the Junior Assistant is a non-teaching post which is not covered by Rule 15(4). Therefore, the entire exercise of the respondents with regard to obtaining prior permission before filling up the vacancy as contemplated under Rule 15(4) is not required as insisted by the respondents when an application is made by the Secretary to approve the appointment of the writ petitioner from 4.4.1990 in a vacancy arose due to retirement of A. Kothandapani in the year 1989. The instructions issued by the Chief Educational Officer, Thanjavur dated 23.3.1988 relates to filling up the vacancies of the teachers. But the respondents construed that the rule specifically deals with the appointment of regular

vacancies of teachers and Rule 15(4) is applicable to the non-teaching staff. According to us, their view is not correct.

4. Moreover, as seen from the facts and circumstances of the case, after the appointment of the petitioner on 4.4.1990, a proposal was submitted

for approval of the said post which was rejected on the ground that it is in violation of Rule 15(4). But it has got approval after the withdrawal of

the appeals filed by some of the teachers on 1.2.1994. We do not know how the irregularities are rectified by withdrawing the appeals or the

violation of rule is curried by withdrawing the appeals by the affected parties. Therefore, after withdrawal of the appeals on 1.2.1994, the violation

of Rule 15(4) is still in operation. Therefore, the respondents should not have approved the appointment from the date of withdrawal of the

appeals, i.e., 1.2.1994, as we have taken the view that Rule 15(4) is not covering the appointment of non-teaching staff. Therefore, the question of

obtaining prior approval or after appointment approval of the non-teaching staff does not arise. Therefore, except this there are no other

proceedings for approval of the non-teaching staff. When we asked the learned senior counsel about any other proceedings were issued by the

Government from time to time with regard to the appointment of the non-teaching staff with regard to the abovesaid private school, it was

submitted that no such proceedings were issued by the Government bringing the non-teaching staff post under the purview of Rule 15(4). When

that is the case, the conclusion arrived at above is correct.

5. The decision of the learned single Judge of this Court rendered in *A. Murugesan v. State of Tamil Nadu* 2007 (4) MLJ 561 holding that Rule 15

of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 will apply only to teaching staff and with regard to the appointment of

non-teaching staff, there is no need to get prior permission from the educational authorities is also brought to our notice.

6. The appointment in the vacancy arose due to the retirement of A. Kothandapani on 31.12.1989. Even rule 15(4) deals about the promotion of

teachers in a regular vacancy and the heading of the rule 15 contemplates qualifications, conditions of service of teachers and other persons.

Nothing was mentioned about other persons. But it is clarified under Rule (4-A) any person employed in the institution specified in column (1) of

the Table mentioned in Rule (4-A), aggrieved by an order issued under Sub-rule (4) may prefer an appeal to the authority specified in the

corresponding entry in column (2) thereof. Column (1) mentions with regard to the Pre-primary, Primary or Middle Schools, the authority is the

Chief Educational Officer. Sub-rule 4(i) mentions promotion shall be made on grounds of merit and ability, seniority being considered only when

merit and ability are approximately equal. 4(ii) mentions that appointments to the various categories of teachers shall be made by 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) above,-

(a) Appointment of other persons employed in that school, provided they are fully qualified to hold the post of teachers.

(b) Appointment of teachers from any other school.

(c) Direct recruitment.

Nothing was mentioned about the appointment of non-teaching staff. Perhaps, the respondents are of the view that it was mentioned in the rule 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. 'Other persons' means 'persons

appointed from other schools in the teacher post'. Therefore, it is nothing to do with the appointment of non-teaching staff. If no qualified and

suitable candidate is available by method (i) above, the appointment of other persons employed in that school provided they are fully qualified to

hold the post of teachers. This made the respondents to understand that 'any other persons' means 'non-teaching staff'. But, Rule 15(4)(i)

mentions that the promotion shall be made on grounds of merit and ability, seniority being considered when merit and ability are approximately

equal. If no qualified and suitable candidate is available by method (i), appointment of other persons employed in that school provided they are

fully qualified to hold the post of teachers. Therefore, the entire exercise undertaken by the Secretary making an application for approval of the

appointment of the petitioner in a regular vacancy dated 4.4.90 is a futile exercise in the eye of law.

7. Therefore, we hold that as already held by the learned single Judge of this Court in the decision rendered in A. Murugesan v. State of Tamil

Nadu (2007) 4 MLJ 561, Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 does not deal with the appointment

of non-teaching staff. Therefore, the petitioner is entitled for regularisation and approval of appointment from the date of appointment in a regular

vacancy caused due to the retirement of A. Kothandapani from 4.4.1990 and his appointment is valid.

8. The Writ Appeal is allowed accordingly. No order as to costs. Consequently, connected pending miscellaneous petition is disposed of.