

(2011) 08 MAD CK 0359

In the Madras High Court

Case No : Writ Petition (MD) No. 810 of 2007

R. Rathinam

APPELLANT

Vs

The Chief Educational Officer, The District Educational Officer
and S.M.R.V. Higher Secondary School

RESPONDENT

Date of Decision : 08-08-2011

Acts Referred:

Contract Act, 1872 — Section 68

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

Citation : (2011) 08 MAD CK 0359

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : D. Rajendiran, for the Appellant; V. Pandi, Government Advocate for RR 1 and RR 2 and V.R. Shanmuganathan, for RR3, for the Respondent

Final Decision : Dismissed

Judgement

P. Jyothimani, J.—In the third Respondent School, which is an aided non-minority school, out of 9 sanctioned posts of Tamil Teachers, a vacancy arose due to the retirement of one P. Kalyanasundaram, on 31.05.2000. The Petitioner, who is qualified to be appointed as Tamil Teacher, was appointed by the third Respondent in the said vacancy, which is within the sanctioned strength, on 18.03.2003, after conducting interview, among 20 candidates sponsored by the District Employment Exchange and it is stated that immediately the Petitioner joined in the third Respondent School. It is further stated that on 24.01.2003 itself, the third Respondent has sought for prior permission from the first Respondent to fill up the vacancy. But, however, no order was passed by the first Respondent. It was, in those circumstances, the Petitioner came to be appointed on 18.03.2003 and after her appointment, a proposal was sent by the third Respondent School on 25.05.2003 for approval of her appointment from the date of appointment, namely, 18.03.2003. It appears that the second Respondent by an order, dated 13.02.2004, considering the no objection in the form of consent, dated 24.01.2003, has recommended to the first Respondent for approval of the

appointment of the Petitioner from 14.01.2004. In spite of such proposal sent by the third Respondent Management, dated 25.03.2003 for approval of appointment of the Petitioner, the first Respondent has passed the impugned order rejecting the same on the ground that the appointment of the Petitioner was made on 18.03.2003 without prior permission, which is challenged on the ground that the appointment was made by the third Respondent within the sanctioned strength and that it was only after finding out the availability of persons as per the provision of Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules (hereinafter referred to as "the Rules") and calling for the list from the Employment Exchange and by conducting interview and also by following the selection process, the Petitioner was appointed. A letter seeking prior approval was sent to the first Respondent as early as on 24.01.2003, and the failure on the part of the first Respondent in not passing either of the orders should be deemed to be a consent impliedly given, since the appointment was not outside the sanctioned strength and that the Petitioner has been working as a Tamil Teacher in the third Respondent school continuously from the date of her appointment, namely, 24.01.2003 till date and she is entitled for the salary for the work done, even under the principle of quantum meruit.

2. In the counter affidavit filed by the Respondents, it is stated that inasmuch as the appointment of the Petitioner is in violation of Rule 15(4) of the Rules, which, in categorical terms, contemplates prior permission and so long as prior permission was not obtained for the appointment of the Petitioner, she is not entitled for approval of appointment from the date of her appointment, namely, 18.03.2003. The recommendation of the second Respondent, dated 13.02.2004, is only recommendatory in nature and such recommendation cannot supersede the statutory provision contained in the Rules framed under the Tamil Nadu Recognised Private Schools Regulation Rules. Merely because the third Respondent has sent a proposal for prior permission before the appointment of the Petitioner, namely, on 24.01.2003, it does not mean that prior permission has been given. It is further stated that prior permission cannot be inferred by the conduct of the parties.

3. It is the contention of the learned Government Advocate that the purpose of prior approval is not merely a statutory requirement and an empty formality and it is for the purpose of enforcement of the Provision of Rule 15(4) of the Rules, which gives a pre-assumption right on the part of the other teaching staff, who are not regularised, working in the same school and next in succession, other non teaching staff, who are qualified to be appointed as a Teacher apart from the next category of Teachers from the other schools, who are redeployed for want of vacancy. Therefore, prior approval for appointment by resorting to direct recruitment is necessary for the purpose of monitoring as to whether the management has followed the said procedure or not. Therefore, according to them, the appointment of the Petitioner cannot be approved.

4. On the other hand, Mr. D. Rajendiran, Learned Counsel for the Petitioner would

submit that it cannot be termed as an illegal appointment, which is an appointment by the third Respondent and that not obtaining prior permission is only a formality required as per law and as long as the appointment of the Petitioner is not a backdoor entry and that the third Respondent has taken all steps to see that the provisions of Rule 15(4) are followed, her appointment cannot be stated to be illegal or outside the purview of law.

5. The Learned Counsel for the third Respondent School, Mr. VR. Shanmuganathan, would submit that while it is true that prior approval is required on the part of the third Respondent school, they have performed their part of function on 24.01.2003 itself in writing to the first Respondent to grant permission inasmuch as it is in the middle of the academic year, necessarily there must be a teacher and, therefore, it is out of necessity the appointment of the Petitioner was made on 18.03.2003. The Petitioner was well qualified and the third Respondent has tried to find out the persons, who are available in the same school and teachers from other schools and lastly resorted to call for the list from the Employment Exchange and conducted an enquiry by following the selection process, which cannot be stated to be either illegal or unapproved.

6. I have heard the Learned Counsel on either side and perused the materials available on record and I have given my anxious thoughts to the issue involved in this case.

7. It is true that as per the Rules 15(4) of the Tamil Nadu Recognised Private Schools Regulation Rules, 1974, appointment of Teachers is by giving priority to certain candidates. While appointing Teachers, an aided private school must first give promotion to the qualified teachers, who are available in the school and are working temporarily. In the absence of such candidates, the school has to consider the qualified vocational instructors and other administrative staff, who are qualified to be appointed as Teachers. It is in the absence of the said second category, the school can appoint other teachers from other schools, who are redeployed for want of vacancy. In the absence of the said third category only, they can resort to the direct recruitment. While the management goes for direct recruitment, the school committee, which is the appointing authority as per the provision of the Rules, must obtain prior permission from the District Educational Officer, if the school relates to pre-primary School, Primary or Middle School and that of Chief Educational Officer, if it relates to High School or Higher Secondary School. For better appreciation, the following Rules are extracted hereunder:

15. Qualifications, conditions of a service of Teachers and other persons.

(1)...,

(2)....,

(3)....,

(4) (i) Promotion 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 by the following methods:-

- ((i) Promotion from among the qualified Teachers in that school; or
- ((ii) Promotion from among the qualified Vocational instructors in that school;
- ((iii) 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

In the case of appointment from any other school or by direct recruitment, the School Committee shall obtain prior permission of the District Educational Officer in respect of Pre-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.

8. Therefore, it is true that obtaining prior permission by the school committee for making appointment of other persons by direct recruitment is to ensure that the pre-assumption right given to others, namely teachers working in the same school, vocational non-teaching staff, who are qualified to be appointed as teachers and teachers from other schools, who are redeployed for want of vacancy, since they have given job security as per the provision under the Rules. It was only in the absence of these three categories, the management can go for direct recruitment and it is only to check as to whether the management has followed the procedure, which is required under the Rules. Therefore, obtaining prior permission from the educational authorities is not merely an empty formality.

9. But, on the facts of the present case, it is not in dispute that in the third Respondent school a vacancy arose in respect of Tamil Teacher even on 31.05.2000 and the third Respondent has taken nearly three years for the purpose of completing the selection process and that is sought to be explained by the third Respondent to the effect that they wanted to find out as to whether other candidates, who are having preferential right, are available and ultimately in the absence of such persons, the third Respondent has approached the Employment Exchange and it is stated that the Employment Exchange has sponsored 20 candidates including the Petitioner and the school committee, after conducting interview, has selected the Petitioner as the suitable candidate. It is not in dispute that the Petitioner was educationally qualified for appointment as Tamil Teacher before appointment i.e. on 24.01.2003.

10. The third Respondent, being a higher secondary school, has written to the

first Respondent, who is competent authority to give prior permission and admittedly, the first Respondent has neither denied the request made by the Petitioner nor granted permission. It is no doubt true that by non granting permission, one cannot presume that the first Respondent has impliedly granted permission for that. But, nevertheless, the first Respondent, who is a statutory authority and expected to perform its duty as per law, has failed to perform the same till the second Respondent has made a recommendation on 13.02.2004 to the first Respondent to grant approval from 14.01.2004. It is astonishing to note that the second Respondent, who is also a statutory authority, has written such proposal to the first Respondent only on 13.02.2004 and in spite of the same, the first Respondent has kept quite for a long time till the impugned order came to be passed and this shows lethargic attitude on the part of the first Respondent. If really the third Respondent has not followed the procedure as per Rule 15(4) of the Rules, it was the statutory duty on the part of the first Respondent to immediately report to the third Respondent saying that the Petitioner should not be appointed in that place and when the 1st Respondent has not done so, I am of the considered view that the inaction on the part of the first Respondent should not work against the Petitioner, who is admittedly, working right from 18.03.2003 as a Tamil Teacher in the third Respondent school, without salary.

11. Even as per Section 68 of the Indian Contract Act, for the work done, a person is entitled for remuneration. In the case of the Petitioner, the first Respondent having not even acted as per the proposal given by the second Respondent to grant approval to the appointment of the Petitioner from 14.01.2004 cannot now turn back to say that the provisions of the Rules have not been followed, inasmuch as the second Respondent himself has not followed the mandatory provisions of Rules. It is further astonishing to note that the second Respondent, who himself has made a recommendation to the first Respondent on 13.02.2004 to approve the appointment of the Petitioner with effect from 14.01.2004 for the reasons best known to him, he changed his view in the impugned order, dated 27.04.2005, to come to the conclusion that the appointment of the Petitioner could not be approved. There is absolutely no logical conclusion by the second Respondent. The Petitioner has approached this Court as early as in the year 2007 and from January 2007, she has been working in the third Respondent school without salary and in that view of the matter, I am of the considered view that the Petitioner should be considered for approval of her appointment.

12. It is not the case of the third Respondent that inasmuch as the approval of appointment of the Petitioner has not been granted, some other person has been appointed. It is an admitted fact that the Petitioner is still working in the third Respondent school. In such view of the matter, to meet the ends of justice, I am of the considered view that Respondents 1 and 2 should grant approval for the appointment of the Petitioner in the post of Tamil Teacher in the third Respondent school with effect from the filing of the writ petition, i.e., on 25.01.2007.

Accordingly, the impugned of the second Respondent stands set aside. The first and second Respondents are directed to approve the appointment of the Petitioner in the third Respondent school with effect from 25.01.2007, the date of filing of the writ petition, by granting necessary approval and such order shall be passed within a period of eight weeks from the date of receipt of a copy of this order. The first and second Respondents shall compute the arrears of salary due to the Petitioner from 25.01.2007 till date and pay the arrears within the said stipulated period and the first Respondent shall consider the service benefits due to the Petitioner in respect of continuity of service from the date of her initial appointment in the third Respondent school and pass orders within the stipulated time. No costs. Consequently connected miscellaneous petitions are closed.