

(2006) 09 MAD CK 0036

In the Madras High Court

Case No : Writ Appeal No. 1638 of 2003 and W.A.M.P. No. 2240 of 2003

R. Venkataraman

APPELLANT

Vs

S. Sethuraman, Joint Director of School Education, (Higher Secondary), Directorate of School Education, The District Educational Officer and The Secretary and Correspondent, National Higher Secondary School

RESPONDENT

Date of Decision : 15-09-2006

Acts Referred:

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 18(1), 18(2)
Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 — Rule 15, 15(4), 15(4)(1), 15(4A)

Citation : (2006) 4 MLJ 1594 : (2006) WritLR 840

Hon'ble Judges : V. Ramasubramanian, J;D. Murugesan, J

Bench : Division Bench

Advocate : C. Selvaraju for S. Mani, for the Appellant; G. Nagarajan, for Respondent-1 and A. Arumugham, Addl. Govt. Pleader for Respondents-2 and 3, for the Respondent

Final Decision : Allowed

Judgement

This Judgment has been overruled by : S. Sethuraman Vs. R. Venkataraman and Others, AIR 2007 SC 2499 : (2007) 7 JT 82 :

(2007) 7 SCALE 301 : (2007) 6 SCC 382 : (2007) 2 SCC(L&S) 471 : (2007) 6 SCR 922 : (2007) AIRSCW 4445

V. Ramasubramanian, J.—The appellant whose selection to the post of Headmaster was set aside by the learned Judge, has filed the above appeal.

2. The case has a chequered history, whose factual details are as follows:

(a) The post of Headmaster in the 4th respondent school, fell vacant on 1-6-1991 due to the retirement of the incumbent, but the same could not

be filled up immediately for various reasons. However, on 23-7-1992, applications were invited by the 4th respondent from willing candidates for consideration for promotion to the post of Headmaster and the claims of 8 persons including that of the appellant and the 1st respondent herein were considered by the School Committee.

(b) By a resolution dated 3-8-1992, the School Committee promoted the 1st respondent and he assumed charge of the post on 7-8-1992. He is still continuing to hold the post, though it is not approved by the competent authority till date, due to the long winding litigation, between the parties.

(c) Aggrieved by his non selection, the appellant filed an appeal and the District Educational Officer, the 3rd respondent herein, sought appropriate orders from the 2nd respondent by the proceedings dated 30-10-1992, regarding approval of the appointment. But the Joint Director of School

Education, the 2nd respondent herein, rejected the appeal by an order dated 27-11-1992.

(d) The appellant filed a writ petition in W.P. No. 20183 of 1992 on the file of this Court challenging the order of the 2nd respondent and the same

was allowed by this Court on 21-12-1998 with a direction to the 3rd respondent to compare the relative merits of both the candidates and to pass appropriate orders.

(e) In pursuance of the said order of this Court, the 3rd respondent passed an order dated 4-5-1999, allowing the appeal of the appellant herein

and setting aside the appointment of the 1st respondent.

(f) Aggrieved by the said order of the 3rd respondent, the 1st respondent filed an appeal to the 2nd respondent on 28-5-1999, but the same was

dismissed by the 2nd respondent on 9-9-1999.

(g) As against the said order of the 2nd respondent dated 9-9-1999, the 1st respondent filed W.P. No. 15703 of 1999, but the same was

dismissed in limine. Therefore, the 1st respondent filed a writ appeal in W.A. No. 2058 of 1999. At the time of hearing of the writ appeal, the rival

claimants appear to have agreed, to have their relative merits assessed afresh by the 2nd respondent herein. Therefore, the Division Bench

disposed of the said writ appeal by an order dated 14-7-2000, remitting the matter to the 2nd respondent to assess the relative merits of the

parties after affording an opportunity to them.

(h) In pursuance of the said order, the 2nd respondent herein held an enquiry, heard the rival claimants personally and passed an order dated 2-

11-2000, holding that the merit and ability of both of them are equal and that therefore the appellant, who is senior among the two, should be

appointed, in consonance with Rule 15(4)(1) of the Tamilnadu Recognised Private Schools (Regulation) Rules.

(i) Challenging the said order of the 2nd respondent, the 1st respondent filed W.P. No. 19445 of 2000 and the learned Judge allowed the writ

petition. Therefore the present appeal has been filed.

3. We have heard Mr. C. Selvaraju, learned Senior Counsel for the appellant, Mr. G. Nagarajan, learned Counsel for the 1st respondent and Mr.

A. Arumugam, learned Additional Government Pleader appearing for the official respondents 2 and 3.

4. At the outset, it is seen from the order of the learned Judge that he was persuaded to accept the case of the 1st respondent primarily on 2

grounds, namely-

(i) that the Tamilnadu Recognised Private Schools (Regulation) Act and the Rules framed thereunder, vest the school committee with the absolute

power to select a person to man the pivotal post of Headmaster and that therefore the 2nd respondent ought not to have lightly interfered with the

selection made by the competent authority namely the School Committee;

(ii) that the post of Headmaster being one of importance, the authorities should be very slow in interfering with the selection made by the school

committee except under extraordinary circumstances;

(iii) that the position held by the appellant in another school as the Secretary and Correspondent at the relevant point of time was a very vital

aspect while considering the merit and ability of the rival claimants; and

(iv) that the overwhelming and superfluous materials which the school committee took into account at the time of selection should have been given

weightage by the 2nd respondent.

5. There is no quarrel with the proposition that The Tamilnadu Recognised Private Schools (Regulation) Act, 1973 vests the "school committee

with the absolute power (subject however to statutory appeal) to select candidates for appointment. Section 18(1) (b) of the Act confers powers

upon the School Committee to appoint teachers and Section 18(2) makes the educational agency bound by the decisions of the committee. Rule

15(4) of The Tamilnadu Recognised Private Schools (Regulation) Rules, 1974, provides the guidelines for the school committee to be followed

while making promotions, by stipulating among other things, that "Promotion shall be made on the grounds of merit and ability, seniority being

considered only when merit and ability are approximately equal." Rule 15(4-A) provides for an appeal against the orders of the school committee

passed under Rule 15(4), to the statutory authorities named therein, the 2nd respondent being one, in so far as High and Higher secondary schools

are concerned. Therefore the power and discretion vested in the school committee to select a candidate, is subject to the appellate jurisdiction of

the authority prescribed under Rule 15(4A) of the Rules. Though the role of the appellate authority may be limited, considering the nature of the

post, the powers of the school committee are nevertheless subject to scrutiny by the appellate authority. It is in this context that in several cases,

the Apex court held that the management or the school or college committee, shall have the absolute discretion to select a person for the post of

Headmaster or Principal, considering the pivotal nature of the posts and the authorities should be slow to interfere with such discretion.

6. But the case on hand stands on a different footing. The original selection made by the school committee on 3-8-1992 was upheld by the

appellate authority. But a learned Judge of this Court, by an order dated 21-12-1998, passed in W.P. No. 20183 of 1992, set aside the selection

and remitted the matter to the District Educational Officer, the 3rd respondent herein, for a fresh consideration. It is only then that the 3rd

respondent interfered with the selection made by the selection committee. Thus the interference made by the authorities, with the decision of the

selection committee, was only at the instance of this Court, which remitted the matter back to them for fresh consideration. Therefore the 1st

respondent cannot now claim that the statutory authorities are not entitled to interfere with the decision of the school committee very lightly.

7. While in the first round of the battle, the appellate authority did not choose to interfere with the decision of the school committee, they were

constrained to interfere in the second round of the battle, on account of the order of remand passed by this Court.

8. In the 3rd round of litigation, the parties agreed to have the matter reconsidered by the appellate authority, namely the 2nd respondent herein, probably with a view to put an end to this agonizing litigation. This is why, the Division Bench of this Court passed an order in writ appeal W.A.

No. 2058 Of 1999, by consent of both parties, the operative portion of which reads as follows:

After hearing both the counsel for a considerable time, both the sides now agree that the question of inter se merits of the petitioner and the fourth

respondent is liable to be decided again. The learned Counsel appearing on behalf of the fourth respondent had made such a specific statement in

the Court and therefore by consent of both the counsel, the matter is being remanded to the Joint Director of School Education (Higher

Secondary), Directorate of School Education, College Road, Chennai. He will now go into the question of the inter se merits alone strictly within

the scope of Rule 15 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 (Tamil Nadu Act 29 of 1974). If the parties so feel

they shall be entitled to be heard by the first respondent. The first respondent shall decide the question with reference to the date of the availability

of the post i.e., 23.07.1992 and shall proceed to decide whether on that date it was the petitioner or the fourth respondent who could be

appointed as a Headmaster on the basis of inter se merits, etc.

9. It is only by virtue of the said order passed by consent of both the parties that the second respondent went into detail to assess the comparative

merits and ability of the rival claimants. After having invited such an assessment on merits through directions of this Court, it is not open to the first

respondent to question the jurisdiction of the second respondent to go into the merits of the case. Therefore, we are of the considered view that the

second respondent did not overstep or over reach the limitations imposed upon him as an Appellate Authority under the Act, to sit in judgment

over the decision taken by the School Committee, particularly for the following reasons:

a) The original order of the Appellate Authority dated 27.11.1992 refusing to interfere with the decision of the School Committee was set at

naught by this Court and the second respondent was directed by this Court to consider the matter afresh.

b) In the third round of litigation both the parties requested the Division Bench of this Court to remit the matter back to the second respondent for

assessment of the relative merits of both the parties. In other words, the appellant and the first respondent submitted to the jurisdiction of the

Appellate Authority, to assess their relative merits, especially after affording an opportunity to both of them to present their case. More precisely

both the parties, by consent prayed to this Court to direct the second respondent (the Appellate Authority) to virtually act as the original authority

viz., the School Committee, for the purpose of selecting the candidate suitable for promotion to the post of "Headmaster". Therefore, the first

respondent is estopped from contending that the decision of the School Committee cannot be very lightly interfered with by the Appellate

Authority, when in fact, the second respondent did not and was not supposed to act as an Appellate Authority, but was actually required to act as

the original authority by virtue of the consent order passed by the Division Bench.

c) Interestingly, the fourth respondent herein, who is representing the School Committee and who was a party to the order passed in W.A. No.

2058 of 1999, did not object to the consent order passed by the Division bench on 14.7.2000. It was open to the fourth respondent to object to

the consent order, on the ground that the School Committee should not be divested with the powers conferred under the Act. In fact, the fourth

respondent also consented to the order passed by the Division Bench.

d) It is only on account of their consent to the earlier order passed by the Division Bench, the fourth respondent, representing the School

Committee, has not so far chosen to challenge the order of the second respondent dated 2.11.2000. Thus, the School Committee itself has not

objected to the exercise of the power by the Appellate Authority viz., the second respondent herein, going into the merits of the case and assessing

the merit and ability of both the candidates. Therefore, it is not open to the first respondent to assail the order of the second respondent, on the

ground of competence or jurisdiction.

10. After having submitted themselves to an assessment by the second respondent, it is also not open to the parties to assail the final decision taken

by the second respondent, on merits. The only ground on which the order of the second respondent can be assailed by the parties, is that it is

perverse or that the second respondent has taken into account irrelevant factors or failed to take into account the relevant factors. The first respondent, in his writ petition in W.P. No. 19445 of 2000, has not virtually attacked the order of the second respondent on the ground that it is perverse or on the ground that he has not taken into account the relevant factors or that he has taken into account the irrelevant factors. The first respondent, in his writ petition, challenged the order of the second respondent only on merits. Since the assessment of the relevant merits by the second respondent, has been done extensively by him, in pursuance of the directions issued by the Division Bench of this Court on the earlier occasion, it is not open to this Court to sit in judgment over the decision of the second respondent on merits, since the scope of judicial review over such matters is limited. We do not find that the order of the second respondent is either perverse or that he failed to take into account relevant factors or took into consideration irrelevant factors. Therefore, we find no reason even to interfere with the order of the second respondent on merits.

11. The learned Judge was also carried away by the fact that the appellant functioned as the Correspondent of another middle school only at the relevant point of time in 1992. This fact has also been taken into account by the second respondent, in his order dated 2.11.2000. Therefore, the second respondent has actually taken into account all relevant factors in coming to the conclusion in his order dated 2.11.2000. After finding that both the appellant and the first respondent are equally well placed in the matter of merit and ability, the second respondent naturally applied the principle of seniority, since Rule 15 (4)(i) enables him to consider seniority where merit and ability are equal. Therefore, the order of the second respondent does not suffer from any illegality.

12. We have also noticed from the affidavits filed by the respective parties that the appellant was aged 50 years at the time when the writ petition was filed in the year 2000 and the first respondent was aged 44 years at that time. By virtue of this litigation for the past 14 years, no finality could be reached in the matter of promotion to the post of Headmaster in the fourth respondent's school and the appellant is now left only with two more years of service. Under such circumstances, we find that the order passed by the

second respondent is perfectly valid and the order of the learned Judge, setting aside the same is liable to be set aside.

13. Accordingly, the writ appeal is allowed, the order of the learned Judge is set aside and the order of the second respondent dated 2.11.2000 is upheld. No costs. Consequently, connected WAMP is closed.