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**(2006) 09 MAD CK 0132**  
**In the Madras High Court**  
**Case No : W.A. No. 1217 of 2006**

S. Abel Jeyaraj

APPELLANT

Vs

The Director of School Education and Others

RESPONDENT

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**Date of Decision :** 28-09-2006

**Acts Referred:**

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

**Citation :** (2006) 09 MAD CK 0132

**Hon'ble Judges :** A.P. Shah, C.J;K. Chandru, J

**Bench :** Division Bench

**Advocate :** R. Bharanidharan, for the Appellant; M. Sekar, Spl. G.P. for Respondents 1 and 2, for the Respondent

**Final Decision :** Dismissed

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## Judgement

K. Chandru, J.—The appellant is a Graduate Science Teacher appointed by the Commissioner and Manager of the third respondent School

vide order dated 01.6.1988. In the order itself, it is stated that his appointment is subject to the approval and sanction of the Department of

Education, Madras and the Management was not responsible for his emoluments and they will not give the salary, unless and until the Government

approves the appointment. Subject to this condition, the appellant had joined the third respondent School and has been working there.

2. In paragraph 2 of the affidavit filed in support of W.P. No. 2054 of 1998, he has stated about the emoluments drawn by him, which is as

follows:

Year Amount per month

1. 1988-1989 ... Rs. 100.00

2. 1989-1990 ... Rs. 200.00
3. 1991-1993 ... Rs. 300.00
4. 1993-1995 ... Rs. 450.00
5. 1996-1997 ... Rs. 725.00

Though it is shocking to note the state of affairs that a Graduate Science Teacher should receive a monthly salary of Rs. 725/- only from the

Management, however, it is not an issue before us. It is an admitted fact that the petitioner was not appointed against any sanctioned post and till

date, his appointment was not approved by the Department. Even otherwise, the appointment can only be made by the Correspondent, who is the

fourth respondent herein, and the third respondent, at the maximum, can said to be the Educational Agency of the School.

3. It transpires that one A. Benjamin, who was working as B.T. Assistant, was promoted as the Headmaster of the fourth respondent School with

effect from 01.6.1997 thereby causing a vacancy in the post which he was originally holding. Thereafter, prior sanction was obtained from the

Department for filling up the post. The fifth respondent was working as Secondary Grade Assistant and he was eligible to be considered for the

post of Graduate Teacher. Under Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 (for short, "School Rules"),

it is incumbent upon the Private Schools to promote the qualified teachers available in that school and only in the absence of any qualified

candidates either in that School or in any other school run by them, the Management can go for outside recruitment, that too, only after getting

prior approval of the competent authority. In the present case, the fifth respondent has been promoted to the vacancy caused, in terms of the

statutory rule.

4. Anticipating this eventuality, the appellant filed the writ petition in W.P. No. 2054 of 1998 seeking to challenge the order dated 10.12.1997

wherein and by which, the fifth respondent was promoted to the post of B.T. Assistant and also sought approval for his post. Under Rule 15(4A)

of the Rules, in case any person is aggrieved in respect of any appointment made, a right of appeal has been provided and the challenge will have

to be made before the appellate authority. Therefore, entertainment of the writ petition itself is not warranted. In any event, on coming to know

about the filing of the writ petition, the fourth respondent terminated the services of the appellant by an order dated 18.9.1998 wherein it was

clearly stated that the appellant was only appointed as a Compassion Tuition Teacher. However, this is not the subject matter of challenge in the writ petition.

5. When the writ petition came up for hearing, the learned Judge dismissed the same by the order dated 14.7.2004 stating that as the appellant has been terminated from service, the writ petition itself has become infructuous. The learned Judge also stated that the said order will not preclude the petitioner from claiming any relief to which the appellant is legally entitled. Aggrieved against the said order, the appellant has preferred this writ appeal.

6. We have heard the arguments of Mr. R. Bharanidharan, the learned Counsel appearing for the appellant and Mr. Sekar, the learned Special Government Pleader (Education), representing the respondents 1 and 2 and have also perused the records. Though we do not think that the writ petition is to be dismissed on the ground that it has become infructuous but we find even otherwise there are no merits in this appeal and the same is liable to be dismissed.

7. It is seen from the records that at no point of time, the appellant was appointed against any sanctioned post and no approval was sought for, to fill up any vacant post. Even his appointment order referred to earlier, clearly stated that his appointment is subject to the approval of the Department and thereafter only, he will be paid salary. In his own affidavit, he has mentioned that he was not getting the pay available for his post and that was one of his grievances also. It is also seen that the fifth respondent was promoted in terms of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Rules framed thereunder in a regular vacancy in terms of the preference available under Rule 15(4) of the Rules. As the Rule itself indicates that only in case of lack of qualified hands in that school or any other school run by the Management, outside recruitment can be resorted to and that too, only after getting prior approval from the Department for making that mode of recruitment.

8. Therefore, there cannot be any grievance to the appellant in respect of the promotion of the fifth respondent to the post of Graduate Teacher

and he cannot be said to be an aggrieved person in respect of that action. If the appellant is aggrieved about the order of termination passed by the respondents 3 and 4, it is open to him to challenge the said order in the manner known to law. As long as the said order of termination is not under challenge, we are not expressing our opinion in one way or other about it including the fact that the petitioner was not paid proper salary for the years that he had worked.

9. In the light of the above, the writ appeal fails and the same stands dismissed. However, there will be no order as to costs. In view of the same,

M.P. No. 2 of 2006 shall also stand dismissed.