

(2012) 01 MAD CK 0022

In the Madras High Court

Case No : Writ Petition No. 23605 and 23684 of 2009 and M.P. No. 1 of 2010

S. Jayasudha

APPELLANT

Vs

The Director of Elementary Education, DPI Complex, College Road, Chennai - 600006, The District Elementary Educational Officer, Coimbatore District, Coimbatore, The Additional Assistant Elementary Educational Officer, Tiruppur and P. Palanisamy Secretary Bharathi Vidhyalayam Govt. Aided Elementary School Sottan Kalar S.Periapalayam PO Tirupur -7
P. Palanisamy Secretary Bharathi Vidhyalayam Govt. Aided Elementary School Sottan Kalar S. Periapalayam PO Tirupur -7 Vs The Director of Elementary Education, DPI Complex, College Road, Chennai - 600006, The District Elementary Educational Officer, Coimbatore District, Coimbatore, The Additional Assistant Elementary Educational Officer, Tiruppur and S. Jayasudha

RESPONDENT

Date of Decision : 27-01-2012

Acts Referred:

Constitution of India, 1950 — Article 16(4), 335

Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 — Rule 15(7), 15(9)

Citation : (2012) 01 MAD CK 0022

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : K.S. Viswanathan in W.P. No. 23605/2009 and Mr. V. Suthakar in W.P. No. 23684/2009, for the Appellant; I. Arockiasamy, GA(Edn) for R1 to R3 in both WPs, Mr. V. Suthakar for R4 in W.P. No. 23605/2009 and Mr. K.S. Viswanathan for R4 in W.P. No. 23684/2009, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice K. Chandru

1. The first writ petition (W.P. No. 23605/2009) is filed challenging an order dated 12.08.2009, wherein and by which her appointment in the fourth respondent viz., Bharathi Vidhyalayam Government Aided Elementary

School at Tiruppur was declined by the second respondent with effect from 10.09.2007. It was informed that as per the new communal roster, the post had been reserved for a scheduled caste and therefore, there was no scope for granting approval for her appointment. That writ petition was admitted on 18.11.2009. On notice from this Court, the third respondent Additional Assistant Elementary Educational Officer, Tiruppur has filed a counter affidavit dated Nil (April 2010). The petitioner has filed an application in M.P.No. 1 of 2010 for fixing an early date of hearing.

2. In the meanwhile, the 4th respondent school management itself has filed the second writ petition being W.P. No. 23684 of 2009, seeking to set aside the very same order dated 12.08.2009. That writ petition was admitted on 19.11.2009 directed to be heard along with the earlier writ petition. Hence, both the writ petitions were grouped together and a common order is passed.

3. The stand of the Management was that a vacancy arose in the post of Secondary Grade Teacher on 14.03.2007 on account of the incumbent Mrs. Geetha being promoted as Headmistress. Therefore, the Management sought for permission to the second respondent for filling up the said post. The District Elementary Educational Officer, Coimbatore by his proceedings dated 11.07.2007 permitted the post to be filled up. But however in Condition No. 3, he had stated that the post will have to be filled up on the basis of the new communal roster prescribed vide G.O.

No. 4 School Education Department, dated 19.01.2004.

4. However, the School Management informed the District Employment Office, Coimbatore by their letter dated 27.07.2007 that the vacant post of Secondary Grade Assistant falls under the general turn. Therefore, they sought for candidates from the open category. The employment exchange also forwarded the names with a covering letter dated 09.08.2007. The Management also advertised in the Dina Malar Newspaper, Coimbatore Edition dated 31.08.2007 inviting candidates for appointment to the post of Secondary Grade Teacher from the open category.

5. According to the School Management, one N. Poovathi whose name was sponsored by the Employment exchange did not attend the interview.

The other candidates including S. Jayasudha, the petitioner in W.P. No. 23605 of 2009 attended the interview. The Management selected the said

S.Jayasudha and appointed her in the post of Secondary Grade Teacher and she also joined duty on 10.09.2007. When her name was forwarded

for approval, the Additional Assistant Elementary Educational Officer, Tiruppur asked the Management to send the appropriate records in

selecting the candidate. One of the undertaking given by the Management was that they had followed the rules of reservation in terms of G.O.No.

4 School Education department, dated 19.01.2004.

6. The Management cleverly relied upon G.O. Ms. No. 241 P & AR Department, dated 29.10.2007, wherein the State Government introduced

3.5% internal reservation for Backward Class Christians and Backward Class Muslim candidates and issued 200 point roster to be followed with

effect from 15.09.2007. In the Annexure to the said GO, as to how the 200 point roster was to be followed was set out. In the normal case, the

roster starts always with the General Turn candidate and therefore according to the Management, the post was reserved for the General turn. On

receipt of the records, by the impugned order, the petitioner was informed that the roster point for the vacancy is made for Scheduled Caste

candidate. The question of appointing a General Turn candidate on the roster made for a scheduled caste cannot be permitted and interpretation

placed by the Management based upon G.O. Ms. No. 241, P & AR Department, dated 29.10.2007 is unsustainable and has no application to the

case on hand.

7. In the counter affidavit filed by the third respondent, in Paragraphs 4 and 10 to 15, it was stated as follows:-

4. As the vacancy falls on 15.03.2007 the school management should made appointment in the roster as per G.O. No. 85 dated 29.06.2000 and as

the previous vacancy had been filled in General Turn, this post should filled by Scheduled Caste Turn .Instead of that the school management filled

the post by G.T turn which is against the said G.O.

10. I submit that the Head Master of the school retired from service on 31.05.2006 due to superannuation.

11. I submit that Tmt.Geetha Secondary Grade Teacher of the institution was promoted as Headmistress and joined duty as Headmistress on

14.02.2002.

12. So the secondary grade vacancy should

be filled by S.C women in turn.

13. It is presumed that the school authorities has decided to fill up the vacancy by a candidate who is not belonging to Scheduled Caste

Community.

14. I submit that they fraudulently created new roster register which reveals as the secondary grade vacancy has to be filled by other caste

community women turn.

15. I submit that unto 14.09.2007 the rule of communal reservation was not revised by Government.

8. The fact that the school is covered by the provisions relating to reservation is not disputed. Under Rule 15(7) of the Tamil Nadu Recognised

Private Schools (Regulation) Rules, every private school not being a minority school shall reserve 18 per cent of the vacancies in teaching as well

as non-teaching staff candidates belonging to Scheduled Caste and Scheduled Tribes. Rule 15(9)(ii) provides for contingency under which if a

candidate for scheduled caste is not available as to what should be done. Rule 15(9)(ii) reads as follows: ½

15(9)(ii) If a qualified and suitable candidate belonging to any of the Scheduled Castes and Scheduled Tribes or Backward Classes is not available

for selection for appointment in the turn allotted for them in the cycle, the turn so allotted to the Backward Classes shall lapse and the vacancy shall

be filled by the next turn in the order of rotation; but the turn so served for Scheduled Castes and Scheduled Tribes shall not lapse and the

number of candidates to be selected in that recruitment shall be reduced by the number of Scheduled Castes and Scheduled Tribes candidates not

available for selection against the turn reserved for them; the unfilled vacancies reserved for Scheduled Castes and Scheduled Tribes shall be

carried over to the next recruitment and selection for appointment to that post in the next recruitment recruitment shall be made first for the carried

over turn and then the normal rotation shall be followed. If qualified Scheduled Castes or Scheduled Tribes candidates are not available, even then,

the carried over turn shall lapse and the vacancy shall be filled by the next turn in the order of rotation.

9. The constitutional obligation and purpose for reserving teaching posts for candidates belonging Scheduled Caste communities came to be

considered by the Supreme Court in relation to Gujarat Secondary Education Act vide judgment in Bharat Sevashram Sangh and Others Vs. State

of Gujarat and Others, In paragraph 8, the Supreme Court held as follows:-

8. The next section which was attacked before us is Section 34 of the Act. Section 34(1) of the Act provides that 15 per cent of vacancies of the

teaching staff of a registered private school shall be filled up by persons belonging to the Scheduled Castes and the Scheduled Tribes. It is argued

that the above provision interferes with the managerial function. As already mentioned a large number of teachers whose salaries are met by the

grants given by the State under the Grants-in-Aid Code are employed by the managements. The State should therefore, have a voice in the method

of recruitment. The State should also make provision for reservation of certain percentage of seats for members belonging to the Scheduled Castes

and the Scheduled Tribes under Article 16(4) of the Constitution. The insistence on having teachers belonging to the Scheduled Castes and the

Scheduled Tribes is also in the public interest. Children should be brought up in an atmosphere where there is opportunity to mix freely with

students and teachers belonging to traditionally disfavoured communities also. The opportunity to show reverence to teachers belonging to the

Scheduled Castes and Scheduled Tribes will in the long run enable the child brought up in that atmosphere to shed the feeling of superiority over

members belonging to the Scheduled Castes and the Scheduled Tribes. Such an atmosphere would also be congenial to the development of a

society consisting of persons free from feelings of hatred or contempt towards others. Section 34 of the Act serves the above-mentioned laudable

purpose. Even the teachers who belong to the Scheduled Castes or the Scheduled Tribes have to possess the requisite qualifications for posts.

We do not, therefore, find any illegality in Section 34 of the Act.

10. In the present case, the reservation was made by the State initially with a 100 point roster. Subsequently, it had switched over to the 200 point

roster but it did not mean that the moment 200 point roster was introduced, the Management can go back to start the exercise all over again as if

there was no reservation in existence before the introduction of 200 point roster. If the Management has any doubt as to whether a particular post

falls within a particular roster point, they should have produced all registers to the

department and should have got opinion from the Department with reference to ascertaining the correct roster point for filling up the post. On the other hand, they have taken the law into their own hands and given perverted interpretation stating that the vacancy had to start with the General Turn. As rightly contended by the respondents, it was the petitioner's own interpretation by making a post deserved for a Scheduled Caste and converting it into a General Turn vacancy.

11. In this case, it must be emphasised that it is only open to the State Government to provide for a roster point and in case of de-reservation, they should also provide for appropriate guidelines. Under no circumstances, a person can seek for a de-reservation of a particular post in a writ in the nature of mandamus as it would amount to directing the authorities to act contrary to the statute.

12. The Supreme Court vide judgment in State of Punjab and others Vs. G.S. Gill and another, in paragraph 7, it was held as follows:-

7. Thus it could be seen that the carry forward rule is constitutionally permissible. It is an extension of the principle of providing facility and opportunity to secure adequacy of the representation to Davits and Tribes mandated by Article 335. It should be carried for three years. Even in the post when the vacancy as per roster was available, but candidates were not available, same could be carried forward for three years.

However, in each recruitment year, the carry-forward rule cannot exceed 50% of the vacancies. That question does not arise in a situation where

there is single post/cadre. In S.S. Sharma v. Union of India⁵ in paragraph 8 at page 592, this Court had held that the limited departmental

competitive examination for recruitment of the members of the Scheduled Castes and Scheduled Tribes for determination of eligibility for

promotion is not invalid nor the Central Government be directed to derisive the vacancies meant for such members when it was found that suitable

Scheduled Caste and Scheduled Tribe candidates were not available for inclusion within the field of selection. Whether or not reserved vacancies

should be de-reserved is a matter falling primarily within the administrative discretion of the Government. There is no right in general candidates to

seek filling up of the vacancies belonging to the reserved category and to insist on degeneration of reserved vacancies so long as it is possible in law to

fill there served vacancies. In other words, carried-forward (unfilled) vacancies reserved for Davits and Tribes should be filled up only by the reserved candidates and general candidates have no right to seek direction for de-reservation thereof for filling up of the same by general candidates. It would thus be clear that carry-forward rule is a permissible constitutional rule. Carry forward would-be done for three years. In this case, the Government issued orders to carry forward for "two years". Therefore, the direction or mandamus to de-reserve the solitary post was clearly unconstitutional. This Court in U.P. Sales Tax Service Assn. v. Taxation Bar Assn.⁶ had held that no mandamus could be issued to disobey the law or prohibit the authorities from discharging the functions. It would, therefore, be manifestly illegal to seek mandamus or direction; nor would the Court be justified to issue such mandamus or direction to the appropriate Government to de-reserve vacancy. It is common knowledge that selections are not objectively being made to select the candidates belonging to the Davits and Tribes to fill up the vacancies reserved for them though qualified candidates are available to be promoted/appointed, with a view to see that reserved vacancies are not filled up and the same are passed off as eligible candidates being not available so as to ensure that carry-forward vacancies either exceed 50% of the accumulated total vacancies or that selection goes beyond three years so as to make the Government de-reserve the vacancies.

(Emphasis added)

13. The petitioners attempt is nothing but to deserve a particular post by changing the roster point with the aid of the Court. Though the counsel for the petitioner contended that they got prior permission to fill up the post, but that permission has to be interpreted only to fill up the post in terms of Rule 15(9)(ii) set out above. Under the said circumstances, there is no case made out to entertain the writ petitions. Hence, both the writ petitions will stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.