

(2012) 01 MAD CK 0308

In the Madras High Court

Case No : Writ Petition No. 10024 of 2009 and M.P. No. 2 of 2009

S. Kanagaraj

APPELLANT

Vs

The Director of Elementary Education, The District
Elementary Educational Officer and The Management of A.
Agaram Government Aided, Middle School

RESPONDENT

Date of Decision : 27-01-2012

Acts Referred:

Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 — Rule 15(7), 15(8), 15(9), 2, 22A(2)

Citation : (2012) 01 MAD CK 0308

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S. Ramesh, for the Appellant; I. Arockiasamy, GA (Edn) For R1 and R2 and No appearance For R3, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The petitioner, who was employed in the third respondent school has come forward to challenge an order passed by the second respondent District Elementary Educational Officer, Cuddalore, dated 28.11.2007. By the impugned order, the second respondent declined to grant approval to the petitioner's appointment as a Secondary Grade Teacher in the third respondent school. The writ petition was admitted on 09.06.2009. Pending the writ petition, this Court granted an interim stay. On notice from this Court, the second respondent has filed a counter affidavit dated 28.07.2010.

2. The third respondent school is a private aided middle school governed by the provisions of Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Rules framed there under. The petitioner had completed Secondary Grade Teacher Training. He belongs to backward community. He had also got his name registered in the employment exchange. He was selected by the third respondent school and appointed as a Secondary Grade Teacher vide order dated

17.08.2007. He also accordingly joined duty. It was thereafter, the third respondent sent proposals seeking for approval of the appointment of the petitioner. It was stated in the proposal that communal roster was followed and his name was sponsored by the employment exchange and after conducting an enquiry, the petitioner was selected and he was directed to take classes for 4th and 5th standard.

3. On receipt of the same, the second respondent by the impugned order informed that the vacancy for filling up the post of Secondary Grade Teacher arose on account of the retirement of one Selvanambi. But the school was eligible for the post of one Headmaster, One Graduate Teacher, two Secondary Grade Teachers and one Craft teacher. As per the appointment made so far in respect of the subject teachers, there is one male teacher and two female teachers. By addition of the petitioner, the ratio prescribed by the State Governments between women and men in respect of teachers' post, which is prescribed as 3:1 by G.O.Ms. No. 197 School Education Department, dated 21.07.2000 has been violated and therefore, his appointment cannot be approved. The school management sent a representation dated 02.07.2008 asking the respondents including the first respondent to revise their decision. It was stated that up to the lower standard, there is one female teacher and since a male teacher is eligible to take classes from Standard 1 to 5, they appointed the petitioner. Since the school is situated in a remote village, it is not accessible with any transport facility and hence, there is difficulty in appointing women teachers. For the middle school, there's one male and 1 female teacher and for the primary school, there is one female teacher. Therefore, there is no difficulty in appointing the petitioner. The petitioner also sent a representation dated 31.10.2008 seeking for approval of his appointment and also stating the fact that he has not been paid salary for over 14 months since the date of his appointment.

4. In the counter affidavit filed by the second respondent, it was stated that the petitioner school has violated the conditions prescribed in G.O.Ms. No. 197 School Education, dated 21.07.2000, wherein the State Government for the academic year 2000-2001 had agreed for a 50% reservation for women as an interim measure. Therefore, the Government Order prescribing 3:1 between men and women need not be followed for the said academic years. In the counter affidavit, in paragraph 5, it was averred as follows:-

5. It is submitted that though the petitioner claimed that equal 50% that of female teacher can be appointed is no way support the contention of the petitioner. It is relevant to note that already the 3rd respondent school having two male teachers namely V. Balasubramanian and Selvaraj; two female teachers namely C. Malarkodie and Senthamilselvi, that apart one more vacancy arose in the result of retirement of one R. Selvanambi. If the petitioner appointment is approved, total strength of the teacher ratio would exceed. The male teacher as already 50% + 50% is inexistence. Hence, looking at any angle, the petitioner

appointment could not be approved contravention with the existing G.O and Rules and regulation. In fact, the 3rd respondent school has not challenged the rejection order, that being so, the petitioner has no locus-standi to challenge the order passed by the 2nd respondent.

5. It is not clear as to how the appointment of the petitioner is in violation of any provisions of the Tamil Nadu Recognized Private Schools (Regulation) Act. Rule 15(7),(8) and (9) of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974 provides for reservation only in respect of Scheduled Castes, Scheduled Tribes and Backward Classes. There is no reservation made in favour of women teachers prescribing a particular ratio by making any amendment to the Rules. Even otherwise, whether the prescription of the ratio of 3:1 between women and men teachers and whether it will fit the constitutional frame work of Articles 15 and 16 itself is a doubtful question.

6. In fact, the Supreme Court has held that any reservation for women can only be a horizontal reservation and there cannot be any vertical reservation vide judgment in A.P. Public Service Commission Vs. Balaji Badhavath and Others, . In Paragraph 45, the Supreme Court held as follows:-

45. Reservation of women, handicapped, etc. is on a horizontal basis. Reservation to the category of candidates has to be given irrespective of the class or category of candidates. A final selection has to be made. If such a procedure, as directed by the High Court, is to be taken recourse to, the same would give rise to complexity.

7. Subsequently, the Supreme Court in the decision in Govt. of Andhra Pradesh Vs. P.B. Vijaykumar and another, in paragraph 10 held as follows:-

10. Rule 22-A (2), however, does not provide for this kind of reservation for women. It is a rule for a very limited affirmative action. It operates, first of all, in respect of direct recruitment to posts for which men and women are equally suited. Secondly, it operates only when both men and women candidates are equally meritorious. This is an express condition of Rule 22-A (2), thus limiting its application. In other words, it contemplates a situation where, in the selection test - whether it is written or oral or both, a certain number of men and women candidates have got an equal number of marks. If the numbers of posts to which these equally situated men and women can be appointed are limited, and all of them cannot be appointed, then preference to the extent of 30% is required to be given to women. This is clearly an affirmative action of preference to the extent of 30% for women. To give an illustration, supposing there are in the merit list, at a certain point in the order of merit, 20 candidates - men and women, who have secured equal marks. There are only 10 posts which have to be distributed amongst these 20 candidates. In such a situation, 3 out of these 10 posts will be given to women while the remaining 7 posts will have to be allotted among the remaining 17 candidates. In such a situation if there are any departmental rules for giving preference they will operate. For example such

rules at times provide that a person who is older in age will be preferred, all other things being equal. This kind of preference may have nothing to do with merit. It may be merely an administrative guideline to select from amongst those who're equally meritorious. Sometimes educational qualifications are looked at to find out the marks obtained by the candidates in the examination. It could be that the examination taken by different candidates is of different institutions or universities and is taken at different times. Nevertheless, these marks are looked at to select some candidates out of a group of equally meritorious persons. These norms for selection out of equally meritorious persons, do not come into play under Rule 22-A (2) for giving preference to women. The phrase "other things being equal" does not refer to these other norms for choosing from out of equally meritorious persons. For example, it would be somewhat startling to find men and women who have not merely got the same number of marks in the selection test but are also born on the same day in the same year. It is not the intention of Rule 22A(2) that it would apply only if all the candidates have not merely the same number of marks in the selection test but are also born on the same date, or have identical marks in the qualifying diploma or degree examination. The preference contemplated under Rule 22-A (2) will come into operation at the initial stage when in the selection test for the post in question, candidates obtain the same number of marks or are found to be equally meritorious. Rule 22-A (2) prescribes a minimum preference of 30% for women, clearly contemplating that for the remaining posts also, if women candidates are available and can be selected on the basis of other criteria of selection among equals which are applied to the remaining candidates, they can also be selected. The 30% rule is also not inflexible. In a situation where sufficient numbers of women are not available, preference that may be given to them could be less than 30%.

8. Therefore, excluding the Headmaster of the school, there are already 2 women teachers working and the addition of the petitioner does not violate the 50% prescription by the Government as an interim measure for the academic year 2000-2001 as informed by the State Administrative Tribunal. In any event, in so far as the Private schools are concerned, whether such a GO can be enforced is also a doubtful proposition. Even the State Government under the statutory rules had prescribed 30% reservation of post for women candidates that too on a horizontal basis.

9. A Full Bench of this Court vide its judgment in Saliar Mahajana Higher Secondary School v. The Joint Director of Schools (Higher Secondary) reported in 1995 W L.R. 277 has held that all Government orders cannot be read into the provisions of the Private Schools Act and there must be a specific amendment made to the rules. In paragraph 11, it was observed as follows:- 11. The Single judge before whom this writ petition came expressed a doubt as to the correctness of the view taken in the aforesaid Bench judgment as in his opinion R.2 of the Rules framed under G.O.Ms. No. 720 has not been taken note by the Division Bench. R.2 as pointed out above merely makes the rule applicable to private Schools mutatis mutandis. That does not mean that all the provisions

found in G.O.Ms. No. 720 will automatically have to be imported in the case of private Schools. They have to be modified suitably in so far as their applications to private schools are concerned. If that test is applied, there can be no difficulty in holding that with regard to Private Schools, there having been no constitution of service by any Rule and there having been no definition of the expression "Teachers in academic subjects and Teachers in languages", the normal rule that the post of Headmaster has to be filled up by promotion from among the Teachers in subjects and Teachers in languages is clear.

In view of the above, the impugned order declining to approve the appointment of the petitioner in the third respondent school as Secondary Grade Teacher is illegal. The writ petition stands allowed and the impugned order stands set aside. Respondents 1 and 2 are hereby directed to grant approval to the appointment of the petitioner. A decision in this regard shall be taken within 8 weeks from the date of receipt of the order. The petitioner shall also be paid his wages for the period he had rendered service from the date of his appointment. No costs. Consequently, connected miscellaneous petition is closed.