

**(2009) 08 MAD CK 0301**

**In the Madras High Court**

**Case No : Writ Petition (MD) No. 304 of 2005**

S. Malliga

APPELLANT

Vs

Joint Director (Secondary) and Appellate Authority,  
Directorate of School Education, District Educational Officer,  
Secretary, Sowdambigai Higher Secondary School and M.  
Muthumeena, B.T. Assistant, Sowdambigai Higher Secondary  
School

RESPONDENT

**Date of Decision : 19-08-2009**

**Acts Referred:**

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

**Citation : (2009) 08 MAD CK 0301**

**Hon'ble Judges : B. Rajendran, J**

**Bench : Single Bench**

**Advocate :** V. Panneerselvam, for the Appellant; So. Paramasivam, Government Advocate for Respondents 1 and 2, D.P. Sundararaj, for Respondent 3 and M.O. Thevankumar, for Respondent 4, for the Respondent

**Final Decision : Dismissed**

## Judgement

B. Rajendran, J.—The petitioner herein joined as a Junior Assistant in the third respondent school through employment exchange on 18.01.1989. She has got qualification of B.A. (English) in 1982 and B.Ed. in 1991 (After joining the school). The petitioner was then subsequently promoted as a Secondary Grade Teacher in the vacancy on 19.06.1997. The appointment of the petitioner was approved by the second respondent.

2. The petitioner would further contend that based on a judgment of this Hon'ble High Court, Government issued orders regularising the services of those persons, who were appointed prior to 19.05.1998, with a condition to undergo Child Psychology Training for a period of one month and appointment thereon as fresh appointment in G.O.Ms. No. 155, School Education Department, dated 03.10.2002. As per this order, the persons, who were appointed prior to 19.05.1998 were given time scale of pay and annual increment were denied and

that they were appointed as a fresh appointee from the date of completion of Child Psychology Training and were fit in the scale of pay at a minimum of Rs. 4500/-. Accordingly, the petitioner was also given the status and therefore, the petitioner challenged this in W.P. No. 7496 of 2004. In the meanwhile, when the post of B.T. Assistant became vacant in the third respondent school on 08.07.1999, the petitioner applied for the same to consider her for promotion as B.T. Assistant. But, however, she was denied the same on the basis of the alleged letter dated 25.08.1999, which was obtained from her by compulsion as if she is not pressing her claim. But, she would also claim that the management given assurance to the effect that in the next vacancy she will be considered. The next vacancy also arose on 29.08.2000 and she applied for the same and the management rejected the same by order dated 29.03.2001 on the ground that she was not eligible. Therefore, the petitioner preferred an appeal to the first respondent/the appellate authority and the first respondent rejected the appeal by impugned order dated 20.08.2004 on the ground that inasmuch as the petitioner became a Secondary Grade Teacher only from 02.06.2003 the date on which the petitioner was sponsored for Child Psychology Training, from that date alone the petitioner was qualified as a Secondary Grade Teacher and in view of the dispute in the Management, the proposal for approval from the date of completion of Child Psychology Training is yet to be received. The rejection of the petitioner for selection was valid. The appellate authority would specifically state that inasmuch as when the promotion as Secondary Grade Teacher itself has not been approved and B.T. (English) qualified person cannot be promoted in the vacancy of B.T. (History), the rejection made by the first respondent was valid and dismissed the appeal preferred by the petitioner. Aggrieved against this, the petitioner has preferred this Writ Petition.

3. The petitioner would contend that when the school was upgraded as High School in 1986, only two posts of B.T. Assistant and one post of Tamil Pandit were sanctioned. The above two B.T. Assistant posts were directed to be filled one for Maths and another one for English and inasmuch as those two subjects are important subjects in the High School keeping in mind that students in other subjects could be taught by anybody. Ignoring the Government guideline, the third respondent has filled up the posts by one Science and History Teacher. No history post was sanctioned at any point of time. The very appointment itself was illegal and as on date there was no other teacher for English. She cannot be considered on the vacancy of B.T. (History). She would be considered for that post in case she has B.A. (History), whereas the original sanctioned post was only English post, which she is very much entitled to.

4. The petitioner would further contend that if Rule 15(4) of Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, and the Rules, 1974 is taken into consideration, whenever any vacancy arises they have to consider the persons who are working in the same school and only in the absence of qualified hands alone they can appoint an outsider and in this case without considering the above rule they have appointed an outsider, which is against the rule and

consequently the appointment given to the fourth respondent is illegal and liable to be set aside, which the first respondent has entitled to take into consideration. Hence, the order of the first respondent/appellate authority is illegal and the petitioner has filed this Writ Petition to quash the order of the first respondent and cancel the appointment of the fourth respondent, which has been approved by the Government and give promotion to her.

5. The second respondent has filed a detailed counter contending that the petitioner did not possess the pre-requisite qualification of Diploma in Teacher Education or Secondary Grade Teacher Training Certificate for the post of Secondary Grade Assistant, at the time of her appointment and when she got the degree B.Ed. in 1991 and applying the G.O.Ms. No. 394, Education Department, dated 12.09.1997, the Secondary Grade Teachers without pre-requisite qualifications but with B.Ed. qualifications, should not continue in the post. When the order was challenged and based on the Court order, subsequently G.O.Ms. No. 155, Education Department, dated 03.10.2002 was passed stating that B.Ed. qualified Secondary Grade Teachers who were appointed between 11.07.1995 and 19.05.1998 should undergo one month Child Psychology Training at the District Institute of Education and Training. As the petitioner came under this category the approval for the appointment of the petitioner was cancelled by the second respondent on 29.04.2003 and the grant was also stopped. The petitioner accepted the above condition and her pay was re-fixed at Rs. 4,500/- as per G.O.Ms. No. 155, Education Department, dated 03.10.2002. But, later on, she filed a Writ Petition challenging this in W.P. No. 7416/2004 and directing to re-fix her pay treating as Selection Grade Junior Assistant upto 31.05.2003 and thereafter, to fix the pay of the petitioner as Secondary Grade Teacher and confer all the consequential benefits. In the above said Writ Petition this Hon"ble Court set aside only sub para VII of para 3 which directed recovery from the petitioner and therefore, all other conditions stipulated in G.O.Ms. No. 155, Education Department, dated 03.10.2002 would apply to the petitioner. In the meanwhile, a Science B.T. post became vacant on the death of one Science Assistant during 1999 and as the petitioner possessed B.A. degree in English she was denied the promotion and thereafter the History B.T. Assistant post became vacant, the Management sought prior permission to fill up the vacant post of History B.T. Assistant and only after getting the prior permission of the Chief Educational Officer, Virudhunagar, the Secretary of the third respondent school appointed the fourth respondent Tmt. Muthumeena in the post. The said post was also approved by the District Educational Officer vide Rc. No. 7529/B1/2001, dated 21.09.2001. As against this, the petitioner preferred an appeal, but the appellate authority rejected the appeal on the ground that the petitioner did her B.A. in English, whereas the vacant post is only a History B.T. Assistant post which she would not be entitled to. The Government also relied upon the G.O.Ms. No. 930, Education Department, dated 09.06.1975, G.O.Ms. No. 662, Education Department, dated 13.04.1982 and G.O.Ms. No. 1732, Education Department, dated 30.08.1980, wherein it is clearly stated that the teachers, who have

studied their main subject in Degree Course, can teach only those subjects in Standards IX, X and XI. Therefore, the petitioner, having English as main subject in B.A. Degree Course, cannot teach History subject and hence, prayed that the first respondent order rejecting the appeal was in accordance with law.

6. The third respondent had also filed a detailed counter endorsing the same view and his specific pleading is that the petitioner while seeking promotion for History B.T. Assistant post, failed to take into consideration that she is basically a English graduate and she cannot handle History subjects. Rule 15(4) of Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, and the Rules, 1974 had been taken into account in the appointment of the fourth respondent and only getting approval from the concerned authority, the fourth respondent was appointed. As Rule 15(4) of Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, and the Rules, 1974 will apply only to qualified candidates and the petitioner is not a qualified candidate, she cannot claim to be considered for the post in question. The approval for appointment of History teacher was rightly made and as the petitioner was not an approved Secondary Grade Teacher at the relevant time, she cannot have any grievance. Hence, the petitioner has no legal right to question the order of the first respondent.

7. Similarly, the fourth respondent duly selected candidate had also filed a counter stating that she had got all the pre-requisite qualifications as enumerated under law and Rule 15(4) would not apply to the petitioner as the petitioner is not a qualified person to seek for promotion as her basic degree subject differs and that as early as on 21.09.2001 itself her appointment has been approved and that her service was regularised and as the petitioner is not a basically qualified person to hold the post of B.T. Assistant (History), the petition is not maintainable.

8. It is also further contended that she was appointed through employment exchange by way of direct appointment, that too, after getting prior approval of the second respondent and later on she was regularised and approved. She would also contend that the permanent vacancy arose in the third respondent school for the post of B.T. Assistant (History). Therefore, the petitioner passed in B.A. (English) could not qualify by invoking Rule 15(4) of Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Rules 1974, challenging of appointment is illegal.

9. Heard the learned Counsel appearing for both sides.

10. A short point for consideration is that whether the petitioner who passed her B.A. (English) and working in the school, is eligible to seek for promotion as a B.T. Assistant (History) or not. The only contention made by the petitioner is in respect of the sanctioned post itself at the time of upgradation was only English and therefore, any appointment which is made whether it is History or Science is illegal and the present post even though the vacancy is that of History, the original sanctioned post is only English and therefore, she is rightly eligible. She

would also further contend that the Management has originally stated that her claim for promotion would be considered at a subsequent stage and they conveniently failed to take into consideration at the second time in 2000 and again from out of the school a third party was selected, which is hit by Rule 15(4) of Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, and the Rules, 1974 which would specifically state that if the candidates who are qualified in the same school, the first preference would be given to them and only if there is no qualified candidates the Management would be empowered to appoint from outside the school. These are the main contentions which are vehemently argued by the petitioner counsel. Unfortunately, the petitioner has failed to take into consideration that on both the occasions when the post became vacant, the Management has rightly applied to the department, got prior approval and thereafter, appointed a person. Especially in the first promotion in 1999 though there was a controversy that the letter which was alleged to have been given by the petitioner relinquishing her right was taken by coercion, unfortunately, neither the petitioner has taken any steps to send for the documents nor challenge the said appointment, whereas contra it was also clearly established that she has not chosen to challenge that letter till date in any other manner known to law. If we take into consideration the argument of the petitioner that if the original post itself was sanctioned only for English, when subsequently at two occasions the Management sought the permission seeking for selection for the respective Science posts, definitely the department would not have granted approval. But, in this case both in the present selection as well as in the earlier selection the Government have not only sanctioned, but also approved their appointments regularly. Contra, the petitioner's approval of the earlier selection itself was still lingering and has not been approved till date that being so, the petitioner's allegation at this point of time that there is no vacancy in History it was only in English cannot be entertained.

11. Next, taking into consideration the G.O.Ms. No. 662, dated 13.04.1982, which would categorically state that any appointment in respect of B.T. Assistant could be done only from out of the persons who has got prescribed qualifications in that subject. In this case since History post was called for, the teacher who has got the basic degree of B.A. History is only eligible, whereas admittedly the petitioner has passed only B.A. (English) and her original promotion itself has not yet been approved till the time of this appointment. Therefore, the rejection made by the Management is in order, in accordance with the direction of the Government and this has been rightly confirmed by the Appellate Authority by giving a sound and correct reasons in concurring with the Management in respect of the denial.

12. The petitioner relied upon the rulings of a Division Bench of this Hon'ble Court reported in *The Secretary, Saliar Mahajana Higher Secondary Schools Vs. G. Subburaj and Others*, and 2001 W.L.R. 222 (*M. Siluvai Rajan v. The Director of School Education and Ors.*) wherein this Hon'ble Court has categorically held that appointment of outsider can only be made, if no qualified and suitable

internal teacher is available. As discussed in detail above, when the petitioner is not a candidate or qualified candidate who was available in the school and when the Management has rightly got the necessary approval of the Government seeking for the appointment called for from third parties, the dictum of this ruling is not applicable to the facts of the case as it has been proved beyond any reasonable doubt that the petitioner is not a qualified, suitable internal teacher as available in the school to invoke Rule 15(4) of Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, and the Rules, 1974. Hence, no merit in this Writ Petition and the order passed by the first respondent is in consonance with the rules and regulations and there is no necessity to interfere with the impugned order. The appointment of the fourth respondent is proper and correctly appointed by the third respondent. Hence, no interference is required. This Writ Petition is dismissed. No Costs.