

(2008) 02 MAD CK 0045

In the Madras High Court

Case No : Writ Petition No. 24213 of 2005 and W.P.M.P. No. 26430 of 2005

S. Manivannan

APPELLANT

Vs

Director of School Education and Others

RESPONDENT

Date of Decision : 15-02-2008

Acts Referred:

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 19, 20, 9

Citation : (2008) 5 MLJ 642 : (2008) WritLR 441

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : C. Selvaraj for S. Mani, for the Appellant; S. Gopinathan, A.G.P. for Respondents 1 to 3, R. Ganesan, for 4th Respondent and A. Jenasenan, for 5th Respondent, for the Respondent

Final Decision : Allowed

Judgement

N. Paul Vasanthakumar, J.—Prayer in the writ petition is to quash the order of the first respondent dated 23.5.2005 communicated by the

third respondent by proceeding dated 11.5.2005 and direct the respondents to approve the promotion of the petitioner as Headmaster of the 4th

respondent School from 1.9.1995 with all consequential benefits.

2. The brief facts necessary for disposal of the writ petition are as follows:

(a) The 4th respondent School was established and administered by Thirumuruga Kirubananda Variyar Educational Sangam from the year 1990.

The said school was granted recognition with a condition that grant-in-aid will not be given for a period of three years. The Sangam accepted the

said condition and appointed teaching and non-teaching staff in the 4th respondent School.

(b) The petitioner was appointed as B.T. Assistant on 1.8.1990. The person, who

served as Headmaster in the 4th respondent School was

relieved from his post due to his inability and in the said place petitioner was appointed as Headmaster from 1.9.1995.

(c) After expiry of three years period, the Government, through G.O.Ms. No. 217 Education Department, dated 13.5.1997, sanctioned the

following posts, (1) One post of Headmaster; (2) Two B.T. Assistants; (3) One Tamil pandit; (4) Three Secondary Grade Teachers; (5) One

P.E.T; (6) One Junior Assistant; and (7) One Office Assistant, to the 4th respondent School with effect from 1.6.1995.

(d) Since the petitioner was appointed as Headmaster of the 4th respondent School from 1.9.1995, even though the post was sanctioned from

1.6.1995, 4th respondent management submitted the proposal for approval of his appointment as Headmaster only from 1.9.1995. The same was

rejected by the third respondent by order dated 8.12.1998 on the ground that the petitioner was working as B.T. Assistant in a non-sanctioned

post and he was appointed without any sponsorship through Employment Exchange, while he was appointed as B.T. Assistant.

(e) The 4th respondent management challenged the said order by filing appeal before the second respondent by stating that appointment through

Employment Exchange can be made only in aided posts and for unaided posts, the said procedure need not be followed and insofar as the

experience is concerned, petitioner having worked for more than five years in the 4th respondent School, which is a recognised School, the said

period of service should be treated as experience for approval of the petitioner's appointment as Headmaster. Since there was no response in

spite of filing appeal and reminders, 4th respondent filed W.P. No. 2673 of 2005 before this Court and a direction was issued to the first

respondent to consider and pass orders.

(f) Consequently the first respondent passed the impugned order dated 23.3.2005, which was communicated by the third respondent on

11.5.2005. The reason stated in the impugned order is that the petitioner was serving as B.T. Assistant in a non-sanctioned post and therefore the

said service cannot be counted for experience. The said order is challenged in this writ petition on the ground that the Tamil Nadu Recognised

Private Schools (Regulation) Act, 1973, and Rules, 1974 were followed by the 4th

respondent management while appointing the petitioner as

Headmaster and in Annexure-V of the Rules framed thereunder, five years of experience in a recognised School after passing B.Ed. alone is

prescribed for the post of Headmaster of High School and nowhere it is stated that the said five years experience is to be in the sanctioned/aided

post. Hence the petitioner prayed for setting aside the said order with a consequential direction to pay salary and other benefits from 1.9.1995.

3. Third respondent filed counter affidavit stating that 4th respondent School was granted recognition during the year 1990. Petitioner was

appointed as B.T. Assistant in the School on 28.8.1990 and he was promoted as Headmaster from 1.9.1995. Petitioner having not possessed of

five years of teaching experience in a sanctioned post of B.T. Assistant, he was not having five years of experience as required under the Rules for

being appointed as Headmaster of the School.

4. The learned Senior Counsel appearing for the petitioner submitted that rejection order passed by the first respondent is erroneous as the

petitioner was having more than five years of teaching experience as B.T. Assistant after passing B.Ed., and therefore 4th respondent rightly

appointed the petitioner as High School Headmaster and the same is bound to be approved due to sanction of post from 1.6.1995. The learned

Senior Counsel also produced G.O.Ms. No. 116, School Education Department, dated 14.7.2006, wherein it is stated that for counting the

experience for the post of Headmaster, the service rendered by a teacher in matriculation school is bound to be taken note of and the said position

was made clear in G.O.Ms. No. 285, School Education Department, dated 12.3.1991 and the Government also considered the counting of

experience of teachers worked in unaided private schools, provided the said teachers were appointed in unaided private school and intimation to

that effect has already been given to the District Elementary Educational Officer, after thorough verification of their service. Relying on the said

Government order, the learned Senior Counsel submitted that the petitioner's appointment in the 4th respondent School is proved by an order of

appointment dated 11.8.1990 and a service register is also opened which contains the details of the petitioner's service in the 4th respondent

school as B.T. Assistant from the said date and the management also submitted

periodical report to the District Educational Officer stating the names of persons worked in the 4th respondent School. The Attendant Register of the School also contains the name of the petitioner from 1990 to 1995, which was also verified by the District Educational Officer during annual inspection. Hence the petitioner's five year service as B.T. Assistant in 4th respondent school is bound to be treated as experience in terms of Annexure-V of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974.

5. Heard the learned Additional Government Pleader appearing for the respondents 1 to 3 and also the learned Counsel for respondents 4 and 5.

6. The point in issue is whether the petitioner is qualified for being appointed as Headmaster of the 4th respondent school from 1.9.1995

considering his five years previous service as B.T. Assistant in the very same school in the unaided vacancy.

7. Admittedly the 4th respondent School was granted recognition by the Department from 1.6.1990. Grant-in-aid was not given to the School till

31.5.1995. The recognition was granted u/s 9 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. One of the conditions for

the grant of recognition was that the management shall appoint fully qualified teachers. Qualifications for the teachers and other persons employed

in private schools are prescribed u/s 19 of the Act read with Annexure-V of the Rules. As per Section 20 of the Act, no person, who does not

passes the qualification prescribed u/s 19 shall be appointed in any private school after the commencement of the Act. Thus, it is incumbent on the

part of the 4th respondent to appoint fully qualified teachers.

8. The facts about the petitioner's appointment from 1.8.1990 as B.T. Assistant after acquiring B.Ed qualification and his continuance in the said

school as B.T. Assistant till he is appointed as Headmaster on 1.9.1995 are not in dispute. The records pertaining to his appointment, service

register and the attendance register from 1990 to 1995 were produced before me. Annexure-V of the Tamil Nadu Recognised Private Schools

(Regulation) Rules, 1974, prescribes the qualification for appointment to the post of Headmaster of the High School, which is as follows:

Headmaster : (1) B.A., or B.Sc., or its equivalent and B.Ed. (High School) or B.T. or L.T. and trained Teachers Certificate of Collegiate Grade.

(2) Should have worked as Teacher in recognised Schools for a period of not less than five years after obtaining B.T. or its equivalent degree.

From the perusal of the above qualifications, prescribed under the rules, which is the only governing rule for appointment to the post of High

School Headmaster, I am of the view that the order passed by the respondents that five years teaching experience in an unaided school, cannot be

treated as qualification towards experience, is unsustainable. As rightly contended by the learned Senior Counsel appearing for the petitioner, in the

said prescribed qualification, it is not stated that five years experience should be from a recognised aided school. The rule contemplates only five

years experience after obtaining B.T. or its equivalent degree in a recognised School or Schools. Hence the impugned order rejecting approval

stating that the service rendered in an unaided school cannot be taken as experience for the purpose of promotion to the post of Headmaster is

liable to be set aside. The above said reason being the only reason stated for rejecting approval, the writ petitioner is entitled to succeed.

9. The 5th respondent, who got impleaded himself in this writ petition was one among the B.T. Assistant, appointed by the 4th respondent

management when the school was granted recognition and when posts were sanctioned through G.O.Ms. No. 217 Education Department, dated

13.5.1997 from 1.6.1995, he was absorbed as B.T. Assistant only along with the petitioner and he accepted the said appointment and the said

appointment was also approved and he is paid salary as B.T. Assistant. The 5th respondent having accepted the B.T. Assistant post and is

receiving salary without challenging the appointment given to the petitioner as Headmaster, cannot claim that he is entitled to be appointed as

Headmaster of the School in the place of the petitioner. The list of teachers appointed, when the school was unaided on 22.8.1990, also

establishes the fact that the writ petitioner is the first B.T. Assistant and the 5th respondent is the second B.T. Assistant. Therefore, he is not senior

even in the cadre of unaided B.T. Assistant cadre. The 5th respondent is getting salary as B.T. Assistant from 1.6.1995 and the petitioner is

working as Headmaster of the school from 1.9.1995. The 5th respondent was also appointed in unaided vacancy without his name being

sponsored through employment exchange. Even when he was absorbed in an aided post, he was not sponsored through employment exchange.

Hence the 5th respondent has no locus standi to object the approval of the appointment of petitioner as Headmaster from 1.9.1995.

10. In view of the above findings, the writ petition is allowed. The third respondent is directed to approve the appointment of the petitioner as

Headmaster in the 4th respondent High School from 1.9.1995 with salary and other benefits as the post is sanctioned by the Government through

G.O.Ms. No. 217, Education Department, dated 13.5.1997 with effect from 1.6.1995. Necessary order to that effect is to be passed by the third

respondent within a period of four weeks from the date of receipt of copy of this order. No costs. Connected miscellaneous petition is closed.