

(2011) 01 MAD CK 0318

In the Madras High Court

Case No : Writ Petition (MD) No. 9372 of 2009 and 13502 of 2010 and M.P. (Md) No. 1 of 2009 and 1 of 2010

S. Mookiah

APPELLANT

Vs

The District Elementary Educational Officer, The Secretary,
Edward Memorial Middle School and K. Jeyaraman

RESPONDENT

Date of Decision : 28-01-2011

Acts Referred:

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 11, 14, 15, 17(3), 22(1)
Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 — Rule 12, 12(3A), 12(4), 12(5), 8(3)

Citation : (2011) 01 MAD CK 0318

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : K. appadurai, for the Appellant; S.C. Herold Singh, G.A. R1 and M. Ajmal Khan, for R2 and R3, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—The Petitioner is one and the same person in both the writ petitions. The first writ petition(W.P. No. 9372/2009) was filed challenging the order dated Nil passed by the second Respondent wherein and by which, the third Respondent who was working as Physical Education Teacher was included in the School Committee for a period of 3 years from the date of the order.

2. In that writ petition, notice of motion was ordered on 17.05.2009. Pending the notice of motion, no interim relief was granted.

3. On notice from this Court, the first Respondent has filed a counter affidavit dated 08.06.2010. On behalf of the second Respondent Management, a counter affidavit dated 14.06.2010 was also filed.

4. Pending that writ petition, the very same Petitioner filed W.P. No. 13502 of 2010, seeking to challenge the order of the District Elementary Educational

Officer, dated 30.09.2010 approving the constitution of the School Committee as proposed by the second Respondent, but without prejudice to the outcome of W.P. No. 9372 of 2009 filed by the Petitioner. When that writ petition came up for hearing, the earlier writ petition was directed to be posted along with the present writ petition and they were heard together.

5. The case of the Petitioner was that he had joined the second Respondent school on 03.04.1989 as Secondary Grade Teacher and had put in 20 years of continuous service. The school being a non-minority school is bound to constitute a School Committee in terms of Section 15 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. By exercise of powers u/s 56 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 r/w Section 15, Government has framed Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974.

6. It is necessary to refer to Rule 12, which reads as follows:

12. Constitution of the School Committee.-

(1) The educational agency of every private school shall constitute a school committee.

(2) The term of office of the Committee shall be three years. Members of the Committee shall be eligible for renomination.

(3) The School Committee shall consist of not more than the following number of members:

(i) Representatives of the Educational agency who shall be nominated by such educational agency: Provided that the employees of the school shall not be nominated under this category

(ii) Headmaster of the School (Ex-officio)

(iii) Senior most teachers of the school

(iv) Parent-Teacher Association nominee

(v) Senior-most non teaching staff (if available)

Explanation I. -Non-teaching staff shall mean the ministerial staff belonging to group "C" and above.

Explanation II -For the purpose of this rule the seniority shall be determined with reference to the total service rendered by teachers or non teaching staff as the case may be in any recognised school or schools:]

Provided that the number of representative of teachers shall not be reduced on account of any decrease in the strength of teachers during the three years term of the committee:

Provided further that the educational agency shall increase the representation for

the teachers on the above scale, if the strength of the teachers is increased. The teachers so nominated shall be a member of the committee for the residual period of the tenure of the committee and shall be eligible for renomination:

Provided further when a vacancy of teachers representatives in the committee arises, the next senior- most teacher shall be nominated to the committee. However there shall be no change in the membership of the teacher representative during the tenure of the committee on account of the appointment of another senior teacher.

[(3-A) When a vacancy of representatives of teaching and non teaching staff arises, the vacancy shall be filled in on the basis of seniority.]

(4)The educational agency shall nominate one of the representatives in the Committee as the President.

If the educational agency intends to change the President, within the period of three years, it shall do so only with the prior approval of the District Educational Officer.

(5)The following persons shall not be eligible to become members of the Committee:

(a) Minors;

(b) Mentally unsound person;

(c)Persons convicted for criminal offence involving moral turpitude;

(d) Insolvents;

(e) A person who has been found responsible for any serious irregularity, as a result of enquiry by the Education Department.

(Emphasis added)

7. It is stated that as per the Rule, if a person do not suffer any disqualification under Rule 12(5), the senior most teacher must be included in the School Committee. One Mahalakshmi, Secondary Grade Teacher in the school, who was also a member of the School committee got retired on 31.12.2008. As there was a vacancy of a Senior most teacher in the School Committee, the Petitioner submitted his application for his nomination, being the senior most teacher. But the second Respondent in violation of the principles behind the Act and the Rules appointed one K. Jeyaraman, (third Respondent herein), a junior Physical Education Teacher as a Member in the School Committee. Though the Petitioner preferred a representation to the first Respondent, challenging the improper constitution of the School Committee, even before any action can be taken, the second Respondent forwarded their proposals excluding the Petitioner. Once again the Petitioner sent a further representation dated 18.02.2009 to the first Respondent. But instead of disposing of the representation of the Petitioner, the first Respondent approved the School Committee as proposed by the second

Respondent.

8. In the counter affidavit filed by the first Respondent, it was stated that the first Respondent cannot interfere with the decision taken by the school Agency. The School Agency alone has power to constitute the School Committee and if the Petitioner is so aggrieved, he can only appeal to the Joint Director of Elementary Education.

9. In the counter affidavit filed by the second Respondent School Management, it was contended that though the Petitioner is senior in the cadre of Secondary Grade Teacher, his induction as a member of the School committee will be detrimental to the interests of the school. He has consistently demonstrated that he is not fit to hold the post of teacher in the school. He has also filed a suit against the school. Since the Petitioner earlier suffered punishment for his misconduct and due to the pendency of the disciplinary proceedings for serious misconduct, his request for induction to the School Committee was rejected and the Management passed the impugned order dated 16.02.2009. The school has already decided to remove the Petitioner from service and the said decision is pending approval by the first Respondent. The Petitioner earlier was imposed with the penalty of stoppage of increment for a period of three years without cumulative effect and the challenge made to the said order was not fruitful and the said punishment has become final. Therefore, reliance was placed upon Rule 12(5)(e) of the Rules extracted elsewhere.

10. The short question that has to be decided is whether the impugned orders are liable to be interfered with as contended by the Petitioner.

11. In so far as the Private Schools Act is concerned, the School Committee plays a vital role in the Management of the school. By the induction of a teacher in the School Committee, the intention of the State Government is to give them a role in the administration of the school as in any school, the teachers play most vital role. The composition of the School Committee has been extensively modified by the Government which were brought into effect vide G.O. Ms. No. 1133 Education dated 26.08.1989. The composition of the School Committee and its constitution and functions are provided under Chapter IV of the Private School Act.

12. A challenge to the said amendment was repelled by this Court by P. Sathasivam, J (as he then was) vide judgment in The Coimbatore District Aided Secondary and Higher Secondary School Management Association Vs. State of Tamil Nadu and Others, . In paragraph 19, it was held as follows:

19. I hold that amendment to Rule 12 cannot in any way affect the interest of the management, teachers and pupil. As per the scheme of the Act, the Government are empowered to prescribe the number of members of the school committee taking into consideration of the interest of all concern, namely, the management, teaching, non-teaching staff and the students.

13. The said order was taken on appeal before a Division Bench. A Division Bench presided by V.S. Sirpurkar, J. (as he then was) dismissed the writ appeal and upheld the vires of the Rule vide judgment in The Coimbatore District Aided Secondary and Higher Secondary School Management Association, represented by its President v. State of Tamil Nadu reported in (2004) 2 M.L.J. 263. In paragraph 30, it was observed as follows:

30..... It will be clear from the rules and more particularly Rule 12(4) that it is the educational agency which can nominate one of the representatives in the school committee as the President. Therefore, it is obvious that even if the total number of the members of the school committee is 12, in which only six representatives of the Educational agency, by the casting vote given u/s 17(3), the educational agency would have a upper hand. Therefore, this criticisms cannot be made at least by the school management that this curtailing of the number of the representatives would create an impossible situation and the functions of the school committee would come to a standstill. We do not see any unreasonableness in limiting the number of representatives of the Educational agency at least on the ground argued by the learned Counsel. This is apart from the fact that if the number of representatives of the educational agency is not limited then the educational agency might flood the school committee by its members and in that case, the democratic set up of the school committee would itself be lost. The educational agency in that case can become autocratic so as to silence any teacher or staff by their sheer majority. In our opinion, the rule limiting the number of the members of the Educational agency, is therefore, well thought-out rule.

(Emphasis added)

14. The parity between the number of representatives by the educational agencies and the number of Ex-officio members in the School Committee were made equal namely each will have 6 members. This balance was maintained so that the school is not dominated by the nominees of Educational Agency which will erode to autonomy of the representatives of the teachers, which also will have a greater say in the running of the school. If this position is conceded and if the composition of the School committee was not in order, then the educational authorities must intervene as the chapter in which the said section comes by virtue of Section 28 has overriding effect over other agreement or contract.

15. Section 28 reads as follows:

28. Chapter to have overriding effect.-(1) This Chapter or any rule providing for all or any of the matters specified in this Chapter or any order made in relation to any such matter shall have effect notwithstanding

(a) anything contained in any-

(i) other law for the time being in force, or

(ii) award, agreement or contract of service, whether such award, agreement or

contract of service was made before or after the date of the commencement of this Act, or

(iii) judgment, decree or order of court, Tribunal or authority, or

(b) that the rules relating to recognition of, or payment of grant, to private schools, had or have no statutory force:

Provided that here, under any such award, agreement, contract of service or otherwise, any teacher or other person employed in any private schools entitled to benefits in respect of any matter which are more favorable him than those to which he will be entitled under this Chapter, such teacher or other person shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that the receives benefits in respect of other matters under this Chapter.

Hence, in the matter of a School committee, there cannot be any private arrangement.

16. In so far as the School Committee should comprise of three senior most teachers is concerned, the Management has to necessarily fill it up with senior most teacher and no one else. Even Rule 12(3-A) clearly states that if a vacancy of the representatives of teaching and non teaching staff arises, the vacancy should be filled up only on the basis of seniority. This is an additional indicator in the Rules that a senior most teacher alone can be in the committee. The said nomination is on the basis of Ex-officio capacity and there is no role for an educational agency or the school management to pervert the procedure. Of course, any nomination will be subject to disqualification provided under Rule 12(5) extracted above.

17. Since the second Respondent themselves rely upon Rule 12(5)(e), it has to be seen whether the Petitioner has got any disqualification in terms of the said Rule. In that case, it is only in case of any enquiry by the Education Department relating to serious irregularities, a person gets disqualified from being in the School Committee. It is not the case of the Management that the Petitioner had suffered any enquiry by the Education Department for any serious irregularity. The fact that he had suffered an increment cut earlier or that he was facing a major penalty which is pending approval by the Department has no relevance. u/s 22(1), any major penalty can be inflicted only with the prior approval of the competent authority. Till such time the order does not come into operation at all and it cannot be any order in the eye of law.

18. Mr. Ajmal Khan, learned Counsel for the second Respondent contended that in respect of a private school, there cannot be any enquiry by the Education Department and therefore, Rule 12(5)(e) only means an irregularity found by the School Management. The term Education Department should be substituted by the School Management. If in the exercise of power of Rule making power, if the Government frames a particular Rule providing for disqualification, it has to be

construed strictly and there is no scope for expanding the Rule and further contention, there cannot be any enquiry by the Department is also unwarranted. Since the second Respondent's school is an aided school and in case of any mismanagement of the Government funds in relation to such irregularities, certainly the Department can invoke action which can take the form of Civil, Criminal or Departmental action. Further even in cases of major penalty such as dismissal, the Education Department has to grant approval. For that purpose they will have to undertake an enquiry to grant approval. If such an approval is granted then the teacher cannot be in the school itself and hence his continuing in the Committee will not arise.

19. Inasmuch as the Petitioner had not suffered any disqualification under Rule 12(5) and Rule 12(3) provides for nomination of senior most teacher, there is no escape for the Management except to include the Petitioner in the School Committee in the place of retired teacher as per law. The fact that his presence in the Committee will be embarrassing or that he was acting detrimental to the interests of the school is too vague statement. It cannot disqualify the Petitioner from being in the School Committee. Of course, it goes without saying that if any subject involving the Petitioner comes before the Committee, certainly, he will not be able to participate in respect of that item. But in respect of other items as long as he continues to be on the rolls of the teaching staff of the second Respondent school, he is entitled to be in the School Committee.

20. With reference to the question regarding a senior most person being in the Committee, a similar arose before a Division Bench of this Court, while interpreting the provision found in the Tamil Nadu Private Colleges (Regulation) Act, 1976, in T.K. Sudhindran and Ors. v. P. Jothi, Secretary, Colleges Committee, Sri Theagaraya College, Madras -21 and Ors. reported in (1985 3 ILR Mad 1), this Court in paragraph 17 observed as follows:

17. Mr. Kumaramangalam, learnedcounsel for the Petitioner on the other hand, had submitted that Clause (c) of Rule 8(3) is not ultra vires, and that the prescription of two senior most Professors is only for the purpose of clarification and illustration of what was latent in Section 11 of the Act. We do not find any substance in this contention of the learned Counsel. The Legislature has clearly provided that two senior Professors should be nominated on the College Committee. Nothing prevented the Legislature from saying two senior most Professors should be nominated to the College Committee. The rule providing for two senior most Professors is, therefore, in excess of the rule making power, and it isnot incidental to or by way of clarification of the main provision of the Act. It should accordingly be read down to mean two seniorProfessors as mentioned in Section 11 of the Act...

Fortunately, in the Private Schools Act, such a doubtneed not arise. Unlike Section 11 of the Private Colleges Act, u/s 14 of the Private Schools Act uses the term senior most teacher. Hence, Rule 12(3) does not go beyond the rule making power when it provides for senior most teacher to be accommodated in the

Committee.

21. Further, it is unfortunate that the first Respondent despite a complaint did not interfere with the decision of the Committee and wanted the Petitioner to appeal to the Joint Director. Since he is the approving authority of the School Committee, he could have very well raised a query with reference to non-inclusion of the Petitioner and returned the list without granting approval. In any event, it is unnecessary to remit the matter to the very same authority to decide the matter. The question involved herein is only on a narrow campus and involves interpretation of a particular Rule.

22. In the light of the above legal precedents, both the writ petitions will stand allowed and the impugned order in so far as non-inclusion of the Petitioner in the School Committee is set aside. The second Respondent is hereby directed that the Petitioner should be included in the School Committee as an Ex-officio senior most teacher of the school in the place of the third Respondent. No costs. Consequently, connected miscellaneous petitions are closed.