

(2009) 06 MAD CK 0137

In the Madras High Court

Case No : Writ Petition No. 1618 of 2001

S. Pandara Vadivu

APPELLANT

Vs

The Director of Elementary Education, The District
Elementary Educational Officer and The Secretary and
Correspondent Mr. K.S. Senthilnayagam

RESPONDENT

Date of Decision : 26-06-2009

Acts Referred:

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 11, 15, 2(7),
22

Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 — Rule 15(4), 17

Citation : (2009) 5 MLJ 1000

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

**Advocate : L. Chandrakumar, for the Appellant; K. Balakrishnan, for
Respondents 1 and 2 and Godson Swaminathan, for Isaac Mohanlal, for 3rd
Respondent, for the Respondent**

Final Decision : Dismissed

Judgement

N. Paul Vasanthakumar, J.—The prayer in the writ petition is to quash the order dated 22.11.2000 passed by the second respondent declining grant of approval of petitioner's appointment as Headmistress in the third respondent school with consequential direction to approve the appointment of petitioner as Headmistress.

2. The case of the petitioner is that after passing graduation, she registered her name in the Employment Exchange in the year 1996 initially at Cuddalore, which was subsequently transferred to Madurai District Employment Exchange. A vacancy arose in the third respondent - private aided School in the cadre of Headmistress due to the retirement of the then Headmaster. The third respondent applied for permission to fill up the post and no order having been passed, the third respondent invited applications through news paper - Dinakaran, Tirunelveli edition, dated 18.6.1999. On receipt of applications, a selection committee was constituted by the third respondent and interview was

held to assess the merit and ability. Considering the merit and ability, the petitioner was selected and appointed as Headmistress from 28.6.1999. Appointment order was issued to the petitioner by the third respondent on the undertaking given by the petitioner that no salary will be paid unless the appointment is approved by the department. The petitioner joined the services of the third respondent, even though she was not having five years of teaching experience. It is stated that no other candidate, who applied to the third respondent, was having five years of teaching experience.

3. The third respondent submitted proposal for approval before the second respondent, who is the competent authority. The said application seeking approval was rejected on the following grounds:

- (a) Third respondent failed to obtain prior approval for appointment,
- (b) Third respondent failed to get list from the Employment Exchange, prior to appointment, and,
- (c) Petitioner is not having five years of teaching experience.

Thereafter the petitioner was relieved from the services of the third respondent by order dated 19.12.2000. The order disapproving the appointment of the petitioner is challenged in this writ petition on the ground that there is considerable delay on the part of the second respondent in not granting prior permission to fill up the post of Headmaster and only after submitting application seeking prior permission, the third respondent invited applications through newspaper, pursuant to which several persons applied. It is contended that calling for list from the Employment Exchange for appointment may be a source and the same cannot be the exclusive source. Petitioner having been appointed on the basis of the advertisement published in the newspaper, the second respondent cannot reject approval on the ground that her name was not sponsored through the Employment Exchange. Insofar as not having five years of experience is concerned, no candidate applied for the post was having the required teaching experience and in fact there is a provision to get exemption from the Government for not having five years of teaching experience and the Government also granted exemption to similarly placed persons. Even if exemption cannot be granted, petitioner's appointment can be approved as B.T. Assistant for five years and on completion of five years service, Headmistress salary can be paid.

4. The third respondent filed counter affidavit stating that the post of Headmaster in the third respondent School became vacant on 1.6.1999 due to the retirement of the then Headmaster V. Murugan on 31.5.1999. As no suitable person was available in the School for promotion to the post, the School Committee resolved to fill up the post by direct recruitment and after seeking prior permission from the competent authority, the third respondent invited applications through newspaper dated 18.6.1999, pursuant to which nine candidates applied and appeared for selection. None of the candidate applied for

the post, was having five years of teaching experience like that of the petitioner. Petitioner was found meritorious from among the candidates appeared for interview and she also gave assurance that she would get exemption order from the Government for not having five years of teaching experience. But, the petitioner could not obtain necessary orders of exemption from the Government and hence her appointment was also not approved and consequently by proceeding dated 19.12.2000, the petitioner was relieved from the post as per the direction issued by the Assistant Elementary Educational Officer, Udankudi, by his proceedings dated 12.12.2000. The third respondent also justified the appointment of the petitioner since the Headmaster post is an important post to the School, which has to be filled up for proper administration of the school. It is further stated in the counter affidavit that the petitioner after being relieved from the third respondent School, secured employment in another school viz., Dalpin Public Matriculation School, Bye-pass Road, Madurai, and she was working there from May, 2001 to April, 2002. Now she is employed in Kanchi Sri Sankara Academy Matriculation School, Manakkad Road, West Tiruchendur, Tuticorin District.

5. The other respondents have not filed counter affidavit.

6. Heard Mr. L.Chandrakumar, learned Counsel for the petitioner, Mr. K.Balakrishnan, learned Additional Government Pleader for the respondents 1 and 2 and Mr. Godson Swaminathan, learned Counsel for the third respondent.

7. The points arise for consideration in this writ petition are as follows:

(a) Whether the third respondent School is entitled to appoint the petitioner as Headmistress without getting prior permission from the second respondent ?

(b) Whether approval of appointment of the petitioner can be rejected on the ground of not sponsoring the name of the petitioner through the Employment Exchange?

(c) Whether the petitioner is entitled to claim approval without having five years of teaching experience ?

8. Admittedly the third respondent School is a recognised Private Aided Non-minority School and therefore the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, and the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, are applicable to it. There was no teacher eligible to be appointed in the third respondent school for being promoted to the post of Headmaster and the School Committee of the third respondent resolved to fill up the post by direct recruitment.

9. Rule 15(4)(ii)(c) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, deals with "direct recruitment" in private aided schools. It is stated therein that in case of appointment from any other school or by direct recruitment, the School Committee shall obtain the prior permission of the District Educational Officer in respect of pre-primary, primary and middle schools

and that of the Chief Educational Officer in respect of the High Schools and Higher Secondary Schools, Teachers Training Institutions, setting out the reasons for such appointment. Thus, it is evident that vacant post in a recognised Private Aided Non-minority School can be filled up by direct recruitment, only after getting prior permission from the competent authority.

10. Here in this case, the case of the petitioner and the third respondent School is that the third respondent applied for prior permission and no order was passed by the competent authority viz., the second respondent and therefore the third respondent proceeded to fill up the post on the expectation of the grant of prior permission.

11. (a) The question as to whether on submitting application if no order is passed, whether it can be treated as deemed permission/approval or not insofar as seeking prior approval of the competent authority before passing dismissal/removal/reduction in rank of a teacher as required u/s 22 of the Act, came up for consideration before this Court in the decision reported in 1998 WLR 641 (T. Ramamoorthy v. The Secretary, Sri Ramakrishna Vidyalaya High School, etc. and Ors.). A Division Bench of this Court in the said decision in paragraph 6 held as follows:

6. We have carefully considered the submissions of the learned Counsel appearing on either side on the basis of the above decisions. We are of the view that the view taken by the Division Bench in the decision reported in M. Rukmani Devi Vs. The Chief Educational Officer and Others, is the correct and proper view that should and ought to be taken in a matter like this, as could be seen even from the decision of the Apex Court reported in : [1987]2SCR974 cited supra, and nothing concrete was brought to our notice on behalf of the (sic) appellant (respondent?) warranting any re-thinking or re-consideration of the issue in a different manner or to arrive at a different conclusion. The decision of the learned single Judge which is the subject matter of appeal before us, is liable to be set aside on the basis of the principles laid down by the Division Bench reported in M. Rukmani Devi Vs. The Chief Educational Officer and Others, alone which squarely governed this case against the Management. In addition to the reason already assigned therein, we may also add that if the statutory provision enacted by the Legislature prescribed a particular mode for terminating the service or dismissing the teaching or a non-teaching staff of a school, it can and has to be done not only in that manner alone, but it cannot be done in any other manner too. This principle that where a power is given to do a certain thing in a certain way, things must be done in that way and not otherwise and that other method of performance is necessarily precluded, is not only well settled, but squarely applies to this case also in construing the scope of the power as also its exercise by the management u/s 22 of the Act.

In fact the Division Bench reversed the judgment of the learned single Judge holding that if no order is passed, there is deemed approval.

(b) In the decision reported in 2002 (4) CTC 129 (R.V. Thevar Memorial Girls High School v. The Director of School Education) again a similar issue as to whether the provisions viz., Section 22 and Rule 17 are mandatory or not, was considered by the Division Bench of this Court and it is held therein that passing orders before obtaining prior approval is illegal and void as obtaining permission is mandatory as per the statutes.

(c) Whether an outsider can be appointed as a teacher when teachers working in the lower cadre are available in the School in violation of Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, was considered by another Division Bench of this Court in the judgment reported in The Secretary, Saliar Mahajana Higher Secondary Schools Vs. G. Subburaj and Others, , wherein it is held that if any appointment is made in violation of Rule 15(4), it is not valid. Paragraphs 4 and 5 of the said Judgment read as follows:

4. Admittedly, the first respondent had been appointed on 10.8.1997 as a Post Graduate Teacher in Commerce.

Rule 15(4)(i) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, states as follows:

Promotion shall be made on grounds of merit and ability, seniority being considered only when merit and ability are approximately equal.

(4) Appointments to the various categories of teachers shall be made by the following methods:

i) Promotion from among the qualified teachers in that school.

ii) If no qualified and suitable candidate is available by method (i) above, -

(a) Appointment of other persons employed in that school, provided they are fully qualified to hold the post of teachers.

(b) Appointment of teachers from any other school.

(c) Direct recruitment.

5. A perusal of the above Rule shows that appointment of outsiders can only be made if no qualified and suitable internal teacher is available. In other words, sub-clause (ii) of Rule 15(4) will only apply when no teacher falling in the category of Sub-clause (i) of Rule 15(4) is available. It is undisputed that there were teachers available as specified in Sub-clause (i) of Rule 15(4) i.e. internal candidates. Hence the appointment of the first respondent who was an outsider was clearly illegal. It was rightly set aside by the Joint Director of School Education by order dated 17.12.2001 and that order has been rightly confirmed by the learned single Judge. Admittedly, during the period when the first respondent was working i.e from 11.8.1997 to October 2004, he has been paid a consolidated salary of Rs. 1,050 p.m. (later enhanced to Rs. 1,250 p.m.) from the donations received by the Management. The learned single Judge has

directed that the first respondent should be paid salary of a regular teacher for the period for which he had worked i.e. from 11.8.1997. We are of the opinion that this direction of the learned single Judge for payment of salary as a regular teacher for the period for which the first respondent worked, cannot be sustained. Admittedly, the first respondent was not a legally appointed teacher. He had been appointed illegally in violation of Rule 15(4) of the Rules. Hence we cannot see how he can be granted salary of a regular teacher.

12. The third respondent School being a private aided School as defined in Section 2(7) of the Act, granting recognition u/s 11 of the Act and being administered by the School Committee formed u/s 15 of the Act, is bound to follow the Tamil Nadu Recognised Private School (Regulation) Rules, 1974, in the matter of appointment of Headmaster and teaching staff also. The said Rule 15(4) is not followed by the third respondent School while appointing the petitioner.

13. Similar writ petition challenging the rejection of approval for not obtaining prior approval was raised in W.P. No. 13914 of 1992 and the writ petition was dismissed on 13.4.1994, which was affirmed by the Division Bench in W.A. No. 786 of 1993 by order dated 25.7.1993.

14. The second respondent has not granted any prior approval to fill up the post of Headmaster of the third respondent school, which is admittedly required under the above said statutory provision, viz., Rule 15(4). The School Committee took a decision to go for direct recruitment to fill up the post of Headmaster. The said fact having not been disputed, the appointment of the petitioner by the third respondent School is to be treated as invalid and illegal and the said order will not confer any right to the petitioner.

15. In view of the above finding arrived at, I am of the view that the other reasons given by the second respondent while rejecting approval of appointment of the petitioner need not be gone into in this writ petition.

There is no merit in this writ petition and consequently, the writ petition stands dismissed. No costs.