
(2008) 04 MAD CK 0160
In the Madras High Court
Case No : W.A. (MD) No. 352 of 2008

Shirley Water

APPELLANT

Vs

The Director of School Education and Others

RESPONDENT

Date of Decision : 24-04-2008

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : (2008) 3 LW 355 : (2008) 5 MLJ 659

Hon'ble Judges : S. Manikumar, J;R. Banumathi, J

Bench : Division Bench

Advocate : R. Vijayakumar, for the Appellant; D. Gandhiraj, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S. Manikumar, J.—Mr. D.Gandhiraj, learned Government Advocate, takes notice for the respondents 1 to 3. By consent, the writ appeal is taken up for final disposal at the admission stage itself.

2. The correctness of the order dismissing the writ petition for a Mandamus, for a direction to the respondents 1 to 3, to reject the appointment order of D.Retnadhas, dated 10.07.2006 sent by the Manager and Correspondent of the Salvation Army Higher Secondary School, Nagercoil, the fifth respondent is challenged in this appeal.

3. The appellant is working as a Secondary Grade Assistant in the Salvation Army Higher Secondary School, Nagercoil, the fifth respondent. According to her, she has passed M.Sc., Agri (Botany) and M.Ed., degree and therefore, qualified to hold the post of P.G.Assistant(Botany) from 11.12.2005. She submitted a representation dated 07.11.2005 to the fifth respondent to consider her seniority and experience in the fifth respondent school and appoint her as P.G.Assistant(Botany). However, without considering her request, the Manager and Correspondent of fifth respondent School appointed one D.Retnadhas as

P.G.Assistant (Botany) and the appointment order was sent for approval to the Chief Educational Officer, Nagercoil, the second respondent herein. Aggrieved by the appointment of the said teacher, the appellant has sent another representation dated 15.07.2006 to the second respondent not to accord approval for the appointment of the said D.Retnadhas without considering the appellant's promotion.

4. The grievance of the appellant was that as the appointment was against the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 (hereinafter referred to as "the Rules") and that the fifth respondent ought to have promoted the appellant as P.G.Teacher as per Rule 15(4) (ii)(i) of the Rules. Besides, the appellant also contended that she was the next qualified and eligible teacher for being promoted to the said post.

5. The fifth respondent, Manager/Correspondent of the Salvation Army Higher Secondary School, Nagercoil, in his counter affidavit has stated that the school is a minority school receiving grant in aid from the State Government and therefore, the right of appointment in a sanctioned post is solely vested with the management of the minority school.

6. It was further stated that Mr.D.Retnadhas was appointed in the Salvation Army Higher Secondary School, Territorial Head quarters, High Ground Road, Maharaja Nagar Road Post, Tirunelveli District the fourth respondent herein on 01.06.1992 and was senior to the appellant. It is also the case of the respondents that while the said D.Retnadhas was working as B.T.Assistant in the fourth respondent school, the appellant was working only as a Secondary Grade Teacher and therefore, she is not qualified to be appointed as P.G.Assistant (Botony) in the vacancy caused due to the retirement of a P.G.Assistant Teacher. The fifth respondent has further submitted that the appointment to the said vacancy is not by way of promotion from the 5th respondent School and therefore, Rule 15(4) of the said Rules is inapplicable.

7. The learned single Judge, taking into consideration, the applicability of Rule 15(4)(ii)(i) of the Rules which deals with qualifications, procedure to be followed for appointment/promotion of teachers, the power of the management of a minority institution to appoint teachers in respect of corporate body running more than one school and also to the fact that the said D.Retnadhas was working as a graduate teacher (i.e.,) a higher post than that of the appellant found that there was no infringement of Rule 15(4) of the Rules in the process of promotion. The learned single Judge, on scrutiny of Rule 15(4) further observed that there is no automatic promotion of any qualified person, but the rule clearly contemplates that promotion shall be made on the grounds of merit and ability and seniority will be considered only when merit and ability are approximately equal. Considering the fact that the said D.Retnadhas had been selected from among all the qualified candidates and holding a higher post, the learned single Judge dismissed the writ petition. Though, the appellant challenged the appointment of said D.Retnadhas, he was not made as party in the writ petition.

8. Learned Counsel for the appellant, reiterating the contentions in the memorandum of appeal submitted that the learned single Judge ought to have seen that the appellant was more qualified than D.Retnadhas for the post of P.G.Assistant (Botany). He further submitted that when the appellant was fully qualified to be promoted to the post of P.G.Assistant (Botany), appointment of D.Retnadhas from another school is in violation of Rule 15(4) of the Rules. He further submitted that the learned single Judge ought to have seen that the school committee of the 5th respondent school has not obtained any prior permission from the Chief Educational Officer before appointing the said D.Retnadhas who was working in other school.

9. Mr.D.Gandhiraj, learned Government Advocate, appearing for the respondents submitted that in respect of a corporate body running more than one school, all the schools under the control and management of the corporate body shall be treated as one unit for the purpose of the Rule 15(4) (ii)(i) of the Rules and therefore, the post of P.G.Assistant in fifth respondent school can be filled up by appointing a teacher working in any of the schools run by the fourth respondent namely, the Salvation Army, with their headquarters at Tirunelveli. He further submitted that as between the appellant and the said D.Retnadhas, the latter is senior to the appellant. Besides, the writ petition itself is not maintainable for non-joinder of the said D.Retnadhas who is a necessary and proper party.

10. Heard the learned Counsel appearing for the parties and perused the material available on record.

11. Rule 15 of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 envisages the procedure to be followed for appointments to various categories of teachers. The qualifications, condition of service of teachers and other persons are also set out in this Rule. As per Rule 15(4) (ii) (i) promotion shall be made on the grounds of merit and ability and seniority being considered only when merit and ability are approximately equal. The 5th respondent school is one of the schools, run by the Salvation Army which is a corporate body recognised by the educational authorities.

12. A reading of the above said rule makes it clear that in respect of corporate body running more than one school, the schools coming within the control and management of the corporate body shall be treated as a single unit for the purpose of this Rule (i.e.,) for appointment to various categories of teachers. The contention of the 5th respondent school that the said D.Retnadhas was appointed in the fourth respondent school at Nagercoil on 01.06.1992 and that he was working as B.T.Assistant, holding a higher post than that of the appellant, is not disputed by the learned Counsel for the appellant. Perusal of the affidavit filed in support of the writ petition further discloses that the appellant was appointed as middle school assistant in the fifth respondent school only on 29.06.1993 and that he is one year junior to the person appointed as P.G.Assistant.

13. Therefore the finding of the learned single Judge that there is no

infringement of Rule 15(4) in the process of promotion of the said D.Retnadhas cannot be found fault with. Further, the writ petition is liable to be rejected for non-joinder of necessary and proper party.

14. In *Rajbir Singh, HFS-II Vs. State of Haryana and Another*, , the dismissal of a writ petition, challenging the inter se seniority, without impleading the other persons was confirmed by the Apex Court.

15. In *Baskaran Vs. The Commissioner of College Education and Others*, , a Division Bench of this Court following the judgment of *Prabodh Verma and Others Vs. State of Uttar Pradesh and Others*, , held that the remedy under Article 226 of the Constitution of India is equitable and discretionary and the persons who would be vitally affected by the decision are necessary parties. The Court should dismiss the writ petition, if necessary parties are not impleaded in the writ petition.

16. In yet another decision in *Ramrao and Others Vs. All India Backward Class Bank Employees Welfare Association and Others*, , the Apex Court reiterated the legal position and held that

...An order against the person without impleading him as a party and without giving an opportunity of hearing must be held to be bad in law. The appellants herein, keeping in view of the fact that by reason of the impugned direction, the orders of promotion effected in their favour had been directed to be withdrawn, indisputably, were necessary parties. In their absence, therefore, the writ petition could not have been effectively adjudicated upon. In the absence of the "promotees" as parties, therefore, it was not permissible for the High Court to issue the directions by reason of the impugned judgment.

17. Concedingly, the appellant who has sought for an equitable and discretionary remedy from this Court has failed to implead the promotee as party respondent in the writ petition. As rightly observed by the learned single Judge, the writ petition is not maintainable for non-joinder of necessary and proper party also. We do not find any infirmity in the order. There are no merits in the writ appeal and the same is dismissed. No costs.