
(2013) 08 MAD CK 0012

In the Madras High Court

Case No : W.A. (MD) No. 960 of 2011 and M.P. (MD) No. 1 of 2011

Sivanthi Vinayagar Primary School, Virudhunagar and M.
Vairamuthu

APPELLANT

Vs

S. Pappa, State of Tamil Nadu, Director of Elementary
Education and District Elementary Educational Officer,
Virudhunagar

RESPONDENT

Date of Decision : 23-08-2013

Acts Referred:

Citation : (2013) 08 MAD CK 0012

Hon'ble Judges : P. Devadass, J;N. Paul Vasanthkumar, J

Bench : Division Bench

Advocate : Isaac Mohanlal, for the Appellant; V. Panneerselvam for Mr. M.R. Vijayakumar for Respondent No. 1, Mr. V.R. Shanmuganathan, Special Government Pleader, for Respondents 2 to 4, for the Respondent

Final Decision : Disposed Off

Judgement

N. Paul Vasanthkumar, J.—This writ appeal is preferred by the management of the School as well as the person selected as Headmaster of

the Sivanthi Vinayagar Primary School, Mamsapuram, Srivilliputhur Taluk, Virudhunagar District, against the order made in W.P. (MD) No.

10248 of 2008 dated 12.8.2011. In the said writ petition the first respondent, who is one of the senior-most Secondary Grade Teacher in the

School, challenged the order issued by the Government in G.O. (4D) No. 2, School Education Department, dated 20.9.2008 and the

consequential order passed by the District Elementary Educational Officer, Virudhunagar, dated 7.10.2008 and prayed for a direction to promote

her as Headmistress of the first appellant School as per Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, and

confer all consequential benefits.

2. The learned single Judge allowed the writ petition with a direction to consider the case of the first respondent for appointment in the post of

Headmistress of the first appellant school.

3. The brief facts necessary for disposal of this writ appeal are as follows:

(a) The first respondent, after passing Plus Two (+2) and Diploma in Teacher Education, was appointed as Secondary Grade Teacher in the first

appellant Private Aided School on 20.4.1990 and in the said school, the Primary School Headmaster post became vacant from 1.6.1998 due to

the retirement of the incumbent.

(b) According to the first respondent herein, there were only two Secondary Grade Teachers possessing required qualification for promotion as

Headmaster viz., one Baby @ Umayal Parvathi and the first respondent herein. The management, ignoring the claim of both the internal candidates,

appointed the second appellant as Headmaster on 1.6.1998.

(c) The second appellant is not having Diploma in Teacher Education Certificate and also not having five years of experience as Secondary Grade

Teacher, which is required for promotion to the post of Headmaster of the School. His name was also not sponsored through the Employment

Exchange and being an outsider, he can be appointed only after getting prior approval in accordance with Rule 15(4) of the Tamil Nadu

Recognised Private Schools (Regulation) Rules, 1974. The first respondent having not been promoted, filed an appeal before the competent

authority.

(d) The first appellant sent proposal for approval to the second respondent before the District Elementary Educational Officer, Virudhunagar,

which was rejected on 10.9.1999. The said order was confirmed by the appellate authority on 10.2.2000.

(e) The second appellant was permitted to continue even after rejecting approval, which resulted in passing an order of direct payment of salary to

teachers, on 29.1.2001. The said order was challenged by the School Management in W.P. (MD) No. 2772 of 2001 and obtained interim stay.

The said stay order was confirmed in W.A. (MD) No. 631 of 2001. The second appellant has not chosen to challenge the order rejecting

approval.

(f) During the time of direct payment, the senior-most teacher viz., Baby @ Umayal Parvathi was to be in charge of the Headmaster post by order

dated 30.4.2001. The said order was challenged by the appellant in W.P. (MD) No. 9823 of 2001. Though interim stay was granted initially, later

on it was vacated.

(g) In spite of vacating the interim order, the second appellant was permitted to continue by the management, which resulted in filing Contempt

petition No. 638 of 2002, wherein the first appellant has filed an affidavit stating that the second appellant has abandoned the post and he did not

function as Headmaster and after recording the said statement, the contempt petition was closed on 20.2.2003. The said Umayal Parvathi

continuously served as Acting Headmistress till her retirement on 31.5.2007.

(h) Thereafter, the first respondent was put in charge as Headmistress. The first respondent submitted representation seeking promotion. The

management having not considered her request, she filed W.P. (MD) No. 8870 of 2007 and during pendency of the writ petition, Government

issued G.O. (4D) No. 2, School Education Department, dated 20.9.2008 and consequential order was passed by the District Elementary

Educational Officer, Virudhunagar on 17.10.2008 and the said orders are challenged in W.P. (MD) No. 10248 of 2008.

(i) In view of filing of the said writ petition, viz., W.P. (MD) No. 10248 of 2008, earlier writ petition filed in W.P. (MD) No. 8870 of 2007 was

withdrawn with liberty to agitate her claim in W.P. (MD) No. 10248 of 2008.

(j) The said Government order was issued due to issuance of direction to consider the claim of the second appellant seeking relaxation and

approved the first appellant as Headmistress in W.P. (MD) No. 1609 of 2006 and 1907 of 2005. The said direction was issued on 28.3.2006.

(k) After various litigations, the Government order having been challenged, the learned single Judge held that the promotion given to the second

appellant by the first appellant from 1.6.1998 is not valid as the action of the first appellant in appointing the second appellant, who is an outsider,

is without getting prior approval from the competent authority, in violation of Rule 15(4). The learned Judge held that the Tamil Nadu Recognised

Private Schools (Regulation) Act, 1973, do not contemplate granting relaxation of

experience and directed the management to consider the claim of the first respondent for appointment in the post of Headmistress.

4. The learned counsel appearing for the appellants submitted that the first respondent has not challenged the appointment given to the second appellant as Headmaster from 1.6.1998 and without challenging the said order, the approval/exemption granted by the Government cannot be questioned, as the same are consequential orders passed by the Government and the educational authorities, pursuant to the appointment given to the second appellant. Learned counsel further submitted that section 20(3) of the Act empowers the Government to grant relaxation of age and experience and the Government having exercised its statutory power in granting relaxation for not possessing five years of teaching experience by the second appellant, the first respondent is not entitled to challenge the same and the learned Judge was not right in allowing the writ petition, as if there is no provision to grant relaxation.

5. The learned counsel appearing for the first respondent on the other hand submitted that the appointment given to the second appellant as Headmaster of the School from 1.6.1998 was challenged by filing appeal before the District Elementary Educational Officer, Virudhunagar, on 12.6.1998 itself, that is within one month from the date of appointment given to the second appellant, and the said appeal was sent by registered post, which was also acknowledged by the District Elementary Educational Officer on 16.6.1998. Therefore, the contention of the appellants that the appointment of the second appellant was not challenged by the first respondent, is not legal and valid. Learned counsel further submitted that the approval sought for by the first appellant, in favour of the second appellant, was rejected by the Department and the approval sought for having been rejected, the appointment order has become invalid, and therefore the contention of the learned counsel for the appellant is unsustainable. The learned counsel further submitted that section 20(3) of the Act empowers only granting of exemption regarding age and experience, and not qualification. As per the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, Annexure-V, for posting a person as Headmaster, he/she must be a Secondary Grade Teacher, for which Plus Two (+2) and Diploma in Teacher Education are the prescribed qualifications and the

Teacher must have five years of teaching experience to become Headmaster of the school. The second appellant admittedly has not passed

Diploma in Teacher Education and he is a graduate teacher. The learned counsel further submitted that the first appellant has not followed Rule

15(4)(i) before appointing second appellant, who is an outsider and as such the learned single Judge was right in setting aside the Government

Order and the consequential order passed by the District Elementary Educational Officer and giving direction to consider the claim of the appellant

for the post of Headmistress.

6. The learned Special Government Pleader submits that the department is willing to follow any direction issued by this Court in this matter.

7. We have considered the rival submissions of the respective parties.

8. It is an admitted case that the second appellant is not possessing Diploma in Teacher Education and he is a graduate with B.Ed. qualification. He

was appointed as Headmaster of the School from 1.6.1998 in a retirement vacancy, without five years experience. The first appellant School is a

recognised private aided school, granted recognition in terms of the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act,

1973 and rules framed there under.

9. Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, is applicable to the first appellant aided school. Rule 15(4)

(i) clearly states that promotion shall be made on merit and ability, seniority being considered only when merit and ability are approximately equal.

Rule 15(4)(ii) mandates that appointments to various categories of teachers shall be made firstly by promotion among the qualified teachers in that

school and, if no qualified teachers are available in that school, other persons including the non-teaching staff working in that school, can be

employed, provided they are fully qualified to hold the post of teachers, and, only when they are not available, appointment of teachers from any

other school or by direct recruitment can be made with the prior permission of the District Elementary Educational Officer or the Chief Educational

Officer, as the case may be.

10. The said issue was already considered by this Court in the decisions reported in R. Balavadivel Vs. Chief Educational Officer, District

Educational Officer, Secretary, N.S.V.V. Higher Secondary School and S.

Thangapandi, , S. Pandara Vadivu Vs. The Director of Elementary

Education, The District Elementary Educational Officer and The Secretary and Correspondent Mr. K.S. Senthilnayagam, , M. Chelladorai Vs.

Joint Director of School Education (Higher Secondary), District Educational Officer, Correspondent, C.S.I. Higher Secondary School and J.

Evangline, B.T. Assistant (Promotee) CSI Higher Secondary School, and The Secretary, Saliar Mahajana Higher Secondary Schools Vs. G.

Subburaj and Others, No exemption is granted for not following Rule 15(4)(ii) to ratify the appointment of the second appellant by the

management.

11. Thus, the appointment given to the second appellant by the first appellant as Headmaster, is in violation of the statutory rule viz., Rule 15(4)(ii)

and the same cannot be treated as valid appointment.

12. The appointment of the second appellant may be treated as a valid appointment in the post of Secondary Grade Teacher, though he is not

having Diploma in Teacher Education qualification and is possessed with graduation with B.Ed Degree, in terms of G.O. Ms. No. 155 School

Education Department dated 3.10.2002 and G.O. Ms. No. 150 School Education Department dated 27.2.2007. Thus, the decision rendered by

the learned single Judge cannot be found fault with.

13. The contention of the learned counsel for the appellants that the first respondent has not chosen to challenge the appointment given to the

second appellant as Headmaster of the School and the first respondent has challenged only the consequential order, cannot hold good in view of

the fact that the appointment given from 1.6.1998 was not approved by the Department, and therefore the appeal filed challenging the appointment

has become infructuous. Before the grant of exemption and granting approval through the impugned orders, the first respondent filed W.P. (MD)

No. 8870 of 2007 and the said writ petition was withdrawn with liberty to agitate all the issues in the writ petition which was allowed by the

learned single Judge, which is under challenge in this writ appeal. Considering the overall aspect of the matter we dispose of this writ appeal in the

following terms:

a) The appointment of the second appellant from 1.6.1998 is to be treated as Secondary Grade Teacher.

b) The first appellant management shall fill up the post of Headmaster of the school by following Rule 15(4)(i) & (ii), within a period of six weeks

from the date of receipt of copy of this order.

c) Till the Headmaster post is filled as stated supra, status-quo as on today shall be maintained.

The writ appeal is disposed of accordingly. No costs. Connected miscellaneous petition is closed.