
(1998) 09 MAD CK 0025

In the Madras High Court

Case No : Writ Petition No. 13496 of 1998

Sundaram Aided Elementary School

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 04-09-1998

Acts Referred:

Citation : (1998) 09 MAD CK 0025

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : R. Venkatakrishnan, for the Appellant; M. Rathinam, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Subramani, J.—The Petitioner seeks issuance of a Writ of Certiorarified Mandamus or any other Writ or direction in the nature of a

writ and quash the order O.Mu. No. 2741/A6/98 dated 30.7.98 passed by the second Respondent and to direct the Respondents to approve the

appointment of Head Master in the Petitioner School with effect from 16.2.1998 with all consequential benefits.

2. The post of Head Master in the Petitioner-School fell vacant from 1.2.1998. The Secondary Grade Teachers working in the school gave written

letters stating that they are not willing to take work as the Head Master. Therefore, the Petitioner applied to the authorities to fill up the post and

the District Educational Officer also gave permission to the Petitioner to appoint persons having five years experience. A request was also made to

the District Employment Exchange to send candidates having 5 years experience and for that they also informed that no candidates are available to

fill up the post of head master with 5 years experience. Therefore, Petitioner appointed one Neelamegam, B. Lit., DPT as Head Master of the School. The appointment has not been approved by the authorities stating that Neelamegam has not completed five years teaching experience and therefore his appointment cannot be approved.

3. It is the case of the Petitioner that the impugned order is not legal in the sense that for the post of Head Master, five years experience is necessary in Primary Schools. But when graduate teacher is appointed no five years experience is required and that is the policy of the Government.

4. At the time of the admission, I directed the Government Pleader also to take notice. Government Pleader was also heard. After hearing the Government Pleader, I do not think that the Petitioner is entitled to succeed. In a similar case, this Court has held that the experience prescribed by the School is not a matter which could be overlooked or given an exemption and only those candidates who were fully qualified at the time when vacancy arose could be considered for appointment.

5. It has been so held by Jayasimha Babu, J. in W.P. Nos. 6607 of 1991 and 17963 and 18718 of 1992 (P. Singaravelu, etc. v. Government of Tamil Nadu). In that case, the learned Judge has held that neither the Act nor the Rules contain any provision conferring power on the Government or any of the authorities to relax any of the provisions of the Act or of the Rules. All regular appointees to the posts set out in the Rules must necessarily possess the prescribed qualifications. The learned Judge further said that it is not possible to take the view that the Government has unlimited power to grant relaxation to anyone who seeks relaxation from any of the requirements of the Act or Rule or the qualification prescribed in the Act and/or the Rules. The learned Judge further went on to say that in the absence of a specific Statutory Provision conferring the power to relax the qualification, such qualification cannot be relaxed. It is further said in that decision that even assuming that it was open to the Government to relax the rule, such power could only be exercised for promoting the objects of the Act and not to condemn the wilful and deliberate flouting of the Statutory Rules. The object of prescribing the qualification is to ensure that only such persons who possess the requisite knowledge and

experience are appointed to the post. The said legal position declared by the learned Judge was followed by P. Sathasivam, J. in W.P. Nos.

11257 of 1995, 13099 of 1995, 15441 of 1995 and 3818 of 1997 - Order dated 30.8.1997 (J. Deivakadatcham v. The Joint Director of

Elementary Education, DPI Compound, Madras-6). The decision of P. Sathasivam, J. was taken on appeal in W.A. No. 418 of 1998. But the

Writ appeal was dismissed by judgment dated 26.3.1998.

6. I also had occasion to consider the above decisions in W.P. Nos. 13090 of 1997 and 2406 of 1998 - Order dated 20.7.1998 (Tamil Nadu

Anglo Indian Schools Teachers and Staff Association etc. v. The Government of Tamil Nadu). I have also followed those decisions and held that

the qualifications fixed for the Head Master regarding experience is one of the essential qualification taking into consideration the responsibilities

which he has to take in managing the institution. It is not liable to be relaxed.

7. On the basis of the above decisions and taking into consideration the qualifications fixed under the Act, I do not think that the impugned order is

liable to be interfered with. The Respondents had rightly interpreted the Rules and came to the correct conclusion, that the appointment cannot be approved.

8. In the result, the Writ Petition is dismissed. No costs.