

(1997) 06 MAD CK 0013
In the Madras High Court
Case No : W.A. No. 1062 of 1992

The Chief Educational Officer and Another	APPELLANT
Vs	
V. Subbaraj and Others	RESPONDENT

Date of Decision : 16-06-1997

Acts Referred:

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 20

Citation : (1997) 2 CTC 355 : (1997) 2 MLJ 596

Hon'ble Judges : S.M. Abdul Wahab, J;J. Kanakaraj, J

Bench : Division Bench

Advocate : K.P.H. Thulasiraman, Special Government Pleader, for the Appellant;

Final Decision : Dismissed

Judgement

J. Kanakaraj, J.—The writ appeal is directed against the order of the Learned Single Judge in Writ Petition No. 2314 of 1980 dated

21.7.1986. By the said order, the learned Single Judge allowed the petition filed by the first respondent. It may be necessary to notice the brief

facts on which the writ petition itself was filed.

2. The first respondent (writ petitioner) sought to quash the order of the Educational Tribunal in C.M.A.No. 66 of 1979 confirming the orders of

the Chief Educational Officer and the District Educational Officer. The writ petitioner was appointed as a Secondary Grade teacher in the Hindu

Aided Middle School in a leave vacancy on 2.7.1973 and he continued to hold the said post till 8.10.1973. Thereafter, the writ petitioner was

appointed as the secondary Grade Teacher in regular vacancy in the very same school with effect from 9.10.1973 and he held that post till

4.10.1978. The writ petitioner was appointed as the Headmaster of the Middle School with effect from 4.10.1978. When the matter was taken up

for approval of the District Educational Officer, the latter held that the appointment could not be approved because the writ petitioner did not have necessary experience. The District Educational Officer did not specify the required experience or how the writ petitioner fell short of the required period of experience. When the matter went on appeal to the Chief Educational Officer, he confirmed the order and also added another ground by saying that seniority of certain others had not been taken into account. The Educational Tribunal, before whom the matter was further agitated, also confirmed the orders of the two authorities. It is under these circumstances the writ petitioner came before this court in Writ Petition No. 2314 of 1980. The learned single Judge found that there were only two seniors both of whom had abandoned their claim over the post and therefore, the writ petitioner was the senior most person. The learned single Judge found that the writ petitioner was thus qualified and, therefore allowed the writ petition and set aside the orders of the authorities as well as the order of the Tribunal. The Educational Authorities have preferred this appeal.

3. Learned Government Pleader argued before us that the writ petitioner (first respondent) did not have the required experience of five years as secondary grade teacher. In support of his argument, the learned Government Pleader refers to the counter affidavit filed by the appellants wherein it is stated that the writ petitioner did not have the experience for a period of five years in a regular post of secondary grade teacher. The counter affidavit is silent on the question whether the writ petitioner had served in leave vacancies or temporary vacancies. On this aspect we have to refer to the affidavit of the writ petitioner wherein it is categorically stated that the writ petitioner was fully qualified as per the rules because he had five years of experience as secondary grade assistant, if the period of service in leave vacancies is also taken into account. This aspect of the matter is totally ignored by the appellants in the counter affidavit. Even before the learned single judge, no argument was advanced that the writ petitioner did not have the required experience. In this view of the matter, we are not inclined to hold that the writ petitioner did not have the required experience of five years and on the other hand, we hold that it is enough if the writ petitioner had experience in the post of secondary grade assistant whether it be in a regular post or in a leave vacancy. What is important is that the incumbent should have experience in the post. No

argument was advanced on the finding of the learned single judge that two seniors had given up their claims and therefore, the writ petitioner was the senior most person.

4. In the result, the order of the learned single judge does not call for any interference. The authorities were not justified in denying approval of the appointment of the writ petitioner as Headmaster of the Middle school. The writ appeal is dismissed. No costs.