

(2017) 02 MAD CK 0079
In the Madras High Court
Case No : W.A. (MD) No. 416 of 2012

The Chief Educational Officer, Periyakulam	APPELLANT
Vs	
Nadar Saraswathi Higher Secondary School	RESPONDENT

Date of Decision : 17-02-2017

Acts Referred:

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

Citation : (2017) 3 LW 260 : (2017) 3 MLJ 486

Hon'ble Judges : Mr. R. Subbiah and Mrs. J. Nisha Banu, JJ.

Bench : Division Bench

Advocate : Mr. V.R. Shanmuganathan, Special Government Pleader, for the Appellants; Mr. Isaac Mohanlal, Senior Counsel for Mr. M. Pounraj, Advocate, for the Respondent

Final Decision : Allowed

Judgement

R. Subbiah, J.—This writ appeal has been filed by the appellants as against the order passed by a learned Single Judge of this Court, dated 19.04.2012 in W.P.(MD). No. 12065 of 2011, whereby and where under the learned Single Judge quashed the impugned order passed by the second appellant rejecting the approval of the appointment of one Mr. Logeshwaran, as Physical Education Teacher (PET) and consequently, directed the appellants to approve the appointment of the said teacher with effect from 22.08.2011 with all monetary benefits.

2. The case of the respondent school before the learned Single Judge is as follows :

The respondent is a Higher Secondary School, managed by Theni Melapettai Hindu Nadar Uravinmurai, Theni and has been receiving grant-in-aid from the State Government. It is governed by the Tamil Nadu Recognised Private Schools (Regulation) Act. As per G.O. Ms. No. 525, School Education, dated 29.12.1997, the first appellant sanctioned the post of one Physical Education Director and six

Physical Education Teacher in respect of the respondent school for the year 2010-2011. While so, one Mr. R. Aasariya Rajamani, who had been working as Physical Education Teacher, was promoted as B.T. Assistant on 20.10.1999. Subsequently, on 02.09.2011, the School Committee appointed one Mr. K. Logeshwaran in the post which fell vacant for the Physical Education Teacher and sent for approval on 05.09.2011. But, the same was returned by the second appellant by the impugned proceedings, dated 21.09.2011, stating that no prior approval for appointment was obtained from the first appellant herein. As the post is sanctioned post, there is no need to get prior permission from the Chief Educational Officer. Hence, challenging the rejection order, the respondent has filed the Writ Petition.

3. Before the learned Single Judge, the appellants filed a counter affidavit stating that the School is a non minority institution. Since the appointment was made by direct recruitment, as per Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 (hereinafter referred to as "the Rules"), prior permission before filling up the post is necessary. As per Rule 15(1) of the Rules, the number of teachers and other staff shall not exceed the number of posts fixed by the Director and Subordinate Officers of the Education Department from time to time, with reference to the academic requirements and norms of work load prescribed by the Department. As per para 5(iii)(c) of G.O. Ms. No. 525, dated 29.12.1997, subject to a maximum number of three PET posts (including one Physical Director post) was allowed in the respondent school. Though the respondent school is said to have been sanctioned 6 PET posts besides one Physical Director posts on or after the date of the above said G.O. dated 29.12.1997, as per the proceedings of the staff fixation for the year 2011-12 i.e, as on 01.08.2011, the respondent school was eligible for only 2 PET posts and one Physical Education Director post (Maximum of 3) and the surplus post of 4 PETs have become non-existent, consequent on the promotion and retirement of the persons who served in the surplus posts. Thus, the respondent appointed Mr.K.Logeswaran in the non sanctioned post of PET teacher. Hence, the proposal was duly rejected by the second respondent. Thus, he prayed for dismissal of the writ petition.

4. After hearing both sides, the learned Single Judge has allowed the writ petition on two grounds viz., (a) No prior permission is required for filling up the sanctioned vacancy, as held by this Court in 2011(5) CTC 532 (S. Christy v. the Chief Educational Officer) and followed in 2011(1) CWC 822 (S. Jayakumar v. State of Tamil Nadu); and (b) as per judgment reported in 2010 (2) MLJ 277 (the Director of School Education, Chennai and others v. K. Uma), a Higher Secondary School is entitled to three PET posts and one Physical Education Director and hence, the contention of department that as per G.O. Ms. No. 525, Education Department, dated 29.12.1997, the school is entitled to only two PET posts and one Physical Education Director, cannot be sustained.

5. At the outset, the learned Special Government Pleader would submit that in

the present appeal, he would insist only the ground of non obtaining of prior permission from the first appellant before filling up the sanctioned vacancy, as per Rule 15(4) of the Rules. In this regard, the learned counsel for the appellants submitted that the learned Single Judge has come to the conclusion that prior permission under Rule 15(4) is not necessary for filling up the sanctioned post only based on the judgment reported in *S. Christy v. Chief Educational Officer, Kanyakumari District*, (supra). But, the said judgment was challenged by way of Writ Appeal, in which, a Division Bench of this Court, though disagreed with reasons assigned by the learned Single Judge that for filling up a sanctioned post, no prior approval is necessary, ultimately dismissed the writ appeal on different ground, however, making it clear that prior permission for appointment is necessary in terms of Rule 15 of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, at least for non-minority institutions and even minority institutions will have to take post-facto approval and any appointment in Minority Institutions would depend only upon the fixation of staff strength by the Educational Authorities. So far as the present case is concerned, the respondent is a non-minority institution and therefore, the judgment relied upon by the learned Single Judge cannot be applied. In support of the above contention, the learned counsel for the appellants has relied upon the following judgments:

(a) 2016 (1) CWC 481 (*Chief Educational Officer, Kanyakumari District v. S. Christy*)

(b) 2005 (1) CTC 8 (*The Secretary, Saliar Mahajana Higher Secondary School, Aruppukottai v. G. Subburaj and others*)

Thus, he prayed for dismissal of the order passed by the learned Single Judge.

6. Countering the above submission made by the learned Special Government Pleader, the learned senior counsel appearing for the respondent submitted that Rule 15(4)(ii) of the Rules contemplates "prior permission" only in the event of filling up of "promotional posts" by way of taking persons from other schools or by way of appointing from open market through "direct recruitment". In the instant case, the post of PET is a entry level post and it is not a promotional post. Therefore, the judgment relied upon by the learned Special Government Pleader cannot be made applicable to the facts of this case. In support of his contention, he has also relied upon the following judgments:

(a) (2010) 2 MLJ 277 (*Director of School Education v. K. Uma*)

(b) Unreported judgment of this Court in W.A. (MD). No. 136 of 2011 (*the Chief Educational Officer v. S. Prabhu*)

Thus, he prayed for dismissal of this writ appeal.

7. Keeping the submissions made on either side, we have carefully gone through the entire materials available on record. In view of the submissions made on either side, the only question that has to be decided in this case is whether the prior permission of the appellants is necessary for filling up the sanctioned

vacancy?

8. It is not in dispute that the respondent school is a non-minority school. The main submission of the learned Special Government Pleader appearing for the appellants is that since the respondent is a non minority school, as per Rule 15(4) of the Rules, the prior permission of the first appellant for filling up a sanctioned vacancy is mandatory, whereas the learned senior counsel for the respondent submitted that the said Rule is applicable only for filling up the promotional post and not for filling up any sanctioned vacancy.

9. At this juncture, this Court is of the view that it would be appropriate to extract the provision of Rule 15 of the Rules for reference:

"15. Qualifications, conditions of service of teachers and other persons. - (1).... (4)(i) Promotion shall be made on grounds of merit and ability seniority being considered only when merit and ability are approximately equal.

(ii) Appointments to the various categories of teachers shall be made by the following method:-

(i) Promotion 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.

In the 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 School and that of the Chief Educational Officer in respect of High Schools and Higher Secondary Schools, Teacher Training Institutions setting out the reasons for such appointment. In respect of Corporate body running more than one school, the schools under that body shall be treated as one unit for purpose of this rule."

10. A bare perusal of the above Rule makes it clear that the Rule does not make any difference in respect of filling up of promotional post and non promotional post. Specifically, in sub clause (ii) it is stated that "appointments to various categories of teachers shall be made by following method", which means that it may be promotional post or non promotional post. Thus, the contention of the learned senior counsel for the respondent that Rule 15(4) would apply only to the promotional post is rejected.

11. So far as the contention with regard to the prior permission is concerned, Rule 15(4) itself makes it clear that prior permission is required only in the case of appointment from any other school or by direct recruitment and not in the case of appointment made by giving promotion to the persons employed in that

school." When a similar question arose viz., whether prior approval is necessary or not with regard to sanctioned vacancy? before a learned Single Judge of this Court in the case of S. Chrity v. the Chief Educational Officer, Kanyakumari District reported in 2011 (5) CTC 532, the learned Single has held that for appointment to the sanctioned post, no prior permission is necessary. By relying on the very same judgment, in this case, the learned Single Judge has allowed the writ petition. When the State went on appeal against the said view taken by the learned Single Judge in S.Christy case, a Division Bench of this Court has held in paragraph Nos.9 as follows;

"9. But, the ultimate conclusion reached by the learned Judge to direct approval to be granted to the appointment of the 1st respondent cannot be interfered with, for a different reason. The school in question is a Minority Educational Institution. As can be seen from the very Rule 15 of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, relied upon by the appellants, it has no application to minority schools. Therefore, despite the fact that the reasoning contained in the order of the learned Judge is not correct, the conclusion arrived by him is in accordance with law. Therefore, after pointing out that Rule 15 of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 stands on a different footing from Rule 11 of the Tamil Nadu Private Colleges (Regulation) Rules, 1976 and that prior permission is necessary in terms Rule 15 of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, at least for Non-minority Institutions, the Writ Appeal is liable to be dismissed. However, we wish to clarify that even minority institutions will have to take post-facto approval and that any appointment even in minority institutions would depend only upon the fixation of staff strength by the Educational authorities."

12. The above decision of the Division Bench of this Court is also reported in 2016 (1) CWC 481 (the Chief Educational Officer, Kanyakumari District v. S. Christy). From the above decision, it is clear that in case of any appointment from any other school or by direct recruitment in the non minority institutions, prior permission is necessary in terms of Rule 15 of the Rules. In yet another decision of a Division Bench of this Court in 2005(1) CTC 8 (The Secretary, Saliar Mahajana Higher Secondary Schools, Aruppukottai v. G. Subburaj and others), it has been categorically held that appointment made in contravention of Rule 15(4) is illegal.

13. As observed earlier, the respondent school is a non minority institution. The appointment of Mr. K. Logeshwaran was made by direct recruitment and therefore, the respondent ought to have obtained prior permission in terms of Rule 15(4) of the Rules. The appointment made in contravention of Rule 15(4) cannot be sustained. In view of the above, the decision of the learned Single Judge needs interference.

14. The decisions relied upon by the learned senior counsel appearing for the respondent are related to only about the fixation of staff strength, which has not been disputed in this writ appeal by the learned Special Government Pleader.

Therefore, the same are not relied upon.

15. In the result, this writ appeal is allowed and the order passed by the learned Single Judge is set aside. No costs.