
(1994) 08 MAD CK 0066
In the Madras High Court

The Saliar Mahajana Higher Secondary School	APPELLANT
Vs	
The Joint Director of Schools (Higher Secondary) and Others	RESPONDENT

Date of Decision : 17-08-1994

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (1995) 1 MLJ 303 : (1995) WritLR 277

Hon'ble Judges : Srinivasan, J

Bench : Division Bench

Judgement

1. For the purpose of brevity, it is enough to notice the facts in W.P. No. 1513 of 1989. The petitioner was working as a Post Graduate Assistant in the 2nd respondent private school. When the post of Headmaster fell vacant on 1.6.1983, the School Committee appointed the 3rd respondent who was working as an inducted Teacher to that post. Aggrieved by that order, the petitioner filed on appeal before the Joint Director (1st respondent) contending that under the relevant Rules, only a Post Graduate Assistant could be promoted to the post of Headmaster and not an inducted Teacher. The Joint Director accepted that plea and allowed the appeal by order dated 7.4.1984. That order is challenged by the School Management in W.P. No. 14852 of 1988. The 3rd respondent who was appointed by the Management, filed an appeal before the Tribunal against the orders of the Joint Director. The petitioner in W.P. No. 15130 of 1989 has filed W.P. No. 6944 of 1986 contending that the Tribunal has no jurisdiction to entertain an appeal in the matter of appointment of a Headmaster against the orders of the Joint Director. In W.P. No. 15130 of 1989, the petitioner challenges the order of the Management, appointing the 3rd respondent as the Headmaster.

2. The Higher Secondary System of Education was introduced in the year 1978. By G.O.Ms. No. 1091, Education, dated 16.5.1978, non-statutory rules were made governing the qualifications and method of appointment of Headmasters and Teachers of academic subjects in Higher Secondary Schools. Realising the fact that for the post of Headmaster, an experience of two years of service as

Higher Secondary Assistant in any Higher Secondary School had been prescribed under the said Rules, it was ordered that a person who was working as a Headmaster with post Graduate qualification in a High School, may at the discretion of the Management be posted as Headmaster of a Higher Secondary School, but when future vacancy arises that vacancy should be filled in only by persons who are fully qualified to hold the post with teaching experience of two years as Post Graduate Assistant.

3. As stated earlier, the incumbent who was holding the post of Headmaster in the year 1983. In the 2nd respondent School which was then a High School was treated as an inducted Headmaster and he continued in that post till 30.5.1983. In the vacancy so caused, the 3rd respondent who was working as an inducted Teacher handling Higher Secondary Classes, was selected by the Management on the ground of merit and ability and experience to hold that post of the Headmaster. The petitioner (in W.P. No. 15130 of 1989), filed an appeal against that appointment. He relied on G.O.Ms. No. 720, Education, dated 28.4.1981 which are rules made under the proviso to Article 309 of the Constitution of India governing the Tamil Nadu Higher Secondary Educational Service consisting of the posts of Headmasters, teachers in academic subjects, teachers in languages, Physical Directors, etc. These Rules *propria vigore* will govern only schools run by the Government. But the preamble to G.O.Ms. No. 720, Education, dated 28.4.1981 stated that the qualifications and other service conditions prescribed in the appended notification for the posts of Headmasters, Teachers of Higher Secondary Standards and Physical Directors in Government Higher Secondary Schools will *mutatis mutandis* be followed also in aided schools run by Local Bodies (Municipalities and Corporations, etc.)

4. It is therefore obvious that the Rules made under the proviso to Article 309 of the Constitution ill G.O.Ms. No. 720, Education, dated 28.4.1981 (hereinafter referred to as the Rules) would equally be applicable to Aided Schools. In those Rules, Rule 2 states that appointment to several classes and categories of the service shall be made in the manner as mentioned therein. As regards the post of Headmaster which falls in Class I, it can be either filled up (i) by recruitment by transfer or (ii) by promotion from Class II of the Service.

5. Class II of the Service describes the category on Teachers in Academic subject and Teachers in Language.

6. In this case, we are concerned with recruitment by the method of promotion. Therefore, the feeder category for promotion to the post of Headmaster is Class II, viz., Teachers in Academic Subjects for Teachers in Languages. The qualifications prescribed for teachers in Academic Subjects are that the candidate must hold a Master's Degree of a University in the State or a Master's Degree of an equivalent standard in the subject in respect of which recruitment is made. Since these Rules have been made applicable to Aided Schools *mutatis mutandis*, if the 3rd respondent were to be promoted from the category of Teachers in Academic Subjects to the category of Headmaster, then, the question for

consideration is whether the 3rd respondent could be described as one occupying the post of a Teacher in Academic Subjects. It is contended by Mr. C. Selvaraju, that the 3rd respondent though possesses a Master's Degree in a subject other than the one for which recruitment was made. In other words, the 3rd respondent did not possess a Master's Degree in Mathematics which he was then teaching and to which post he was recruited. It was obviously because of this reason, the 3rd respondent was only an inducted Teacher handling Higher Secondary Classes. It is contended that he belonged to a category of inducted Teachers and not a category contemplated under G.O.Ms. No. 720, Education, dated 28.4.1981, falling under Class II of the services.

7. In the order of the Joint Director allowing the appeal filed by the petitioner, it is stated that the 3rd respondent herein was only an inducted Teacher and not a member of Class II of the Service. It was therefore held by the Joint Director that the 3rd respondent was not qualified to be promoted as a Headmaster.

8. Mr. E. Padmanabhan, learned Counsel appearing for the 2nd respondent would submit that merit and ability are the main criteria for appointment of a Headmaster and on a comparative assessment of the qualifications, merit and ability of the petitioner and the 3rd respondent, the School Committee came to the conclusion that the 3rd respondent was better suited to hold the post of Headmaster because of long years of service and experience. Mr. E. Padmanabhan also relied on a judgment of a Division Bench of this Court made in W.A. No. 640 of 1985 wherein it was held that if appointments are to be made on merit and ability, it is enough if a person possesses the qualifications prescribed for appointment to the post of the Headmaster.

9. In G.O.Ms. No. 720, Education, dated 28.4.1981, Rule 7 deals with qualifications and it states that no person shall be eligible to the appointment, specified in column (1) of the Annexure by the methods specified column (2) against each, unless he possesses the qualifications specified in the corresponding entries in column (2) thereof. Insofar as the post of Headmaster in concerned, the qualifications prescribed for appointment were:

(i) A Master's Degree of a University in the State or a Master's Degree of equivalent standard or a certificate issued by the University of Madras for having undergone the Certificate course in science and Humanities for graduate Teachers in High School.

(ii) B.T. or B.Ed., Degree of University in the State or a Degree of Equivalent Standard.

(iii) Experience for a period of not less than ten years as B.T. Assistant or Pandit in a Secondary School/Training School/Higher Secondary School, after obtaining a teaching Degree recognised by the Director of School Education and

(iv) must have passed the Account Test for Executive Officers or Account Test for Subordinate Officers Parts I and II.

It is contended by Mr. Padmanabhan that the 3rd respondent possesses these qualifications and therefore, his appointment cannot be disturbed. In W.A. No. 640 of 1985, etc. by judgment dated 24.6.1986, the Division Bench noticed these qualifications and held that if a person possesses these qualifications, he could not be appointed as Headmaster.

10. Mr. C. Selvaraju, learned Counsel for the petitioner would submit that the said Judgment of the Division Bench made in Writ Appeal No. 640 of 1985 had failed to notice that apart from prescribing the qualifications for the incumbents of the post of Headmasters, the Rules also specifically, state the method of recruitment. It is either by transfer or by promotion. If it is by promotion the feeder category is Teachers in Academic Subjects or Teachers in language. It is contended by Mr. Selvaraju that it is not enough if a person possesses the qualifications as prescribed in Rule 7, but he must also satisfy the requirements of Rule 2 which states that appointments to several classes and categories shall be made in the manner prescribed therein, viz.. either by transfer or by promotion from Class II. Since, according to Mr. Selvaraju, the 3rd respondent did not satisfy the requirements for being considered as a person belonging to Class II even on a national basis, as he did not possess a Master's Degree of a University in the State in the subject in respect of which the recruitment was made as a Teacher, he could not be considered as a Teacher in Academic Subjects falling under Class II, but he could at the most be only an inducted Teacher. It is contended that the privilege given to a B.T. Assistant to handle higher secondary classes as an inducted 1 teacher was only an ad hoc or temporary basis governed by G.O.Ms. No. 1091, dated 16.9.1978 and that transitory provision cannot be retained for ever and used from time to time so as to enable an inducted teacher to be promoted to the post of a Headmaster.

11. Since the judgment in W.A. No. 640 of 1985 makes no reference to Rule 2 relating to the method of recruitment and also to the qualifications to be possessed by an incumbent belonging to Class II of the Service, Mr. Selvaraju, learned Counsel contends that the said judgment requires re-consideration. though the Rules made in G.O.Ms. No. 720, dated 28.4.1981 will normally govern only the schools run by the Government yet, the said Rules have been made applicable to Schools run by aided management also by reason of executive instructions which are found in the preamble to G.O.Ms. No. 720, Education, dated 28.4.1981. If therefore a person could be promoted as a Headmaster, only if he was a Teacher in the Academic Subjects possessing a Master's Degree in the subject for which the recruitment was made and if the 3rd respondent did not possess that qualification it is for consideration whether the appointment the 3rd respondent could be sustained or whether it requires interference. That would depend upon the question whether the judgment in Writ Appeal No. 645 of 1990 requires reconsideration or not. Since prima facie, it is seen that the said judgment has made no reference to Rule 2 or to the qualifications which a Teacher in an academic subject should possess before he could be promoted to the post of a Headmaster, papers are placed before My

Lord, the Chief Justice for orders as to whether these writ petitions may be posted before a Full Bench consisting of Three Judges.

In pursuance of the order of this Court, dated 7.11.1990 and made herein and the office note dated 21.7.1994 this matter having been fixed for hearing on this day, upon perusing the petitions and the affidavit filed in support thereof the order to this Court dated 30.11.1988 and made herein and the counter-affidavit filed herein and the records relevant to the prayer aforesaid to the writ made by the High Court, and upon hearing the arguments of E. Padmanabhan. for Petitioner.

Srinivasan, J.—This writ petition is filed by the Management of the Saliar Mahajana Higher Secondary School for the issue of a certiorari calling for the records relating to the proceedings of the Joint Director of Schools (Higher Secondary) in his Office Ref. No. Mu.Mu. 239292/H.S./23/G8/83, dated 7.4.1984 and quash the same. The short facts which are sufficient for the disposal of this writ petition are that the petitioner school was upgraded into a Higher Secondary School on 1.7.1978. The Headmaster who was then occupying the post continued in service. He retired on 31.5.1983. The vacancy was filled up by the petitioner by appointing one Sankaralingam on 14.6.1983. The information of appointment was given to the Chief Educational Officer. But, he had passed any orders approving the appointment. The fourth respondent in the writ petition by name Navaneetha Krishnan challenged the appointment by filing an appeal before the first respondent, the Joint Director of Schools, on the footing that Sankaralingam was qualified to be appointed as a Headmaster as he was not a Post Graduate Assistant at the time of such appointment. The contention was accepted by the Joint Director and he allowed the appeal on 7.4.1984. Challenging that order, the management, has preferred this writ petition.

2. It should also be mentioned now that there were two other writ petitions before this Court which were posted along with this writ petition, W.P. No. 6944 of 1986 was filed by the fourth respondent for issue of a Writ of prohibition prohibiting the Education Tribunal from hearing the appeal C.M.A. No. 7 of 1984 filed by appointee of the Management challenging the order of the Joint Director of Schools. The fourth respondent also filed W.P. No. 15130 of 1989 challenging the order of management appointing the said Sankaralingam as Headmaster. When the matters were posted before S. Ramalingam, J. he felt that the matter required to be considered by a Full Bench as, in his opinion the view taken by a Division Bench of this Court in W.A. Nos. 640 and 669 of 1985 was erroneous, inasmuch as, the judgment did not take note of Rule 2 of the Rules framed under G.O.Ms. No. 720, Education, dated 28.4.1981 relating to the recruitment and also to the qualification to be possessed by an incumbent belonging to Class 2 of the service. The order of reference was made on 7.11.1990. Pursuant to the same, the Chief Justice constituted this Bench to hear the writ petitions.

3. When the matters were posted before us W.P. Nos. 6944 of 1986 and 15130 of 1989 were withdrawn by the counsel stating that he was instructed to withdraw

the same by his client. We have passed orders yesterday dismissing the writ petitions as withdrawn. What survives before us for consideration is the question raised in W.P. No. 14582 of 1988 at the instance of the Management as to whether the appointment of Sankaralingam as Headmaster is valid in law?

4. When the High Schools were upgraded as Higher Secondary Schools in the year 1978-79 the Government issued G.O.Ms. No. 1091, Education, dated 15.6.1978. That Government Order also provided for private schools which were receiving aid from the Government. According to the Government Order, the Headmasters of Aided Schools who are functioning as such, may continue, as Headmasters of the Higher Secondary Schools. As regards the Teachers, the provision in the Government order is that all the Teachers fully qualified as per the provisions in the Government order available in the same school shall be appointed as Higher Secondary Teachers and if adequate number of qualified persons are not available in same Management, persons qualified according to the provisions contained in the Government Order may be allowed to handle the Higher Secondary Classes. Thus, a distinction is made with reference to the post of Headmaster and the post of Teacher in the said Government Order.

5. Subsequently, the Government passed G.O.Ms. No. 720 on 28.4.1981 framing rules under Article 309 of the Constitution of India whereby the Tamil Nadu Higher Secondary Educational Service was constituted. In the preamble to the Government Order, it is stated that the qualifications and other service conditions prescribed in the notification for the posts of Headmasters, Teachers of Higher Secondary Standards and Physical Directors in Government Higher Secondary Schools will *mutatis mutandis* be followed also in Aided Schools run by local bodies (Municipalities and Corporations, etc.) and Government schools under the Adi Dravidar and Tribal Welfare and Backward Class Departments, pending issue of amendments to the relevant rules.

6. As per the annexure to the Government Order, the method of recruitment for the post of Headmaster and Headmistress in High-School is (i) recruitment by transfer and (ii) by promotion. We are not concerned in this case with recruitment by transfer. As regards promotion, the provision in the Government Order is that promotion should be made from Class II of the service. It should be noted here that the Service constituted under the Government Order comprises three classes viz., Class I, Classes II and III. Class I pertains to Headmaster and Headmistress of the High School, Class II relates to Teachers in academic subjects and teachers in languages and Class III relates to Physical Directors and Physical Directresses in Higher Secondary Schools. While the service is constituted with regard to the Government School under Article 309 of the Constitution, there is no such constitution of service with reference to private schools which take aid from the Government. When the preamble refers to the applicability of the rule *mutatis mutandis* to the Aided Schools, it can only mean that the Rules will be applicable with suitable modifications as necessary with reference to Aided Schools. The expressions *mutatis mutandis* has been defined

in the Law Lexicon of Ramanatha Aiyar reprinted in 1993 at page 845 as follows:

With the necessary changes in pointed of detail. (Wharton L.Lex.)

In Black's Law Dictionary with Pronunciations, Sixth Edition at page 1019 the following definitions is found,

With the necessary change in points of detail, meaning that matters or things are generally the same but to be altered when necessary, as to names, offices, and the like. *Housman v. Waterhouse*, 191 App. Div. 850 : 182 N.Y.S. 249 .

7. In *Ashok Service center and Others Vs. State of Orissa*, . The Supreme Court applied the definition contained in Black's Law Dictionary as aforesaid and observed,

Section 3(2) of the Act which maker, the provisions of the Principal Act *mutatis mutandis* applicable to the levy of additional tax is a part of the charging provisions of the Act and it does not say that only those provisions of the principal Act which relate to assessment and collection of tax will be applicable to the proceedings under the Act. Before considering that provisions of the principal Act should be read as part of the Act, we have to understand the meaning of the expression "*mutatis mutandis*". Eral Jowitt's "The Dictionary of English Law (1959) defines "*mutatis mutandis*" as with the necessary changes in points of detail. Black's Law Dictionary (Revised 4th Edn. 1968) defines" *mutatis mutandis* as with the necessary changes in points of detail, meaning that matters or things are generally the same, but to be altered when necessary, as to names, offices, and the like, *Housman v. Waterhouse*, 191 App. Div. 850 : 182 N.Y.S. 249. In *Bouvier's Law Dictionary* (3rd Revision Vol. II) the expression "*Mutatis mutandis* is defined as "The Necessary Changes". This is a phrase of frequent practical occurrence, meaning that matters or things are generally the same, but to be altered when necessary, as to names, offices, and the like. Extension of an earlier Act *mutatis mutandis* to alter Act brings in the idea of adaptation, but so far only as it is necessary for the purpose making a change without altering the essential nature of the thing changed, subject of course to express provisions made in the later Act.

8. We have no difficulty in holding that rules framed under G.O.Ms. No. 720, Education, dated 28.4.1981 are applicable to the Aided Schools with such modifications as are necessary. Hence, insofar as the Aided Schools are concerned, the rules cannot be treated as statutory rules or rules framed under Article 309 of the Constitution. The said Article in the Constitution of India is not applicable to private schools. Consequently, the rules insofar as they relate to Aided Schools can only be brought under Article 162 of the Constitution of India and treated as having been framed in exercise of the executive powers of the Government. Thus, the rules under G.O.Ms. No. 720 are only administrative rules insofar as they relate to Aided Schools and they cannot be treated as statutory rules.

9. Hence, there is no question, of Class II Service or Class I Service with reference to Aided Schools as no such service has been constituted by appropriate rules framed by the Government. No doubt, the promotion to the post of Headmaster can be only from among the Teachers in academic subjects and Teachers in Languages. The Rules used the expression "Teachers in Academic Subject and Teachers in Languages. The rules did not use any other expression at that time. It was long afterwards, in 1988 the rules were amended by G.O.Ms. No. 452, dated 24.3.1988 when the expressions "Teachers in Academic subjects" and "Teachers in Language" were replaced by the expression "post Graduate Assistants in academic subjects" and "Post Graduate Assistants in Languages" respectively. Insofar as the present case is concerned, the appointment of Sankaralingam as headmaster was made on 14.6.1983, long prior to the passing of G.O.Ms. No. 452 and the amendment of G.O.Ms. No. 720. Hence, the relevant expressions at the time of appointment were only "Teachers in Academic subjects" and Teachers in Languages" Admittedly, there is no definition in any rule or Act of the expression "Teachers in Academic subjects or Teachers in Languages." Consequently, we have to adopt the normal interpretation which should be given to such expression. The expression will normally cover any person who is teaching academic subject or who is teaching language. It cannot be construed to mean only Post-Graduate Assistant or any particular type of Teacher. The expression Teacher would only include all those persons who are teaching subjects and the languages. That is the view taken by a Division Bench of this Court in W.A. No. 391 of 1981 and W.P. No. 6921 of 1981 in the judgment dated 17.3.1982. The relevant passage in the judgment reads thus:

The qualifications relating to Tamil Vidwans or Pulavars referred to in the "Notes" are particular qualification which are recognised for teaching Tamil. But, from that it could not be contended that the words "academic" subjects in G.O.Ms. No. 1091, Education, dated 15.6.1978 would not include languages. In fact, the description in Note 3 which reads as "Degree in subjects other than working as B.T. Assistants in subjects other than Tamil" show that the Government have used a compendious name as "teachers of Academic Subjects", to refer to both teachers who teach languages as also other teachers and they have not made any distinction, though it would have been desirable to make such a distinction.

10. The same view expressed by the Division Bench which decided W.P. Nos. 640 and 669 of 1985 on 24.6.1986. The Bench observed.

The relevant entry insofar as we are concerned in Class I is Headmaster and Headmistress in Higher Secondary Schools. The method of recruitment for the posts of Headmaster and headmistress in Higher Secondary Schools in by,

(i) Recruitment by transfer from category 10 (sic.) Class II of the Service. Class II of the service.

(ii) Promotion from Class III of the service. Class II of the Service consists of

teachers in academic subjects. One of the conditions for filling up the vacancies in Class I reads as follows: Promotion to Class I in the Service shall be made on grounds of merit and ability. Seniority being considered only where merit and ability are approximately equal.

This provision shows the promotions to the post of Headmaster did not go merely by seniority but that it is the merit and ability of the candidate which have to be first considered and if merit and ability are approximately equal then only the seniority will tilt the balance in favour of the senior persons. In case of promotions, the qualifications have been specifically prescribed in the Annexure, Separate qualifications are prescribed to the recruitment by transfer and in the case of promotions qualifications prescribed as follows:

(i) A Master's Degree of a University in the State or a Master's Degree of equivalent standard or a certificate issued by the University of Madras for having undergone the certificate.... and Humanities for graduate Teachers in High School:

(ii) B.T. or B.Ed. Degree of a University in the State or a teaching degree of equivalent standard:

(iii) Experience for a period of not less than ten years as B.T. School Assistant in a Secondary School/Training school/Higher Secondary School recognised by the Director of School Education.

The qualifications as prescribed under the recruitment rules in the case of promotions therefore, is that a Master's Degree of a University in the State or a Master's Degree of Equivalent standard or a certificate issued by the University of Madras for having undergone the certificate course in Science and Humanities for Graduate teachers in High School along with other qualifications is sufficient. There is nothing in those rules which require that a person who claims a right to promotion to the post of the Headmaster or Headmistress must have a Master's degree in the subject which he had been teaching as a teacher in the academic subjects. The argument of Mr. Karuppan, therefore, that respondent No. 3 does not have the qualification, namely, that he does not possess a Master's Degree in the subject which he is teaching and therefore, he is not qualified, has no substance at all. Undoubtedly, therefore, respondent No. 1 was a person who was entitled to be considered under the rules for promotion.

11. The single Judge before whom this writ petition came expressed a doubt as to the correctness of the view taken in the aforesaid Bench Judgment as in his opinion Rule 2 of the Rules framed under G.O.Ms. No. 720 has not been taken note by the Division Bench. Rule 2 as pointed out above merely makes the rule applicable to private schools mutatis mutandis. That does not mean that all the provisions found in G.O.Ms. No. 720 will automatically have to be imported in the case of private schools. They have to be modified suitably insofar as their application to private schools are concerned. If that test is applied, there can be difficulty in holding that with regard to private schools, there having been no

constitution of service by any rule and there having been no definition of the expression Teachers in Academic subjects and Teachers in languages, the normal rule that the post of Headmaster has to be filled up by promotion from among the Teachers in subjects and Teachers in languages is clear.

12. In the circumstances, we do not find any error in the view taken by the Division Bench in W.A. Nos. 640 and 669 of 1985 insofar this aspect of the matter is concerned. There is no dispute before us that the appointee of the Management, viz., Sankaralingam, was fully qualified to be appointed as Headmaster even as per the Rules prescribed in G.O.Ms. No. 720. The only contention raised by the fourth respondent was that Sankaralingam did not belong to Class II service as he was not a Post-Graduate Assistant. That contention is without merit in the view we have expressed above.

13. In the result, the writ petition is allowed and the order passed on 7.4.1984 by the Joint Director of Schools is quashed. It has been brought to our notice that Sankaralingam has since retired from service on superannuation. It is represented that he was paid only the salary admissible to an inducted teacher. As we have found that he was fully qualified to be a Headmaster as per the rules framed in G.O.Ms. No. 720, dated 28.4.1981 and that there was no question of his being disqualified for promotion as such Headmaster, he is entitled to the salary payable to the post of Headmaster of a Higher Secondary School. The difference in the pay payable to him as a Headmaster of the Higher Secondary School shall be paid by the Government on the basis of this order. The Government shall make the payment within twelve weeks from the receipt of the claim from the Management. The reference to the Full Bench is answered accordingly and the writ petition is allowed. There will be no order as to costs.