
(1990) 07 MAD CK 0095
In the Madras High Court

T.M. Uthrakumaran

APPELLANT

Vs

Tamil Baptist Mission Middle School and Others

RESPONDENT

Date of Decision : 25-07-1990

Acts Referred:

Constitution of India, 1950 — Article 30(1)

Citation : (1990) 2 MLJ 386

Hon'ble Judges : S. Govindasamy, J

Bench : Division Bench

Judgement

S. Govindasamy, J.—The petitioner has filed W.P. No. 900 of 1985 to issue a Writ of mandamus directing the District Educational Officer, Kancheepuram, Chengalpattu District, the second respondent herein, to allot one out of five posts of B.Ed. Grade Headmaster made available under the proceedings of the fourth respondent, the Director of School Education, Madras, in his proceedings in Rc.No.433749-B9/84 dated 22.12.1984 to the first respondent herein and consequently direct the first respondent to appoint the petitioner as B.Ed. Grade Headmaster.

2. The petitioner was originally appointed as Higher Grade Teacher in the first respondent School in the year 1968. Thereafter, the petitioner as appointed as Secondary Grade Teacher in the year 1969 and later the petitioner got himself qualified as "Pulavar" in Tamil obtained B.Litt. degree and also obtained Post Graduate Degree in addition to B.Litt. The first respondent School is having a strength of more than 800 pupil at its roll. In 1979, the Government by G.O.Ms.No. 1297, Education Department, dated 21.7.1979, have decided that under a phased programme Middle Schools under all kinds of managements should be provided with Headmasters in the scale of Rs. 450-800, manned either by a B.Ed. or a Tamil Pandit Grade-I. As per the said Government Order, all those who are working in the middle school as Headmaster and who possess or acquire on or before 1.9.1979 either B.Ed. or Tamil Pulavar shall get B.Ed. Scale of Rs.450-800 from 1.9.1979 and those who acquire the said qualification from

2.9.1979 to 1.9.1980 would get the benefit from 1.9.1980 and so on. The said Government Order also provided that when permanent vacancies arise in future in posts of Headmasters of Middle Schools, such vacancies shall be filled up by the seniormost among persons working as Secondary Grade Teachers or in other cadres of trained teachers, but qualified for B.Ed./Tamil Pandit. Thereafter, the Government by G.O.Ms. No. 1298, Education Department, dated 2.7.1979 accorded sanction for creation of 200 additional posts of B.Ed. Grade Headmasters in the scale of Rs. 450-800 from time to time for middle (Higher Elementary) schools and the Director of School Education shall distribute the said posts to various District Educational Officers for allotment to individual schools. The said Government Order prescribes the method of recruitment for filling up the post of B.Ed. Grade Headmaster i.e., the post shall be filled up by seniormost among persons working as Secondary Grade Teachers or in other cadres of trained teachers, but qualified for B.Ed./Tamil Pandit. The said Government Order further provides that the post of Secondary Grade Headmaster already existing in the middle school to which a B.Ed. Grade Headmasters" post is allowed will be redesignated and continued as Additional Headmaster and its incumbent would be given full protection for drawing pay, special pay and allowances from time to time in future, as if he had continued to be a Headmaster.

3. At the request of the first respondent School, the District Educational Officer, Kancheepuram, was pleased to sanction one B.Ed., Grade Headmaster to the first respondent school during the year 1980-81 and that the District Educational Officer, the second respondent, by his communication Rc.No. 10313/C/80 dated 29.9.1980 addressed to the First respondent, stated that the post should be utilised on or before 10.10.1980 and that the post should be filled up by the seniormost among persons working as Secondary Grade Teachers or in other cadres of trained teachers, but qualified for B.Ed./Tamil Pandit and that the post of Secondary Grade Headmaster already existing in the middle school to which a B.Ed. Grade Headmaster"s post is allotted, could be redesignated and continued as Additional Headmaster and its incumbent would be given full protection for drawing pay from time to time in future as if he had continued to be a Headmaster. Thereafter, the first respondent herein appeared to have intimated on 29.9.1980 to the District Educational Officer, Kancheepuram, the second respondent herein, that the first respondent herein had proposed to surrender the said post. The second respondent, in reply to the abovesaid communication dated 29.9.1980, by his communication N.K. No. 10313/E/80 dated 13.10.1980 stated that it was not proper for the first respondent School having requested for sanction of a B.Ed. Headmaster Grade, to surrender the said post and however, in view of the policy of the Government, the first respondent School should make use of the post of the B.Ed. Headmaster sanctioned at the request of the first respondent herein and also directed the first respondent to communicate after filling up the post. Since the petitioner happens to be the senior most among the persons, the first respondent School, though requested for sanction of one post and after obtaining sanction, was reluctant to fill up the post for the reasons best

known to the first respondent School. It is in these circumstances, the petitioner has filed O.S. No. 1300 of 1980 on the file of the Court of the District Munsif, Poonamallee against the first respondent herein (the defendant in the suit) for mandatory injunction directing the defendant, the first respondent herein, to appoint the petitioner as Headmaster of the first respondent School by implementing the proceedings of the District Educational Officer, Kancheepuram, the Second respondent herein.

4. The second respondent, thereafter by communication Rc.No. I0313/C81 dated 1.2.1981 resumed the said post allotted in favour of the first respondent School as the said post was surrendered by the first respondent. Thereafter, the District Munsif, Poonamallee, by his judgment and decree dated 10.3.1982 decreed the said suit, directing the first respondent herein to appoint the petitioner as B.T. Headmaster of the said school. Aggrieved by the said judgment and decree, the first respondent herein preferred an appeal, A.S. No.93 of 1983 on the file of the Court of the Principal Subordinate Judge, Chengalpattu and the Principal Subordinate Judge, Chengalpattu by his judgment and decree dated 10.7.1984 confirmed the judgment and decree of the trial Court. Aggrieved by the said judgment and decree, the first respondent filed a Second Appeal S.A.No.950 of 1985 before this Court.

5. In the year 1984, the fourth respondent herein in his proceedings Rc.No.433749-B9/84 dated 22.12.1984 sanctioned 250 posts of B.Ed. Grade Headmasters and distributed five posts for Kancheepuram Educational District. In Kancheepuram Educational District, there are six schools having the strength of more than 300 pupil, in which four Panchayat Union Schools are having a strength of less than 400 pupil and the first respondent has the strength of more than 800 pupil and as such the first respondent School, on priority basis, is entitled to have the post of B.Ed. Grade Headmaster. It is at this stage, the petitioner, having succeeded in the civil suit, filed the above writ petition to issue a writ of mandamus directing the second respondent to allot one out of the five posts of B.Ed. Grade Headmaster, allotted to the Kancheepuram District, to the first respondent school and to direct the first respondent to appoint the petitioner as B.Ed. Grade Headmaster.

6. Mrs. Nalini Chidambaram, learned Counsel for the petitioner, contended that the petitioner having filed the above suit and obtained a decree, has a right to insist upon for allotment of one post to the first respondent School so as to enable the first respondent School to comply with the decree. Learned Counsel for the petitioner also contended that it is the Governmental policy that all middle schools should in a phased manner be sanctioned the post of B.Ed. Grade Headmaster and consequently the middle schools cannot function without implementation of the Governmental policy as envisaged in G.O.Ms. No. 1297, Education Department, dated 21.7.1979. Learned Counsel for the petitioner also contended that the first respondent School having addressed the second respondent for allotment of one post, ought not to have surrendered the post

and such a surrender was with intent to defeat the rights of the petitioner for being appointed to the post of B.Ed. Headmaster Grade.

7. Mr. Shanmughakani, Learned Counsel appearing on behalf of the first respondent contended that the first respondent School is a minority school and as such is protected by Article 30(1) of the Constitution of India and consequently the writ is not maintainable. Learned Counsel for the first respondent further contended that the petitioner cannot compel the first respondent herein for appointment of Headmaster and such a claim will amount to interference with the administration of educational institution. Learned Counsel for the first respondent further contended that the petitioner cannot have any right to the post, that the first respondent was not under the obligation to facilitate his appointment as Headmaster of the School and that the petitioner is not entitled to ask for allotment of one out of five posts to the first respondent school.

8. Mr. A. Fathimanathan, Learned Government Advocate contended that the Government accorded sanction for creation of 250 posts, in which five posts were distributed to the Kancheepuram District and such distribution could be done only to the schools which are eligible according to the norms prescribed in the said Government Order and consequently the petitioner cannot compel the second respondent to distribute one post to the first respondent school.

9. Considering the relative contentions of the parties herein, the Governmental policy as envisaged in G.O.Ms.No. 1297, Education Department, dated 21.7.1979 is to the effect that under a phased programme middle schools under all kinds of management, should be provided with the post of a Headmaster in the scale of Rs. 450-800 manner either by a B.Ed. or a Tamil Pandit Grade I. The contention of the learned Counsel for the petitioner that having regard to the facts and circumstances of the case, the District Educational Officer should allot one post to the first respondent School is well-founded. The object of the Government is so clear that all schools under all kinds of management should be provided with a post of B.Ed. Headmaster. The first respondent School was eligible to have a B.Ed./Tamil Pandit in the scale of Rs. 450-800. Since the petitioner filed a suit, O.S. No. 1300 of 1980 and succeeded in the said suit and obtained a decree for mandatory injunction directing the first respondent to appoint the petitioner as B.Ed. Headmaster, it is for the first respondent, subject to the result of the second appeal, to comply with the decree.

10. As per the provisions contained under Article 30(1) of the Constitution of India, the first respondent herein has every right to establish and administer educational institution of its choice. It may be noted that the first respondent herein is only an aided minority institution. The Government while extending the aid, can impose conditions without affecting or in any manner interfering with the rights of the first respondent school in the administration of educational institution. In this context, the Supreme Court in the decision *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, held

as follows:

All institutions of general secular education whether established by the minorities or the non-minorities must impart to the students education not only for their intellectual attainment but also for pursuit of careers. Affiliation of minority institutions is intended to ensure the growth and excellence of their children and other students in the academic field. Affiliation mainly pertains to the academic and educational character of the institution. Therefore, measures which will regulate the courses of study, the qualifications and appointment of teachers, the contentions of employment of teachers, the health and hygiene of students, facilities for libraries and laboratories are all comprised in matters germane to affiliation of minority institutions. These regulatory measures for affiliation are for uniformity, efficiency and excellence in educational courses and do not violate any fundamental right of the minority institutions under Article 30.

The right conferred on the religious and linguistic minorities to administer educational institutions of their choice is not an absolute right. This right is not free from regulation. Just as regulatory measures are necessary for maintaining the educational character and content of minority institutions similarly regulatory measures are necessary for ensuring orderly, efficient and sound administration.

It is manifest from the above ratio of the Supreme Court, that it is open to the State Government to impose regulatory measure while extending the aid to the minority institutions in order to impart to the students education not only for their intellectual attainment but also for pursuit of careers. In this instant case, it is the policy of the State Government to provide, under a phased programme, all middle schools of all kinds of management with the B.Ed. Headmasters in the scale of Rs. 450-800 manned by persons possessing B.Ed/Famil Pandit Grade I. It cannot be said that such introduction amounts to interference with the administration of the educational institution so as to affect the rights of the first respondent school, approved under Article 30(1) of the Constitution of India. It is in these circumstances, the contention of the first respondent that the writ filed by the petitioner is hot maintainable is not sustainable at all.

11. The contention that the first respondent is not under the obligation to facilitate the appointment of the petitioner as Headmaster cannot be correct. The Governmental policy as envisaged in G.O.Ms. No. 1297 is being implemented in a phased programme. The first respondent School has to necessarily appoint a B.Ed. Headmaster as and when the post is sanctioned. The petitioner has also obtained a decree for mandatory injunction and the first respondent herein has to satisfy the decree. If the post of the Headmaster is allotted to the first respondent School, the first respondent has to fill up the said post according to the norms prescribed in G.O.Ms. No. 1297 and G.O.Ms. No. 1298 of 1979. The contention that the first respondent School is not under an obligation to facilitate the petitioner's appointment as Headmaster cannot be said to be correct. If the petitioner is qualified and senior most among the secondary grade teachers, the petitioner is entitled to stake his claim on the basis of G.O.Ms. No. 1297 and

G.O.Ms. No. 1298 of 1979 and in which case the first respondent cannot be heard to contend that the first respondent is not under an obligation to appoint the petitioner as Headmaster. The first respondent is under the obligation to consider the claim of the petitioner, provided he qualified as per the norms prescribed under the above said Government Orders.

12. The contention on the part of the first respondent that it is not open to the petitioner to seek for allotment of one post to the first respondent School cannot be accepted on the facts and circumstances of this case. The petitioner has obtained a decree for mandatory injunction against the first respondent and such a decree is not a mere paper decree and the petitioner acquired a right on the basis of such a decree and the petitioner is entitled to enforce such a right by seeking a direction to the second respondent to allot one post to the first respondent School in compliance with the Governmental Policy as envisaged in the Government Order, referred to hereinabove.

13. The contention on the part of the Government to the effect that the Government have distributed five posts to the Kancheepuram District and that could be allotted only on the basis of the norms prescribed and consequently the petitioner cannot compel the second respondent to allot one post to the first respondent School cannot be acceptable for the reason that it is manifest that the first respondent School has satisfied the requirements of the norms prescribed in the Government Orders and has a strength of more than 800 pupils, from among the six schools of which four schools are having the strength of less than 400 and in those circumstances the first respondent school is eligible as per the norms prescribed under the Government Orders. Consequently, the petitioner having satisfied the norms prescribed for allotment of one post, is entitled to seek for remedy of allotment of one post out of five posts to the first respondent school. It is in this context that by virtue of the interim order of this Court, the second respondent is directed to keep one post vacant for the purpose of allotment to the petitioner. In view of the above, the contention of the learned Counsel for the respondents cannot be correct. It is in these circumstances, the petitioner is entitled to have his remedy for allotment of one post to the first respondent School. Equally, the first respondent shall consider the claim of the petitioner for appointment, if the petitioner satisfies the norms prescribed by the aforesaid Government Orders. In view of the conclusions arrived at by me above, the writ petition has to be allowed.

14. Second Appeal No. 950 of 1985 : This Second Appeal is directed against the judgment and decree dated 10.7.1984 in A.S.No.93 of 1983 on the file of the Court of the Principal Subordinate Judge, Chengalpattu confirming the judgment and decree dated 10.3.1982 in O.S. No. 1300 of 1980 on the file of the Court of the District Munsif of Poonamallee.

15. The above second appeal arises out of the suit filed by the respondent herein/ the- plaintiff in the above suit, for mandatory injunction for direction to the defendant/the appellant herein, to appoint the respondent herein, as Headmaster

of the appellant school by implementing the proceedings District Educational Officer, Kancheepuram on the ground that the respondent was qualified as a Secondary Grade headmaster and acquired qualification as "Pulavar" and B.Litt., that by virtue of the Government Order, G.O.Ms. No. 1297 and G.O.Ms No. 1298 of 1979, that any middle school having the strength of more than 300 pupils of its own, should appoint B.Ed. or Pulavar and based on the policy of the Government that the District Educational Officer, Kancheepuram sanctioned one post of B.Ed. Grade Headmaster on the requisition made by the appellant herein in his proceedings dated 29.9.1980 and also directed the appellant herein to utilise the post on or before 10.10.1980 and as the appellant had not taken steps to appoint the qualified teacher, the District Educational Officer again directed the appellant herein to fill up the post sanctioned to the school, that in order to defeat the claims of the respondent herein, the appellant made arrangement to surrender the post and that the appellant had been wantonly and deliberately delaying the appointment of the respondent herein with some ulterior motive and purpose and hence the respondent filed the above suit for the reliefs stated hereinabove.

16. The defendant/appellant resisted the suit contending that the appellant school is a minority school and as such the suit is not maintainable, that the civil Court has no jurisdiction to grant the relief prayed for by the respondent herein, since the school is a minority school protected under Articles 30 and 31 of the Constitution of India, that the contingency of appointment of B.T. Qualified person would arise only when the permanent Headmaster relinquished his post or retired from the post, that the orders of the District Educational Officer upgrading the post of Headmaster was illegal and that the appellant had surrendered the post of B.Ed./Tamil Pandit Headmaster and that the post was reallocated and was surrendered and as such the suit has become infructuous as there was no post in existence.

17. On consideration of the materials on record, the trial Court held that the suit, as instituted by the respondent herein, is maintainable and that the respondent is entitled to mandatory injunction as prayed for. Accordingly, the trial Court decreed the suit as prayed for. Aggrieved by the judgment and decree of the trial Court, the appellant herein preferred an appeal, A.S.No.93 of 1983 on the file of the Court of the Principal Subordinate Judge, Chengalpattu and the lower appellate Court, after considering the materials on record, came to the conclusion that the respondent is entitled to the reliefs as prayed for and consequently dismissed the appeal, by confirming the judgment and decree of the trial Court Aggrieved by the said judgment and decree of the lower appellate Court, the appellant herein has preferred the above second appeal.

18. Mr. K. Shanmughakani, learned Counsel for the appellant contended that the suit is not maintainable in view of the fact that the appellant institution is a minority institution and protected under Article 30(1) of the Constitution of India, that the suit is bad for mis-joinder of parties and that the jurisdiction of the civil

Court is barred for institution of the suit.

19. Mrs. Nalini Chidambaram, learned Counsel for the respondent in the second appeal, contended that the suit is maintainable and cannot be said to be bad for non-joinder of parties and that the jurisdiction of the civil court is not barred for institution of the suit.

20. In so far as the first contention is concerned, it is well settled that the State Government can impose regulatory measures in order to ensure the efficiency and excellence of the institution and such measures cannot be considered as interfering with the right of management of the minority institution and the ratio laid down by the Supreme Court in *The Ahmedabad St. Xaviers College Society's Case* (Supra) is clear to this effect. It is in these circumstances, the contention of the appellant that the suit as framed by the respondent is not maintainable for the reason that the appellant institution is protected under Article 30(1) of the Constitution of India, cannot be sustainable in law. The State Government has decided as a policy to have all the middle schools of all kinds of management a Headmaster of B.Ed/Tamil Pandit cadre in the prescribed pay scale and the implementation of such Governmental policy cannot be said to be eroded with the right of the appellant school and consequently the contention on the part of the learned Counsel for the appellant that the appellant school is protected by Article 30(1) of the Constitution of India is not sustainable. That apart, learned Counsel for the appellant is not able to point out as to whether the respondent is entitled to get the relief under any provisions of the Act and consequently the contention of the appellant that the civil court's jurisdiction is barred for institution of the suit of this nature by the respondent herein is not sustainable in law.

21. With reference to the contention that the suit is bad for misjoinder of parties, it is clear that the respondent has sought for the relief only as arguing the appellant and so long as the appellant is a party to the suit and so long as the relief is sought for as against the appellant, it cannot be said that the suit is bad for misjoinder of parties. In view of the above, all the contentions put forward by the appellant are not sustainable in law and consequently it cannot be said that the judgments and decrees of the courts below are liable to be set aside and there is no warrant also for interfering with the judgment and decrees of the courts below and the judgments and decrees of the courts below are hereby confirmed.

22. In the result, W.P. No. 900 of 1985 is allowed. However, there will be no order as to costs. S.A. No. 950 of 1985 is dismissed and the judgments and decrees of the courts below are confirmed. No costs.