
(1990) 01 MAD CK 0011
In the Madras High Court

V. Ramasamy

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 08-01-1990

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1990) 1 LW 261 : (1990) 1 MLJ 146

Hon'ble Judges : Nainar Sundaram, J

Bench : Division Bench

Judgement

Nainar Sundaram, J.—This writ appeal is directed against the order of the learned single Judge in W.P.No. 1565 of 1980. The petitioner in

the writ petition is the appellant herein and the respondents herein were respondents in the writ petition. For the sake of convenience we shall refer

the parties by their nomenclature assigned to them in the writ petition. On 21.7.1979, the first-respondent issued G.O.Ms.No. 1298, Education,

dated 21.7.1979, hereinafter referred to as the impugned Government order, under which 200 additional posts of B.T. Grade Headmasters were

sanctioned for Middle Schools (Higher Elementary Schools) in the State. The said Government orders in the typed-sets of papers run as follows:

G.O.Ms.No. 1298, Education, dated 21.7,1979. Read:

1. G.O.Ms.No. 1063, Education, dated 11.5.61.
2. G.O.Ms.No. 1027, Education, dated 24.5.78.
3. Government Memorandum No. 73067/L1/76-3, Education dated 26.12.1978.
4. From the Director of School Education No. I9932/B7/78, dated 25.9.78 and 24.7.79.

Sanction is accorded to the creation from 1st June, 1979 or the date of filling up

the post whichever is later 200 additional posts of B.T. Grade

Headmasters on Rs. 450-20-590-25-740-30-800 plus allowances as admissible from time to time for Middle Schools (Higher Elementary

Schools). The posts will be distributed by the Director of School Education among the various District Educational Officers for allotment to the

individual schools which are well managed and which have strength of more than 300 (in Standards 1 to 8). The distribution will be made equitably

on the basis of the relative priority of the need on the basis of the approved teacher pupil ratio of particular middle school for additional post

provided that none of these 200 posts should be allotted to any middle schools whose headmaster's post is likely to be upgraded to B.Ed. scale

from 1.9.1979 with reference to G.O.Ms.No. 1297, Education, dated 21.7.1979.

(ii) The posts whether utilised in Government Schools or non-Government schools will be permanent right from the beginning.

2. When filling up the post of B.T. Grade Headmasters allotted under this scheme shall be filled up by the senior-most among persons working as

Secondary Grade Teachers or in other cadres of trained teachers but qualified for the post B.Ed./Tamil Pandit in the particular management i.e.

Government Schools, Local Bodies-Local Bodies Schools under each local body, each aided school or each cluster of aided school under single

management and such person shall be allowed B.Ed. scale from the date of appointment. Since these 200 posts of B.T. Grade Headmasters are

additional posts, the Secondary grade or other posts vacated by the person filled up to hold the post of B.T. Grade Headmasters can also be filled

up by a substitute in a normal course.

(ii) If no such secondary Grade or other teacher qualified for B.Ed./Tamil Pandit is in service, such vacancy shall be filled up by appointing a Tamil

Pandit from the open market or by transfer from another management as Headmaster on B.Ed. scale.

3. The post of Secondary Grade Headmaster already existing in the Middle School to which a B.T. Grade Headmaster's post is now allotted will

be redesignated and continued as Additional Headmasters and this incumbent will 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.

4. Grants to Local Bodies including in the case of the Panchayat Union Councils/ Aided Schools in their respective areas and aided managements

for the salaries of the B.T. Grade Headmasters allotted under this scheme shall be paid from the District Educational Officers as per the procedure

followed for posts sanctioned under the State Plan Schemes.

5. This order issues with the concurrence of the Finance Department vide: its U.O.No. 52486/E-11/79, dated 21.5.1979.

We must record here that we are obliged to make extracts of the relevant proceedings only as per copies furnished to us in the typed-sets.

2. The second-respondent by his proceedings, dated 27.7.1979 distributed the posts sanctioned amongst the Middle Schools. The District

Educational Officer, Pollachi, by his proceedings dated 25.8.1979, allotted the third-respondent one such post and the concerned proceedings run

as follows:

Thiru R. Krishna Rao, B A., B.T.

District Educational Officer, Pollachi.

To

The Secretary,

Aided Middle School,

Injipara Estate, Valparai-642 127.

Rc.No. 21347 D1/79, dated 25.8.1979.

Sir,

Sub:- Elementary Education - Allotment of - Post of B.T. Grade Headmasters Post to Higher Elementary Schools during the academic year 1979-

80-Distribution allotted.

Ref:- G.O.Ms.No. 1298/Edn. dated 21.7.1979 communicated in Director's proceedings R.C.No. 1537037/79 dated 27.7.1979.

The B.T. Grade Headmaster posts sanctioned in Government orders Ms. No. 1298, Education, dated 21.11.1979 and distributed in Director's

proceedings R.C.No. 157 B7/79, dated 21.7.1979 are hereby allotted to the following schools for immediate utilisation (i.e.) on or before

31.8.1979.

Name of the School No. of Posts allowed

Aided, Middle and Management Schools, Injiparai. ONE

The posts should be utilised as per the instructions contained in the Government orders Ms.No. 1298/Education, dated 21.7.1979 (copy enclosed).

The utilisation of the posts may be reported on or before 31.8.1979 failing which the posts now allotted will be ceased and reallocated to the other needy schools.

The receipt of this reference and the Government orders maybe acknowledged by next post without fail.

Encl: Government order copy:

Specimen form of Utilisation report.

3. On 29.8.1979, the third-respondent appointed the petitioner as the headmaster on probation in its school effective from 31.8.1979. On

5.10.1979, the appointment of the petitioner was confirmed by the third-respondent. On 10.11.1979, the third-respondent applied to the second-

respondent for ratification of the appointment of the petitioner and to regularise the same and sanction the teaching grant to enable the disbursement

of the salary to the petitioner. The request to the above effect ran as follows:

State Aided Elementary Schools,

Injipara, Valparai P.O

10th November, 1979.

To

The Director of School Education

Madras-6.

Dear Sir,

Sub:- Appointment made for filling up the post of B A., B.Ed. Headmaster in Aided Middle School - Injipara Estate, Valparai P.O., Coimbatore

District.

Ref:- R.C.No. I57370-DI/79, dated 20.9.79 from the Director of School Education, Madras-6.

We beg to bring to your kind notice that we have appointed Sri V. Ramasamy, BA, B.Ed., in the B.T. Grade Headmaster's Post created by the

Government as per the above G.O in our Lower Division State Aided Middle

School as from 31.8.1979 on the following basis:

1. There were no qualified Tamil Pandits in the area.
2. There were no qualified teachers working in our schools for upgrading.
3. We were not able to appoint a qualified person from our Management Schools by transfer because there were no qualified Tamil Pandits employed in the schools.
4. The management is strictly abided by the rules and regulations of the Educational Department regarding appointments.
5. The order for the appointment of B.Ed./Tamil Pandit Headmasters was received by us only on 28.8.1979 and the last date of utilisation of the post was 31.8.1979. In view of the very short notice, we could not contact the Employment Exchange and get the list of candidates in time.

Hence, the School Committee had to appoint a B.Ed. qualified candidate who was resident on the estate at that time.

6. Sri. V. Ramasamy was unemployed and was giving tuition to S.S.L.C./P.U.C. failed candidates and hails from a very poor family from

Backward Community and further he was the only candidate from B.C. of this area who has the required qualification.

7. Sri. V. Ramasamy's name was sponsored by the Employment Exchange and his number was S1. 9.5.75 Reg.No. 12118/79, M.C.O.151.

He was given an interview and was found suitable for the post. Because of the time - limit to fill up the post before 31.8.1979 his case was

considered and was appointed as from 31.8.1979 as Headmaster. He has been working since 31.8.1979; but his salary has not been paid as we

have not received the teaching grant assessment from the Education Department.

In view of the foregoing we were not able to appoint a qualified Tamil Pandit and would request you to ratify our appointment and pass necessary

orders regularising the appointment and sanction the Teaching Grant to enable us to disburse his salary as, a special case.

Thanking you,

Yours faithfully,

Aided Higher Elementary School,

Injipara Estate, Valparai P.O.

Sd./- Correspondent.

Copies to:

1. The Chief Educational Officer, Coimbatore.
2. The District Educational Officer, Pollachi.
3. The Deputy Inspector of Schools, Valparai.
4. On 3.3.1980, the second-respondent declined this request of the petitioner as follows:

Copy of Director's proceedings L.Dis.

254127-B7/79, dated 3.3.1980.

Sub:- Elementary Education - Aided - Aided Middle School, Injipara Estate - Coimbatore District - Allotment - Regarding.

Ref:- 1. R.O.C.21347-D1/79 dated 25.1.80 of the District Educational Officer, Pollachi.

2. R.O.C.44403-B1/79 dated 8.2.80 of the Chief Educational Officer, Coimbatore.

1. The Chief Educational Officer is informed that with reference to the orders issued in G.O.Ms.No. 1298, Education, dated 21.7.1979, the

Correspondent, Aided Middle School, Injipara Estate ought to have filled up the B.T. Grade, Headmaster's post allotted by the District

Educational Officer, Pollachi during 1979-80 by a qualified B.T./Tamil Pandit working as Secondary Grade Teacher or other categories of

teachers working in the school. If there is no such B.T. or Tamil Pandit qualified Secondary Grade or other categories of the teachers working in

the school, then the above post should be filled up from the open market by the appointment of a Tamil Pandit. But the correspondent, Aided

Middle School, Injipara Estate, has filled up the B.T. Grade Headmaster's post allotted to his school by appointing one Thiru V. Ramasamy, B.A.,

B.Ed., a candidate sponsored by the Employment Exchange on 31.8.1979 as there is no B.T. Tamil Pandit qualified Secondary Grade Teacher

and other categories of the teachers under the management of Injipara estate.

2. Since the action of the Management defeats the purpose of the G.O., the Correspondent, Aided Middle School, Injipara Estate may be asked

to replace immediately Thiru V. Ramasamy, B.T. Grade Headmaster by a qualified Tamil Pandit from the open market by contacting the

concerned Employment Exchange to sponsor Tamil Pandit's name for filling up B.T. Grade Headmaster's post since it is reported that there are

no qualified Secondary Grade or other Categories of the teachers working in aided Middle School, Injipara Estate. A report on the action taken

by the Correspondent in this regard should reach this office on or before 15.3.1980.

This reference should be treated as specially urgent.

(Sd.) P.V. Munirathinam.

For Director of School Education.

This obliged the petitioner to come to this Court by way of the writ petition, projecting the following prayer:

For the reasons stated in the accompanying affidavit, the petitioner herein prays that this Hon''ble Court may be pleased to issue a writ or order or

direction in the nature of certiorarified mandamus particularly a writ of certiorarified mandamus to call for the records from the 1st respondent

made in G.O.Ms.No. 1298 Education dated 21.7.1979 and quash the para. 2 (ii) of impugned G.O. in so far as it relates to the petitioner and

direct the respondents to regularise the services of the petitioner from the date of his appointment on 1.8.79 and thus render justice.

5. The learned single Judge did not countenance the grievances of the petitioner on any of the points urged before him and in particular with

reference to discrimination coming within the mischief of Article 16 of the Constitution of India and dismissed the writ petition. The learned Single

Judge countenanced the contention raised by respondents 1 and 2 that even assuming that the petitioner has a valid case, the petitioner not having

been sponsored by the Employment Exchange at the time of induction into service, his appointment must be held to have been vitiated. Thus the

petitioner has come before us by way of the present writ appeal.

6. Mr. P. Shanmugam, Learned Counsel for the petitioner, would confine his submissions only to the aspect of discrimination coming within the

mischief of Articles 14 and 16 of the Constitution of India. Learned Counsel for the petitioner would submit that for filling up the posts of B.T.

Grade Headmasters in the Middle Schools, two sources were provided and in one source, namely, in-service filling up of the posts, the

qualification of B.Ed., or Tamil Pandit was recognised as being on par with each other and only in the other source, namely, recruitment from open

market or by transfer from another management, the preference was confined

only to Tamil Pandits and the State having treated both: the categories, namely, B.Ed. and Tamil Pandit as equals for one source for the very same post cannot exclude B.Ed. in the other source, namely, direct recruitment from open market or by transfer from another management and this classification is not at all founded on any intelligible differentia and the differentia has no rational nexus to the objects sought to be achieved by the State in creating the additional posts. In substance, learned Counsel for the petitioner wants Clause 2 (ii) of the impugned Government Order to be struck down as violative of Articles 14 and 16 of the Constitution of India. Our assessment of the position, factual and legal, in the matter obliges us to concur with the submissions of the learned Counsel for the petitioner. Certain well settled principles which have come to be recognised as basic on the question of discrimination violative of Articles 14 and 16 of the Constitution of India cannot be lost sight of. When there is a complaint of violation of Articles 14 and 16 of the Constitution of India with reference to a rule or a statutory provision, it must be found out as to whether two tests stand satisfied. The first test is, as to whether the classification on which impugned rule or statutory provision is founded is based on intelligible differentia which distinguishes persons or things grouped together from others left out of the group. The second test is as to whether the differentia in question has a reasonable relation to the object sought to be achieved by the impugned rule or statutory provision and there must be nexus between the basis of the classification and the object intended to be achieved by the impugned rule or the statutory provision. Here the post to be filled up is that of a B.T. Grade Headmaster in a Middle School. Two sources were thought about and chalked out, namely, in-service filling up and direct recruitment from open market or by transfer from another management. For in service filling up, both B.Ed. and Tamil Pandit were found competent. But, by Clause 2 (ii) of the impugned Government Order, for direct recruitment in open market or by transfer from another management, B.Ed. was excluded and only a Tamil Pandit has been directed to be preferred. As to why a B.Ed., should be excluded, when the other source of direct recruitment is to be resorted to for the same post is not at all convincingly explained by respondents 1 and 2. The post is one and the same. With regard to one source,

namely in service filling up, both B.Ed., and Tamil Pandit were found qualified and competent. They are treated on par. When the other source, namely, direct recruitment from open market or by transfer from another management is resorted to there is apparently every justification and warrant for countenancing and continuing the equality, already recognised in respect of both the categories, namely, B.Ed., and Tamil Pandit In the absence of any convincing explanation for conceiving a differentia, which must have a reasonable nexus to the objects intended to be achieved, it is not possible to uphold this differentia either as an intelligible one or as a reasonable one, going out of the mischief of Articles 14 and 16 of the Constitution of India. The only reason which we could glean from the counter-affidavit filed on behalf of respondents 1 and 2 in the writ petition is found in paragraph 3 (4) thereof, which runs as follows:

In Secondary Schools, the pupils studying in Standards VI to VIII, acquire proficiency in mother tongue (Tamil) as intensive teaching is done by Tamil Pandits in the learning process. Besides, the students learn the other subjects also in Tamil and usage of mother tongue is the main source for effective learning. In Middle Schools (Higher Elementary) Tamil is handled by Secondary Grade Teachers and as such, it is imperative and essential to appoint Tamil Pandits in Middle Schools when direct recruitment is made for B.T. Grade Headmasters. This facility makes the pupils to acquire rich knowledge and understanding in subject matters when they are handled by highly competent teachers appointed to improve quality. The petitioner can appear as a candidate for B.T. Post in High Schools and he has opportunity to get his change. There is a clear stipulation in the G.O. that a Tamil Pandit should be appointed from open market when it cannot be otherwise filled in.

7. What has been set out in the counter-affidavit of respondents 1 and 2 has not found any expression in the impugned Government order. Leaving that alone, and even when we examine and assess what has been averred in the counter-affidavit of respondents 1 and 2, we must say that it does not make out any intelligible differentia and it does not set out any reasonable nexus between the differentia and the object intended to be achieved.

If the object is that the students in the Middle Schools, must learn the subjects in Tamil and imparting of knowledge in the subjects by Tamil

Pandits alone would make the students to acquire rich knowledge and understanding in the subjects, as seems to have been declared in the above paragraph in the counter affidavit of respondents 1 and 2, then this object ought to have found expression even while delineating the first source by confining that source to only one category, namely, Tamil Pandit. That has not been done. As to only Tamil Pandit alone should be the choice when the second source to the same post is chalked out, is not at all brought forth before us to bring any conviction to our mind. Both B.Ed. and Tamil Pandit are found competent and equals for in service filling up of the post. It is not even claimed that with regard to the first source, namely, in service filling up, there is a need to accommodate and encourage B.Eds. who are already in service. Further, as to what extent a Headmaster in a Middle School, his office being what it is, would take up an exhaustive role of imparting knowledge in subjects to the students in Tamil, when he happens to be Tamil Pandit, also does not stand expatiated by respondents 1 and 2. The differences between the two services, in our view, have no reasonable relation to the nature of the office to which recruitment is to be made and the same cannot be legitimately sustained on the basis of a valid classification. There is absolutely no warrant to give a preferential treatment to Tamil Pandit against B.Ed. in the matter of the second source. There is no reasonable nexus between the differences. No legitimate justification for excluding B.Ed. in the second source has been made out. The learned Single Judge, in our view, has not approached and assessed this question from the above angle and this has resulted in his not appreciating this grievance of the petitioner.

8. The ground which weighed with the learned single Judge that the recruitment of the petitioner to the service of the third-respondent was not duly sponsored by the Employment Exchange is also the subject matter of attack by the learned Counsel for the petitioner. Of course, there is an endeavour on the part of the learned Government Pleader appearing for respondents 1 and 2 to sustain this ground countenanced by the learned single Judge. The third-respondent is neither a Government Department nor a Government Organisation nor a statutory body and, in such a contingency the third-respondent could not be called upon to adhere to any rule that the vacancy should be notified to the Employment Exchange

and the vacancy should be filled up by candidates sponsored by the Employment Exchange. In this context, we are obliged to take note of the

following passage occurring in the pronouncement of the Supreme Court in Union of India (UOI) and Others Vs. N. Hargopal and Others,

It is clear that it is the desire of the Government of India that all Government Departments, Government Organisations and statutory bodies should

adhere to the rule that not merely vacancies should be notified to the employment exchanges, but the vacancies should also be filled by candidates

sponsored by the employment exchanges. It was only when no suitable candidates were available, then other sources of recruitment were to be

considered. While the Government is at perfect liberty to issue instructions to its own departments and organisations provided the instructions do

not contravene any constitutional provision or any statute, these instructions cannot bind other bodies which are created by statute and which

function under the authority of statute. In the absence of any statutory prescription the statutory authority may however adopt and follow such

instructions if it thinks fit. Otherwise, the Government may not compel statutory bodies to make appointments of persons from among candidates

sponsored by employment exchange only. The question, of course, does not arise in the case of private employers which cannot be so compelled

by any instructions issued by the Government.

This settles the contention raised on behalf of respondents 1 and 2 impeaching the validity of the appointment of the petitioner by the third-

respondent on the ground that the petitioner was not a candidate sponsored by the Employment Exchange. Otherwise, no impediment has been

found and expressed before us by respondents 1 and 2 with reference to the countenancing of the recruitment of the petitioner by the third-

respondent and for regularising his services.

9. Before we conclude, we must advert to the voice of the fourth-respondent heard through his learned Counsel supporting the decision of the

learned single Judge. The admitted position is that the fourth-respondent would not at all be eligible for the post of B.T. Grade Headmaster in a

School like the third-respondent, since he does not fulfil any of the qualifications prescribed therefor. Though he was functioning as such as

headmaster, he was relieved from that post, on the petitioner being appointed to

the same. The fourth-respondent is not by himself impeaching the impugned Government order. The fourth-respondent is going on different track by saying that the appointment of the petitioner has not been properly made in the sense it was not made by the school committee. We are not obliged to probe into this complaint of the fourth respondent in this writ petition, preferred by the petitioner, impeaching the Constitutional vires of the impugned Government order. The petitioner having made out that the impugned Government Order suffers the vice of being discriminatory and hence violative of Articles 14 and 16 of the Constitution of India, he must succeed and he is entitled to the reliefs asked for by him in the writ petition. Accordingly, we allow this writ appeal set aside (he order of the learned single Judge in W.P.No. 1565 of 1980 and allow the writ petition. We make no order as to costs.