



1

W.A.(MD)NO.1335 OF 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.11.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MS.JUSTICE R. POORNIMA

W.A.(MD)No.1335 of 2022 AND

C.M.P.(MD)No.10452 of 2022

1. The District Educational Officer,
Thanjavur Educational District,
Thanjavur.

2. The Block Educational Officer,
Thanjavur Rural,
Thanjavur.

... Appellants / Petitioners

Vs.

1. G.Gangadevi,
W/o.Murali,
Head Master,
Swaminatha Aided Middle School,
Vallam – 613 403,
Thanjavur Taluk and District.

... Petitioner / Respondent

2. The Secretary,
Swaminatha Aided Primary School,
Vallam – 613 403,
Thanjavur Taluk and District.

... Respondent / 3rd Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 18.08.2022 in W.P.(MD)No.17132 of 2021 and W.M.P.(MD)Nos.14035 and 14036 of 2022 and thereby allow the above writ appeal.



For Appellants : Mr.V.Om Prakash,
Government Advocate.

For R-2 : Mr.Panneer Selvam
* * *

J U D G M E N T

(Judgment of the Court was delivered by G.R.SWAMINATHAN, J.)

Heard both sides.

2.One vacancy arose in the post of Headmaster in Swaminatha Aided Primary School, Vallam. The teachers already working in the said school gave individual letters to the management giving up their claim for being considered for promotion to the post of Headmaster. The school management wrote to the department seeking permission to fill up the vacancy. Permission was granted on 03.06.2015. Thereafter, the school management wrote to the District Employment Exchange seeking availability of eligible candidates for being considered for the post of Headmaster. On 14.08.2015, the District Employment Exchange issued non-availability certificate. Thereafter, the school management issued paper publication calling for applications from the eligible candidates. Interview was held on 05.02.2016. Thereafter, Gangadevi was appointed as Headmaster. Proposal was submitted to the District Educational Officer, Thanjavur for approval of appointment. Approval was granted on 12.04.2016.



3. Even though the approval was granted, salary grant was not

released. Therefore, the petitioner filed W.P.(MD)No.24032 of 2016.

This Court vide order dated 04.03.2021 directed the competent authority to consider the representation and pass appropriate orders. Pursuant to the said direction, the District Educational Officer, Thanjavur passed the order dated 10.08.2021 cancelling the approval earlier granted.

Challenging the same, the petitioner filed W.P.(MD)No.17132 of 2021.

The writ petition was allowed vide order dated 18.08.2022 in the following terms:-

“2. The authority of the first respondent to cancel the appointment already made on the ground that the concerned Headmistress did not possess five years of teaching experience, has been disapproved by this Court on various occasions, primarily on the ground that the Government themselves in G.O.Ms.97, School Education Department, dated 05.07.2021, had relaxed the five years teaching experience as a pre-requirement for appointment and in such decisions, it has been held that the appointee would be entitled for salary as a BT Assistant / Secondary Grade Teacher, till he completes the five years of teaching experience.

3. In one such decision of the Honourable Division Bench of this Court in the case of *State of Tamil Nadu rep. by Secretary to Government, Education*



***Department, Secretariat, Chennai – 600 009 and others
Vs. Hindu Middle School, Virudhunagar District
represented by its Secretary in W.A.(MD).No.1404 of
2014, dated 29.04.2015,*** the Honourable Division Bench
had placed reliance on various other decisions of this Court
and held as follows:

“9.This issue as to whether the appointment of a person as Middle School Headmaster, who did not possess 5 years experience can be approved or not is no longer res integra. This Court in earlier decision had held that the appointment as Middle School Headmaster can be approved, but persons will be eligible only for B.T.Assistant salary till he acquires requisite 5 years experience.”

4. The learned Additional Government Pleader placed reliance on the qualifications prescribed under Class 17 of the Code of Regulations for Approved Nursery and Primary Schools and submitted that since the Headmistress is required to have work as a Teacher for five years after obtaining B.Ed., or its equivalent degree, there is no infirmity in the order of cancellation. Such a submission is opposed to their own proceedings in G.O.Ms.97, School Education Department, dated 05.07.2021. Section 20(3) of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, which entitles the Headmaster to draw the salary of the Secondary Grade Teacher for the required period of



five years and continue to perform the duties of the Headmaster. Moreover, the first respondent himself has earlier granted prior permission to the School to fill up the vacancy of Headmaster on 03.06.2015. If that be so, the present impugned order, cancelling the appointment, may not be proper.

5. For all the foregoing reasons, the impugned proceedings issued by the 1st respondent in Na.Ka.No. 4321/A8/2018, dated 10.08.2021, is hereby set aside. Consequently, there shall be a direction to the first respondent to pass appropriate orders restoring the earlier order of approval granted by them in Mu.Mu.No. 00773/Aa1/2016, dated 12.04.2016 and disburse the salary to the petitioner in the post of Primary School Headmistress in the 3rd respondent School from the date of appointment, (i.e.,) from 10.02.2016, including the arrears of salary, along with interest at the rate of 6% per annum, together with all other service benefits, within a period of four weeks from the date of receipt of a copy of this order.”

4.Challenging the same, the Department has filed this intra-court appeal.

5.The learned Government Advocate appearing for the appellants drew our attention to the order dated **24.03.2023 passed by**



the Hon'ble Supreme Court in Civil Appeal No.1951 of 2023 (State of

Tamil Nadu and Others V. Nehru Middle School and Another). He

submitted that the Hon'ble Supreme Court had held that once a candidate lacking the requisite teaching experience cannot be permitted to continue as Headmaster. He called upon this Court to set aside the impugned order and allow the writ appeal as prayed for.

6. Per contra, the learned counsel for the appointee as well as the learned counsel for the school management submitted that the impugned order is well reasoned and it does not call for interference.

7. We carefully considered the rival contentions and went through the materials on record.

8. It is not in dispute that a candidate for being appointed as Headmaster of a primary school ought to have five years teaching experience. But this requirement was relaxed vide G.O.Ms.No.97 School Education Department dated 05.07.2001. Paragraph No.3 of the said GO. reads as follows:-



WEB COPY



“3. மேற்கண்ட தொடக்கக் கல்வி இயக்குநரின்

கருத்தினை அரசு நன்கு பரிசீலித்ததன் அடிப்படையில்

i) இனிவரும் காலங்களில் உதவிபெறும் தொடக்க மற்றும் நடுநிலைப் பள்ளிகளில் தலைமை ஆசிரியர் காலிப்பணியிடத்தில் நியமனம் செய்யப்படும் போது பணிமூப்பு அடிப்படையில் இதர தகுதிகள் அனைத்தும் நிறைவு செய்திருப்பின் அவர்கள் முன்னரே பெற்றிருக்கும் முன் அனுபவத்தை கணக்கில் கொண்டு பதவி உயர்வினை ஏற்பளிக்கலாம் என்றும் அப்படி பணி மூப்பு அடிப்படையில் அதே பள்ளியிலிருந்து தகுதிபெற்ற ஒருவர் தலைமை ஆசிரியராக நியமனம் செய்யப்படும்போது ஐந்தாண்டுகள் முன் அனுபவம் இருக்கவேண்டும் என்ற விதியை தளர்த்தியும்,

ii) தொடக்கப்பள்ளிகளில் தலைமை ஆசிரியர்களாக நியமனம் செய்யப்படுபவர்கள் 5 ஆண்டுகள் பணிமுன் அனுபவம் பெற்றிருக்க வேண்டும் என்ற விதியை (அனுபவம் உள்ளவர் கிடைக்காவிட்டால்) தளர்த்தியும்,

iii) நடுநிலைப் பள்ளிகளில் பி.டி. பட்டதாரி மற்றும் தமிழாசிரியர் நாடுநர்கள் இடைநிலை ஆசிரியப் பணி முன் அனுபவத்துடன் கிடைப்பது கடினம் என்பதால் அவர்கள் வேலைவாய்ப்பகத்தில் நாடுநர் இன்மை சான்று



(Non availability Certificate) பெற்ற பின் நேரடி நியமனம் செய்யப்படும் போதும் பணி முன்அனுபவம் தேவை எனும் விதியினை தளர்த்தியும் அரசு ஆணையிடுகிறது.

iv) இவ்வாறான நேர்வுகளில் பள்ளியில் உள்ள ஆசிரியர்களுக்கு முன்னுரிமை அளிக்கப்பட வேண்டுமென அரசு ஆணையிடுகிறது. அதன்பிறகே வேலைவாய்ப்பகம் மற்றும் பிற நேரடி நியமனங்கள் மூலம் ஆசிரியர்கள் நியமனம் செய்யப்படவேண்டும்.”

9.The Hon'ble Division Bench of this Court vide order dated 31.01.2011 in W.A.(MD)No.776 of 2010 held that in view of issuance of G.O.Ms.No.97 School Education Department dated 05.07.2001, no separate relaxation is required to be obtained for individual cases.

10.In Civil Appeal No.1951 of 2023, the Hon'ble Supreme Court had interfered for two reasons. The school management had not obtained any letter from the eligible candidates working in the same school giving up their rights to be considered for promotion. Likewise, the school management in that case had not obtained non-availability certificate from the District Employment Exchange. This is clear from paragraph No.9 of the said order. It reads as follows:-

“9. Now, so far as the submission on behalf of the respondent No.2 relying upon the G.O. issued by State



WEB COPY



Government on relaxation is concerned, at the outset, it is required to be noted that the same shall be applicable only in a case where the other eligible candidates are not available and / or other eligible candidates have given up their right to be considered for the promotion to the post of Head Mistress / Head Master. In the counter affidavit before the High Court, it was specifically pointed out on behalf of the appellants that the school obtained letters only from the BT Teachers and not from the secondary grade teachers eligible for promotion as Head Master of middle school. In that view of the matter, even reliance placed upon the G.O. on relaxation is absolutely misplaced and the same shall not be of any assistance to the appellants.”

The aforesaid decision is clearly distinguishable on facts. In this case, the other teachers working in the school had given up their claim. The employment exchange had also issued non-availability certificate. In this view of the matter, we are of the view that interference with the impugned order is not warranted. This writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.SWAMINATHAN, J.) & (R. POORNIMA, J.)
27th November 2024

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
PMU



WEB COPY



10

W.A.(MD)NO.1335 OF 2022

G.R.SWAMINATHAN,J.

AND

R.POORNIMA, J.

PMU

W.A.(MD)No.1335 of 2022

27.11.2024