

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.03.2018

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THE HONOURABLE Mr. JUSTICE **K.K.SASIDHARAN**
AND
THE HONOURABLE Mr. JUSTICE **P.VELMURUGAN**

**W.A.No.935 of 2014
and M.P.No.1 of 2014**

1.The Government of Tamil Nadu
Rep. by its Secretary to Government
Education Department
Fort St.George, Chennai 9.

2.The Director of Elementary Education
College Road, Chennai 6.

3.The District Elementary Educational Officer
Tirunelveli.

4.The Additional Assistant Elementary
Educational Officer
Valliur, Tirunelveli District.

.. Appellants

Vs.

1.J.Metildaviji

2.S.R.M.Middle School
Rep. by its Secretary
Nakkaneri, Tirunelveli District.

..Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set-aside the order dated 21.11.2013 made in W.P.No.10832 of 2013 on the file of this Court.

For Appellants : Mr.K.Karthikeyan,
Government Advocate

For R1 : Mr.S.N.Ravichandran

J U D G M E N T

[Judgment of the Court was delivered by K.K.SASIDHARAN, J.]

THE FACTS:

The first respondent was appointed as Graduate Headmistress by the Management of SRM Middle School, Nakkaneri, Tirunelveli District, notwithstanding the fact that she was not in possession of the required experience of five years as a B.T.Assistant Teacher for appointment as Headmistress. The Management submitted proposal for approval of her appointment. The proposal for approval of appointment was rejected by the Government by order dated 29 May, 2012. The said order was put in issue before the writ court in W.P.No.10832 of 2013.

2. The learned single Judge by quoting the earlier judgments rendered by the Division Bench and more particularly, the judgment dated 08 December, 2011 in W.A.No.1408 of 2010, allowed the writ petition with a rider that the first respondent would draw the salary payable to the post of B.T.Assistant for the first five years and thereafter, she would be

entitled to the salary in the post of Middle School Headmistress. The learned single Judge further observed that the approval would be from the date of her initial appointment. Feeling aggrieved, the appellants have come up with this intra court appeal.

SUBMISSIONS:

3. The learned Government Advocate appearing on behalf of the appellants contended that the Rule is very clear that the Middle School Headmaster must have five years of experience. The experience of five years is a part of the eligibility criteria. Since the first respondent was not having the required experience, her claim for approval of appointment was rightly rejected by the Education Department.

4. The learned counsel for the first respondent on the other hand submitted that there was no in-service candidate willing to take up the post of Middle School Headmaster and only after relinquishment by all those teachers, the Management resorted to a transparent procedure. The candidates sponsored by the Employment Exchange were not prepared to take up the job. It was only under such circumstances, the

Management appointed the first respondent with a condition that she would receive the salary in the post of Middle School Headmistress only after completion of five years. According to the learned counsel, series of judgments were passed by this Court earlier giving relaxation in the matter of experience. Since the first respondent is similarly placed, the learned single Judge was correct in allowing the writ petition.

ANALYSIS:

5. The Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974 provides the qualification for appointment to the post of Middle School Headmaster. As per the said Rule, in addition to the educational qualification, the candidate must also have five years of experience as a Secondary Grade Teacher. The said condition is also found in the Government Order in G.O.(Ms).No.97, School Education Department, dated 05 July, 2001.

6. There is no dispute that as on the date on which the first respondent was appointed as the Middle School Headmistress, she was not having the required experience of five years. The Management while

appointing her made it clear that she would be entitled to the salary in the post of Middle School Headmistress only after completing five years of service.

7. The Management submitted a proposal for approval of appointment of the first respondent. The application was routed through the education authorities at the District level. The Government having found that the first respondent was not having the required experience, rejected the proposal.

8. The core question is as to whether the Management was correct in appointing a candidate without any experience, notwithstanding the Regulation which mandates five years experience as a B.T.Assistant.

9. The Regulation is very clear that for appointment to the post of Headmaster in a Middle School, the candidate must have five years of experience. The experience is also part of the eligibility criteria. There are no Regulations or Government Orders permitting relaxation in the matter of educational qualification or experience. The Government Orders relied on by the learned counsel for the first respondent relate to relaxation in

respect of experience, in case, the teachers who were working in the very same institution were appointed as Middle School Headmaster. However, in the subject case, the first respondent was not an employee of the SRM Middle School as on the date on which she was appointed as the Middle School Headmistress. Therefore, all those Regulations relating to relaxation would not apply to the first respondent.

10. The learned counsel for the first respondent placed reliance on a judgment of a Division Bench of this Court in **Principal Secretary to Government and others vs. S.Govindarajan** (judgment dated 11 December, 2014 in W.A.No.1494 of 2014) in support of his contention that under similar circumstances, the Division Bench approved the appointment of a candidate as Headmaster, notwithstanding the non-possession of five years of experience. We are not in a position to agree with the contention taken by the learned counsel on the basis of the judgment in W.A.No.1494 of 2014.

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11. In **S.Govindarajan (cited supra)**, the issue before the Division Bench was as to whether the teacher working in the very same institution was entitled for relaxation in the matter of experience, in case,

he was appointed as Headmaster, notwithstanding the factual position that he had no required experience. The Division Bench having found that the first respondent in the said appeal was also an employee of the second respondent institution, opined that he is entitled to the Government Orders regarding relaxation of the qualification and experience. However, in the subject case, the first respondent was not an employee of the institution in question. She has come from open market. She had no experience. Therefore, the first respondent cannot be equated a teacher who has already been working in the institution in question. We are, therefore, of the view that the judgment in **S.Govindarajan (cited supra)** would not come to the rescue of the first respondent.

12. The appointment in question was made on 10 November, 2008. The first respondent has been working as Headmistress ever since her appointment. However, she was paid salary only in the post of B.T.Assistant (Tamil). The proposal submitted by the Management for approval was rightly rejected by the Government.

13. There are no statutory provisions under the School Regulation Act giving relaxation in the matter of experience. The Tamil Nadu

Recognised Private Schools (Regulation) Rules, 1974 also contain the requirement of basic qualification and experience for appointment to the post of Headmaster. There is no provision giving relaxation in the Regulations also. We therefore, make the position very clear that the candidates for appointment to the post of Middle School Headmaster must have five years of experience as a teacher. We also make it clear that there is no provision for giving relaxation in the matter of either qualification or experience.

14. The other question is as to whether we should interfere in the order passed by the learned single Judge even after declaring the law on the subject.

15. The first respondent has been working with effect from 10 November, 2008. The Management, during the time of her appointment made it clear that for the first five years, she would be eligible only to the salary applicable to the B.T.Assistant. The first respondent is also agreeable to accept the salary at the rate applicable to the B.T.Assistant for five years. We therefore, make it clear that the appointment of the first respondent as Middle School Headmistress would commence for all

practical purposes, only from the date on which she completed five years, meaning thereby, it would be only from 10 November, 2013. She is not entitled to the salary for the period from 10 November, 2008 to 10 November, 2013. Her service as a Headmistress for the said period would not be counted for any purpose, including seniority. We are confirming the order directing approval of appointment only on account of the peculiar background facts relating to the appointment of the first respondent as Middle School Headmistress with effect from 10 November, 2008 and the pendency of the matter for all these years. The proceedings of the Director of School Education giving relaxation to a similarly situated Headmaster also has been taken note of by us for moulding the relief. The order passed by the learned single Judge is modified to the above extent.

The intra court appeal is allowed in part as indicated above. No costs.

(K.K.SASIDHARAN, J.) (P.VELMURUGAN, J.)
21 March, 2018

gms

**K.K.SASIDHARAN, J.
AND
P.VELMURUGAN, J.**

gms

To

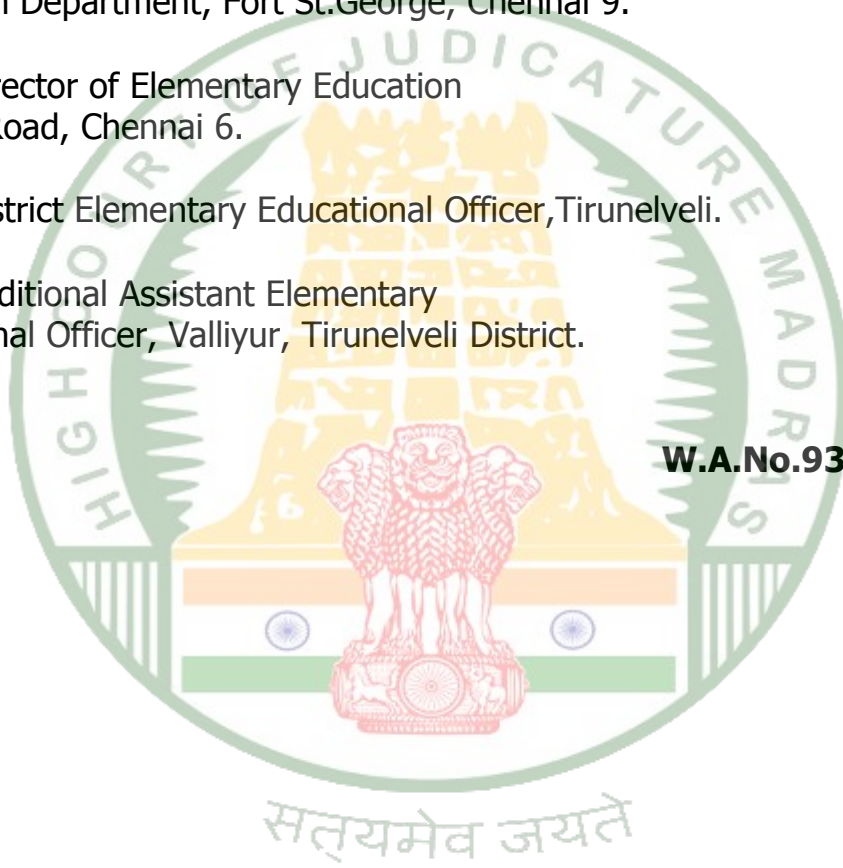
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