



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.10.2015

CORAM :

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

and

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Writ Appeal(MD) No.1053 of 2015

The Madurai Corporation Schools
Teachers Association,
Rep by its General Secretary,
S.Senthurpandi
No.122/25, Mamalaichamy 2nd Street,
K.Pudur, Madurai 625 007. ... Appellant/Petitioner

Vs.

- 1.The Secretary,
Department of Schools Education,
Government of Tamil Nadu,
St., George Fort, Chennai 9.
- 2.The Director of School Education,
College Road, Nungambakkam, Chennai 6.
- 3.The Commissioner,
Corporation of Madurai,
Madurai 2. ... Respondents/Respondents

Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 07.08.2015 made in W.P.(MD)No.16843 of 2014.

Prayer in WP(MD). 16843/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the respondents to fill up the post of Corporation Educational Officer, Madurai among the Headmasters/Headmistress in the Corporation Higher Secondary School, Madurai as per the procedure followed by the Corporation of Chennai and Coimbatore.

For Appellant : Mr.K.C.Ramalingam
For Respondents 1&2 : Mr.V.R.Shanmuganathan,
Special Government Pleader.

JUDGMENT

(Judgment of the Court was delivered by **R. SUDHAKAR, J**)

<https://hcservices.ecourts.gov.in/hcservices/> it appeal is directed against the order passed by the learned single Judge dated 07.08.2015 in W.P(MD)No.16843 of 2014.



2. We find no reason to interfere with the order of the learned single Judge dismissing the writ petition filed by the appellant association seeking direction to appoint Corporation Educational Officer from among the Headmasters/Headmistress of Madurai Corporation and not from the seniority list of Assistant Educational Officers who according to the respondent Department are governed by Corporation Educational Subordinate Service Rules.

3. Learned single Judge after considering the entire gamut of the issue dismissed the writ petition stating that the writ petition has been filed based on apprehension and surmises of the petitioner.

4. We find that if one or other Headmaster/Headmistress seeks remedy of appointment of Corporation Educational officer and feels that he/she has right, it is for the person to pursue such remedy, who is personally aggrieved.

5. In **Formation of Indian Network Marketing Association, Chennai Vs. M/s. Apple FMCG Marketing Pvt., Ltd., Chennai and others** reported in **2005 Writ L.R.321**, wherein it has been held that ordinarily a writ petition or writ appeal can only be filed by someone who is personally aggrieved.

6. In **Sand Carrier's Owners Union and Others VS. Board of Trustess for the Port of Calcutta, AIR 1990 Cal 176**, it was observed by the Calcutta High Court as follows:-

"The members of such association may be affected by a common order and may have common grievance but for the purpose of enforcing the rights of the members, writ petition at the instance of such association is not maintainable".

7. A Full Bench of the Allahabad High Court in **Indian Sugar Mills Association Vs. Secretary to Government**, reported in AIR 1951 All 1 held as follows:

"The further argument is that any person, whether his interests are directly affected or not, can file an application challenging any Act of the Legislature or the order of the Government on the ground that it is ultra vires. In this connection we cannot do better than quote the decision of the learned Judges of the Supreme Court of the United States in **Commonwealth of Massachusetts V. Andrew W. Mellon**, 262 U.S. 447:67 Lawyers Edn. 1078, Sutherland, J. who delivered the opinion of the Court quoted with approval the remarks of Thomson, J. with whom Story, J. concurred, which were as follows:

It is only where the rights of persons or property are involved, and when such rights can be presented under



some judicial form of proceedings, that courts of justice can interpose relief."

Dealing with the question whether a single tax-payer can challenge the enforcement of a Federal Appropriation Act on the ground that it was invalid and would increase the burden of his taxes, the learned Judge observed:

"His interest in the moneys of the treasury-partly realised from taxation and partly from other sources-is shared with millions of others; is comparatively minute and indeterminable; and the effect upon future taxation of any payment out of the funds so remote, fluctuating, and uncertain that no basis is afforded for an appeal to the preventive powers of a Court of equity??If one tax-payer may champion and litigate such a cause, then every other tax-payer may do the same, not only in respect to the statute hereunder review, but also in respect of every other appropriation Act and statute whose administration requires the outlay of public money, and whose validity may be questioned. The bare suggestion of such a result, with its attendant inconveniences, goes far to sustain the conclusion which we have reached, that a suit of this character cannot be maintained."

Those remarks are with reference to a suit. They are much more applicable to proceedings under Article 226 which are of a summary and of a coercive nature without providing for a normal trial or a right of appeal except in those cases where a substantial question of interpretation of the constitution arises. This Court is being flooded with applications under Article 226 of the Constitution which is seriously affecting the normal work of the Court. We feel that the time has come when we may point out that Article 226 of the Constitution was not intended to provide an alternative method of redress to the normal process of a decision in an action brought in the usual courts established by law. The powers under this Article should be sparingly used and only in those clear cases where the rights of a person have been seriously infringed and he has no other adequate and specific remedy available to him".

8.Following the above said decisions, the First Bench of this Court in Tamilaga Asiriyar Koottani Vs.The Government of Tamil Nadu and 19 others reported in 2005 Writ L.R. 389 has held as follows:-

"In our opinion, if any educational institution or Head Master or Teacher is aggrieved by the impugned G.O.Ms.No.13 dated 9.2.2005 they can file a writ petition in this Court challenging the same, but the appellant - association had no locus standi in the matter. It cannot



be said that the educational institutions or Head Masters are so poor that they are unable to approach this Court. If any particular educational institution or Head Master has a grievance against the impugned G.O.Ms.No.13 dated 9.2.2005 it is for such person to file a writ petition or writ appeal, and not for any association. The writ appeal is dismissed on the ground of lack of locus standi. The writ petition is dismissed for the same reason. W.A.M.P.No.1384 of 2005 is dismissed".

9.In that case, the writ petition was filed by the Association to forbear the Government from implementing G.O.Ms.No. 13, School Education (C2) Department, dated 09.02.2005 till the end of the academic year 2004-2005 and for consequential direction to consider the grievance of the Elementary School Headmasters working in the upgraded middle schools as per G.O.Ms.No.39, dated 21.03.2002 and G.O.Ms.No.135 dated 23.08.2002 for replacement, transfer and postings in the month of June 2005.

10.In such view of the matter, the writ petition has been filed by the association seeking service benefits that is to say appointment to the post of Corporation Educational Officer cannot be entertained. Learned single Judge was justified in dismissing the writ petition. Accordingly, the writ appeal is dismissed. No costs. Consequently, M.P(MD)No.1 of 2015 is closed.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub Assistant Registrar

To

- 1.The Secretary,Department of Schools Education,
Government of Tamil Nadu, St., George Fort,Chennai 9.
 - 2.The Director of School Education,
College Road, Nungambakkam,Chennai 6.
 - 3.The Commissioner, Corporation of Madurai, Madurai 2.
- +1cc to Mr.K.C.Ramalingam, Advocate Sr.No.60202
+1cc to Mr.R.Murali, Advocate Sr.No.60555
+1cc to Spl.GOvernemnt Pleader Sr.No. 60749

sms

AA/JGB-DP/04.11.2015/4p-7c

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