



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.11.2016

CORAM:

THE HONOURABLE DR.JUSTICE S.VIMALA

W.P(MD)No.19022 of 2015

and

M.P(MD)No.1 of 2015

The Correspondent,
Punitha Arulappan Higher Secondary School,
Avudayanoor - 627 808,
Tirunelveli District.

: Petitioner

Vs.

1. The Director of School Education,
College Road, Chennai - 600 006.

2. The District Educational Officer,
Tenkasi - 627 811,
Tirunelveli District.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings issued by the 2nd respondent District Educational Officer in O.Mu.No.3154/a3/2015 dated 22.07.2015 refusing approval to the appointment of V.Arul Selvaraj as the Headmaster in the petitioner's school, quash the same and further direct the District Educational Officer to give approval forthwith to the appointment of V.Arul Selvaraj as Headmaster and disburse the grant-in-aid towards his salary and other attendant benefits w.e.f. the date of his appointment viz., 01.06.2015.

For Petitioner : Mr.Isaac Mohanlal
for Mr.T.Cibi Chakraborty

For Respondents : Mr.T.S.Mohammed Mohideen,
Additional Government Pleader.

O R D E R

The refusal of approval to the appointment of Mr.V.Arul Selvaraj as Headmaster in the petitioner's school by the second respondent, is under challenge in this writ petition.

2.Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.



3.The case of the petitioner is that the petitioner's school, Punitha Arulappar Higher Secondary School, Avudayanoor, Tirunelveli District, is a minority educational institution, governed by the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974. The post of Headmaster in the school fell vacant due to the retirement vacancy of previous incumbent, namely, Mr.A.Arul Joseph. In that vacancy, the school appointed a fully qualified candidate namely, Mr.V.Arul Selvaraj, w.e.f.01.06.2015. The Headmaster, who was appointed, possessed of M.A.(Economics) and also having 32 years of teaching experience as B.T. Assistant. The petitioner school submitted proposal to the second respondent on 19.06.2015, for approving the said appointment. The second respondent returned the proposal, vide order dated 22.07.2015. The Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, prescribe the qualification for appointment to the post of a Headmaster in the Higher Secondary School in Heading IV of Annexure V as under:

**IV.QUALIFICATIONS FOR APPOINTMENTS AS TEACHERS IN HIGHER
SECONDARY SCHOOLS:**

Name of the post	Qualifications
(1)	(2)
1.Headmaster or Headmistress (Higher Secondary Schools).	i.A Master's Degree of a University in the State for teaching any of the languages under Part I and II or subjects under Part III, Group "A" of the syllabus for Higher Secondary Courses or a Master's Degree of equivalent standard in any one of the subjects or languages, specified in the said syllabus or certificate issued by the University of Madras for having undergone the Certificate Course in Science and Humanities for Graduate Teachers in High Schools during the year 1960-1964; ii.B.T. or B.Ed. Degree or its equivalent, iii.Experience for a period of not less than ten years as B.T. Schools Assistant or Pandit in a Secondary school or Training School or Higher Secondary School recognised by the Director of School Education; Provided that the experience in the category of Headmaster and Headmistress in a school recognised by the Director of School Education shall be taken into account for calculating the experience in the category of B.T. Assistant.



The approval was rejected on the sole ground that the incumbent has not worked as Post Graduate Assistant, which is a feeder category for the post of Higher Secondary School Headmaster as per Rule 15(4)(d). Therefore, this writ petition has been filed.

4. The learned counsel for the petitioner would submit that Rule 15(4)(d) is not applicable to minority educational institutions and this contention is amply supported by the decisions of this Court and he relied upon the following decisions:

(i) In **Eka Ratchagar Sabai Higher Secondary School, rep. by its Correspondent, Tuticorin District and Others** reported in (2008) 1 MLJ 322, where-under, it has been held that Rule 15(4) of the Tamil Nadu Recognised Private School (Regulation) Rules, 1974, is not applicable to the minority educational institutions. Paragraphs 5 and 15 are extracted here under:

"5. The main question is, however, regarding the applicability of Section 15(4) of the Rules to the minority schools. Learned counsel for the appellants has relied upon several decisions of the Supreme Court in support of his contention that in view of the provisions contained in Article 30(1) of the Constitution of India, the Management of the school has a right to appoint Headmaster, teacher and other staff, of course keeping in view the minimum qualification prescribed but, such discretion cannot be curtailed by making provision regarding appointment of such persons in a particular manner. Particularly he has placed reliance upon the decision of the Supreme Court in the Secretary, Malankara Syrian Catholic College v. T. Jose and Others (2007) 1 SCC 386.

... ..

15. Judged in light of the observations made by the Supreme Court in Secretary, Malankara Syrian Catholic College v. T. Jose (supra), the provisions which lay down qualification for appointment of teachers are obviously required to be followed; whereas the procedure contemplated in Rule 15(4) of the Rules severely constricting the scope of the discretion of the Management in appointment of teachers and confining the same to a particular source would be violative of Article 30(1). Therefore, such provisions are not required to be followed by the minority institutions. In view of the above, we cannot agree with the view expressed by the learned single Judge under the impugned judgment and such decision is liable to be over-tuned".

(ii) The said Judgment was followed by the Division Bench of this Court in **A. Belavendran v. The joint Director of School Education, Chennai and others** reported in 2010(1) CWC 34. Paragraphs 23 and 24 are extracted here-under:



"23. In **Eka Ratchagar Sabai Higher Secondary School and another v. K. Sumathi and another**, 2007(4) LW 617, which is almost identical to the present case, the Division Bench dealt with each of the judgments that have been cited before us. The minority institutions' right of appointment of Principals/Headmasters and Teachers of their choice have been protected under Article 30(1) of the Constitution of India in the above case. As observed by the Supreme Court in **St. Xavier's case**, the Division Bench held that though it relates to appointment of Principal, the same logic and ratio would be applicable to the appointment of Teachers also and the Division Bench further held that since the matter has been decided by the Supreme Court in the Decision in **Secretary, Malankara Syrian Catholic College v. T. Jose and Others** (2007)1 SCC 386, the interpretation given earlier by different Judges of this Court cannot hold good and therefore the necessary conclusion is that the discretion of the Management to appoint Teachers of its own choice (of course a Teacher, who is otherwise qualified and eligible as per the prescribed regulations) cannot be curtailed through the process of Rules, Regulations or other executive instructions.

24. We see no reason to differ from the view of the Division Bench of this Court since it is in line with the Supreme Court's pronouncement. Further, we need not go into the applicability of Rule 15(4) of the Rules, since the Supreme Court has observed that all enactments must be brought in line with the T.M.A. Pai Foundation's case. The principles laid down in T.M.A. Pai Foundation's case have been crystallized in P.A. Inamdar's case, which is again reiterated in Secretary, Malankara Syrian Catholic College's case. In such circumstances, the Writ Appeal is dismissed. No costs".

5. Placing reliance upon the decisions of this Court, the learned counsel for the petitioner has contended that Rule 15(4) (d) does not apply to the minority educational institutions and the only governing provision for appointment of Headmaster is prescribed in Heading IV of Annexure V of the Tamil Nadu Recognised Private School (Regulation) Rules, 1974, under which, the following are the required qualifications:

(i) A Master's Degree of a University in the State for teaching any of the languages under Part I and II or subjects under Part III, Group "A" of the syllabus for Higher Secondary Courses or a Master's Degree of equivalent standard in any one of the subjects or languages specified in the said syllabus or certificate issued by the University of Madras for having undergone



the Certificate Course in Science and Humanities for Graduate Teachers in High Schools during the year 1960-1964;

(ii) B.T. or B.Ed. Degree or its equivalent,

(iii) Experience for a period of not less than ten years as B.T. Schools Assistant or Pandit in a Secondary school or Training School or Higher Secondary School recognised by the Director of School Education;

Provided that the experience in the category of Headmaster and Headmistress in a school recognised by the Director of School Education shall be taken into account for calculating the experience in the category of B.T. Assistant".

6. The learned Additional Government Pleader would submit that the Headmaster did not have the required experience as he has not worked as Post Graduate Assistant as contemplated under Rule 15 (4) (d) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974.

7. The said contention cannot be accepted as it has been held in decisions of this Court referred to supra that Rule 15(4) (d) is not applicable to the minority educational institution and therefore the contention that the Headmaster did not possess the required qualification as contemplated under Rule 15(4) (d) cannot be raised at all. Therefore, the rejection of approval on the sole ground that the incumbent has not worked as Post Graduate Assistant has to be set aside. Accordingly, the impugned order passed by the second respondent dated 22.07.2015 is set aside and the respondents are directed to approve the appointment of Mr.V.Arul Selvaraj as Headmaster in the petitioner's school and disburse the grant-in-aid within a period of eight weeks from the date of receipt of a copy of this order.

8. The writ petition is allowed on the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/

Assistant Registrar(Records)

/TRUE COPY/

Sub Assistant Registrar

To

1. The Director of School Education, College Road, Chennai-600006.
2. The District Educational Officer, Tenkasi - 627 811, Tirunelveli District.

+1cc to M/s.T.Cibi Chakraborty, Advocate, in SR No.65687.

ORDER MADE IN
W.P (MD) No.19022 of 2015
and M.P (MD) No.1 of 2015
02.11.2016