



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 18.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.A.[MD].No.1159 of 2011
and
M.P(MD)Nos.1 and 2 of 2011
and
M.P(MD)No.3 of 2013

The Secretary,
Sri Thirikudaraja Primary School,
Tenkasi, Tirunelveli District.

: Appellant/Writ
Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. By its Secretary,
Department of School Education,
Fort St. George, Chennai - 600 009.
- 2.The Director of Elementary Education,
College Road, Chennai - 600 006.
- 3.The District Elementary Educational Officer,
Tirunelveli, Tirunelveli District.
- 4.Additional Assistant Elementary,
Educational Officer, Tenkasi - 627 811,
Tirunelveli District.

: Respondents/
Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent to set aside the order, dated 18.08.2011 passed by a learned Single Judge in W.P(MD)No.9273 of 2011 on the file of this Court and allow this Writ Appeal.

Prayer in WP(MD). 9273/ 2011 :

Petition filed under Article 226 of the Constitution of India, praying for the issuance of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the Second respondent Director of Elementary Education vide O.Mu.No. 3564/G1/2011 dated 10.05.2011, quash the same and further direct the Second respondent to forward forthwith the petitioner's proposal for relaxation to the first respondent State Government dated 30.04.2008 (resubmitted on 20.08.2010) and further directing the Ist respondent to consider and pass appropriate orders on the same within a reasonable time.

For Appellant : M/s.S.Xavier Rajini

<https://hcservices.ecourts.gov.in/hcservices/> For Respondents : Mr.V.R.Shanmuganathan,
Special Government Pleader

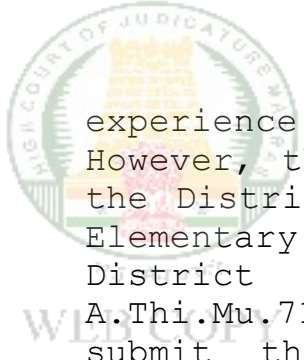
**JUDGMENT**

[Judgment of the Court was delivered by **R.SUBBIAH, J.**]

This Writ Appeal has been filed challenging the order of the learned single Judge passed in the writ petition filed by the appellant in W.P(MD)No.9273 of 2011, dated 18.08.2011, whereby and whereunder the prayer of the appellant-School to quash the impugned proceedings issued by the second respondent in O.Mu.No.3564/G1/2011, dated 10.05.2011 and also for a further direction to the second respondent to forward the petitioner's proposal for relaxation to the first respondent State Government, dated 30.04.2008(re-submitted on 20.08.2010) and for a further direction to the first respondent to consider and pass appropriate orders on the same within a reasonable time, was rejected.

2. The case of the appellant is that the appellant-school was recognised as aided Private School. The Headmaster of the school Mr.N.Solai retired on 31.05.2002. Thereafter, the appellant-school took steps to fill up the vacancy. Hence, the appellant requested the District Employment Exchange to sponsor 'OC' male candidates with five years teaching experience, vide letter, dated 22.04.2008. The appellant-School has also caused an advertisement in a Tamil Daily, namely, "Dhinakaran" on 23.04.2008 inviting Male 'OC' candidates under open competition category with five years teaching experience and the appellant has also affixed the intimation in the School Notice Board. The qualification prescribed for the post is D.T.Ed + Five years teaching experience as Secondary Grade Teacher and the interview was fixed on 30.04.2008 at 9.30 a.m. But, the District Employment Officer forwarded the name of one qualified candidate namely, S.Shanmugam vide proceedings X2/77/2008, dated 22.04.2008 and the appellant has also sent interview card to him on 24.04.2008, but, he did not turn up. But, one C.Richard Rose attended the interview and he possessed H.S.C and D.T.Ed., but he did not possess teaching experience of five years. The School Committee selected the said Richard Rose and resolved to appoint him as Headmaster vide resolution, dated 30.04.2008. Accordingly, he was appointed w.e.f 30.04.2008 on condition that the School would claim only the Secondary Grade Salary from the Government till he acquires the teaching experience of five years. The said Richard Rose has also gave an undertaking to that effect on 30.04.2008 and joined duty on 30.04.2008 and he has been serving the school till date.

3. It is the further case of the appellant that for the purpose of disbursement of grant-in-aid towards the salary and also for relaxation of pre-requisite qualification of five years teaching experience, the appellant has submitted a proposal to the District Elementary Educational Officer on 09.05.2008 through the Assistant Elementary Educational Officer. The proposal was returned by the District Elementary Educational Officer, vide proceedings O.Mu.No.4563/Aa1/2008, dated 06.06.2008 stating that the proposal could not be considered for the reason that the Government Order first cited therein directed that the persons, who had five years of teaching



experience only could be appointed as Primary School Headmasters. However, the appellant re-submitted the proposal on 23.06.2008 to the District Elementary Educational Officer through the Assistant Elementary Educational Officer. But, again it was returned by the District Elementary Educational Officer vide proceedings A.Thi.Mu.7166/A1/2008, dated 26.08.2008 with a direction to re-submit the proposal after rectifying the defects mentioned therein. Thereafter, the appellant re-submitted the proposal on 14.09.2008 explaining that the permission for filling up the Post had been granted on 22.04.2008, the then academic year was to end on 30.04.2008 and therefore, the appointment should have been made before the then academic year and further, an explanation, dated 14.09.2008 for not obtaining No Objection Certificate from the District Employment Exchange for appointing a candidate without five years teaching experience, was also submitted to the State Government. Again the same was returned vide proceedings O.Mu.No.8518/Aa1/2008, dated 07.10.2008 directing the Assistant Elementary Educational Officer to instruct the school to get fresh list of candidates having five years teaching experience from the District Employment Exchange.

4. Thereafter, the appellant made a request to send qualified male 'OC' candidates with five years teaching experience. As there was no eligible person, the District Employment Exchange sent Non Availability Certificate. Hence, the appellant once again re-submitted the proposal to the District Elementary Educational Officer on 13.11.2008 with the Non availability certificate and requested to approve the appointment of C.Richard Rose after getting necessary relaxation from the Government. But, the request of the appellant was not considered till date. Finally, the appellant submitted all the documents to the Director of Elementary Education, Chennai. But, the request of the appellant was rejected vide proceedings O.Mu.No.3564/G1/2011, dated 10.05.2011. Aggrieved by the same the appellant-School filed the writ Petition. But, the writ petition was dismissed by the learned single judge vide order, dated 18.08.2011, stating that relaxation of teaching experience, cannot be claimed as a matter of right. Challenging the same, the present writ appeal has been filed by the appellant-school.

5. When the matter is taken up for consideration, the learned counsel appearing for the appellant by producing the judgment delivered by the Division Bench of this Court in W.A(MD)No.1119 of 2014, dated 29.04.2015, submitted that the issue involved in the writ appeal is no longer *res integra*.

6. Heard the submissions and perused the materials available on record.

7. In the judgment rendered in W.A(MD)No.1119 of 2014, dated 29.04.2015, in an identical situation, the Division Bench of this Court, had directed to approve the appointment made by the respondent therein, subject to the requirement under law. The relevant portion of the said judgment is extracted hereunder:

13. When the matter came up for hearing, Mr. V. R. Shanmuganathan learned Special Government



Pleader appearing for the appellants/respondents conceded that the respondent/writ petitioner may work in the post of B.T.Assistant, but, however, shall not claim salary for the post of Headmaster, until she acquired five years of teaching experience, as B.T.Assistant.

14. Learned counsel for the respondent/petitioner submitted that on completion of five years of teaching experience, a direction can be issued to the Management, to consider the case of the petitioner for promotion to the post of Headmaster, as per the provisions of the Tamil Nadu Recognised Private School (Regulation) Act, 1973 and the rules made thereunder.

15. Recording the above said submission, the Writ Appeal is allowed and the order, dated 15.04.2014 made in W.P(MD)No.14375 of 2012 is set aside. The respondent shall work as B.T. Assistant and she shall not claim salary for the post of Headmaster. Management also shall not claim salary for the post of Headmaster. After completion of five years in the Post of B.T.Assistant, a direction is issued to consider the case of the petitioner for promotion to the said Post, in accordance with the statutory provisions.

16. Perusal of the impugned order made in W.P (MD)no.14375 of 2012 shows that approval of appointment of Smt.Sujata by the respondent/petitioner, as Headmaster of the school has been declined only on the ground that the said Sujatha had not fulfilled the Statutory eligibility, namely, five years of teaching experience in the post of B.T.Assistant, for being appointed as Headmaster of Middle School. Excepting the above, there is no other reason for not approving the appointment of said Sujatha appointed by the respondent/petitioner. Thus, it is not the case of the appellant/official respondents that said Sujatha appointed by the respondent/petitioner did not possess B.T Assistant qualification. It is not open to the appellants to contend that the said Sujatha has not even qualified to be appointed as B.T Assistant. The appellants are directed to approve the appointment of the Sujatha appointed by the respondent/petitioner, as B.T.Assistant, subject to the requirement under law. The said exercise shall be completed within a period of six weeks from the date of receipt of a copy of this



order. No Costs. Consequently, M.P (MD) No.1 of 2014 is closed.

8. Therefore, we are of the opinion that following the said decision of this Court, the present writ appeal can be allowed. At this juncture, it is to be noted that the petitioner had already completed five years of experience as Secondary Grade Teacher on 29.04.2013.

9. In view of the same, the respondents are directed to approve the appointment of the petitioner as Secondary Grade from 30.04.2008 to 29.04.2013 and thereafter, as Headmaster. The said exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

With the above direction this Writ Appeal is disposed of. No Costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(C)

/TRUE COPY/

Sub Assistant Registrar

To

- 1.The Secretary,
State of Tamil Nadu,
Department of School Education,
Fort St. George, Chennai - 600 009.
- 2.The Director of Elementary Education,
College Road, Chennai - 600 006.
- 3.The District Elementary Educational Officer,
Tirunelveli, Tirunelveli District.
- 4.Additional Assistant Elementary,
Educational Officer, Tenkasi - 627 811,
Tirunelveli District.

+1 cc to MR.Xavier Rajini, ADVOCATE, SR NO:2975

pm

sva/bs/10.02.2017/5p/6c

Judgment made in
W.A. [MD].No.1159 of 2011
18.01.2017