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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 10.02.2017

DELIVERED ON: 17.02.2017

CORAM:

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

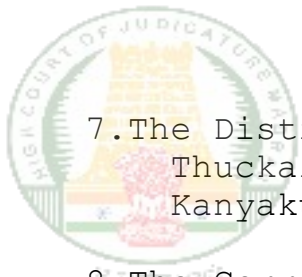
W.A. (MD) No.667 of 2011
and
M.P. (MD) .Nos.1 to 3 of 2011

Dr.N.Gunasegar

.. Appellant
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 School Education,
College Road, Chennai - 600 006.
- 3.The Director of Matriculation Schools,
College Road, Chennai - 600 006.
- 4.The Regional Joint Secretary to CBSE
Schools, 1630 A, J.Block Main Road,
Anna Nagar West,
Chennai - 600 040.
- 5.The Council for the Indian School
Certificate Examinations,
rep. by its Chief Executive and Secretary,
Pragati House, 3rd Floor,
47-48, Nehru Place,
New Delhi - 110 019.
- 6.The Chief Educational Officer,
Kanyakumari District,
Nagercoil - 629 001.



7.The District Educational Officer,
Thuckalay - 629 175,
Kanyakumari District.

8.The Correspondent,
Arunachalam Higher Secondary School,
Thiruvattar - 629 177,
Kanyakumari District.

.. Respondents /
Respondents

Writ Appeal has been filed under Clause 15 of the Letters Patent, against the order dated 13.06.2011, passed by a learned Single Judge of this Court in W.P.(MD).No.5852 of 2009.

Prayer in WP(MD). 5852/ 2009 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 2nd respondent Director of school education in O.Mu. No. 36495/W5/2007 dated 01/01/2008 Quash the same and further direct the 7th respondent District Educational officer to approve forthwith the appointment of the petitioner as Headmaster in the 8th respondent school w.e.f. 03/04/2006 with all attendant benefits.

For appellant : Mr.Isaac Mohanlal,
Senior Counsel
for Mr.S.Xavier Rajini

Respondents 1 to 3, 6 & 7 : Mr.V.R.Shanmuganathan,
Special Government Pleader

For 4th respondent : Mr.V.P.Rajan

For 8th respondent : No appearance

JUDGMENT

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

The appellant is the Writ Petitioner. He has filed this appeal as against the order made in W.P.(MD).No.5852 of 2009, dated 13.06.2011, whereby and whereunder a learned Single Judge of this Court has negatived the relief sought for by the appellant to quash the proceedings of the second respondent viz., the Director of School Education, dated 01.01.2008 and to consequently direct the 7th respondent viz., the District Educational Officer, Thuckalay, to approve forthwith the appointment of the appellant/petitioner as Headmaster in the 8th respondent school with effect from 03.04.2006 with all attendant benefits. However, the learned Single Judge directed the first respondent to consider



and pass orders on the representation of the appellant / petitioner dated 25.03.2008 within a period of four months from the date of receipt of the order.

2. In view of the order that is going to be passed in this appeal, notice to the 5th respondent is dispensed with.

3.0. The brief facts which are necessary to decide this writ appeal is as follows;

The appellant herein is working as Headmaster in the 8th respondent school, which is a recognised aided private school established in the year 1928. The appellant joined in the said school as Headmaster on 03.04.2006 and his appointment was against a regular vacancy that occurred on account of the voluntary retirement of the previous approved Headmaster by name Mr. Madhavan Thampi on 15.02.2006. The appellant possesses M.Sc. Degree in Zoology and M.Ed. Degree from the Madurai Kamaraj University and Ph.D. in Entomology from the Madras University. Before joining the post of Headmaster, he worked about 15 years, 5 months and 14 days as Teacher in various recognised schools. The 8th respondent school submitted a proposal to the 7th respondent on 04.09.2006 for the purpose of disbursement of grant-in-aid towards his salary with the required details. But, the 7th respondent, without giving approval for the same, forwarded the proposal to the 2nd respondent. The 2nd respondent rejected the said proposal, vide impugned order dated 01.01.2008, stating that though the appellant has the necessary educational qualifications, there is some deficiencies in teaching experience. It is also stated in the impugned order that (i) There is no Government Order to reckon the experience put in the ISC and CBSE schools as eligible teaching experience; and (ii) G.O.Ms.No.35, School Education Department, dated 22.03.2005 which directed to treat the experience in Matriculation Schools as eligible teaching experience has been stayed by this Court. Challenging the said order, the appellant has filed the writ petition before this Court in W.P.(MD).No.5852 of 2009.

3.1. The prayer in the writ petition was opposed by the 7th respondent viz., the District Educational Officer, by filing a detailed counter affidavit stating that the qualification for appointment to the post of Headmaster for Higher Secondary School is prescribed in Annexure V appended to the Tamil Nadu Recognised Private School (Regulation) Rules, 1974 which reads as follows;

(i) A Master's degree for teaching any of the languages under Parts I and II or subjects under Part III group 'A' of the syllabus for Higher Secondary Courses or its equivalent in any of the subjects or languages specified in the said syllabus or a certificate 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. School Assistant or Pandit in a Secondary School or Training School or Higher Secondary School recognized by the Director of School Education.

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

Whereas, the appellant has worked in the Schools as follows;

School	Management	Service Yr.Mth.Days	Remarks
Brindavan Public School, Attoor, Chengalpattu.	Indian School Certificate Examination Board (ISCE)	03 08 26	
DAV-BHEL School, Ranipet, Vellore District.	Central Board of Secondary Education (CBSE)	07 11 22	Services not counter-signed by the Inspecting Officer
Surabhi Sree Raja Madhanghi Higher Secondary School, Salem.	Directorate of School Education	02 00 00	Services not counter-signed by the Inspecting Officer
Nyruthi Matriculation Higher Secondary School, Tirupur.	Matriculation School	00 09 15	
Dharani Matriculation Higher Secondary School, Vasudevanallur	Matriculation School	00 11 11	
Total		15 05 14	

Though the appellant possesses necessary educational qualifications, he should have experience for a period not less than ten years as B.T. School Assistant or Pandit in a Secondary School or Training School or Higher Secondary School recognized by the Director of School Education. Out of the above said 15 years, 05 months and 14 days service, the appellant has served in ICS Schools, CBSE Schools and Matriculation Schools, which are not approved as recognised schools as per Section 11 of the Act.



Further, there is no provision in the Tamil Nadu Recognized Private School (Regulation) Rules, 1974 to reckon the services in ICS Schools, CBSE Schools and Matriculation Schools as eligible for the post of Headmaster of Higher Secondary Schools. Thus, the 7th respondent prays for dismissal of the writ petition.

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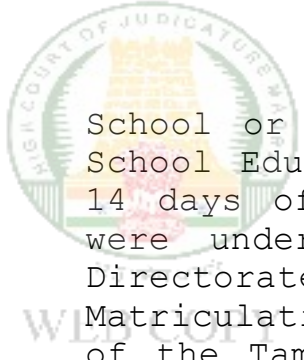
3.2. The 4th respondent - the Regional Joint Secretary of CBSE Schools, has also filed a counter affidavit stating that he is an unnecessary party and he is no way connected with the relief sought for by the appellant.

3.3. The learned Single Judge, after hearing the learned senior counsel for the appellant and the learned Additional Government Pleader, rejected the claim of the appellant, however, directed the first respondent to consider and pass orders on the appeal/representation of the appellant dated 25.03.2008 within a period of four months from the date of receipt of the order. Aggrieved by the said order, the appellant has come up the present writ appeal.

4.0. The learned senior counsel appearing for the appellant would submit that the appellant herein joined as Headmaster in the 8th respondent school on 03.04.2006 in a regular vacancy. When the 8th respondent school has submitted a proposal to the 7th respondent on 04.02.2006 for the purpose of grant-in-aid, the 7th respondent, without giving approval, forwarded the proposal to the second respondent. But, the second respondent rejected the proposal stating that there was some discrepancy in the teaching experience of the appellant.

4.1. The main reason assigned in the impugned order is that the appellant has not worked in the recognized aided schools. In order to assail the said reason assigned in the impugned order, the learned senior counsel for the appellant invited the attention of this Court to Sub clause IV of Annexure - V of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 and submitted that for appointment to the post of Headmaster / Headmistress, one should possess a Master's degree for teaching in any of the languages under Parts I and II or subjects under Part III group 'A' of the syllabus for Higher Secondary Courses or its equivalent in any of the subjects or languages specified in the said syllabus or a certificate in Science and Humanities for Graduate Teachers in High Schools during the year 1960-1964 and also B.T. or B.Ed. degree or its equivalent. The appellant possesses M.Sc. Degree in Zoology and M.Ed. Degree from the Madurai Kamaraj University and Ph.D. in Entomology from the Madras University. Thus, he contended that the appellant has necessary educational qualifications.

<https://hcservices.ecourts.gov.in/Hcservices/> as the other qualification viz., experience, is concerned, there should be an experience of not less than 10 years as B.T. Assistant or Pandit in a Secondary School or Training



School or Higher Secondary School recognized by the Director of School Education. The appellant has about 15 years, 5 months and 14 days of teaching experience in five different schools, which were under four different management viz., ISC; CBSE School; Directorate of School Education, Tamil Nadu; Directorate of Matriculation Schools, Tamil Nadu. Sub clause IV of Annexure - V of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, does not contemplate that the appointee should have gained experience in any aided school and hence, the rejection made by the second respondent stating that the appellant has not worked in any aided school, is liable to be rejected.

4.3 In order to show that the schools in which the appellant had worked, are already approved as recognized schools, the learned senior counsel for the appellant invited the attention of this Court to page No.1 of the typed set of paper and submitted that as per proceedings of the second respondent - the Director of School Education, in RC.No.132427 E2/73, dated 19.05.1974, all the Matriculation Schools, Central Schools, Schools affiliated to CBSE, ISC Schools may be treated on par with recognised schools in Tamil Nadu. But, without considering this proceeding, the second respondent has rejected the proposal stating that the appellant had not worked in any recognized schools. Hence, the impugned order is liable to be set aside.

4.4. The another reason assigned in the impugned order is that though G.O.Ms.No.35, School Education Department, dated 22.03.2005, has been issued to reckon the experience in matriculation schools as eligible teaching experience for appointment to the post of Headmaster, the same has been stayed by this Court on 06.09.2006 and hence, the appellant cannot claim the benefit of the same. According to the learned senior counsel for the appellant, the said G.O. was in operation at the time of appointment of the appellant on 03.04.2006 and it was stayed only on 06.09.2006 and therefore, the operation of the stay would not deter the right of the appellant to claim the benefit of the same. Further, the said G.O. relates only to reckon the experience of the matriculation school. In this case, the appellant has served only about 18 months in the matriculation school. Even assuming for a moment in view of the said stay the service of the appellant in the matriculation schools cannot be taken into account, he would have 13 years and 7 months experience excluding the same. Thus, he is qualified to be appointed in the post of Headmaster for Higher Secondary School, as the required qualification is only 10 years experience.

4.5. Though it is stated that the service certificate was not countersigned by the inspecting officer for a period of 9 years 11 months and 12 days, the learned counsel appearing for the appellant by producing the service certificates stated that all the service certificates have been countersigned by the inspecting



officers concerned and thus, he prayed for quashment of the impugned order.

5. Countering the above submissions, the learned Special Government Pleader submitted that one of the qualifications for appointment to the post of Headmaster of Higher Secondary School is that a person should have an experience for a period not less than 10 years as B.T. Assistant or Pandit in a Secondary School or Training School or Higher Secondary School recognized by the Director of School Education. The said recognition should be within the meaning of Section 11 of the Act. Unless there is a specific order giving a recognition by the Director of School Education, the schools, where the appellant gained experience, cannot be taken as recognized schools. Further the learned Special Government Pleader submitted that the proceedings relied on by the appellant viz., Dir. Proc. Rc.No.132427 E2/73, dated 19.07.1974 is not a genuine one and the same is not applicable to this case.

6. The learned Special Government Pleader has further submitted that though the School Education Department has issued G.O.Ms.No.35, dated 22.03.2005, to treat the experience in the matriculation schools as eligible teaching experience to appoint to the post of Headmaster for Higher Secondary School, the said G.O. was, subsequently, stayed by this Court on 06.09.2006 and hence, on that score also, the appellant cannot claim that his experience in matriculation school should be taken into consideration. The learned single Judge has rightly considered the said submissions and rejected the claim of the appellant. Thus, he prayed for dismissal of the writ appeal.

7. Keeping the submissions made by the learned counsel appearing on either side, we have carefully gone through the entire materials available on record. So far as the educational qualification of the appellant to be appointed in the post of Higher Secondary School Headmaster is concerned, absolutely there is no dispute. The dispute is only with regard to the teaching experience. According to the respondents, the appellant ought to have worked in any aided school and gained experience in recognised school. A bare perusal of Sub-clause IV of Annexure V of the Tamil Nadu Recognised Private Schools (Regulation) Rules would show that the experience for the post of Headmaster in the Higher Secondary School should be not less than ten years in the school recognized by the Director of School Education and it does not contemplate that one should have worked in any aided school. Therefore, the rejection made by the second respondent on the ground that the appellant has not worked in any aided school, is not legally sustainable.

<https://hcservices.ecourts.gov.in/hcservices/>

8. So far as the contention with regard to the experience in recognized school is concerned, the learned senior counsel

appearing for the appellant relied on a proceeding issued by the second respondent viz., Director of School Education in Dir. Proc. Rc.No.132427 E2/73, dated 19.05.1974, with regard to the types of recognised schools in Tamil Nadu. They are:

1. Matriculation Schools
2. Central Schools
3. Schools affiliated to CBSE
4. I.S.C. Schools

He has further submitted that it is also stated in the said proceeding that these schools may be treated on par with recognised schools in Tamil Nadu. Hence, according to the learned senior counsel for the appellant, the experience gained by the appellant in the above said schools should be treated as the experience in the recognised schools and the appellant should be appointed in the Post of Headmaster for Higher Secondary School.

9. When the learned Special Government Pleader disputed the genuineness and authenticity of the said proceedings dated 19.05.1974, the learned senior counsel appearing for the appellant produced a book titled "A Guide for Rules (Aided / Matriculation Schools Manual)" written by Rev.Fr.K.Arulanandham S.J., wherein in paragraph No.191 it is stated as follows;

"III. High School

H.M.:- Any Graduate / Post Graduate who holds teaching degree (B.Ed) Plus teaching experience of not less than five years in a Recognised School after acquiring B.Ed. Degree or its equivalent qualification.

G.O.Ms.No.1966, Edn. 29.11.1974 vide Annexure - I

Column (2) (i), (ii)

Note : It is not needed that he should have worked as a B.T. Assistant for five years in a High School, 5 years of service in any Recognised School in any cadre will suffice, Cf. Verdict of the High Court Judicature of Madras on W.P.No.1569 of 1980, dated 30.06.1986 and W.P.No.8806 of 1986 dated 01.09.1986.

Types of Recognised Schools in Tamil Nadu Dir. Proc. Rc.No.132427 E2/73, dated 19.05.1974:

1. Matriculation Schools
2. Central Schools
3. Schools affiliated to CBSE
4. I.S.C. Schools

These may be treated on par with recognised schools in Tamil Nadu."

10. After perusing the same, the learned Special Government Pleader submitted that the said G.O. is a nonexistent one and not a genuine one. Even assuming it to be true, the same cannot override the statutory provisions. He has further submitted that



even according to the said G.O., it only relates to High School and not to Higher Secondary School. Therefore, the working experience of the appellant in the non recognised school cannot be reckoned as the experience gained in the recognised school.

11. It is assertive submission of the learned Special Government Pleader on the instructions of the officials of the Education Department that the said G.O., dated 19.05.1974, is a nonexistent one and not a genuine one. The appellant has not produced a copy of the said G.O., in order to prove the genuineness of the same. The qualification for appointment to the post of Headmaster for Higher Secondary School, as prescribed in Annexure V appended to the Tamil Nadu Recognised Private School (Regulation) Rules, 1974, is 10 years experience as B.T. School Assistant or Pandit in a Secondary School or Training School or Higher Secondary School recognized by the Director of School Education. Admittedly, Matriculation Schools, Central Schools, Schools affiliated to CBSE, ISC Schools are not recognised as per the provision of Section 11 of the Act. Though the Government, in G.O.Ms.No.35, School Education (VE) Department, dated 22.03.2009, has ordered to reckon the service rendered in the Matriculation School as eligible experience for appointment to the post of Headmaster in Aided Higher Secondary School, the same has been stayed by the Principle Bench of this Court in W.P.No.25603 of 2006 and the same still continues. Hence, the submission of the learned senior counsel for the appellant that as per the proceedings of the second respondent viz., Director of School Education in Dir. Proc. Rc.No.132427 E2/73, dated 19.05.1974, the Matriculation Schools, Central Schools, Schools affiliated to CBSE, ISC Schools are recognised schools, is rejected. Since on the date of approval, the appellant has no relevant experience as per the Act, the second respondent has rightly rejected the said approval. The learned Single Judge also has rightly affirmed the same.

12. However, considering the facts and circumstances of the case and also considering the submissions of the learned counsel for the appellants that the appellant has been continuing in the post of Headmaster of the 8th respondent school; now, he has completed more than 10 years of service in the post of Headmaster; he is going to retire very shortly, the second respondent is directed to reckon the service rendered by the appellant in the post of Headmaster in the 8th respondent school as eligible service for appointment to the post of Headmaster for Higher Secondary School and consider his case positively for regularisation in the post of Headmaster for Higher Secondary School, within a period of four weeks from the date of receipt of the order. However, it is made clear that this order shall not be



13. With the above direction, this Writ Appeal stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to the Government of Tamil Nadu.
Department of School Education,
Fort St. George, Chennai - 600 009.

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

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7. The District Educational Officer,
Thuckalay - 629 175,
Kanyakumari District.

+1cc to Special Government Pleader, Sr No. 9198
+1cc to M/s Xavier Rajini, Advocate, Sr No. 9151

Pre-Delivery Judgment made in
Writ Appeal (MD) No. 667 of 2011
17.02.2017