



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 08.02.2017

CORAM :

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P. (MD) .No.12555 of 2011

WEB COPY

The Secretary,
Sivaguru Memorial Primary School,
Subramaniapuram, Emankulam Post,
Nanguneri, Tirunelveli District.

.. Petitioner

.Vs.

1.The Secretary,
Department of School Education,
State of Tamil Nadu,
Fort St. George, Chennai-9.

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

3.The District Elementary Educational Officer,
Tirunelveli District,
Tirunelveli.

4.The Assistant Elementary Educational Officer,
Nanguneri.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the proceedings issued by the 4th respondent in O.Mu.No.2500/A1/2010 dated 13.01.2011 and quash the same and consequently direct the respondents to approve the appointment of Ramola Jipsi Mavin, W/o Santhosh Raj from the date of the appointment as Head Master in petitioner's school on 01.06.2005 and to disburse secondary grade salary from 01.06.2005 to 31.05.2010 and Head Master salary from 01.06.2010 with arrears by relaxing the qualification of five years teaching experience if necessary under section 20(3) of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 and by dispensing with the prior permission for appointment within stipulated time.

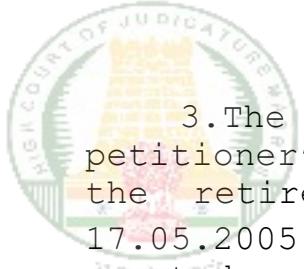
For Petitioner : Mr.T.A.Ebenezer

For Respondents : Mr.K.Guru

**O R D E R**

The Petitioner has filed the instant Writ Petition for Certiorarified Mandamus to call for the records pertaining to the proceedings issued by the 4th respondent in O.Mu.No.2500/A1/2010 dated 13.01.2011 and quash the same and consequently direct the respondents to approve the appointment of Ramola Jipsi Mavin, W/o Santhosh Raj from the date of the appointment as Head Master in petitioner's school on 01.06.2005 and to disburse secondary grade salary from 01.06.2005 to 31.05.2010 and Head Master salary from 01.06.2010 with arrears by relaxing the qualification of five years teaching experience if necessary under section 20(3) of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 and by dispensing with the prior permission for appointment within stipulated time.

2.The case of the petitioner is that the petitioner is the Secretary of Sivaguru Memorial Primary School which is an aided non-minority Primary School having only one sanctioned teacher. The only sanctioned teacher who was the Head Master of the school retired from service on 31.05.2005 on attaining superannuation. Therefore the petitioner has sought for prior permission to fill-up the vacancy arose due to the retirement of the above said Head Master to the 3rd respondent through proper channel well in advance on 25.04.2005. Since there is no reply from the 3rd respondent, the petitioner's school has applied directly to the 3rd respondent seeking prior permission on 17.05.2005. Even thereafter no order was passed by the 3rd respondent on the application seeking for prior permission submitted by the petitioner's school, and therefore the petitioner's school by following the procedure contemplated under Rule 15(4) of the Tamil Nadu Recognized Private Schools (Regulation) Rules restored direct requirements and approached the District Employment Exchange and also issued advertisement in the news paper seeking application from the eligible candidates for appointing Head Master in the petitioner's school. The list of candidates sponsored by the District Employment Exchange were failed to attend interview and the other candidates attended were interviewed. Since none of the candidates are not having 5 years teaching experience, the petitioner's school appointed Ramola Jipshi Mavin as District Employment Exchange form 01.06.2005 by considering the urgency that after the retirement of single teacher no one is available for taking care of the school from 01.06.2005 onwards. The appointment was made by the petitioner's school only with a view to avoid closure of the school without teacher. However, the 3rd respondent by proceedings dated 13.01.2011 rejected the approval of the proposal sent by the petitioner's school for the appointment of the above said Head Master on the ground that no proper permission was obtained and the teacher appointed was not having 5 years teaching experience.



3.The further case of the petitioner is that admittedly the petitioner's school has applied for prior permission even prior to the retirement of the single teacher on 25.04.2005 and on 17.05.2005 to the 3rd respondent and the same were not disposed as on today keeping the application of the petitioner's school seeking prior permission to fill up the vacancy by the 3rd respondent without passing any order is amounts to grant of approval. Further the petitioner's school was having only one sanctioned teacher and the single teacher was also retired on 31.05.2005 and therefore the petitioner's school could not wait indefinitely without making appointment. If nobody is appointed the school might have been closed without teacher. According to the petitioner the above issue is already settled by this Court by order made in W.P.No.810 of 2007 dated 08.08.2011. Therefore the petitioner herein has come up with the present writ petition seeking to quash the impugned order of the 3rd respondent and for consequential relief. As far as the question of 5 years teaching experience is concerned, the government may exempt the 5 years teaching experience qualification under section 20 of the Tamil Nadu Recognized Private Schools (Regulation) Act. According to the petitioner in the present case no exemption is required, since the petitioner's school sought for approval and salary as Secondary Grade Teacher for 5 year from the date of appointment and Head Master salary thereafter.

4.The 3rd respondent filed counter affidavit and contented that the Head Master of the petitioner's school by name Johnson Moses retired from service on 31.05.2005. It is true that the petitioner's school sought permission to fill up the post of Head Master of the school directly to the District Elementary Education Officer, Tirunelveli. But the secretary of the school did not take any concentrated action to get permission of the District Elementary Education Officer to fill up the post of the Head Master as required under Rule 15(4) of the Tamil Nadu Recognition Private Schools (Regulation) Rules. As per annexure V under Rule 15(6) of the Tamil Nadu Recognized Private Schools (Regulation) Rules, the qualifications prescribed for the post of Headmaster of Primary School is (1) SSLC (2) TSLC of Secondary Grade or its equivalent and should have worked as a Secondary Grade Teacher in any Recognized School for a period not less than five years after obtaining T.S.L.C or Secondary Grade or its equivalent. But in the present case the petitioner's school appointed Ramola Jipsi Mavin as Head Master of the school without getting prior permission from the D.E.E.O. Further the above said Head Master is not having 5 years teaching experience. It is true that the petitioner's school is having only one sanctioned post of Head Master. It is the duty of the petitioner's school to get necessary permission from the D.E.E.O. to fill up the vacancy well in advance. The petitioner has appointed his own daughter who did not have 5 years teaching



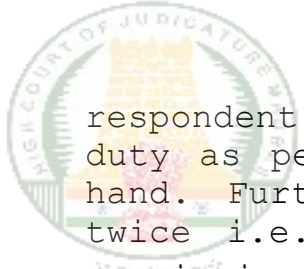
experience of Secondary Grade Teacher and therefore, for appointing unqualified teacher relaxation of rules has to be obtained from the Government. The appointment of Head Master of the petitioner's school is not in order and not in accordance with rules. Therefore the proposal sent by the petitioner's school was rightly rejected and the same does not call for any interference by this Court.

5.I have heard Mr.T.A.Ebenezer, learned counsel appearing for the petitioner and Mr.K.Guru, learned Additional Government Pleader appearing for the respondents and relevant records are perused.

6.It is an admitted case on both sides that the petitioner's school is an aided non-minority school having standards 1 to 5 and it has only one sanctioned post. The Head Master of the school was retired from service on 31.05.2005 and in that place one Ramola Jipsi Mavin was appointed as Head Master on 01.06.2005. It is also admitted case of both sides that prior to the retirement of the Head Master, the petitioner's school sent two applications to the D.E.E.O. of Tirunelveli on 25.04.2005 and 17.05.2005 seeking prior permission to fill up the vacancy and the same was not considered by the D.E.E.O.

7.According to the petitioner since no prior permission was granted by the 3rd respondent despite the receipt of the above said two applications, the petitioner's school proceeded for the appointment of the Head Master by direct recruitment. The petitioner's school also sought for the eligible list of candidates from the District Employment Exchange and they also advertised in the daily news paper. The candidates sponsored by the District Employment Exchange have not attended for the interview and the interview was conducted with the other persons and in which the above said Ramola Jipsi Mavin was appointed on the Head Master of the petitioner's school. The appointment was made by the petitioner's school by taking into consideration of the fact that the schools should not be closed without teacher after 31.05.2005. This court finds that there is a force in the said contention.

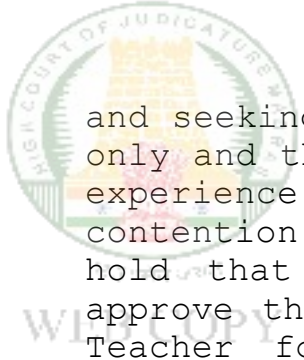
8.Per contra the Learned Government Advocate for the respondents contented that the petitioner's school failed to take concentrated effort to get prior permission from the D.E.E.O to fill up the vacancy. This Court is unable to accept the above said contention of the learned Government Advocate that the concentrated steps have not been taken by the petitioner's school and the respondents are also not able to understand what is the meaning of concentrated steps as alleged by the respondents. The 3rd



respondent who is a statutory authority expected to discharge his duty as per law, has failed to perform the same in the case on hand. Further the petitioner's school submitted application on twice i.e., on 25.04.2005 and on 17.05.2005 for getting prior permission. The 3rd respondent has not at all passed any order on the above said applications and keeping the same without passing any order thereon is illegal and arbitrary and the same shows Lethargic attitude on the part of the 3rd respondent. Therefore the contention of the respondent that the appointment of the Head Master by the petitioner's school cannot be approved without prior permission is baseless and the same is rejected. The above said issue has been considered and decided in favour of the petitioner's school by this Court in an unreported judgment made in W.P.No.810/2007 dated 08.08.2011 wherein at para No.10 it is held as follows:

"10. The third respondent, being a higher secondary school, has written to the first respondent, who is competent authority to give prior permission and admittedly, the first respondent has herein denied the request made by the petitioner nor granted permission. It is no doubt true that by non granting permission, one cannot presume that the first respondent has impliedly granted permission for that. But, nevertheless, the first respondent, who is a statutory authority and expected to perform its duty as per law, has failed to perform the same till the second respondent has made a recommendation on 13.02.2004 to the first respondent to grant approval from 14.01.2004. It is astonishing to note that the second respondent, who is also a statutory authority, has written such proposal to the first respondent only on 13.02.2004 and in spite of the same, the first respondent has kept quit for a long time till the impugned order came to be passed and this shows lethargic attitude on the part of the first respondent. If really the third respondent has not followed the procedure as per Rule 15(4) of the Rules, it was the statutory duty on the part of the first respondent to immediately report to the third respondent saying that the petitioner should not be appointed in that place and when the 1st respondent has not done so, I am of the considered view that the inaction on the part of the first respondent should not work against the petitioner, who is admittedly, working right from 18.03.2003 as a Tamil Teacher in the third respondent school, without salary."

9.As far as the 5 years teaching experience is concerned, as rightly contented by the Learned Counsel for the petitioner, the school is seeking approval for the above said appointment for Secondary Grade Teacher for 5 years from the date of appointment



and seeking approval, salary for the post of Headmaster thereafter only and therefore the question of requirement of 5 years teaching experience does not arise. This Court has accepted the above said contention put forth by the learned counsel for the petitioner and hold that the authorities namely the respondents herein shall approve the appointment of Ramola Jipsi Mavin as Secondary Grade Teacher for 5 years i.e., from the date of appointment and disburse the salary for the post of Secondary Grade Teacher, thereafter to give approval for the post of Head Master and to pay salary for the post of Head Master.

10. For the forgoing reason and in the light of the above said judgment of our High Court, I am of the considered opinion that there is no violation of Rule 15(4) of the Tamil Nadu Recognition Private Schools (Regulation) Rules in the appointment to the post of Head Master of the petitioner's school. Therefore the impugned order of the 3rd respondent is liable to be quashed.

11. In the result:

(a) this writ petition is allowed by setting aside the order in O.Mu.No.2500/A1/2010 dated 13.01.2011 passed by the 4th respondent;

(b) the respondents are hereby directed to approve the appointment of Smt. Ramola Jipsi Mavin, W/o. Santhosh Raj from the date of the appointment as Head Master in the petitioner's school from 01.06.2005 and to disburse Secondary Grade Teacher's salary from 01.06.2005 to 31.05.2010 and Head Master's salary from 01.06.2010 with arrears.

(c) the said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order. No cost.

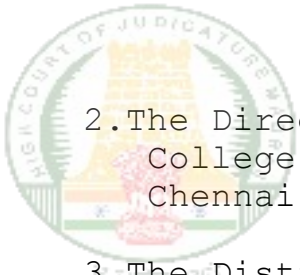
Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary,
Department of School Education,
State of Tamil Nadu,
Fort St. George, Chennai-9.



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

3.The District Elementary Educational Officer,
Tirunelveli District,
Tirunelveli.

4.The Assistant Elementary Educational Officer,
Nanguneri.

+1cc to Mr.T.A.Ebenezer, Advocate, SR.7378

W.P. (MD) .No.12555 of 2011
08.02.2017

VS/SKN

KK/SV MMS/SAR1-01.06.2017-7P-6C