

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.09.2017

DELIVERED ON : 20.11.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.No.26540 of 2010; W.P.(MD) Nos.7167, 14933, 12772 of 2010
and 21795 of 2016 & M.P.(MD)Nos.1,2,3,1/10, & MP.Nos.2,3/10 &
WMP(MD)No.15580 of 2016

W.P.No.26540 of 2010:

A.Murugesan

... Petitioner

Vs.

- 1.The Joint Director of School Education
(Higher Secondary)
College Road,
Chennai-600 006.
- 2.The Chief Educational Officer,
Tirunelveli,
Kokkarakulam,
Tirunelveli District.
- 3.The District Educational Officer,
Tenkasi,
Tirunelveli District.
- 4.Hindu Nadar Uravinmurai Kalvi Committee,
Higher Secondary School,
rep. by its Secretary Mr.R.Rathnavel Pandian,
Sivaram Nadar 1st Street,
T.N.Puthukudi,
Puliankudi - 627 855,
Tirunelveli District.
- 5.Thiru.R.Rathinavel Pandian
- 6.M.Mariappan

7.Hindu Nadar Uravinmurai Magamai Committee,
rep. by its President T.Mariappan,
23A, Sivaramu Nadar 1st Street,
T.N.Pudukudi, Puliangudi.

.. Respondents

(Respondents 6 & 7 impleaded as per order
dt. 28.8.2017 in M.P.Nos.1 & 2 of 2011)

W.P. (MD) No.7167 of 2010:

Hindu Nadar Uravinmurai Kalvi Committee
Higher Secondary School,
rep. by its Secretary Mr.R.Rathnavel Pandian,
Sivaram Nadar 1st Street,
T.N.Puthukudi,
Puliankudi - 627 855,
Tirunelveli District.

... Petitioner

Vs.

1.The Chief Educational Officer,
Tirunelveli,
Kokkarakulam,
Tirunelveli District.

2.The District Educational Officer,
Tenkasi,
Tirunelveli District.

3.A.Murugesan

... Respondents

W.P. (MD) No.14933 of 2010:

A.Murugesan

.. Petitioner

सत्यमेव जयते
Vs.

1.The Joint Director of School Education
(Higher Secondary)
College Road,
Chennai-600 006.

2.The Chief Educational Officer,
Tirunelveli,
Kokkarakulam,
Tirunelveli District.

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

4.Hindu Nadar Uravinmurai Kalvi Committee
Higher Secondary School,
rep. by its Secretary,
Sivaram Nadar 1st Street,
T.N.Puthukudi,
Puliankudi - 627 855,
Tirunelveli District.

5.A.Ramakrishnan

.. Respondents

W.P. (MD) No.12772 of 2010:

A.Murugesan

.. Petitioner

Vs.

1.The Chief Educational Officer,
Tirunelveli,
Kokkarakulam,
Tirunelveli - 627 009.

2.The District Educational Officer,
Tenkasi,
Tirunelveli District.

3.Hindu Nadar Uravinmurai Committee
Higher Secondary School,
rep. by its Secretary Mr.R.Rathinavel Pandian,
Sivaram Nadar 1st Street,
T.N.Puthukudi,
Puliankudi - 627 855,
Tirunelveli District.

.. Respondents

W.P. (MD) No.21795 of 2016:

M.Mariappan

.. Petitioner

Vs.

1.The Director of School Education,
DPI Compound,
College Road, Chennai.

2.The Chief Educational Officer,
Tirunelveli District,
Tirunelveli.

3.The District Educational Officer,
Tenkasi.

4.The Correspondent,
Hindu Nadar Uravinmurai Committee
Higher Secondary School,
T.N.Puthukudi, Puliankudi,
Tirunelveli.

..Respondents

Prayer : Writ Petition No.26540 of 2010 filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the 1st and 4th respondents in relation to the proceedings issued in Na.Ka.Na.12418/W5/E1/2010, dated 28.10.2010 by the 1st respondent and in proceedings No.Nil, dated 10.11.2010 issued by the 4th respondent and quash the same and issue a consequential direction to the respondents to approve the petitioner's promotion as P.G. Assistant (History) from 9.4.2008 in Hindu Uravin Murai Kalvi Committee Higher Secondary School, T.N.Puthukudi, Puliankudi, Tirunelveli District with service and monetary benefits.

Prayer : Writ Petition (MD) No.7167 of 2010 filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for all records relating to the order of the 1st respondent made in Na.Ka.No.25/B2/2009 dated 29.4.2010 and quash the same in so far as the petitioner Hindu Nadar Uravinmurai Committee Higher Secondary School is concerned.

Prayer : Writ Petition (MD) No.14933 of 2010 filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the 4th respondent in his letter No.04/2010-11 dated 21.6.2010 and quash the same and consequently, direct the respondents 1 to 3 to approve the petitioner's promotion as PG Assistant (History) from 09.4.2008 in Hindu Nadar Urvin Murai Kalvi Committee Higher Secondary School with service and monetary benefits.

Prayer : Writ Petition (MD) No.12772 of 2010 filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the District Educational Officer, Tirunelveli, the 2nd respondent herein to implement the order dated 29.4.2010 of the Chief Educational Officer, Tirunelveli with regard to approval of the appointment of the petitioner as Post Graduate Assistant in History in the 3rd respondent school in his Proceedings in Na.Ka.No.25/A2/2009 in letter and sprit within a stipulated period.

Prayer : Writ Petition (MD) No.21795 of 2016 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 order passed by the 3rd respondent in Athi.M.No.911/A3/2016, dated 05.7.2016 and quash the same and consequently direct the 3rd respondent to approve the promotion proposal dated 07.1.2016 sent by the 4th respondent and consequently, disburse all other service and monetary benefits to the petitioner within the stipulated time.

For Petitioner : Mr.R.Saseetharan
(W.P.No.26540 of 2010)
Mr.S.Chellapandian
(W.P.(MD) Nos.7167/2010
and 21795/2016
Mr.S.Duraiaraja
W.P.(MD) No.14933/2010
Mr.S.Siva Thilakar
W.P.(MD) No.12772/2010 &
for R3 in WP.7167/10

For Respondents : Mr.R.Govindasamy
Special GP for R1 to R3
in W.P.No.26540/2010; W.P.
(MD) Nos.14933/2010;
21795/2010;
R1 & R2 in W.P.(MD)
Nos.7167/2010 & 12772/2010
Mr.S.Challepandian
for R4 & R5 in
W.P.No.26540/2010;
R4 in W.P.(MD) No.14933 of
2010 and R3 in W.P.(MD)
No.12772 of 2010

M/s.N.Kanagasabai for R6
in WP.26540/10
Mr.Avinash
for M/s.V.Ragavachari for
R7 in WP.No.26540/10

No Appearance - for R5 in
WP.No.14933/10
No Appearance - for R4 in
WP.No.21795/10

COMMON ORDER

Writ Petition No.26540 of 2010 has been filed by the petitioner seeking a Writ of Certiorarified Mandamus calling for the records of the 1st and 4th respondents in relation to the proceedings issued in Na.Ka.Na.12418/W5/E1/2010, dated 28.10.2010 by the 1st respondent and in proceedings No.Nil, dated 10.11.2010 issued by the 4th respondent and quash the same and consequently, direct the respondents to approve the petitioner's promotion as PG Assistant (History) from 9.4.2008 in Hindu Uravinmurai Kalvi Committee Higher Secondary School, T.N.Puthukudi, Puliankudi, Tirunelveli District with service and monetary benefits.

2. Writ Petition (MD) No.7167 of 2010 has been filed by the School seeking a Writ of Certiorari calling for all records relating to the order of the 1st respondent made in Na.Ka.No.25/B2/2009 dated 29.4.2010 and quash the same in so far as the petitioner- Hindu Nadar Uravinmurai Committee Higher Secondary School is concerned.

3. Writ Petition (MD) No.14933 of 2010 has been filed by the petitioner seeking a Writ of Certiorarified Mandamus calling for the records of the 4th respondent in his letter No.04/2010-11 dated 21.6.2010 and quash the same and consequently, direct the respondents 1 to 3 to approve the petitioner's promotion as PG Assistant (History) from 09.4.2008 in Hindu Nadar Urvinmurai Kalvi Committee Higher Secondary School with service and monetary benefits.

4. Writ Petition (MD) No.12772 of 2010 has been filed by the petitioner seeking a Writ of Mandamus directing the 2nd respondent to implement the order dated 29.4.2010 of the Chief Educational Officer, Tirunelveli with regard to approval of the appointment of the petitioner as PG Assistant in History in the 3rd respondent school in his Proceedings in Na.Ka.No.25/A2/2009 in letter and spirit within a stipulated period.

5. Writ Petition (MD) No.21795 of 2016 has been filed by the petitioner seeking a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 3rd respondent in Athi.M.No.911/A3/2016, dated 05.7.2016 and quash the same and consequently, direct the 3rd respondent to approve the promotion proposal dated 07.1.2016 sent by the 4th respondent and also disburse all other service and monetary benefits to the petitioner within the stipulated time.

6. Since the issue revolves around the promotion of the petitioner A.Murugesan as PG Assistant (History) and consequential approval to be granted by the educational authorities, all the writ petitions were taken up together,

heard and disposed of by this common order.

7. For the sake of convenience, the petitioner A.Murugesan is referred to as "the petitioner" and the Hindu Nadar Uravinmurai Committee Higher Secondary School is referred to as "School Management" hereinafter.

Introduction:

8. The Nadar community together formed a Committee called "Hindu Nadar Uranvinmurai" and through their contributions, established the "Hindu Nadar Primary School" consisting of Standard I to V in the year 1978 for the benefit of the community and thereafter, upgraded the School into a High School. Thereafter, the School became a full fledged Higher Secondary School in the year 1987. The School is a free education Government recognised Private School coming under the Tamil Nadu Recognised Private Schools Regulations Act, 1973 and Rules 1974, hereinafter referred to as "the said Act" and "the said Rules".

9. The Hindu Nadar Uravinmurai (Village Committee) is an elected body of the Nadar Community and the School for administrative purposes is administered through its nominated members, as the Hindu Nadar Uravinmurai Committee (School Committee), which is a registered Society under the Tamil Nadu Societies Registration Act.

10. The children in the School are from the Hindu Nadar community and children from all communities viz., Muslim, Christian and from all castes including Scheduled Castes/Scheduled Tribes and also most economically backward sections of society.

Facts of the case:

11. Briefly stated case of the School Management is that pursuant to the resolution of the School Committee dated 02.08.2007, one R.Manickam, the then P.G. Assistant (History) was promoted as Headmaster of the School and on the same date i.e., on 02.08.2007, the Village Committee passed a resolution to appoint by promotion the petitioner, a Secondary Grade Teacher working in the Primary School. Subsequently, on being made aware of the Rules, the Village Committee, by a resolution dated 07.10.2007 recalled the earlier resolution and decided to promote the petitioner as per his request in the Primary School.

12. The School Committee, which was approved by the Education Department, never acted upon the Village Committee resolutions and the petitioner was never promoted as PG Assistant (History) and continued as Secondary Grade Teacher in the Primary School till 08.4.2008 and he received salary from the Education Department as Secondary Grade Teacher only.

However, the petitioner in collusion with the then Secretary of the School Committee Mr.A.Ramakrishnan signed a separate management teacher register of the Higher Secondary School even though he was working in the Primary School and was receiving salary therefor.

13. On 07.02.2008, the School Committee passed a resolution resolving to fill up the vacancy of PG Assistant (History) in the Higher Secondary School. Necessary prior permission and newspaper advertisement was given for an interview to be conducted on 09.04.2008 for the post of PG Assistant (History). Without conducting interview and without any School Committee scrutiny, on 09.4.2008, the then Secretary A.Ramakrishnan has given appointment order to the petitioner. Bogus entries were also made in the School Committee register by the then Secretary. By a resolution dated 13.04.2008 the School Committee removed the then Secretary A.Ramakrishnan and appointed one P.Ananthan as Secretary of the School Committee.

14. The School Education Department stopped the teaching grant and other grants to the School with effect from 09.04.2008 and direct payment was ordered by the School Education Department pursuant to the representation of the teachers. Challenging the removal, the then Secretary A.Ramakrishnan had filed a civil suit and W.P.(MD) No.7318 of 2008 claiming to be the Secretary of the School in question. By an order dated 08.9.2008, W.P.(MD) No.7318 of 2008 came to be dismissed, against which, W.A.(MD) No.84 of 2009 has been preferred and the same was withdrawn on 06.8.2009.

15. Since the appointment by promotion of the petitioner as PG Assistant (History) was not in accordance with law, the District Educational Officer, Tenkasi, by his proceedings dated 18.11.2008 returned the papers to the Headmaster of the School, who in turn handed over the same to the petitioner. The petitioner has not challenged the return of papers, however, he kept on signing the register though he was not entitled to do so.

16. On 09.8.2009, the Revenue Divisional Officer conducted Uravinmurai (Village Committee) election and formation of School Committee. By the proceedings dated 10.12.2009, the District Educational Officer, Tenkasi approved the School Committee for the period 02.12.2009 to 01.12.2012. The School Committee, after taking charge, on 04.01.2010 suspended the illegal appointment by accepting the order of the District Educational Officer dated 18.11.2008 and that the petitioner was once again informed that his continuance in the School was without proper approval and was also illegal. The petitioner was also informed that thereafter, he should not tamper records.

17. On 12.01.2010, the petitioner was called upon to produce all documents available with him in respect of his appointment by promotion. However, on 20.2.2010, the petitioner appeared before the Chief Educational Officer, Tirunelveli and complained that he was preventing from working and signing the register. The Chief Educational Officer, Tirunelveli, by its proceedings dated 01.3.2010, directed the School to conduct an enquiry on 09.3.2010 regarding the appointment of the petitioner. Accordingly, the School Management conducted enquiry and despite opportunities, the petitioner did not turn up for enquiry. In the mean while, without jurisdiction, the Chief Educational Officer, Tirunelveli has passed an order dated 29.04.2010 permitted the petitioner to work in the School and also directed the District Educational Officer, Tenkasi to approve the promotion/appointment of the petitioner. Challenging the order of the Chief Educational Officer, Tirunelveli, the School Management has filed the writ petition being W.P.(MD) No.7167 of 2010.

18. On the other hand, the case of the petitioner is that by a resolution dated 02.8.2007, the School Committee appointed him as PG Assistant in History. A proposal could not be sent to the District Educational Officer for approval, as the promotion of the existing incumbent viz., R.Manickam as Higher Secondary School Headmaster shall first be approved. On approval of the existing incumbent as Headmaster of the Higher Secondary School and in view of the permission granted by the Chief Educational Officer, on 10.3.2008 to fill up the PG Assistant by way of direct recruitment as well, the School Management decided to conduct an interview and accordingly, it gave newspaper publication and called candidates for interview from the Employment Exchange. The petitioner attended the interview and performed well. However, the School Management has not selected any person from outside for direct recruitment, but selected the petitioner and issued an order of appointment on 09.4.2008 and sent the proposal to the educational authorities for approval.

19. According to the petitioner, the School Management was under the impression that since the Chief Educational Officer, Tirunelveli has given permission to fill up the post of PG Assistant by way of direct recruitment as well, his appointment can also be by way of direct recruitment and accordingly, sent the proposal with all necessary documents. Since the petitioner performed well in the interview and already the School Management has decided to appoint the petitioner as PG Assistant on the ground that he was a qualified candidate working in the Primary School and other teachers had relinquished their right for promotion and also no other suitable person was available in the School, issued an order of appointment in favour of the petitioner and sent proposal to the District Educational Officer, Tenkasi for approval.

20. The case of the petitioner is that though proposal has been sent by the then Secretary to the District Educational Officer, Tenkasi for approval of the appointment of the petitioner as PG Assistant, no order has been passed on the proposal for more than a period of 8 months. According to the petitioner, he was attending the School as PG Assistant from 9.4.2008 onwards and was relieved from the post of Secondary Grade Teacher in Elementary School and the same has been approved by the order of the District Educational Officer dated 22.1.2010, but he was not paid salary in the post of PG Assistant.

21. On 18.11.2008, the District Educational Officer, Tenkasi returned the proposal for approval in respect of the promotion of the petitioner to the Headmaster of the School. Since the School was under direct payment, the Headmaster could not re-submit the proposal for approval of the petitioner's appointment. However, the petitioner was working as PG Assistant without any salary. According to the petitioner, after an election, a new School Committee was formed and Thiru.R.Rathnavel Pandian was approved as Secretary of the School Committee.

22. On 04.1.2010, when the petitioner was proceeding to attend the School, the new Secretary prevented him from attending the School and from signing the register without re-submitting the proposal. Though the petitioner was prevented from signing the register, he was attending the School regularly. On 20.2.2010, the petitioner made a representation to the Chief Educational Officer, Tirunelveli and after enquiring and on examination of all the relevant persons, by a proceedings dated 29.4.2010, the Chief Educational Officer, Tirunelveli arrived at a conclusion that on 09.4.2008, the petitioner was appointed as PG Assistant of the School by the then Secretary of the School Committee and accordingly, he was attending the School.

23. The further case of the petitioner is that on 28.10.2010, the Joint Director of School Education (Higher Secondary) passed an order purporting to have been issued on an appeal filed by the petitioner on 04.2.2010 stating that the Hindu Nadar Uravinmurai Committee, Primary School, Puliyankudi and Hindu Nadar Uravinmurai Committee Higher Secondary School, Puliyankudi, cannot be considered as Schools functioning under one Corporate Management and that no order has been obtained from the Education Department. Therefore, the teachers cannot be promoted from Primary School to the Higher Secondary School by way of promotion and that the appointment of the petitioner cannot be considered as promotion. Though the Joint Director dismissed the appeal, in its proceedings, the Joint Director

observed that his order was subject to the result of W.P.(MD) No.7167 of 2010 filed by the School Management.

24. Totally, five writ petitions have been filed. Out of five writ petitions, three writ petitions viz., W.P.No.26540 of 2010 and W.P.(MD) Nos.14933 of 2010 and W.P.(MD) No.12772 of 2010 have been filed by the petitioner. W.P.(MD) No.7167 of 2010 has been filed by the School Management and W.P.(MD) No.21795 of 2016 has been filed by one Mariappan.

Submissions of the respective learned counsel:

25. Challenging the order dated 28.10.2010 of the Joint Director as well as the School Management impugned in W.P.No.26540 of 2010, the learned counsel for the petitioner submitted that on 04.2.2010, the petitioner made a representation to the Joint Director stating that the new School Management prevented him from discharging his duty as PG Assistant and that the said act of the School Management is illegal, as the common School Committee was constituted under Rule 12 of the said Rules for both Primary and High Schools by the Hindu Nadar Uravinmurai Kalvi Committee and that the educational authorities ought to have treat the petitioner's appointment by promotion from Primary School to Higher Secondary School. According to the learned counsel, the Joint Director has failed to note Rule 15(4)(1) of the said Rules, which emphasis the School Management to fill up a vacancy from the qualified teachers/other staff working in the same school.

26. The learned counsel also submitted that the District Educational Officer, Tenkasi has not rejected the approval, whereas it has returned the approval for various reasons. He would submit that pursuant to a resolution dated 02.8.2007, the promotion given to one Manickam was approved by the Elementary Educational Officer and therefore, it is the duty of the new School Management to re-submit the proposal regarding the petitioner's appointment by promotion to the District Educational Officer, Tenkasi. Therefore, the order passed by the Joint Director and the School Management dated 28.10.2010 respectively are liable to be set aside. Consequently, the learned counsel for the petitioner prayed for a direction on the District Educational Officer, Tenkasi to implement the order dated 29.04.2010 of the Chief Educational Officer, Tirunelveli in respect of the approval of the appointment of the petitioner as PG Assistant (History) in the School.

27. The learned counsel next contended that by an order dated 21.06.2010, the School Management imposed a punishment of stoppage of two increments with cumulative effect on the ground that the petitioner was working in the PG Assistant post from 03.8.2007 to 08.4.2008 and availed medical leave for a period from 11.3.2008 to 02.6.2008. According to the learned

counsel, the School Management cannot turn back and passed an order of punishment imposing stoppage of two increments with cumulative effect as the petitioner was working in the PG Assistant post based on the appointment order dated 9.4.2008 issued by the then Secretary A.Ramakrishnan. Since the decision of the then Secretary was based on the resolution dated 02.8.2007, the new School Management cannot impose such punishment on the petitioner.

28. Countering the arguments of the learned counsel for the petitioner, the learned counsel for the School Management submitted that the Joint Director has rightly rejected the claim of the petitioner and that the order of the Joint Director was in accordance with the Tamil Nadu Recognised Private Schools (Regulation) Act. He would submit that as per the provisions of the the said Act, the School Committee alone competent to make appointments in the Aided Schools.

29. Placing reliance upon Rule 13, the learned counsel for the School Management submitted that the Secretary shall not act independently in the matter of appointments or initiation of disciplinary proceedings against an employee working under them. He would also submit that the Secretary shall abide by the decision taken at the School Committee meetings and he shall not act on his own. However, in the case on hand, the then Secretary R.Ramakrishnan had independently, without the knowledge of the School Committee, gave promotional appointment to the petitioner based on the so called resolution passed by the Village Committee dated 02.8.2007, which was later recalled on 07.10.2007. In any event, the District Educational Officer, Tenkasi has rightly returned the proposal of the petitioner as it was not made in accordance with Rule 15(4) of the said Rules.

30. The learned Special Government Pleader appearing for the educational authorities submitted that the new School Committee has considered the appointment of the petitioner as PG Assistant as illegal and that the petitioner was prevented from entering into the School. Aggrieved by the same, the petitioner had sent telegram/complaint to take action against the new School Committee and also all concerned. After receipt of the complaint, the Chief Educational Officer has conducted an enquiry and during enquiry the old and new School Committee members, Headmaster of the Institution were present. After a thorough enquiry, the Chief Educational Office passed an order to the effect that the appointment of the petitioner should be approved, provided the rules and regulations were properly adhered in making the appointment of the petitioner. Even though the Chief Educational Officer has passed orders to approve the appointment of the petitioner, the orders of the Chief Educational Officer could not be implemented in view of the fact that the new Secretary has filed W.P.(MD) No.7167 of

2010 against the orders of the Chief Educational Officer.

31. The learned Special Government Pleader further submitted that the District Educational Officer, Tenkasi could not approve the appointment for the reason that the documents called for by him earlier was not submitted by the then Secretary and that the the Secretary has not followed any rules and regulations and also he has appointed the petitioner straight away without adhering the rules. He would submit that even the roster registered called for by the District Educational Officer was not produced for perusal. In the above circumstances, the appointment could not be approved by the District Educational Officer.

32. The learned Special Government Pleader then submitted that the petitioner has sent a representation on 04.2.2010 to get his appointment approved to the Joint Director of School Education and the same was considered by the appellate authority and final orders were passed rejecting the representation of the petitioner. Finally, he argued that the appointment of the petitioner made by the then Secretary was totally irregular and no rules and regulations were followed. But at the same time, the present School Committee has considered the petitioner's grievance with passionate grounds and given postings as Secondary Grade Assistant in order to help him without hardship. But the petitioner was not accepted the said appointment. In such circumstances, the learned Special Government Pleader prayed for dismissal of the writ petitions.

Discussions:

33. For proper appreciation, Rules 13, 15(4) of the said Rules and Section 18 of the said Act are extracted hereunder:

"Rule 13(1) The Educational Agency shall

(2) The term of

(3) The Secretary of the School Committee shall function for and on behalf of the School Committee and the Educational Agency.

(4) The Secretary shall act on the basis of the resolution passed at the meetings of the School Committee."

"Rule 15(4) (i) Promotion shall be made on the ground of merit and ability, seniority being considered only when merit and ability are approximately equal.

(ii) Appointment to various categories of teachers shall be made in the following methods.

(i) Promotion from qualified teachers in that school.

(ii) If no qualified and suitable candidate is available by the method (i) as above.

- (a) appointment of other persons employed in that school provided they are fully qualified to hold the post of teacher.
- (b) appointment of teachers from other schools.
- (c) direct recruitment."

"Section 18. Functions of the school committee and responsibility of educational agency under the Act:- (1) Subject to the provisions of this act and the rules made thereunder the school committee shall have the following functions, namely:-

- (a) to carry on the general administration of the private school excluding the properties and funds of the private school.
 - (b) To appoint teachers and other employees of the private school, fix their pay and allowances and define their duties and the conditions of their service; which shall not contravene any of the provisions made in the Rules or directions issued under this Act, and
 - (c) to take disciplinary action against teachers and other employees of the private school following the prescribed procedure.
- (2) The educational agency shall be bound by anything done by the school committee in the discharge of the functions of that committee under this Act.
- (3) For the purposes of this Act, any decision or action taken by the school committee in respect of any matter over which the school committee has jurisdiction shall be deemed to be the decision or action taken by the educational agency.
- (4) The Secretary of the school committee shall send a quarterly Return showing the decisions taken at the meetings of the school committee held during the Quarter under report and enclose it to that monthly staff grant Statement ending with that quarter."

34. Rule 13 of the said Rules stipulates functions of the Secretary, as per which the Secretary shall act on the basis of the resolutions of the School Committee and he shall not act independently in the matter of appointments and/or initiation of disciplinary proceedings against an employee working under them.

35. A reading of Section 18 of the said Act along with Rule 13 of the said Rules would clearly show that the Secretary shall abide by the decision taken at the School Committee meetings and the Secretary shall not act on his own. In the instant case, on going through the entire materials available on record, it is

seen that the then Secretary R.Ramakrishnan, without the knowledge of the School Committee, gave appointment by promotion to the petitioner based on the resolution dated 02.8.2007 passed by the Village Committee/Educational Agency, which was later on recalled on 07.10.2007 as the appointment by promotion of the petitioner is not in accordance with the provisions.

36. While passing the order impugned dated 28.10.2010, the Joint Director of School Education though stated that the order is subject to the result of W.P.(MD) No.7167 of 2010, has chosen to record his findings that the appointment of the petitioner as PG Assistant from Primary School cannot be considered as promotion, as the Primary School and Higher Secondary School of the Management, cannot be considered as Schools coming under the cluster of the School Management.

37. In W.P.(MD) No.7167 of 2010, the School Management has challenged the order of the Chief Educational Officer, Tirunelveli dated 29.4.2010. On a perusal of the impugned order dated 29.4.2010, it is seen that the Chief Educational Officer, Tirunelveli condemned the School Management, which orally disallowed the petitioner to discharge his duties as PG Assistant. In the impugned order, the Chief Educational Officer, Tirunelveli directed the District Educational Officer, Tenkasi to accord approval for the promotion given to the petitioner, provided if the same is in accordance with law.

38. The learned counsel for the School Management submitted that the Chief Educational Officer, Tirunelveli has passed the impugned order dated 29.4.2010 without understanding the difference between the decision taken in the Village Committee and the resolution passed by the School Committee.

39. Per contra, the learned counsel for the petitioner submitted that the Chief Educational Officer, Tirunelveli has not issued the order dated 29.4.2010 by exercising the appellate power, but he has issued the order based on the representation of the petitioner dated 20.2.2010 in which the petitioner had made a grievance that he was appointed as PG Assistant by the previous School Management by a resolution dated 02.8.2007 and as per the said resolution, the petitioner was attending the school. He would further argue that after assumption of new School Management, the petitioner was not permitted to enter the school from 05.1.2010 onwards without any order. Therefore, the Chief Educational Officer was right in passing the order dated 29.4.2010 stating that a teacher cannot be orally prevented from attending the school. The Chief Educational Officer also found that proposal for approval was pending and therefore, issued direction to grant approval, if the appointment was in accordance with the Rules.

40. The learned counsel for the petitioner contended that the petitioner was prevented to discharge his duty as PG Assistant from 05.1.2010 onwards without any written order, which was a high handed action of the School Management. For all these years, the petitioner was illegally denied to work and therefore, the principle of "no work and no pay" was not applicable. In support, the learned counsel relied upon the decision of the Apex Court in Union of India and others v. K.V.Jankiraman and others, reported in (1991) 4 SCC 109.

41. On a perusal of the order impugned in W.P.(MD) No.7167 of 2010, it is seen that the Chief Educational Officer, Tirunelveli equated the resolution dated 02.8.2007 with the decision taken at the School Committee. In the resolution dated 02.8.2007, the community head Nattammai and some other persons who were not part of the School Committee attested their signatures. On a reading of the resolution dated 02.8.2007, it is seen that the said resolution is not a decision taken by the statutory body viz., the School Committee. In any manner, the Chief Educational Officer, Tirunelveli ought not to have remanded the matter to the District Educational Officer, Tenkasi. In fact, the Chief Educational Officer has interfered with the decision taken by the School Committee and the District Educational Officer without any jurisdiction.

42. Against the said decision, the petitioner had preferred an appeal before the Joint Director of School Education on 04.02.2010. While the appeal was pending before the Joint Director of School Education, suppressing the same, the petitioner had once again approached the Chief Educational Officer, Tirunelveli by way of representation dated 20.02.2010 and the Chief Educational Officer, Tirunelveli, by the impugned order dated 29.4.2010 issued a direction to the District Educational Officer, Tenkasi to grant approval to the appointment of the petitioner to the post of PG Assistant, if the appointment is in accordance with the communal roster.

43. The operative portion of the order dated 29.04.2010 reads thus:

"எனவே, மேற்காண் விவரங்கள் அடிப்படையில் திரு.அ.முருகேசன் என்பாரது நியமனத்திற்கு மாவட்டக் கல்வி அலுவலர் நிராகரித்து ஆணை வழங்காத நிலையிலும் உரிய பள்ளிக் கல்வித் குழு தீர்மானத்தின் அடிப்படையிலும் அதாவது ஆசிரிய பிரதிநிதிகள் கையொப்பம் இடாத நிலையிலும், கையொப்பம் வழங்கி உள்ளவர்கள் விவரத்தின் அடிப்படையிலும் செயலருக்கு அளிக்கப்பட்டுள்ள நியமன ஆணை வழங்கும் பணியில் உள்ள பொறுப்பையம் கருத்தில் கொண்டு இறுதி ஆணை பின் வருமாறு வழங்கப்படுகிறது.

வாய்மொழியாக பணிக்கு வருவதை தடை செய்வது விதிமுறைகள் படி

ஏற்றுக்கொள்ளக் கூடிய நிலையில் இல்லை. பள்ளிக் கல்விக் குழு தன் அதிகாரத்தை துஷ்பிரயோகம் அல்லது தவறாக பயன்படுத்துவதையே இதை எடுத்துக் காட்டுகிறது.

திரு.அமுருகேசன் என்பாருக்கு நியமன நாள் முதல் உரிய இன சுழற்சி மற்றும் இதர விதிமுறைகள் படி சரியான நிலையில் இருக்கும்பட்சத்தில் நியமனத்திற்கு ஒப்ப தல் இரு வாரங்களுக்குள் அளித்திட தென்காசி மாவட்டக் கல்வி அலுவலருக்குத் தெரிவிக்கப்படுகிறது.

ஆசிரியரின் நியமனம் விதிமுறைகளின்படி சரியானது எனில் அப்பள்ளியில் தொடர்ந்து பணியாற்ற அனுமதி அளித்திட மாவட்டக் கல்வி அலுவலர், தென்காசி மற்றும் பள்ளியின் செயலருக்குத் தெரிவிக்கப்படுகிறது."

From the order impugned in W.P.(MD)No.7167 of 2010, it is seen that though the School Management brought to the knowledge of the appeal preferred by the petitioner, the Chief Educational Officer, Tirunelveli, without considering the same has passed the order dated 29.4.2010, which is contrary to the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act and Rules thereunder.

44. As stated supra, by an order 28.10.2010, the Joint Director of the School Education dismissed the appeal preferred by the petitioner dated 04.02.2010 on the ground that the defects pointed out by the District Educational Officer dated 18.11.2008 has not been complied with and that the School Management asked the teacher (petitioner) to continue as Secondary Grade Teacher in the Primary School. However, the Joint Director observed that his order is subject to the result of the writ petition (W.P.(MD) No.7167 of 2010) filed by the School Management against the order dated 29.04.2010.

45. In Union of India and others v. K.V.Jankiraman and others, supra, the Hon'ble Apex Court held:

"25. We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R.17(1) will also be inapplicable to such cases."

46. In the case on hand since the appointment by promotion of the petitioner was not supported by a valid resolution of the School Committee constituted under the Rules and also no material was produced to show that the the petitioner was promoted after following the procedures, the new School

Management orally disallowed the petitioner to discharge his duties as PG Assistant. Therefore, the "no work no pay" theory canvassed by the petitioner has no application in this matter. In the given facts and circumstances of the case, the aforesaid decision relied upon by the petitioner will not be applicable to the case on hand.

47. On overall analysis of the materials available on record, this Court is of the view that the impugned order of the Chief Educational Officer, Tirunelveli dated 29.4.2010 does not disclose that the appointment made by the then Secretary on 09.4.2008 was pursuant to and supported by the School Committee resolutions and that it was made after due consideration of the candidates called for interview. Admittedly, in the present case on hand, no interview was conducted. Therefore, the Chief Educational Officer, Tirunelveli erred in directing the District Educational Officer, Tenkasi to approve the appointment and also directing the School Management to permit the petitioner to work in the School when the fact remains that the order of the District Educational Officer dated 18.11.2008 returning the appointment order dated 09.4.2008 without approval, had become final and unchallenged either by the School or the petitioner. In the said event, the petitioner had no vested right to claim the post or continue in the same. In fact, in the counter filed in W.P.(MD) No.12772 of 2010, the District Educational Officer, Tenkasi, stated that the appointment made by the then Secretary was totally irregular and no rules and regulations were followed. In such view of the matter, the order passed by the Chief Educational Officer, Tirunelveli dated 29.4.2010 directing and/or retaining the petitioner, whose appointment has not been approved, is void and the same is liable to be set aside.

48. In W.P.(MD) No.12772 of 2010, the petitioner had sought a writ of mandamus directing the District Educational Officer, Tirunelveli to implement the order dated 29.4.2010 of the Chief Educational Officer, Tirunelveli with regard to the approval of the appointment of the petitioner as PG Assistant (History) in the School.

49. In view of setting aside the order of the Chief Educational Officer, Tirunelveli dated 29.04.2010 in the writ petition being W.P.(MD) No.7167 of 2010 filed by the School Management, W.P.(MD) No.12772 of 2010 filed by the petitioner has become infructuous.

50. By an order dated 21.06.2010, the School Management, imposed punishment of stoppage of two increments with cumulative effect on the petitioner on the ground that without working in Primary School, the petitioner worked as PG Assistant for a period from 03.08.2007 to 08.04.2008 and availed medical leave

for a period from 11.03.2008 to 02.06.2008.

51. Challenging the imposition of punishment, the petitioner had filed W.P.(MD) No.14933 of 2010 contending that the charges levelled against the petitioner were incorrect. According to the petitioner, the previous School Management has appointed the petitioner as PG Assistant on 09.04.2008 after relieving from the Primary School. By an order dated 22.01.2010, his relieving was also approved by the District Elementary Educational Officer, Tenkasi.

53. The learned counsel for the petitioner argued that the new School Management cannot take advantage of its own failure and impose punishment of stoppage of increments for two years on the petitioner. The learned counsel also contended that the School Management cannot turn back and passed an order of punishment since he was working in PG Assistant post based on the appointment order dated 09.04.2008 issued by the then Secretary A.Ramakrishnan. He would submit that the decision of the then Secretary A.Ramakrishnan was based on the resolution dated 02.08.2007.

54. Qua the order of challenge made in W.P.(MD) No.14993 of 2010, the School Committee has correctly taken a decision in imposing punishment against the petitioner, who had violated the provisions of the said Act, whereby attain unlawful gain. In the departmental proceedings, though an opportunity was given to the petitioner to defend his case, he had failed to appear before the School Committee, resultantly, the impugned punishment was imposed on him.

55. The petitioner had claimed that he was working as PG Assistant in the Higher Secondary School from 03.08.2007 to 08.04.2008 and availed medical leave for the said period from the Elementary Education Department. According to the School Management, the petitioner had received monetary benefits during the said period by surrendering his 15 days earn leave. The said aspect has not been denied by the petitioner. This Court finds no illegality in the order of the School Management imposing the punishment on the petitioner.

56. By an order dated 07.01.2016, the School Management has promoted one Mariyappan, a B.T. Assistant to the post of PG Assistant (History) and submitted a proposal for approval on the same day i.e., on 07.01.2016 to the District Educational Officer, Tenkasi. However, by an order dated 05.07.2016, the District Educational Officer returned the proposal of the School Management stating that in view of the pendency of W.P.No.26540 of 2010, the approval could not be granted and that only after the disposal of the writ petition, the question of approval will be considered.

57. Assailing the said order of the District Educational Officer, Tenkasi, Mariappan filed W.P.(MD) No.21795 of 2016 seeking to quash the order of the District Educational Officer, Tenkasi dated 05.07.2016 and to direct the District Educational Officer, Tenkasi to approve the promotion proposal dated 07.01.2016 sent by the School Management and also disburse all other service and monetary benefits to him.

58. The learned counsel appearing for Mariappan submitted that citing the pendency of the writ petition being W.P.No.26540 of 2010 filed by the petitioner, the District Educational Officer, returned the proposal. According to the learned counsel, no interim order was passed in the writ petition filed by the petitioner to continue his service in the PG Assistant post. While so, in the interest of students, the School Management promoted and appointed one Mariappan as P.G. Assistant based on the unanimous resolution passed by the School Committee dated 06.01.2016. When the new School Management sent the proposal for approval, the same was returned by the District Educational Officer, Tenkasi on the ground of pendency of W.P.No.26540 of 2010 filed by the petitioner.

59. The grievance of Mariappan is that there was no interim order operating either against the respondent educational authorities or in favour of the petitioner and mere pendency of the writ petition shall not prohibit the educational authorities to consider the claim on merits. According to Mariappan, he had been promoted as PG Assistant by following the procedure established under the said Act and Rule 15 of the said Rules.

60. Resisting W.P.(MD) No.21795 of 2016, the learned counsel for the petitioner submitted that the new School Management was not in favour of the petitioner as the petitioner was promoted as PG Assistant by the previous School Management, and has taken exception against the petitioner and promoted Mariappan as PG Assistant without re-submitting the proposal to the District Educational Officer, Tenkasi as directed by the proceedings dated 18.11.2008.

61. Admittedly, in the interest of students and on considering the seniority and ability of Mariappan, the School Committee unanimously resolved to appoint Mariappan in the post of PG Assistant (History) from 06.1.2016 and sent the proposal to the District Educational Officer, Tenkasi along with relevant particulars and records. No materials have been produced by the petitioner to show that the said Mariappan is not suitable for the post and by violating the rules, he was given promotion. Since the School Management unanimously resolved to appoint Mariappan as PG Assistant (History) and also no violation in the appointment was pointed out, the District Educational Officer,

Tenkasi ought to have approved the promotion of Mariappan. Therefore, this Court is of the firm view that the promotion given to Mariappan is as per the rules and the same cannot be faulted.

Conclusion:

62. It is reiterated that the petitioner was promoted and appointed by the incompetent authority viz., the then Secretary A.Ramakrishnan, who is bound by the decision of the School Committee. The so-called resolution dated 02.08.2007 is not a decision taken by the statutory body viz., the School Committee constituted under the Tamil Nadu Recognised Private Schools (Regulation) Act and Rules thereon. By relying upon the invalid resolution dated 02.8.2007, the then Secretary A.Ramakrishnan has unilaterally promoted and appointed the petitioner and sent proposal for approval to the District Educational Officer, Tenkasi, who in turn rightly rejected and/or returned the said proposal on 18.11.2008. Without verifying the correctness of the resolution dated 02.8.2007, the Chief Educational Officer, Tirunelveli conducted an enquiry and wrongly came to the conclusion that the School Management should not prevent the petitioner in discharging his duties. Moreover, without setting aside the order of the District Educational Officer dated 18.11.2008, the Chief Educational Officer remanded the same for fresh consideration to the District Educational Officer, which is against the provisions of the Tamil Nadu Recognised Private Schools (Regulations) Act and Rules.

63. The petitioner cannot claim any privilege under the Tamil Nadu Recognised Private Schools (Regulation) Rules though the School Committees for the Elementary and High Schools are one and the same and both of them cannot be construed as one Unit for the purpose of effecting transfer or promotion by virtue of the Rules.

64. The petitioner in his writ petitions had taken contrary facts and he himself not clear to say that whether he has been appointed from the open market or promoted to the said post under Rule 15(4). The petitioner claimed appointment by virtue of promotion by relying upon the resolution dated 02.8.2007 and on the other hand, the petitioner pleaded that he was relieved from the post of Secondary Grade Teacher and participated in the interview conducted for the post of PG Assistant (History) called by the School Management and got selected for the said post. The above said two contrary facts really confusing the Court that he himself not clear.

65. Nothing has been produced by the petitioner to show that the resolution alleged to have been passed by the School Committee qua the appointment of the petitioner was signed by

any of the members or office bearers. It is to be noted that even in the appointment order said to have been issued to the petitioner, the then Secretary A.Ramakrishnan had failed to mention the date of resolution and/or decision taken with regard to the appointment of the petitioner. Thus, all these facts clearly reveal that the School Committee constituted under the said Rules has not passed any resolution in the matter of the appointment with regard to the petitioner.

66. In so far as imposition of the punishment on the petitioner is concerned, as stated supra, the punishment imposed on the petitioner was correct as the petitioner had claimed that he has been working as PG Assistant in the Higher Secondary School from 03.08.2007 to 08.04.2008 and availed medical leave for the said period from the Elementary Education Department. As stated supra, the petitioner had also received monetary benefits during the said period from the Elementary School by surrendering his 15 days earned leave. Therefore, this Court finds that there is no illegality in the order of punishment dated 21.06.2010 passed by the School Management, imposing punishment of stoppage of two increments with cumulative effect on the ground that the petitioner without working in Primary School worked in PG Assistant for a period from 03.08.2007 to 08.04.2008 and availed medical leave for a period from 11.03.2008 to 02.06.2008.

67. Qua the appointment of Mariappan as PG Assistant (History) is concerned, after waiting for more than 6 years and considering the interest and welfare of the students, the Secretary on behalf of the School Committee by virtue of resolution dated 07.01.2016 has appointed Mariappan, who is a senior most in the School as PG Assistant (History). The District Educational Officer, Tenkasi ought to have approved the appointment of Mariappan as there was no prohibition either in the way of interim orders of this Court or in the statute approving the said appointment proposal dated 07.01.2016.

68. For the foregoing reasons, this Court is of the view that there are no merits in the writ petitions filed by the petitioner and on the other hand, the School Management has established their case and thus, the writ petitions filed by the School Management and Mariappan are liable to be allowed.

Result:

69. In the result,
 - (a) W.P.No.26540 of 2010 and W.P.(MD) No.14933 of 2010 are dismissed.
 - (b) In view of the dismissal of W.P.No.26540 of 2010, W.P.(MD) No.12772 of 2010 is dismissed as infructuous.
 - (c) W.P.(MD) No.7167 of 2010 is allowed and the

order of the Chief Educational Officer, Tirunelveli dated 29.04.2010 is quashed.

(d) W.P.(MD) No.21795 of 2016 is allowed and the proceedings of the District Educational Officer, Tenkasi dated 05.7.2016 is quashed.

(e) The District Educational Officer, Tenkasi is directed to approve the promotion proposal dated 07.01.2016 sent by the Correspondent, Hindu Nadar Uravinmurai Committee Higher Secondary School with regard to Mariappan and disburse all other service and monetary benefits to Mariappan within a period of three months from the date of receipt of a copy of this order.

(f) No costs. Consequently, all connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Director of School Education,
DPI Compound,
College Road, Chennai.
- 2.The Joint Director of School Education (Higher Secondary),
College Road,
Chennai-6.
- 3.The Chief Educational Officer,
Tirunelveli,
Kokkirakulam,
Tirunelveli District.
- 4.The District Educational Officer,
Tenkasi,
Tirunelveli District.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.79407

+6ccs to Mr.R.Saseetharan, Advocate, S.R.No.79715 & 79080

W.P.No.26540 of 2010;W.P.(MD) Nos.7167,
14933, 12772 of 2010 and 21795 of 2016
& M.P.(MD)Nos.1,2,3,1,&MP.Nos. 2, 3/2010
& WMP(MD)No.15580 of 2016

RSV(CO)
rrs 14/12/2018