

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.1707 of 2014 & MP Nos.1/2014 & 1/2015
and WA No.801 of 2017 & CMP No.11098 of 2017

R.Jagathambal
Educational Agency,
Aided Primary School,
Chottalvannam, Pattamangalam Post,
Kilvelur Range,
Nagapattinam District. Appellant in both the Appeals

versus

1. C.Kamathchi
(Secoondary Grade Assistant)
Aided Primary School,
Chottalvannam, Pattamangalam Post,
Kilvelur Range,
Nagapattinam District.
2. The District Elementary Educational Officer,
Nagapattinam,
Nagapattinam District.
3. The Assistant Elementary Educational Officer,
Keezhvellore Taluk,
Nagapattinam District.
4. G.Chandrasekaran,
(Secretary), Retired Head Master,
Aided Primary School, Chottalvannam,
Pattamangalam Post,
Nagapattinam District. ... Respondents in both the Appeals

Appeals filed against the order passed by this Court dated 24.11.2014 passed in Rev. Appl. No.282 of 2014 in WP No.7685 of 2013 and the order passed in WP No.7685 of 2013 dated 02.09.2014 respectively.

Petition filed under order 47 Rule 1 CPC praying to review the order dated 02/09/2014 passed by this court in W.P.No.7685/2013.

WP.NO.7685/2013:

Petition under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus Calling for the records pertaining to the order passed by the 1st Respondent in his Proceedings Na.Ka.No. 1331/A5/2010 dated 31.01.2013 and quash the same and direct the Respondents to approve the appointment of the petitioner as Secondary Grade Assistant from 16.03.2011 and confer all the consequential benefits.

For Appellant : Mr.S.Hemanand
(in both the Appeals) for Mr.K.Raja

For Respondents : Mr.P.Ganesan
(in both the Appeals) for M/s.C.S.Associates for R1

Mr.K.Karthikeyan,
Government Advocate for RR 2 & 3

Mr.U.Venkatesan for R4

C O M M O M J U D G M E N T

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

The challenge in these intra Court Appeals is to the order of the learned Single Judge made in WP No.7685 of 2013 dated 02.09.2014, in and by which, the learned Single Judge had allowed the Writ Petition filed by the 1st respondent seeking issuance of Writ of Mandamus calling for the records pertaining to the order passed by the 1st respondent in his proceedings in Na.Ka.No.1331/A5/2010 dated 31.01.2013 to quash the same and direct the respondents to approve the appointment of the petitioner (1st respondent herein), as a Secondary Grade Teacher from 16.03.2011 and confer all consequential benefits.

The Writ Petition came to be filed in the following factual back drop:

2. According to the 1st respondent, she was appointed as a Secondary Grade Teacher in the Aided Primary School, Chottalvannam, Kilvelur Range, Nagapattinam District, by the Secretary of the School Committee on 16.03.2011 and the proposals for approval of the appointment were forwarded to the District Elementary Educational Officer, Nagapattinam, through the Assistant Educational Officer Kilvelur, on the same day.

3. While the said approval was under consideration the School Committee was reconstituted by the District Elementary Educational Officer, Nagapattinam, viz. the second respondent herein, by his proceedings in Mu.Mu.No.2931/A5/2011 dated 15.07.2011, with effect from 15.06.2011. The order constituting a New School Committee was challenged by the then Secretary, viz. G.Chadraseskaran in WP No.18861 of 2011 and this Court had granted interim stay initially for a period of two weeks and thereafter the order of stay was extended until further orders. The said Writ Petition in WP No.18861 of 2011 came to be disposed of by this Court on 16.07.2014, on the ground that nothing survives in the Writ Petition as the period for which the School Committee was constituted had expired by then. While so, since the New School Committee objected to the appointment of the 1st respondent, the 2nd respondent herein, by its proceedings dated 31.01.2003 rejected the approval on the ground that the School Committee had been reconstituted and hence the appointment of the 1st respondent made by the erstwhile Committee cannot be approved.

4. Aggrieved by the said rejection, the 1st respondent filed WP No.7685 of 2013 before this Court. While doing so, the 1st respondent did not implead the Educational Agency in the said Writ Petition. This WP No.7685 of 2013 was allowed by the learned Single Judge on 02.09.2014, on the ground that based on a selection process, the 1st respondent was appointed and the order reconstituting the School Committee was stayed by this Court and therefore, the then Secretary was well within his powers to have appointed the 1st respondent as a Secondary Grade Teacher.

5. Aggrieved, the appellant, who is the Educational Agency of the School, filed a Review Petition in Review Application No.282 of 2014, the said Review Application also came to be rejected by the learned Single Judge, by an order dated

24.11.2014. Aggrieved the appellant had filed Writ Appeal No.801 of 2017 against the order dated 02.09.2014 made in WP No.7685 of 2013 and Writ Appeal No.1707 of 2014 against the order dated 24.11.2014 in Review Application No.282 of 2014 in WP No.7685 of 2013.

6. We have heard Mr.S.Hemanand, learned counsel appearing for Mr. K.Raja, for the appellant, Mr.P.Ganesan, learned counsel appearing for M/s.C.S.Associates, for the 1st respondent, Mr.K.Karthikeyan, learned Government Advocate appearing for the respondents 2 & 3 and Mr.U.Venkatesan, learned counsel appearing for the 4th respondent.

7. Though the rejection of approval is, on the ground that the School Committee came to be reconstituted and on the date of the appointment there was no proper School Committee, we find that the said contention may not be available to the appellant in view of the fact that the School Committee that was constituted on 01.10.2010 was reconstituted only on 15.07.2011 that too with effect from 15.06.2011. Therefore, on the date of the appointment of the 1st respondent, the School Committee that was constituted by the proceedings of the 2nd respondent dated 01.10.2010 was very much in existence.

8. Mr.S.Hemanand, learned counsel appearing for the appellant would however draw our attention to the manner in which, the 1st respondent claims to have been appointed. A publication has been issued in Tamil Daily "Thina Mani" dated 10.03.2011 inviting candidates for a walk-in interview for appointment as a Secondary Grade Teacher, under the category of OC (Female) on 14.03.2011 at 10 a.m. However, by another publication dated 14.03.2011 made in the same daily, the said walk-in interview was postponed without specifying any other date. The proceedings dated 16.03.2011, by which the respondent claims to have been appointed discloses that a publication was made in "Thina Mani" Daily on 14.03.2011, inviting candidates for a walk in interview and an interview was conducted on 15.03.2011 and in the said interview, the 1st respondent, who appeared pursuant to the paper publication was selected.

9. The 4th respondent had filed a type set which according to the learned counsel for the 4th respondent shows the list of candidates who appeared for the interview. A list of three candidates is produced which include the 1st respondent and it is claimed that the said list is the list of candidates, who attended the interview on 14.03.2011. Another list of two

candidates is produced and it is claimed that those two candidates attended the interview on 15.03.2011. Certain letters said to be the call letters issued, to various candidates by certificate of posting were also been produced. A perusal of these documents demonstrates the entire selection process is flawed. As could be seen from the newspaper advertisement issued on 10.03.2011 interview was fixed on 14.03.2011 and by a publication dated 14.03.2011, the interview that was fixed on 14.03.2011 was postponed without fixing any other date. But the counsel for the 4th respondent has produced two lists of candidates, who have said to have been interviewed on 14.03.2011 and 15.03.2011. As per the publication, which has been produced by the appellant herein, the interview was fixed on 14.03.2011 and the same was postponed without specifying any date. Therefore, it is not the case of the parties that there was an interview on 14.03.2011.

10. Though, the 1st respondent would claim in her affidavit that she was appointed pursuant to the interview held on 14.03.2011, the letter dated 16.03.2011 addressed to the 2nd respondent by then Secretary of the School Committee would show that an interview was conducted on 15.03.2011, pursuant to an advertisement made on 14.03.2011. These discrepancies would show that there was no process of appointment followed in appointing the 1st respondent.

11. It will be pertinent to point out at this juncture, the 1st respondent is the daughter of the 4th respondent, who was the then Secretary of the School Committee. It is therefore clear that the entire appointment process has been manipulated to suit the convenience of the 1st respondent and the 4th respondent. Therefore, we are of the view that the order of rejection of approval made by the 2nd respondent though on different grounds, should not have been set aside by the learned Single Judge. From the order of the learned Single Judge, we do not find that these discrepancies were brought to the notice of the learned Single Judge, but we do not think that we should shut our eyes to such deliberate creation of records, so as to make it appear that some kind of selection processes was followed in the appointment of the 1st respondent. We are therefore of the considered opinion that the 1st respondent has no moral or legal right to claim to continue in service on the basis of the appointment made without following any procedure whatsoever.

12. We are therefore of the view that the Writ Petition filed by the 1st respondent seeking approval for the illegal

appointment should not have been allowed and hence these intra Court Appeals will stand allowed setting aside the orders of the learned Single Judge both in the Writ Petition and the Review Petition. The Writ Petition in WP No.7685 of 2013 filed by the 1st respondent will stand dismissed. However, there will be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The District Elementary Educational Officer,
Nagapattinam,
Nagapattinam District.
2. The Assistant Elementary Educational Officer,
Keezhvellore Taluk,
Nagapattinam District.

+1cc to Mr.U.Venkatesan, Advocate sr.no.47434
+2cc to M/s.C.S.Associates, Advocate sr.no.47278
+1cc to M/s.K.Raja, Advocate sr.no.47092
+1cc to Government Pleader sr.no.48050

W.A.No.1707 of 2014 & MP Nos.1/2014 & 1/2015
and WA No.801 of 2017 & CMP No.11098 of 2017

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