

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 30.08.2018

CORAM

THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P.No.22248 of 2018 and
WMP No.26072 and 26073 of 2018

V.Arivazhagan

... Petitioner

Versus

1. The Director of School Education,
College Road, Chennai - 6.
2. The Chief Educational Officer,
Thiruvavur.
3. The District Educational Officer,
Mannarkudi, Thiruvavur District.
4. The Secretary,
Thirumurugan High School,
Melavasal - Mannargudi,
Thiruvavur District.
- *5.The Secretary,
Thirumurugan Elementary School,
Melavasal - Mannargudi,
Thiruvavur District.**

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for a writ of certiorarified Mandamus to call for the entire records connected with the impugned order passed by the 2nd respondent in their letter No.Na.Ka.No.5925/A2/2016 dated 10.11.2016 and quash the same and direct the 4th respondent to promote the petitioner as B.T.Assistant (Mathematics) based on the order of the 2nd respondent vide in Na.Ka.No.5295 /A2/2016 dated 15.09.2016.

For Petitioner : Mr.S.N.Ravichandran

For Respondent : Mrs. P.Kavitha

learned Government Advocate

O R D E R

The petitioner in this case has challenged the impugned order dated passed by the 2nd respondent in their letter

in Na.Ka.No.5295/A2/2016 dated 10.11.2016 in which the earlier order of allowing promotion to the petitioner to BT Assistant has been canceled assigning the reason, that the same was not in accordance with rule. According to the petitioner, the impugned order is arbitrary and illegal, inasmuch as though the petitioner was given posting on promotion in a different school but he being earlier in another school run by the same corporate body, which in law required to be treated as one unit and considering which earlier promotion order was issued, the same thereafter should not have been canceled by the 2nd respondent. Hence, the prayer has been made by the petitioner to quash the order of the second respondent in letter No.Na. Ka.No.5925/A2/2016 dated 10.11.2016 and direct the fourth respondent to restore the promotion of the petitioner based on the order of the second respondent vide Na.Ka.No.5295/A2/2016 dated 15.09.2016.

2.During the course of hearing, it is submitted by the petitioner that while he was working in 5th respondent Elementary School as Secondary Grade Teacher, a vacancy in the post of B.T Assistant (Mathematics) occurred in the 4th respondent school. Both the aforesaid school being under the same management, the 4th respondent school sought permission to fill up the post under Rule 15(4) (iii) of the Tamil Nadu Recognized Private Schools Regulation Act, 1973 on promotion and basing on the same, the authority having granted permission for promotion of the petitioner on 15.09.2016 to fill up the post on priority basis, on 07.11.2016, the promotion was given to the petitioner. However, the respondents realizing that such promotion is impermissible, issued an order dated 10.11.2016 cancelling its earlier order dated 15.09.2017 and 07.11.2016. The same has been challenged by the petitioner in this writ petition.

3.The learned counsel appearing for the petitioner submits, that since both schools are under the same management that can be treated as corporate body and one unit and as such, the petitioner is qualified to be promoted against the aforesaid vacancy that occurred in the 4th respondent school under the Rule 15(4) (ii) (a) (i) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974. Therefore, considering the same when the second respondent passed an order permitting the 4th respondent to fill up the post on promotion and approved the promotion of the petitioner on 15.09.2016, and accordingly, order was issued on 07.11.2016 by the third respondent, the same should not have been cancelled that too without giving notice to the petitioner. The petitioner in this regard has also made a representation to the respondents on 02.05.2018 but the same having evoked no response, and he has come forward to challenge the aforesaid order. Hence, the impugned order be quashed and the order of promotion of the petitioner be restored to file,

submits the learned counsel for the petitioner.

4. The learned Government Advocate appearing for the State submits that since the promotion of the petitioner to a post in the school, which is a distinct and different body, is impermissible under the aforesaid Rules, the earlier promotion given was withdrawn. The petitioner therefore could not have challenged the said withdrawal of the permission given to fill up the post by promotion inasmuch as to fill up the vacancy in the school concerned, when no candidates in the school are available, the same can only be done by transfer from any other school with the permission of the respondent Authority, that is the second respondent or by direct recruitment. Since in this case, the same was not adhered to and petitioner was illegally promoted, the same was withdrawn and the earlier order of permission given to fill up the post on promotion of the petitioner was cancelled. Therefore the petitioner could not have challenged the impugned order inasmuch as the same was in accordance with law. Hence it is submitted that the writ petition is devoid of merits and liable to be dismissed.

5. The learned counsel appearing for the petitioner has drawn notice of this Court to the relevant provision of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974. Rule 15 of the said Rules provides that promotion in a recognised private school shall be made on the ground of merit and ability, seniority being considered only when merit and ability are approximately equal. According to the said Rule, in a recognised private school, appointment to the various categories of teachers shall be made providing promotion from among the qualified teachers in the school and when no qualified and suitable candidates are available, appointment of other persons in the school, who are qualified to hold the post and when no such persons are also available then the appointment of teachers has to be made from any other school or by direct recruitment. So also, it is provided in the said rule that when the appointment from any other school or by direct recruitment has to be made, the School Committee has to obtain prior permission of the District Education Officer in respect of Pre-primary, Primary and Middle School and that of the Chief Education Officer in respect of High School and Higher Secondary School Teachers Training Institute, setting out the reasons for such appointment. But in respect of corporate body running more than one school, all the schools under the bodies shall be treated as one unit for the purpose of the Rule. The vacancy was in fourth respondent school and the petitioner was serving as a teacher in the fifth respondent school before promotion.

6. However, the contention of the learned counsel

appearing for the petitioner is that since the school wherein the petitioner was working before promotion and the school where the post lie vacant is under the management of the same body, though schools are different, both should be treated as one unit. Hence, the permission which the authority had earlier granted to promote the petitioner being conscious to the said fact, the withdrawal of such promotion therefore was illegal and arbitrary. But, notice of this Court has not been drawn indicating the fact that both the schools are managed by the same corporate body. The management of the schools are different and distinct. The post which had fallen vacant to be filled up is in a different school. Therefore, it cannot be said that the vacancy arose in same school or in different school under the same corporate body and as such filling up the same by promotion by the petitioner was not an illegality. Since the schools are different and distinct, the person from one school cannot be promoted to the post which had fallen vacant in another school. The same can only be done by appointment of teachers from any other school or in case of non availability of qualified teachers in any other school by direct recruitment with the permission of the authority concerned as traced in the rule in this regard.

7. In view of the aforesaid rule position, therefore impugned order of the second respondent concerned earlier allowing to fill up the said vacancy in fourth respondent school by promotion of the petitioner, who was working in another school, appears to be not in consonance with the Rule. Hence, the same having been cancelled by the respondent concerned issuing the order of promotion, the same cannot be found fault with. Accordingly, this writ petition filed is devoid of merits and as such stands dismissed. Consequently, the connected miscellaneous petition is also closed. However, in the circumstances there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-IV)

Dated: 16/10/2018

*** Corrected as per Letter dated
02/11/2018**

**Sd/- Assistant Registrar (CS V)
Dated: 12/11/2018**

//True Copy//

Sub Assistant Registrar

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To

1. The Director of School Education,
College Road, Chennai - 6.
2. The Chief Educational Officer,
Thiruvarur.
3. The District Educational Officer,
Mannarkudi, Thiruvarur District.
4. The Secretary,
Thirumurugan High School,
Melavasal - Mannargudi,
Thiruvarur District.

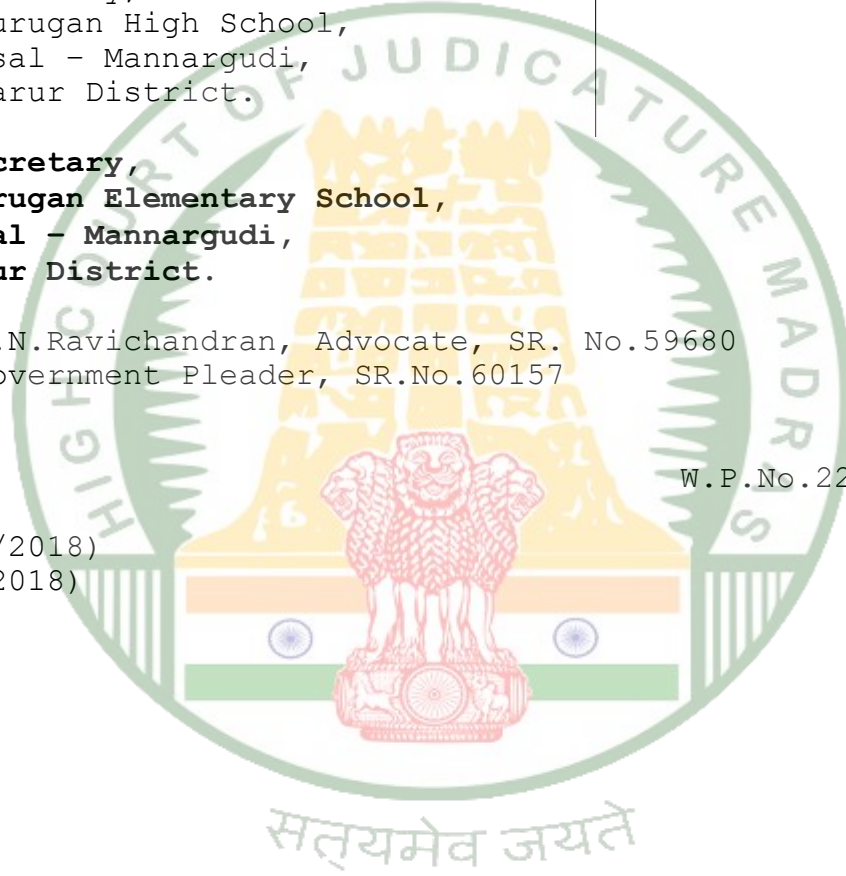
***5.The Secretary,
Thirumurugan Elementary School,
Melavasal - Mannargudi,
Thiruvarur District.**

+lcc to S.N.Ravichandran, Advocate, SR. No.59680
+lcc to Government Pleader, SR.No.60157

SPP(CO)
rrs(16/10/2018)
GN(12/11/2018)

**Corrected order to be
substituted the order
already despatched on
17/10/2018**

W.P.No.22248 of 2018



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