

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Date: 24.07.2018

CORAM
THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.32493 of 2015

R.R.R.K.Middle School,
rep. by its President,
D.Chitra Raja Rathinam

..Petitioner

versus

1. The Government of Tamil Nadu,
rep. by its Principal Secretary,
School Education Department,
Fort St.George,
Chennai-600 009.

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

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

4. The Assistant Elementary Educational Officer,
Sivagangai,
Sivagangai District.

..Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the order of the 2nd respondent made in his proceedings in O.Moo.No.15601/ G3/G1/ 13 dated 15.7.2013 as confirmed by the order of the 1st respondent made in Letter No.36734/ Nee.Va.2 (2)/2014 dated 27.4.2015 and quash the same and direct the respondents to grant relaxation of five years teaching experience and to approve the appointment of C.Suresh John Thomas as Middle School Headmaster in the petitioners School with all consequential service and monetary benefits.

For Petitioner : Mr.A.S.Kaizer

For Respondents: Mr.C.Munusamy, Spl.G.P.
for R1 to R4

ORDER

The petitioner has approached this Court, seeking the following relief:

"To issue Writ of Certiorarified Mandamus, to call for the records relating to the order of the 2nd respondent made in his proceedings in O.Moo.No.15601/ G3/G1/ 13 dated 15.7.2013 as confirmed by the order of the 1st respondent made in Letter No.36734/ Nee.Va.2(2)/2014 dated 27.4.2015 and quash the same and direct the respondents to grant relaxation of five years teaching experience and to approve the appointment of C.Suresh John Thomas as Middle School Headmaster in the petitioners School with all consequential service and monetary benefits.

2. The petitioner school is an aided Middle School, established in the year 1955. In the petitioner school, there were 5 sanctioned posts of teacher, which has strength of 250 students. Out of 5 sanctioned posts of teacher, one is earmarked as Middle School Headmaster (B.T.Assistant). On 31.5.2011, the post of Middle School Headmaster fell vacant due to retirement of the then incumbent, Mrs.Devaki. As per Rule 15 (4) of the Tamil Nadu Private Schools (Regulation) Rules, 1974, the petitioner school took steps to fill up the post from among those who were working in the petitioner school. The only B.T.Assistant Teacher working in the petitioner school with requisite educational qualifications, but having only 3 years of teaching experience was one Mrs.C.Lilly Granakumari. The said incumbent expressed her unwillingness to take up the post of Headmaster due to her family situation. The teaching experience for the appointment to the post of Headmaster of a Middle School as prescribed was 5 years. As no B.T.Assistant with requisite qualifications was available, the petitioner school Committee resolved to fill up the said post by 'direct recruitment'. Therefore, a requisition was sent to the third respondent, seeking permission to fill up the post by direct recruitment method. The fourth respondent also has recommended for appointment by direct recruitment. After due verification, the third respondent vide proceedings dated 25.7.2011, accorded permission to the petitioner school to resort to direct recruitment by following the relevant rules. Thereafter, the petitioner school sent a requisition on 28.7.2011 to the District Employment Office, seeking to sponsor the suitable candidates for appointment to the post of Middle School Headmaster. In response to the requisition made by the petitioner school, the District Employment Exchange sent a list containing only one candidate. In the said circumstances, the School Committee issued advertisement on 17.8.2011 in local

dailies, inviting suitable candidates with requisite qualifications and experience for interview which was scheduled on 24.8.2011. In response to the advertisement, two candidates submitted their applications. On the date of interview, i.e. on 24.8.2011, the candidate sponsored by the Employment Exchange did not turn up for the interview. But the other two candidates who responded to the advertisement, attended the interview, however, it was found that they did not possess 5 years experience as prescribed in the Rules. When the petitioner school approached the Employment Exchange further, they issued a non-availability certificate. In such circumstances, since the petitioner school was left without any option, one of the candidates, namely, Mr.C.Suresh John Thomas was selected and appointment order was issued to him on 25.8.2011. This was necessitated for the simple reason that the post of Headmaster cannot lie vacant for indefinite period as the academic activity and the administration of the school would be drastically affected. In pursuance of the appointment of the said Suresh John Thomas, the petitioner school by its letter dated 25.8.2011 requested the third respondent for approval and also for relaxation of the condition of five years of experience. The third respondent appeared to have forwarded the proposal to the second respondent on 2.3.2012.

3. It is also relevant to mention here that the selected candidate also gave an undertaking that he would not receive salary payable to the Headmaster till he completes 5 years of service and in the interregnum, he would only receive the salary applicable to the B.T.Assistant.

4. While matters stood thus, the second respondent, by proceedings dated 9.4.2013 rejected the proposal on the ground that there cannot be any relaxation of principal condition that the incumbent should have five years of teaching experience. At this, the petitioner school once again represented to the authority that G.O.Ms.No.97 School Education Department, dated 5.7.2001 provides for grant of such relaxation and therefore, in terms of the said G.O., relaxation may be considered. However, once again the representation came to be rejected by the second respondent by proceedings dated 15.7.2013. Aggrieved by the rejection order of the second respondent, the petitioner school had approached the first respondent by filing an appeal dated 26.8.2013. However, unfortunately, the appeal to the Government also came to be rejected on 27.4.2015. The orders of rejection dated 15.7.2013 and 27.4.2015 are put to challenge in the present writ petition.

5. Shri A.S.Kaizer, learned counsel appearing for the petitioner would submit that the issue involved in the Writ Petition is no more res integra since several Writ Petitions were filed on the subject matter and those Writ Petitions were

allowed and a Division Bench of this Court has passed a detailed order on the same subject matter and held that in case the teacher did not possess five years teaching experience, he/she would not be entitled to salary payable to the post of Headmaster, however, he/she can be considered to be eligible for appointment as Headmaster. The learned counsel would submit that G.O.Ms.No.97 School Education Department dated 5.7.2001 clearly provides for such relaxation and unfortunately, the Government and the second respondent had overlooked the said G.O., while rejecting the claim of the petitioner school. In fact, the learned counsel would also refer to several other Government Orders issued from time to time granting such relaxation in the matter of appointment to the post of Headmaster. Such being the case, the learned counsel would submit that the petitioner school alone has been deprived of the services of the Headmaster. He would further submit that the petitioner school has taken all earnest steps as required in order to find a suitable candidate, but unfortunately, no candidates with five years experience were available even in the open market, much less from the same school. In the said circumstances, it became necessary to appoint the most experienced and qualified candidate as Headmaster in order to uphold the interest of the school in terms of both in its academic activities and administration. The learned counsel also referred to several orders passed by this Court, wherein, similar claims had been allowed.

6. Upon notice, Mr.C.Munusamy, learned Special Government Pleader entered appearance for respondents and filed a detailed counter, wherein, in paragraph-11, it is stated as under:

"11. It is humbly submitted that the each and every case the authorities were giving individual orders ratifying the appointments after passing individual orders that with a condition that for the first five years, their salary will be fixed in the lower scale and on completion of five years, the salary will be fixed in the Middle School Headmaster, and not as like in the case of the petitioner that they are drawing the salary in the Higher scales right from the date of appointment which is contrary to the rules and the act."

7. From the above averments made in the counter affidavit, it is clear that the relaxation was being given in individual cases, however, with a restriction of payment of pay scale applicable to the post of Headmaster till completion of five years of teaching experience.

8. In this case also, the petitioner school has clearly informed the authorities that the selected candidate had agreed and given an undertaking that he would not claim salary till he

completes service of five years. That being the case, this Court does not see what is legal impediment for the authority concerned for not approving the appointment of the selected candidate. Although many decisions have been cited on behalf of the petitioner, a decision of the learned Division Bench of this Court rendered in W.P.(MD) No.1404 of 2014 on 29.4.2015 is relevant, wherein, the learned Division Bench has given elaborate reasons and referred to several decisions on the subject matter and held that the issue was no more res integra. The ruling of the learned Division Bench commencing from paragraph-9 onwards would conclude the issue in favour of the petitioner school herein. The relevant portion as found in paragraphs-9 to 11 is extracted as under:

"9. This issue as to whether the appointment of a person as Middle School Headmaster, who did not possess 5 years experience can be approved or not is no longer res integra. This Court in earlier decision had held that the appointment as Middle School Headmaster can be approved, but persons will be eligible only for B.T. Assistant salary till he acquires requisite 5 years experience.

"10. The issue on hand is squarely covered by the following unreported decisions of this Court:

(1) W.P.No.1408 of 2010, dated 08.12.2010 (The State of Tamil Nadu and others Vs. Rational Primary Aided Elementary School), wherein in paragraph 6, it has been held as follows:

"6. As far as the second ground is concerned, for appointment to the post of Headmistress the period of five years training is necessary. In the case on hand, the appointee viz., Manjula Devi has given consent that she will not receive salary attached to the post of Headmistress for a period of five years till she completes the training, which is required for such appointment. The Government has also granted exemption for such eligibility norms of five years' experience at the time of appointment with a condition that such appointee should undergo training in a period of five years. The learned single Judge having accepted the case of the respondent Management that the appointee will not claim salary attached to the post of Headmistress, in our opinion, as the fact that the Government has granted exemption for such appointment is not disputed, we are not inclined to interfere

with the said finding of the learned single Judge. As on both grounds, we are not inclined to entertain any grievance made in the writ appeal, the writ appeal fails and the same is dismissed. Consequently, the connected M.P is closed. No costs.

(2) W.P.No. 442 of 2007, dated 20.03.2007 (The Joint Director of Elementary Education and others Vs. N.S. Meenakshi), wherein in paragraph 3, it has been held as follows:

"3. Four reasons are given by the Department for not granting approval to the appointment of the first respondent as Headmistress of the second respondent school. The first reason is that the without five years' experience the appointment of Primary School Headmistress was made. This ground was rightly rejected by the learned single Judge in view of the G.O.Ms. No.97 dated 5-7-2001 relaxing the requirement of five years' experience."

(3) W.P.No.16383 of 2000, dated 03.11.2008 (Rational Primary Aided Elementary School Vs. The State of Tamil Nadu and others, wherein in paragraphs 3, 4 and 5, it has been held as follows:

"3. The further case of the petitioner is that the said Manjula Devi was not appointed as Secondary Grade Teacher but as Headmistress of the School and B.Ed., teachers are eligible to be appointed in the Headmaster post and the similar issue was considered by this Court in W.P.No.21006 of 2006, and by order dated 6.11.2006, it has been held that G.O.Ms.No.155, School Education Department (D2), dated 3.10.2002 is not applicable to the persons appointed in the Headmistress post and the Government also granted exemption to such of those Headmistress, who are not having five years of teaching experience.

4. In the instant case, the incumbent Manjula Devi has given a consent for not receiving salary as Headmistress for five years till the completion of five years training. The learned single Judge having noticed that G.O.Ms.No.155, School Education Department (D2), dated 3.10.2002 is not applicable to the appointment of the Headmistress

in a primary school, allowed the writ petition. As against which, the respondents filed a Writ Appeal No.442 of 2007, which was also dismissed on 20.3.2007 and the Division Bench upheld the contention that G.O.Ms.No.155, School Education Department (D2), dated 3.10.2002 cannot be applied to the appointments made in the Headmistress post and the same is applicable only to the appointments made in the Secondary Grade vacancies.

5. In view of the above decision as stated supra, the impugned order is set aside. The third respondent is directed to approve the appointment of the said Manjula Devi as Headmistress of the petitioner school with effect from 26.12.1997. However, the said Manjula Devi is entitled to get the Headmistress salary only on completion of five years of teaching experience unless the said experience is relaxed in favour of the said Manjula Devi. Necessary order to that effect is to be passed by the third respondent within a period of six weeks from the date of receipt of a copy of this order.

(4) W.P.No.16772 of 2012, dated 20.07.2012 (B.Bharathi Vs. The State of Tamil Nadu and others), wherein in paragraphs 4 and 5, it has been held as follows:

"4.The learned counsel for the petitioner submitted that the matter in issue is covered by the Division Bench orders in W.A.No.442 of 2007 dated 20.03.2007 and W.A.No.1408 of 2010 dated 08.12.2011. The learned Additional Government Pleader also after going through the Division Bench orders submitted that similar order may be passed. In the Division Bench order dated 08.12.201, the Division Bench held thus:

"4.Two questions arise for our consideration viz.,

(i)Whether G.O.Ms.No.155, School Education Department (D2), dated 3.10.2002 would be applicable to the appointment of a B.Ed graduate to the post of Headmistress in a primary school and

(ii) If so whether the training for a period of five years is a pre-requisite condition for eligibility for such appointment"

5.As far as the first contention is concerned, a Division Bench of this court in W.A.No.442 of 2007 has taken the view that in case a B.Ed graduate is appointed as Headmistress in a primary school, the said G.O. is not applicable and there cannot be any impediment for such appointment. The application of the G.O. is in relation to an appointment of B.Ed graduate to the post of Secondary grade teacher. As the said G.O. has been upheld by the Supreme Court finally, we are not inclined to take a different view that the one taken by the Division Bench, as admittedly the Government has also not questioned the said order of the Division Bench by any further appeal.

6. As far as the second ground is concerned, for appointment to the post of a Headmistress the period of five years training is necessary. In the case on hand, the appointee viz., Manjula Devi has given consent that she will not receive salary attached to the post of Headmistress for a period of five years till she completes the training, which is required for such appointment. The Government has also granted exemption for such eligibility norms of five years' experience at the time of appointment with a condition that such appointee should undergo training in a period of five years. The learned single Judge having accepted the case of the respondent Management that the appointee will not claim salary attached to the post of Headmistress, in our opinion, as the fact that the Government has granted exemption for such appointment is not disputed, we are not inclined to interfere with the said finding of the learned single Judge. As on both grounds, we are not inclined to entertain any grievance made in the writ appeal, the writ appeal fails and the same is dismissed."

5. In view of the above settled position, the impugned order dated 23.01.2012 is set aside. The

respondents are directed to approve the appointment of the petitioner as Secondary Grade Headmistress with effect from 22.09.1997 with all consequential benefits, in the light of the order in W.P.No.21006 of 2006, dated 06.11.2006, confirmed by the order in Writ Appeal No.442 of 2007, dated 20.03.2007 and in Writ Appeal No.1408 of 2010, dated 08.12.2011. Necessary order to that effect is to be passed by the respondents within a period of six weeks from the date of receipt of a copy of this order."

(5) W.P.No.4542 of 2006 and W.P.M.P. No.1579 of 2008, dated 28.10.2008 (T.Sam Razal Vs. The Secretary to Government and others), wherein in paragraphs 4 and 5, it has been held as follows:

"4. The learned counsel for the petitioner submits that pursuant to the aforesaid order of the First Bench of this Court, the Department has approved the appointment of N.S. Meenakshi as Headmistress on condition that till she completes five years experience, she will be paid Secondary Grade scale of pay and after completion of five years experience, she will be paid the Headmistress scale of pay.

5. In the light of the above orders, the impugned order dated 30.12.2005 passed by the second respondent is set aside with a direction to the second respondent to consider the petitioner's claim for approval without reference to G.O.Ms.No. 559, Education, dated 11.07.1995 and pass orders thereon within a period of four weeks from the date of receipt of a copy of this order. It is made clear that if the petitioner satisfies the requirement of five years of teaching experience, he is entitled to get approval of his appointment from the date of his appointment and otherwise, he is entitled to get approval as Headmaster with the scale of pay of Secondary Grade teacher for five years and on completion of five years,

he is eligible to get the scale of pay of Primary School Headmaster.

The writ petition is disposed of in the above terms. No costs. Consequently, connected W.P.M.P. is closed."

(6) W.A.No.1494 of 2014, dated 11.12.2014 (The Principal Secretary to Government, School Education Department and others vs. S.Govindarajan), wherein in paragraphs 7 and 8, it has been held as follows:

"7.The first respondent has taken up a specific contention in the affidavit filed in support of the writ petition that the management obtained a list from the employment exchange and thereafter only steps were taken to call for applications from open market. The appellants have not denied the said statement even in the memorandum of grounds of appeal or in the affidavit filed in support of the stay petition. In any case, the reason that eligibility certificate was not taken from the employment exchange cannot be a valid ground to deny relaxation.

8.The learned Single Judge quoted the earlier order passed by the Writ Court and the related judgment of the Division Bench and allowed the writ petition. We do not find any reason to take a different view in the facts and circumstance of the case."

11. In the result, the writ appeal is disposed of. No costs. The appellants are directed to consider the proposal of the respondent and approval of appointment of R.Baskarasethupathy, if he possess the requisite qualification, within six weeks from the date of receipt of a copy of this Judgment. R.Baskarasethupathy will be entitled to B.T. Assistant's scale of salary till he acquires 5 years teaching experience. Thereafter, he will be entitled to salary to the post of Middle School Headmaster. Consequently, M.P.(MD)No.1 of 2014 is closed."

9. This Court finds that the said issue stood concluded as above in all fours and therefore, there cannot be any dispute to the law laid down by the Division Bench and such ruling is in favour of the petitioner herein. Even otherwise, while granting

relaxation to several other similarly placed teachers, denial of the same to the petitioner school, is hit by Article 14 and therefore, the impugned orders cannot be countenanced in law.

10. For the above said reasons, this Court has no hesitation in allowing the Writ Petition. The impugned orders, viz., in O.Moo.No.15601/ G3/G1/ 13 dated 15.7.2013 passed by the second respondent and in Letter No.36734/ Nee.Va.2(2)/2014 dated 27.4.2015 of the first respondent, are hereby set aside. Consequently, the respondents are directed to grant necessary relaxation of five years in teaching experience and approve the appointment of Mr.C.Suresh John Thomas as Middle School Headmaster in the petitioner school and after completion of five years of experience, grant all consequential attendant and monetary benefits admissible to the post of Headmaster. This direction shall be complied with by the respondents, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected MPs 1 and 2 are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

suk

To

1. The Principal Secretary,
School Education Department,
Fort St.George,
Chennai-600 009.

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

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

4. The Assistant Elementary Educational Officer,
Sivagangai,Sivagangai District.

+1cc to Mr.A.S.Kaizer, Advocate, S.R.No.49746.

+1cc to the Government Pleader, S.R.No.49942

W.P.NO.32493 of 2015

SPD (CO)
rrs 05/10/2018