

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2018

CORAM :

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

W.P.No.18668 of 2010
and
W.P.No.26146 of 2011

WP.No.18668 of 2010

K.Vasantha

.. Petitioner

Vs

- 1.The Joint Director of School
Education (Higher Secondary),
College Road, Chennai - 600 006.
- 2.The Chief Educational Officer,
Thiruvallur.
- 3.The District Educational Officer,
Ponneri, Thiruvallur District.
- 4.The Secretary,
Vijayanta Higher Secondary School,
HVF Estate, Avadi, Chennai - 600 054.

5.C.T.Sakuntala

.. Respondents

PRAYER: Petition under Article 226 of the Constitution of India to issue a writ of Certiorari, calling for the records pertaining to the order issued by the 4th respondent in his proceedings No.07271/Secy-VHSS/Ext/2010 dated 11.08.2010 (3 orders) and the consequential impugned order No.A1/VHSS/2010 dated 12.08.2010 and quash the same.

WP.No.26146 of 2011

C.T.Sakunthala

.. Petitioner

Vs

- 1.The Director of School Education,
D.P.I. Complex, Chennai 600 006.

2.The Joint Director,
Higher Secondary School Education,
D.P.I. Complex, Chennai - 600 006.

3.The Chief Educational Officer,
Thiruvallur.

4.The District Educational Officer,
Ponneri.

5.The Secretary,
Vijayanta Higher Secondary School,
HVF Estate, Avadi, Chennai - 600 054.

6.K.Vasanthan ... Respondents

PRAYER: Petition under Article 226 of the Constitution of India to issue a writ of Certiorari and Mandamus, calling for the impugned order bearing No.P.M.No.18897/DW.05/E03/2008 dated 14.10.2011 passed by the second respondent, and to quash the same and consequently to direct the respondents 1 to 5 to recognise the petitioner as the Headmaster of the fifth respondent school and to pay pension and other monetary benefits to her.

For Petitioner : Mr.Sivavarthanan
for M/s.V.Ramajagadeesan
in WP.No.26146 of 2011

Mr.T.Sellapandian
in WP.No.18668 of 2010

For Respondents: Mr.R.Govindasamy (for R1 to R4)
Special Government Pleader
in both the WPs

Mr.T.Sellapandian (for R6)
in WP.No.26146 of 2011

No Appearance (for R5)
in WP.No.26146 of 2011

Mr.B.Manoharan (for R5)
in WP.No.18668 of 2010

ORDER

The rank of the parties in W.P.No.18668 of 2010 is referred herein for the purpose of deciding the issue involved in both writ petition.

2.The crux of the issue involved in these writ petitions is promotion to the post of Head Master of Vijayanda Higher Secondary School, the respondents 4 and 5 respectively in the above writ petitions. Since the issue involved in the above writ petitions is one and the same, this court inclined to pass the following common order.

3.According to the petitioner in W.P.No.18668 of 2010, she was appointed as Tamil Pandit in the 4th respondent School on 16.01.1981 and thereafter she was promoted as PG Assistant on 11.09.1995. While so the post of Head Master fell vacant in the 4th respondent school on 31.05.2006 due to the retirement of the existing Head Master. Since the petitioner is senior most teacher in the 4th respondent school, he is entitled to be appointed as Headmaster.

4.Whereas the case of the 5th respondent (Petitioner in W.P.No.26146 of 2011) is that she was appointed as School Assistant (Science) on 26.03.1983 and thereafter she was promoted as PG Assistant (Economics) on 11.09.1985. Thereafter, as stated above the Head master post fell vacant. While so the 5th respondent was eagerly waiting for the promotion to the post of Head master, but the 4th respondent school promoted one Mr.M.Velusamy as Head master based on the seniority in age. The 4th respondent school has not considered the merits and abilities of the candidates while giving promotion as Head master by strictly following the rules prescribed under Tamil Nadu Recognized Private School Regulation Rules, 1974. Though the 5th respondent was promoted as Head Master and she also discharged her duty as Head master and retired in the year 2010 i.e on 31.03.2010, thereafter about one year later the 1st respondent herein passed the impugned proceedings dated 14.10.2011 where under cancelled the School Committee resolution dated 13.01.2010 in which the 5th respondent was given promotion as Head Master and promoted the petitioner K.Vasantha as Headmaster with effect from 01.07.2007 onwards on the appeal preferred by her dated 08.02.2010. The said order is under challenge by the 5th respondent vide WP.No.26146 of 2011.

5.Further case of the petitioner is that as against the promotion of Head Master given to Mr.M.Velusamy who is far junior to petitioner. She filed statutory appeal before the 1st respondent and the same was allowed on 10.05.2007. As against the same, Mr.Velusamy filed W.P.No.20592 of 2007 before this

Hon'ble Court. The petitioner also filed W.P.No.20842 of 2007 to implement the order of the 1st respondent. This Court allowed the writ petition filed by Mr.Velusamy by an order dated 25.10.2007, against which the petitioner filed W.A.No.1535 of 2007 and obtained an order of Stay of the order passed by the learned Single Judge and subsequently above said writ appeal was allowed on 21.02.2008. Thereafter, the 4th respondent has promoted the petitioner as Head Master on 11.04.2008.

6.As against the order passed in W.A.No.1535 of 2007, the 5th respondent C.T. Sakunthala filed an application to set aside the order passed by the Hon'ble Division Bench on the ground that during the pendency of the above said Court proceedings, she was promoted as Head Master in the 4th respondent school on 01.07.2007. The said application filed by 5th respondent C.T. Sakunthala was dismissed by the Hon'ble Division Bench of this Court. Aggrieved over the same, she filed SLP (Civil) No.14414 of 2008) before the Hon'ble Apex Court and got an order of Status quo on 18.05.2008 and therefore she was allowed to continue as Head Master. While the SLP came up for hearing subsequently, it was brought to the notice of Hon'ble Apex Court that the petitioner K.Vasantha (6th Respondent in W.P.No.26146 of 2011) filed Statutory appeal before the 1st respondent as against the promotion given to the 5th respondent C.T.Sakunthala on 01.07.2007 and therefore the Hon'ble Supreme Court after taking note of the above said fact, by an order dated 08.07.2009 directed the Director of School Education (1st respondent in W.P.No.26146 of 2011) to decide the appeal dated 28.07.2008 without being uninfluenced by the order made in W.A.No.1535 of 2007. As per the direction of the Hon'ble Apex Court, the Director of School Education by an order dated 25.09.2009 allowed the appeal and remitted the matter to the 4th respondent School to undertake fresh process to fill up the post of Head Master by considering all eligible teachers in the school. On receipt of same the School committee of the 4th respondent School by a resolution dated 13.01.2010 selected the 5th respondent Smt.C.T.Sakunthala as Head Master and she also retired on superannuation on 31.03.2010.

7.It is the contention of the petitioner that as against the resolution of the School committee selecting C.T.Sakunthala as Head Master, she filed appeal before the 1st respondent under the Tamil Nadu Recognized Private School Regulation Rules, 1974.

8. When the above said appeal is pending before the 1st respondent, the 4th respondent school issued the impugned proceeding dated 11.08.2010, wherein she was reverted from the post of Headmaster to the post of PG Assistant with effect from 18.04.2010 and the 5th respondent was promoted as Head Master with effect from 19.04.2010, Challenging the above said proceedings the petitioner is before this Court.

9. The Learned Counsel for the respondents 1 to 4 filed counter to W.P.No.26146 of 2011 and contended that the petitioner /5th Respondent had to wait for the supplementary directions from the Department after the disposal of the SLP filed by the 5th respondent /petitioner C.T.Sakunthala. But he had not done so and issued promotion order to the petitioner C.T.Sakunthala as Headmaster on 11.08.2010 with effect from 19.04.2010 and reverting the 6th Respondent as P.G. Assistant (Tamil) so as to fulfill the pre-mind decision of promoting the petitioner as Headmaster under the shield of the orders of the Hon'ble Apex Court. He also did not think whether the petitioner is entitled for the benefits as permissible under law which could be decided by the School Education Department. As the action of the 5th Respondent is contrary to the natural justice and against law, the 6th Respondent has no other alternative remedy except to approach this Hon'ble Court by filing a writ petition in W.P.No.18668 of 2010 and got the stay order on 13.08.2010 for the promotion of the petitioner herein as Headmaster and the reverting her as P.G. Assistant before deciding the validity of the school committee meeting held on 13.08.2010 by the Department i.e., the 2nd respondent. As the stay order has been issued by this Hon'ble Court, it proves that the entitlement of the benefits permissible under law of the petitioner shall be decided only by the Department.

10. It is further submitted by the respondents that since the 5th Respondent had not assessed the merit and ability of the candidates for promotion as Headmaster as per rule 15(4) (i) of the Tamil Nadu Recognized Private Schools (Regulation) Rules 1974, the 2nd Respondent being the appellate authority of P.G. Assistants and Headmasters of private schools and he had to dispose the appeal of the 6th Respondent filed on 08.02.2010 (i.e., before the disposal of the SLP filed by the Petitioner C.T.Sakunthala) The 2nd Respondent disposed the appeal on 14.10.2011 following the procedures prescribed in rules. He also verified the correctness of the minutes of the meeting of the school committee held on 13.01.2010 which is aggrieved by the petitioner. As the Apex court ordered that the petitioner herein

(Tmt.C.T.Sakunthala) who is also the petitioner in this writ petition W.P.No.26146 of 2011 should be given the benefits as per her entitlements consequent upon the report of the school committee meeting as permissible under law. The petitioner is not entitled to get benefits consequent upon her selection as Headmaster by the invalid school committee and also the minutes of the school committee meeting held on 13.01.2010 is not permissible under the law. If the petitioner is aggrieved in the action of the 2nd Respondent, she can approach the Hon'ble Apex Court in a proper way. Knowing all the facts of this case, this Hon'ble High Court had stayed the promotion of the petitioner on 13.08.2010 in W.P.No18668 of 2010 filed by the 6th Respondent, as the petitioner's averment is distortion of truth. Hence they pray to dismiss both the writ petitions.

11.I heard Mr.Sivavarthanan for M/s.V.Ramajagadeesan in WP.No.26146 of 2011, Mr.T.Sellapandian in WP.No.18668 of 2010, learned counsels for the petitioners, Mr.R.Govindasamy, learned Special Government Pleader for the respondents 1 to 4 in both the writ petitions, Mr.T.Sellapandian, learned counsel for the 6th respondent in WP.No.26146 of 2011 and Mr.B.Manoharan, learned counsel for the 5th respondent in WP.No.18668 of 2010. There is no representation on behalf of the 5th respondent in WP.No.26146 of 2011 and perused the entire records.

12.Though so many contentions are raised by either side and the previous litigation between them, the main issue is to be decided is that whether the promotion given to the petitioner in both writ petitions are in accordance with law and the authorities have followed rule. In the above background of the case, this Court like to emphasis the well settled law that in case of promotion to the post of head master, the seniority of the teachers in the zone of consideration is not the sole criteria to be considered for promotion, whereas it is the merit and ability of the teachers are the factors to be considered for conferring promotion. In other words, the senior most Teacher in zone of consideration cannot claim such promotion as a matter of right or such promotion is not automatic. In this regard, the learned counsel for the petitioner has relied upon the decision of the Hon'ble Division Bench of this Court made in the matter of G.Annamalai Vs The Secretary and Commissioner, Education Department reported in 2007 (3) MLJ 171 holding as following that

"Rule 15 of the Tamil Nadu Recognized Private School Regulation Rules, 1974 deals with the Qualifications, conditions and services of the Teacher and other persons employed in the private schools. As

per Rule 15(4(I), promotion shall be made on the grounds of merit and ability, and only when the merits and ability are approximately equal, seniority is to be considered. Further, it is stated that while making appointment to various categories of teachers the school Management shall follow the following methods:

(i) Promotion among the qualified teachers in that School.

(ii) If no qualified and suitable candidate is available by method (i) above;

(a) Appointment of other persons employed in that school, provided they are fully qualified to hold the post of teachers;

(b) Appointment of teachers from any other school;

(c) Direct recruitment.

Above Rules enumerates that the post of Headmaster is a selection post and the selection is based on merit and ability. Seniority will be considered only when the merits and ability are approximately equal. Hence the 4th respondent having considered the merit and ability of the appellant along with five others as early as on 13.5.1985 and found that the petitioner is not fit to be promoted as Headmaster of the school.

13.It is true that the selection of one Anthonysamy was originally made and the subsequent promotion of Rafia Begam were not approved by the department on the grounds that the said persons were not qualified for being promoted as Headmaster of the school.

14.The discretion is vested with the school committee to appoint teacher and other persons under section 18(b) of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973, hence the discretion exercised by the 4th respondent-Management in not selecting the appellant for the post cannot be treated as invalid. It was the Department held that the appointment made in respect of two others viz., Anthonysamy and Rafia Begam are not proper and a further direction was issued to appoint a fully qualified person.

15.Admittedly, the appellant was not selected and promoted as Headmaster (PG grade), for which he was paid salary also. To claim the salary of the post of Headmaster, the appellant should have been appointed and worked in that post. Though the appellant was given in-charge of the post of Headmaster for

certain period, during the period of leave taken by Headmaster, he cannot claim that he should be given the scale of pay of the post of Headmaster, particularly when he received the salary of PG Assistant along with the special pay for having held the post of Assistant Headmaster and further having retired from services as PG Assistant on 31.08.1995 with the designation of Assistant Headmaster".

16.Thus it is precise that promotion shall be made on the grounds of merit and ability, and only when the merits and ability are approximately equal, seniority is to be considered.

17.Coming to the facts of the case on hand, since the school committee has not properly followed Rule 15(4)(1) of the Tamil Nadu Recognized Private School Regulation Rules, 1974, the 1st respondent has passed the impugned order as directed by the Hon'ble Apex Court. Therefore the contention of the management that school committee alone is having discretion to appoint / promote a teacher is not justified, since the rule is very clear. The record disclose that the petitioner in W.P.No.18668 of 2010 Mrs.K.Vasantha is appointed as Headmaster with effect from 15.04.2008 and after discharging her duty of the said post, she also got retired in the year 2011 on attaining the age of Superannuation. Likewise the petitioner in WP.No 26146 of 2011 C.T.Sakunthala is found to be retired on 31.03.2010. Further the impugned order dated 14.10.2011 in WP.No 26146 of 2011 came to be passed by the 1st respondent on the basis of the direction issued by the Hon'ble Apex Court, wherein the authorities while deciding the Appeal filed by K.Vasantha and on considering the merits and abilities directed the 4th respondent school to appoint the petitioner K.Vasantha as Head Master with effect from 01.07.2007. In the considered opinion of this Court the above order dated 14.10.2011 does not suffer from any infirmities or material irregularities as the same is found to be passed in line with Rule 15 of the Tamil Nadu Recognized Private School Regulation Rules, 1974 dealing with the Qualifications, conditions and services of the Teacher and other persons employed in the private schools and also as per the direction of the Hon'ble Apex Court.

18.For the forgoing reasons and in view of the finding rendered above in W.P.No.26146 of 2011 upholding the impugned order dated 14.10.2011 of the 1st respondent, the impugned orders pertaining to W.P.Nos 18668 of 2010 dated 11.08.2010 and 12.08.2010 becomes infructuous and no adjudication is required in the light of the fact that her grievance had been already addressed in her favour.

19.In the result, both the writ petitions are dismissed. No costs.

vs

Sd/-
Assistant Registrar(CS III)

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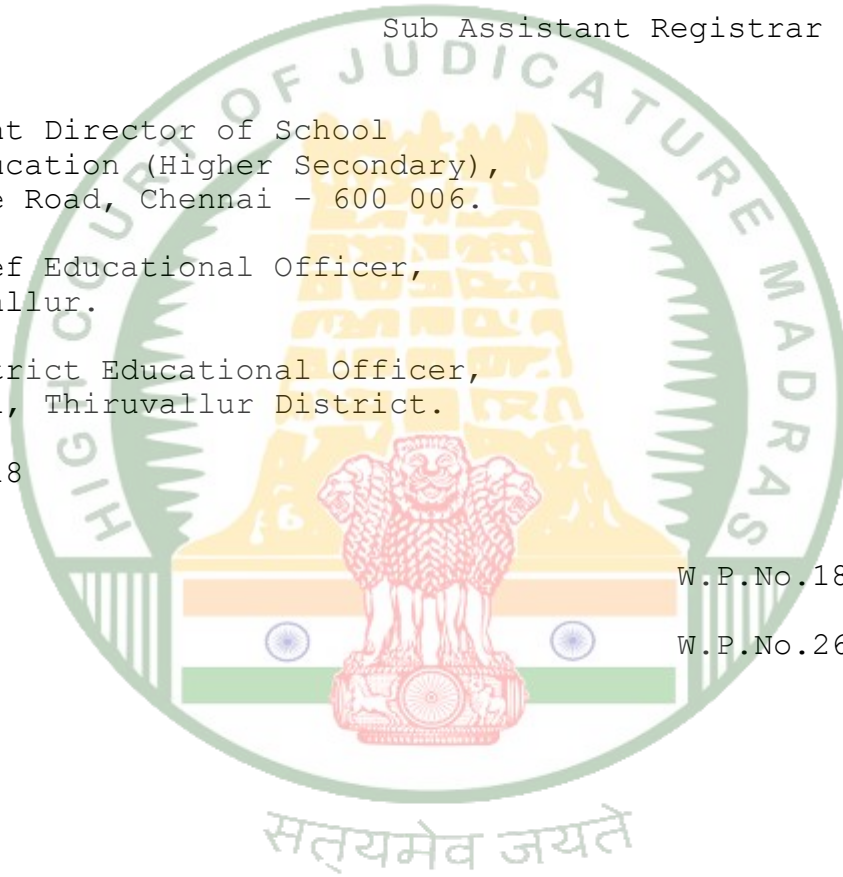
To

Sub Assistant Registrar

- 1.The Joint Director of School
Education (Higher Secondary),
College Road, Chennai - 600 006.
- 2.The Chief Educational Officer,
Thiruvallur.
- 3.The District Educational Officer,
Ponneri, Thiruvallur District.

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