



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 19.03.2018

CORAM:

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM
AND

THE HONOURABLE Mrs. JUSTICE R.THARANI

W.A. (MD) .No.428 of 2018

and

C.M.P. (MD) No.2526 of 2018

WEB COPY

1. The Secretary,
Department of School Education,
State of Tamil Nadu,
Fort. St. George, Chennai-9.
2. The Director of Elementary Education,
College Road, Chennai-6.
3. The District Elementary Educational Officer,
Tirunelveli District,
Tirunelveli.
4. The Assistant Elementary Educational Officer,
Nanguneri ... Appellants/Respondents 1 to 4

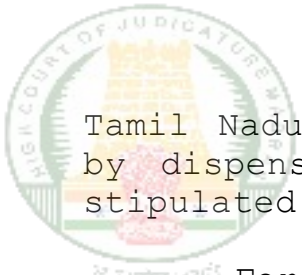
Vs.

The Secretary,
Sivaguru Memorial Primary School,
Subramaniapuram,
Emankularm Post,
Nanguneri,
Tirunelveli District. ... Respondent/Petitioner

PRAYER: This appeal is filed under Clause 15 of the Letters Patent, to set aside the order dated 08.02.2017 made in W.P. (MD) No.12555 of 2011.

Prayer in WP (MD) . 12555/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF CERTIORARIFIED MANDAMUS, calling for the records pertaining to the proceedings issued by the 4th Respondent in O.Mu.No.2500/A1/2010 dated 13-01-2011 and quash the same and consequently direct the Respondents to approve the appointment of Ramola Jipsi Mavin, W/o.Santhosh Raj from the date of the appointment as Head Master in Petitioner s School on 01-06-2005 and to disburse secondary grade salary from 01-06-2005 to 31-05-2010 and Head Master Salary from 01-06-2010 with arrears by relaxing the qualification of five years teaching experience if necessary under section 20(3) of the



Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and by dispensing with the prior permission for petitioner within stipulated time.

For Appellants : Mr.V.R.Shanmuganathan,
Special Government Pleader
For Respondent : Mr.T.A.Ebenezer

JUDGMENT

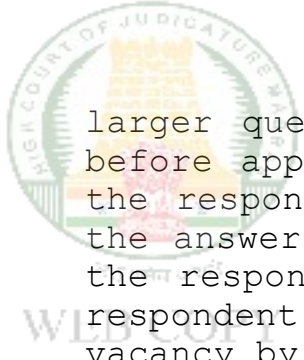
(Judgment of the Court was delivered by **T.S.SIVAGNANAM, J**)

Heard Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the appellants and Mr.T.A.Ebenezer, learned counsel appearing for the respondent.

2.This appeal by the State is directed against the order made in W.P.(MD)No. 12555 of 2011 dated 08.02.2017. The respondent/writ petitioner, which is an Aided Minority Institution School, filed the writ petition, challenging the order passed by the fourth appellant dated 13.01.2011 and sought for a consequential direction to approve the appointment of Ramola Jipsi Mavin, wife of Santhosh Raj, appointed as Head Master in the respondent School on 01.06.2005 and to disburse the salary and also to grant relaxation of the qualification of five years teaching experience if necessary in terms of Rule 20(3) of the Tamil Nadu Recognised Private Schools (Regularisation) Act, 1973 and by dispensing with the prior permission for appointment within a stipulated time.

3.The writ petition was allowed by the impugned order. We have perused the order passed by the Writ Court and we find that the observation made by the Writ Court with regard to non-applicability of the Rule 15 (4) of the rules is incorrect. Since the respondent School is a Non Minority Institution, if the respondent desired to fill up the vacancy by direct recruitment, prior permission of the Department is required. Therefore, to that extent, the observation made in the impugned order is incorrect.

4.The second aspect is whether the five years teaching experience, which is required to be considered for appointment as Head Master, can be relaxed. This issue has been the subject matter of consideration in several matters, wherein this Court has taken the view that the candidate can be permitted to continue as such for a period of five years. However, they will be entitled to only Secondary Grade Teacher scale of pay and upon completion of the five years of teaching experience, the candidate can be considered for payment of salary in the scale of pay for the post of Headmaster with the approval of the Department. Therefore, the Writ Court was justified in extending such benefit to the said teacher appointed by the respondent Management. However, the



larger question is as to the prior approval from the Department before appointing candidate by direct recruitment can be made by the respondent School, which is a non minority institution, and the answer to the question should be in the negative - as against the respondent and in favour of the appellants. Admittedly, the respondent did not obtain prior approval before filling up the vacancy by appointing Ms.Ramola Jipsi Mavin.

5.The learned counsel for the respondent submitted that vacancy arose on 31.05.2005, and since the School is single teacher School, if the vacancy was not filled up at the appropriate time, then, the School has to be closed down, especially when the admission process would be conducted during the relevant period. On facts, we find that the respondent has sought for prior permission on 25.04.2005 to fill up the vacancy which will arise in the post of Headmaster on 31.05.2005. This was followed by a representation dated 17.05.2005. However, the appellants did not pass orders either accepting or rejecting the request. Therefore, the respondent institution had appointed the said candidate on 01.06.2005, who did not possess the requisite 5 years teacher experience.

6.On the facts and circumstances of the case, we find that if the post had not been filled up, the School had to be closed down, as it is single Teacher School and only on that ground we are inclined to give relief to the respondent School and not for the reasons assigned by the Writ Court .

7.In the result, the writ appeal is dismissed for reasons assigned by us above and we confirm the direction issued by the Writ Court in Paragraph No.11 of its order. The direction issued by the Writ Court shall be complied with within a period of eight weeks from the date of receipt of copy of this order. No Costs. Consequently, C.M.P.(MD)No.2526 of 2018 is closed.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To

1.The Secretary,
Department of School Education,
State of Tamil Nadu,
Fort. St. George, Chennai-9.

<https://hsr.sirnet.org> The Director of Elementary Education,
College Road, Chennai-6.



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

4. The Assistant Elementary Educational Officer,
Nanguneri.

+1cc to Mr.T.A.Ebenezer, Advocate SR.No. 56109
+1cc to The Spl. Government Pleader Sr.No.56467

MRN

VB/SKN/RKS/SAR4/12.04.2018/4P/7C

W.A. (MD) .No.428 of 2018
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