



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.07.2018
PRONOUNCED ON : 03.08.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY
and
THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.A(MD)Nos.661, 662 and 664 of 2018
and
C.M.P. (MD)No.3642, 3643 and 3645 of 2018

The Educational Agency,
C/o. Ramasamy Pillai Higher Secondary School,
Ilanji-627 805,
Tirunelveli District,
through its Secretary.

..Appellant in W.A.(MD)No.661 of 2018

Thamizharasi

..Appellant in W.A.(MD)No.662 of 2018

1. The Director of School Education,
DPI Campus, Chennai-6.

2. The Chief Educational Officer,
Tirunelveli-3.

3. The District Educational Officer,
Tenkasi-627 811.

..Appellants in W.A(MD)No.664 of 2018

Vs.

1. S.Kalyani

2. The Director of School Education,
DPI Campus, Chennai-6.

3. The Chief Educational Officer,
Tirunelveli-3.

4. The District Educational Officer,
Tenkasi-626 811.

5. The President,
The Educational Agency,
C/o. Ramasamy Pillai Higher Secondary School,
Ilanji-627 805,
Tirunelveli.

6. Thamizharasi

..Respondents in W.A.(MD)No.661 of 2018



1. S.Kalyani
2. The Director of School Education,
DPI Campus, Chennai-6.
3. The Chief Educational Officer,
Tirunelveli-3.
4. The District Educational Officer,
Tenkasi-626 811.
5. The Educational Agency,
C/o.Ramasamy Pillai Higher Secondary School,
Ilanji-627 805,
Throuhg its Secretary, Tirunelveli.
6. The President,
The Educational Agency,
C/o. Ramasamy Pillai Higher Secondary School,
Ilanji-627 805,
Tirunelveli. ..Respondents in W.A.(MD) No.662 of 2018

1. S.Kalyani
2. The Educational Agency,
C/o. Ramasamy Pillai Higher Secondary,
Ilanji-627 805,
Tirunelveli District,
Through its Secretary.
3. The President,
The Educational Agency,
C/o. Ramasamy Pillai Higher Secondary,
Ilanji-627 805,
Tirunelveli District. ..Respondents in W.A.(MD)No.664 of 2018

COMMON PRAYER: Writ Appeals filed under Clause 15 of the Letter Patent to set aside the order dated 06.02.2018 in W.P.(MD)No.18086 of 2017.

Prayer in WP(MD)No. 18086/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus to call for the records of the 2nd respondent in Mu.Mu.No.8530/Aa2/2017 dated 14.09.2017 and quash the same and further direct the respondents 1 to 5 to appoint the petitioner as graduate Teacher for Maths in the vacancy arising out of retirement of Thiru.K.Eswaran and pay her all increment on her higher qualification with arrears.



WEB COPY

For Appellant : Mr.V.Meenakshi Sundaram
(for W.A.(MD)No.661 of 2018)
Mr.R.Vijayakumar
for Mr.G.Mohan Kumar
(for W.A.(MD)No.662 of 2018)
Mr.A.K.Baskarapandian
Special Government Pleader
(for W.A.(MD)No.664 of 2018)

For Respondents : Mr.T.S.R.Venkatramana (for R1)
(for all petitions)
Mr.A.K.Baskarapandian (for R2 to R4)
Special Government Pleader
(for W.A(MD)Nos.661 & 662 of 2018)

COMMON JUDGMENT

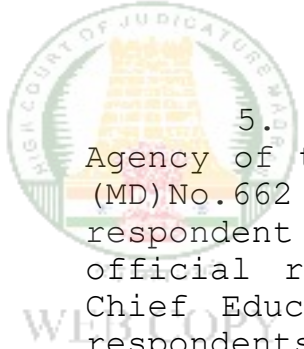
DR.ANITA SUMANTH, J.

These three Writ Appeals challenge an order of the learned Single Judge, dated 06.02.2018 in W.P.(MD)No.18086 of 2017. The Writ Petition was filed by the first respondent in all the writ appeals namely, Ms.Kalyani. She had joined the Ramasamy Pillai Higher Secondary School (in short 'School') as Secondary Grade Teacher on 30.03.1994, became a graduate in the year 1998, a Post Graduate in Maths in the year 2008 and acquired B.Ed., in the year 2010.

2. The case of the writ petitioner was that she ought to have been considered and granted the position of B.T.Assistant (Maths) in the vacancy that arose in the school, but was denied the same, despite being qualified. According to her, the school Management instead appointed one Ms.Thamizharasi by way of migration. The proposal for the said appointment was approved by the Chief Educational Officer (CEO) on 14.09.2017 and pursuant thereto Ms.Thamizharasi has joined the services of the school on 18.09.2017.

3. The writ petition was filed by Ms.Kalyani challenging the appointment of Ms.Thamizharasi and seeking a direction to the official respondents as well as to the school to appoint her as Graduate Teacher for Maths in the vacancy that arose out of the retirement of one Mr.K.Easwaran.

4. The learned Single Judge had allowed the writ petition directing the respondents to appoint Ms.Kalyani in the said post within a period of four weeks and directing the Education Department to approve the same within a period of four weeks seeing as she had the requisite qualifications. The appointment of Ms.Thamizharasi was quashed invoking the provisions of Rule 15 (4) of the Tamil Nadu Recognized Private School (Regulation) Rules, 1974.



5. W.A.(MD)No.661 of 2018 has been filed by the Education Agency of the School / fourth respondent in the writ petition, W.A.(MD)No.662 of 2018 has been filed by Ms.Thamizharasi / sixth respondent in the writ petition and W.A.(MD)No.664 of 2018 by the official respondents viz., The Director of School Education, The Chief Educational Officer and the District Educational Officer / respondents 1 to 3 in the writ petition.

6. Detailed submissions of Mr.V.Meenakshi Sundaram, learned counsel for the Educational Agency, Mr.R.Vijayakumar, learned counsel for Ms.Thamizharasi, Mr.A.K.Baskarapandian, learned Special Government Pleader appearing for the official respondents and Mr.T.S.R.Venkatramana, learned counsel for Ms.Kalyani, have been heard.

7. The challenge in the writ petition is specific to proceedings dated 14.09.2017 in relation to the appointment of a B.T.Assistant Maths in the school and a direction to appoint Ms.Kalyani in the vacancy arising out of the retirement of Mr.Easwaran. All pleadings filed in the writ petition relate to the aforesaid prayers alone.

8. An additional affidavit dated 17th April, 2018 has been filed by the Secretary of the School that we decline to entertain seeing as the deponent is a third party to the proceedings and no leave of the Court has been sought prior to filing of the same.

9. At this stage, an attempt is made by Mr.Venkatramana to contend that Ms.Kalyani was equally eligible for the post of PG Assistant and thus should have been considered for appointment in the vacancies arising therefrom as well. We are not inclined to consider this prayer seeing as no pleadings have been made in this regard at the stage of writ petition. That apart, there can be no enlargement of the scope of the matter at this stage at the instance of Ms.Kalyani, who has been successful in writ petition.

10. Ms.Kalyani had submitted two letters dated 05.03.2012 and 21.01.2015 to the school. Since the issue to be resolved hinges upon the interpretation of the letters and are the subject matter of considerable debate, we extract the same:

Letter dated 05.03.12

'I am working as a Secondary Grade Teacher from 30.03.1994 in Ramasamy Pillai Higher Secondary School, Ilanji. During my course of employment, I had graduated B.Sc., Maths in the year 1998, post graduated M.Sc., Maths in the year 2008 and qualified B.Ed., course in the year 2010.

During the academic year 2011-2012, I have eligibility to get a promotion to Graduate Teacher in Mathematics arising in our school. However, I hereby inform you that due to family reason, I am not in a position to accept the promotion so that I don't want to promotion for this time only.



I request you to give promotion to me, in the next arising vacancy in B.T.Assistant Teacher Post or any other newly permitted post in our School.'

Letter dated 21.01.15

I am working as a Secondary Grade Teacher from 30.03.1994 in our School. During my course of employment I have completed M.Sc.(Post Graduate in Maths) and B.Ed., (Bachelor of Education).

During this academic year I am eligible to get promotion to P.G.Assistant Maths Teacher post due to fell vacant in this Academic year in our school. However due to my family circumstances, at present, I am not in a position to accept the promotion and I inform you, that I don't want any promotion only for this time.

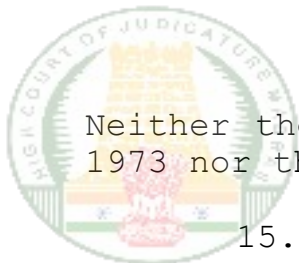
I request you to give promotion to me, through this letter, in the next arising vacancy in B.T.Assistant Teacher post and Post Graduate teacher post or newly permitted post in our School.'

11. The case of the appellants is that Ms.Kalyani is not entitled to the post created by the vacancy of Mr.Easwaran in the light of her relinquishment thereof. Per contra Ms.Kalyani argues that the relinquishment was temporary and operates only for the specific year that it relates to.

12. As far as the relinquishment under letter dated 05.03.2012 is concerned, it has been taken into consideration in respect of the vacancy caused by the promotion of K.Mariappan, as Headmaster. In fact, the said vacancy appears to have been filled in subsequently by proceedings of the Chief Educational Officer (CEO) dated 19.01.2017 and Mr.Shanmugasundaram appointed as Graduate Teacher Maths on 17.03.2017. This position has attained finality and appointment of Mr.Shanmugasundaram in the vacancy caused by the promotion of Mr.Mariappan has been accepted by Ms.Kalyani. Proceedings as far as letter dated 05.03.2012 are concerned thus, in our view have come to rest.

13. The issue that arises for consideration before us is the period for which a relinquishment of a right by a candidate would be operative. According to Ms.Kalyani and as accepted by the learned Single Judge, the relinquishment is specific to the academic year in which the letter of relinquishment was written and submitted. According to the official appellants, the relinquishment of the right is operative for a period of three years in terms of Rule 47 (1) of the Tamil Nadu State and Subordinate Service Rules' (in short 'Service Rules') and as far as the Educational officer is concerned, the relinquishment is operative with respect to the vacancy arising most proximate to the request itself.

14. In other words, the question is whether the letter of relinquishment is to be reckoned qua academic year, qua the most proximate vacancy that arises or for a period of three (3) years.



Neither the Tamil Nadu Recognized Private School (Regulations) Act, 1973 nor the Rules throw any light upon this aspect.

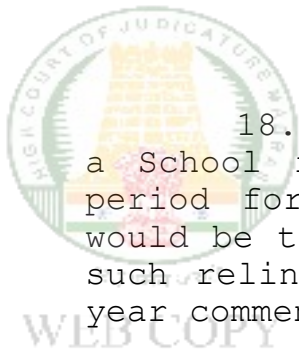
15. The stand of the official respondents both in their counter to the writ petition as well as before us is that a relinquishment of a right by a teacher towards promotion will be in force for a period of three years. This is in accordance with Rule 47 of the Service Rules that read as under:

'47. Relinquishment of rights by members- (1) Any person may in writing, relinquish any right of privilege to which he may be entitled under these rules or the Special Rules if, in the opinion of the appointing authority, such relinquishment is not opposed to public interest; and nothing contained in these rules or the Special Rules shall be deemed to require the recognition of any right or privilege to the extent to which it has been so relinquished.

(2) Relinquishment of a right or privilege for a temporary period shall be accepted if it is made for a period of not less than three years subject to the condition that after the expiry of the said period, the claim of the right or privilege relinquished will be with reference to the state of affairs that exist on the date of expiry of period of relinquishment and without restoration of original seniority. If relinquishment of right or privilege is made permanently and is accepted subsequent claim of the relinquished rights or privileges shall not be entertained.'

16. The Service Rules provides generally for the Rules governing service in the State as well as subordinate services. We are however concerned with the operation of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 which is a special enactment and the Rules enacted in connection therewith. In the absence of there being anything specific to lead us to the conclusion that the provisions of the former should be read into the latter, we find no justification in law to accept this argument. Furthermore, though faculty and staff in teaching establishments draw their pay from the government treasury, they are not in the service of the State as such.

17. Coming to the argument that relinquishment has to be qua the most proximate vacancy thereto, it is no doubt an attractive one. Practically however, it would be unworkable as the period for which such relinquishment would be operative would depend on the number of vacancies that exist and would thus fluctuate from case to case, compromising clarity and certainty in this regard. For this reason, we are of the view that operation of relinquishment can be only qua a specifi period of time and not qua the most proximate



18. Since the activities of a teaching establishment such as a School revolve around the academic year, we conclude that the period for which a relinquishment of a right would be operative would be till the completion of the relevant academic year in which such relinquishment is made. Academic year is defined to mean the year commencing on the first day of January or June.

19. In the present case, the academic year stretches between the 1st of June to 31st of May of the next year. The letter of Ms.Kalyani is dated 21.01.2015 and the relinquishment would thus be in operation till 31.05.2015 only. Mr.Eswaran has retired on 31.10.2015 and was re- appointed till 31.05.2016. The vacancy created by his retirement thus arose on 01.06.2016. In the light of our conclusion that the relinquishment vide letter dated 21.01.2015 is operative only till 31.05.2015, Ms.Kalyani was available for appointment in the vacancy caused by the retirement of Mr.Easwaran on 01.06.2016. That is not all.

20. We now advert to yet another contention put forth by Mr.Venkatramana assailing the appointment of Ms.Thamizharasi, quoting the provisions of Rule 15 (4) of the Tamil Nadu Recognized Private Schools (Regulation) Rules, extracted below:

15. Qualifications, conditions of service of Teachers and other persons:.....

(4) (i) Promotion shall be made on grounds of merit and ability, seniority being considered only when merit and ability are approximately equal.

(ii) Appointments to the various categories of Teachers shall be made by the following methods:-

(i) Promotion from among the qualified Teachers in that school; or

(ii) Promotion from among the qualified Vocational Instructors in that School;

(iii) If no qualified and suitable candidate is available by method (i)

(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.

In the case of appointment from any other school or by direct recruitment, the School Committee shall obtain prior permission of the District Educational Officer in respect of Pre-Primary, Primary and Middle School and that of the Chief Educational Officer in respect of High Schools and Higher Secondary Schools, Teachers' Training Institutions setting out the reasons for such appointment. In respect of Corporate



body running more than one school, the schools under that body shall be treated as one unit for purpose of this Rule.

21. As per the Rules extracted above, a vacancy that arises shall be filled in first by promotion among qualified teachers from within that school and only if no qualified or suitable candidates are available in-house, can the school look outside for suitable candidates. In the present case Ms. Tamizharasi has been chosen by migration despite the availability of a suitable candidate within the school. The argument advanced by the appellants is that Rule 15 (4) is not absolute and vests discretion in the school to choose a candidate from outside even in situations where the in-house candidate had the requisite qualifications. The use of the word 'suitability' in Rule 15(4), according to the appellants, supports this interpretation.

22. We find this argument acceptable. It is possible that an outside candidate may be preferred as more suitable in certain situations despite the availability of qualified candidates within the school. However, the reasons for such preference have to be elucidated clearly and a justification thereof set out in the proposal for appointment of the candidate to the official respondents. The confirmation or otherwise of such proposal by the official respondents should also reflect consideration of the preference made by the school. As far as the present case is concerned, the suitability of Ms. Kalyani has never really been tested as the issue thus far has only related to her relinquishment of the right to appointment or otherwise, her qualifications not being in dispute.

23. Allowing the writ petition, a positive direction has been issued by the learned single Judge to the authorities to appoint Ms. Kalyani within a time frame. In this regard, the Appellants place reliance upon a judgment of the Supreme Court in the case of Life Insurance Corporation of India and others v. Jagmohan Sharma and others [(1998) 9 Supreme Court Cases 219]. The Bench states, in considering a challenge to a positive direction issued by the High Court for promotion of a candidate, that the proper course of action in service matters would be to direct consideration of the candidate for promotion, if otherwise found fit.

24. In the light of our findings and conclusions at paragraph 22 above as well as applying the ratio of the aforesaid judgment, we direct the School Management to consider Ms. Kalyani for appointment to the post of B.T. Assistant Maths in the school and pass appropriate speaking orders after due opportunity to her as well as Ms. Tamizharasi in line with our observations in paragraph 22 of our order (infra) within a period of four weeks from date of receipt of



25. The writ appeals are disposed of in the above terms without any order as to costs. Consequently, connected miscellaneous petitions are closed.

WEB COPY

/True Copy/

Sd/-
Assistant Registrar (CO)

Sub Assistant Registrar (CS-IV)

To

1. The Director of School Education,
DPI Campus, Chennai-6.
2. The Chief Educational Officer,
Tirunelveli-3.
3. The District Educational Officer,
Tenkasi-626 811.

+1CC to Mr.T.S.R.VENKAT RAMANA, Advocate, SR.No. 77103
+1CC to Mr.D.NALLATHAMBI, Advocate, SR.No. 77240
+1CC to the Special Government Pleader SR.No. 77293

W.A (MD) Nos. 661, 662 and 664 of 2018
03.08.2018

TA
ES/KAK/SAR 4/11.08.2018/9P/7C