



WEB COPY

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.03.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.4709 of 2014

and

MP(MD)Nos.1 & 2 of 2014

V.Rajesh Kanna

... Petitioner

Vs.

1. The Joint Director of School Education
(Higher Secondary),
D.P.I Compound, College Road,
Chennai.

2. The District Educational Officer,
District Educational Office,
Dindigul.

3. The Secretary,
N.S.V.V.Boys Hr.Sec.School,
Pattiveeranpatti - 624 211,
Dindigul District.

4. M.Srikanth

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order in Na.Ka.41D/2013 dated 06.11.2013 on the file of the third respondent and consequential order in Mu.Mu.88391/W5/E2/2013 dated 27.02.2014 on the file of the first respondent and quash the same as illegal and consequently direct the respondent No.1 to 3 to promote the petitioner as P.G Assistant (English) in the third respondent school from date of vacancy with all consequential benefits within a time stipulated by this Court.

For Petitioner : Mr.Ajmal Khan,
Senior Counsel
for M/s.K.Hema Karthikeyan

For Respondents : Mrs.S.Srimathy,
Spl., Govt.Pleader for R1 & R2

Mr.N.Dilip Kumar for R3

Mr.V.Panneer Selvam for R4

**ORDER**

The writ petitioner is working as B.T Assistant (English) in the third respondent school. Vacancy arose in the post of P.G Assistant in English following the retirement of one M.Murugesan on 30.04.2013.

2.The fourth respondent was employed as B.T Assistant in Tamil. He possesses the qualification for being appointed to the post of B.T Assistant in English. The writ petitioner as well as the fourth respondent applied for being promoted to the said post. Both the applications were placed for consideration. But, the fourth respondent was appointed as P.G Assistant by order dated 03.10.2013. Aggrieved by the same, the petitioner filed an appeal before the first respondent herein. The first respondent herein called for remarks from the third respondent. The third respondent school passed a fresh resolution dated 06.11.2013. Thereafter, the first respondent rejected the petitioner's appeal on 27.02.2014. They are under challenge in this writ petition.

3.Heard Mr.Ajmal Khan, learned Senior counsel for M/s.K.Hema Karthikeyan, learned counsel for the petitioner as well as Mr.N.Dilip Kumar, learned counsel for the third respondent and Mr.V.Panneer Selvam for the fourth respondent.

4.To resolve the issue on hand, one must refer to Rule 15(4) of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974. It states that appointment to the various categories of teachers shall be made by promotion from among the qualified teachers in the school. Only if no qualified and suitable candidates are available, other modes can be resorted to. In this case, it is not in dispute that the writ petitioner as well as the fourth respondent are both qualified.

5.The learned Senior Counsel appearing for the petitioner took this Court through the text of the resolution passed by the school committee. The school committee resolution dated 06.05.2013 reads that since the fourth respondent herein is senior to the writ petitioner, it was decided to grant him promotion. But, As rightly pointed out by the petitioner's Senior counsel, Rule 15(4)(1) states that promotion shall be made on grounds of merit and ability, seniority being considered only merit and ability are approximately equal. But, in the present case, the resolution dated 06.05.2013 preferred the fourth respondent above the petitioner only on the ground of seniority. It did not take into account the comparative merit and ability of the candidates. Realizing that their resolution dated 06.05.2013 is not in conformity with the statutory parameters, to get over the same in the subsequent resolution, it has been made to appear as if there was comparative analysis. But, this comparative analysis was not made when giving promotion to the fourth respondent. The contention of the learned Senior counsel is well founded.



6.The learned counsel for the fourth respondent drew the attention of this Court to the subsequent resolution dated 06.11.2013 passed by the school Committee. When the writ petitioner filed an appeal before the first respondent and remarks were called for, this resolution came to be passed. It is no doubt true that the said resolution dated 06.11.2013 reads that there was comparative analysis and that thereafter, the fourth respondent respondent was chosen. This Court will have to test the selection process in the light of the contemporaneous materials. The resolution was passed only on 06.11.2013. This Court, therefore, rejects the subsequent resolution dated 06.11.2013 as an afterthought by the school management. In any event, even in the subsequent resolution, it is not evident as to how the comparative analysis was made.

7.In this view of the matter, the proceedings impugned in this writ petition stand quashed. The matter is remitted to the file of the third respondent to undertake a fresh exercise. It is made clear that this Court has not expressed any opinion on the merits of the matter with regard to the inter se merits of the respective candidates.

(*)7(A) Till such a fresh exercise is undertaken and concluded the status quo as on 23.03.2018 shall prevail.

8.This writ petition is allowed on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

Sd/-

Assistant Registrar (CS-I)

**(*)Amended as per order of
the court dated 21.08.2018.**

/True Copy/

Sub Assistant Registrar (CS-II)

To

**(*)To be substituted to the order already
despatched on 19.06.2018.**

1. The Joint Director of School Education
(Higher Secondary),
D.P.I Compound, College Road, Chennai.

2. The District Educational Officer,
District Educational Office, Dindigul.



+1CC to M/s.K.Hema Karthikeyan, Advocate, SR.No.57503

+1CC to Mr.N.Dilip Kumar, Advocate, SR.No.57635

+1CC to Mr.V.Panneer Selvam, Advocate, SR.No.57892

+1CC to the Special Government Pleader SR.No.58413

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23.03.2018

SKM

ES/SKN/RSK/SAR 3/19.06.2018/3P/7C

DS/ SKN/RSK/SAR 2 :23.08.2018: 4P/7C