



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.03.2018

Pronounced on : 04.06.2018

WEB COPY

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.203 & 251 of 2017

and

WMP(MD)Nos.161, 198 & 199 of 2017

and WMP(MD)No.6344 of 2018

Gandhigran Santhi High School

for Deaf,

Rep.by its Correspondent,

Sivasailam 627 412,

Tirunelveli District.

... Petitioner in WP(MD)No.203 of 2017

V.Saravanan

... Petitioner in WP(MD)No.251 of 2017

Vs.

1. The Commissioner for Differently Abled,
Government of Tamil Nadu,
K.K.Nagar, Chennai - 600 078.

2. The District Differently Abled Welfare
Officer,
Kokkirakulam, Tirunelveli District.

3.V.Ramesh ...1 to 3rd respondents
in both cases

V.Saravanan ...4th respondent in WP(MD)No.203 of 2017

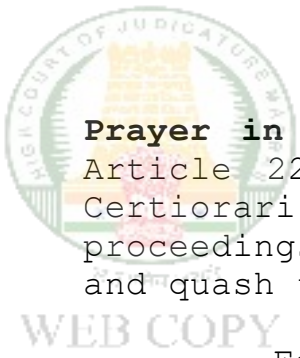
Gandhi Gramam Santhi High School
for Deaf, Rep.by its Secretary,

Sivasailam,

Tirunelveli District.

...4th respondent in
WP(MD)No.251 of 2017

Prayer in WP(MD)No.203 of 2017 : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent's proceedings order செ.மு.ந.க. ஆணை எண்.6110/சி.ப.1/2010 dated 27.12.2016 and quash the same as illegal and to approve the promotion of the fourth respondent as Head Master of the petitioner school with effect from 01.06.2010.



Prayer in WP(MD)No.251 of 2017 : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the first respondent's proceedings order செ.மு.ந.க. ஆணை எண்.6110/சி.ப.1/2010 dated 27.12.2016 and quash the same as illegal.

For Petitioner
in WP(MD)No.203 of 2017 : Mr.M.Senthil Kumar

For Petitioner
in WP(MD)No.251 of 2017 : Mr.R.R.Kannan

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

Mr.F.Deepak for R3 in both cases

Mr.R.R.Kannan for R4
in WP(MD)No.203 of 2017

Mr.M.Senthilkumar for R4
in WP(MD)No.251 of 2017

COMMON ORDER

Gandhi Gram Santhi High School for Deaf is an aided private school. It is governed by a Trust. Thiru.V.Saravanan, the petitioner in WP(MD)No.251 of 2017 was appointed as Secondary Grade Teacher in the school on 01.01.1995. He was promoted as graduate teacher with effect from 01.06.2006. Likewise, Thiru.V.Ramesh has been working in the school as Secondary Grade Teacher since 21.07.1993. The post of Headmaster fell vacant on 30.06.2009 following the retirement of the previous incumbent on superannuation. The school committee conducted an interview of all the eligible candidates on 17.05.2010. Totally three candidates appeared and that included Thiru.V.Ramesh as well as Thiru.Saravanan. Thiru.V.Saravanan was considered as more meritorious and the school committee resolved to promote him as the Headmaster of the school. Proposal was forwarded to the Commissioner for Differently Abled on 18.05.2010 seeking his approval for promoting Thiru.V.Saravanan as Headmaster. Thiru.V.Ramesh filed WP(MD)No.9385 of 2010 for quashing the said office order dated 31.05.2010 whereby Thiru.Saravanan was appointed as Headmaster in-charge of the school. The said writ petition was dismissed on 18.10.2011.

2. Thereafter, Thiru.V.Ramesh submitted a representation dated 23.10.2011. He also filed WP(MD)no.10171 of 2013 before this Court for directing the Commissioner of Differently Abled to



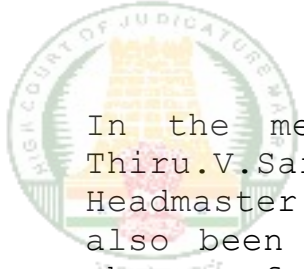
consider his representation. Without notice to the other parties concerned, a direction was given for consideration of the said representation. The first respondent thereafter passed the impugned order dated 27.12.2016 promoting Thiru.V.Ramesh as Headmaster of the school. The school management was not heard before passing the said order. Questioning the same, the school management has filed WP(MD)No.203 of 2017. Thiru.V.Saravanan also filed WP(MD)No.251 of 2017 assailing the said order. Since the challenge in both the writ petitions is to the very same order, they have been clubbed together.

3.Heard the learned counsel on either side.

4.The official respondents have filed a detailed counter affidavit. Since this Court granted interim order on 06.01.2017, to vacate the same Thiru.V.Ramesh has filed a vacate stay petition. He has also filed a typed set of papers. The stand of the official respondents as well as Thiru.V.Ramesh is that Thiru.V.Ramesh is admittedly senior to Thiru.V.Saravanan. Thiru.V.Ramesh joined the school on 21.07.1993. Thiru.V.Saravanan joined the school later on 01.01.1995. Thiru.V.Ramesh also faced disciplinary action. Penalty of stoppage of two increments with cumulative effect was passed. It was ultimately reduced into one of severe warning. According to the official respondents, this infliction of punishment alone was a ground for overlooking the case of Thiru.Ramesh. It is the further contention of the official respondents as well as Thiru.V.Ramesh that mere possessing the M.Ed., degree by Thiru.V.Saravanan cannot be a reason for preferring him over the senior candidate. The official respondents also found fault with the manner in which the disciplinary action was conducted against Thiru.Ramesh.

5.The sum and substance of the contention of the official respondents and that of Thiru.V.Ramesh is that when both are having the requisite eligibility/academic qualifications, the senior should have been preferred. The allegation of arbitrariness is denied. This is because, the authority went by an objective criteria, namely, seniority. It is further contended that the Commissioner for Differently Abled is having the powers to reverse the decision of the school committee. In this case, the institution in question is a non minority institution. It is receiving grant from the Government and that therefore the powers exercised by the competent authority cannot be questioned.

6.This Court is unable to agree with the said submissions of the official respondents and that of Thiru.V.Ramesh. It is seen that the school committee passed a resolution on 17.05.2010 resolving to promote Thiru.V.Saravanan as Headmaster of the school. This resolution of course requires the approval of the competent authority namely, the Commissioner for Differently Abled, Chennai.



In the meanwhile, an office order was issued directing that Thiru.V.Saravanan will look after the duties and functions of the Headmaster in-charge of the school. In the office order, it has also been mentioned that he has been appointed as Headmaster in charge of the school. The same was questioned by Thiru.V.Ramesh by filing WP(MD)No.9385 of 2010. The writ petition was dismissed by this Court by order dated 18.10.2011. While dismissing the writ petition, the learned Judge referred to the decision of the Hon'ble Supreme Court reported in **2007 (6) SCC 382 (S.Sethuraman vs. R.Venkatraman and others)**.

7.The issue on hand is whether the competent authority was justified in reversing the decision of the school committee in promoting Thiru.V.Saravanan as Headmaster or not. Since the school in question is an aided school, the relevant provision is Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules. 1974. It states that promotion shall be made on grounds of merit and ability, seniority being considered only when merit and ability are approximately equal. Therefore, the fact that Thiru.V.Ramesh is senior to Thiru.V.Saravanan could have become relevant only if the selection committee had come to the conclusion that their interse merit and ability are approximately equal.

8.In the present case, the selection committee took note of the fact that Thiru.V.Saravanan is having an additional qualification compared to Thiru.V.Ramesh. That apart, Thiru.Ramesh was found guilty in the disciplinary proceeding initiated against him. No doubt, the punishment of stoppage of two increments with cumulative effect was reduced into one of severe warning. But, the fact remains that he was awarded with a punishment. Taking into account these two aspects, the selection committee came to the conclusion that Thiru.V.Saravanan was more meritorious and able compared to Thiru.V.Ramesh. Since Thiru.V.Saravanan was considered as a better candidate, the fact that Thiru.V.Ramesh was senior paled into insignificance.

9.In that view of the matter, the selection committee resolved to promote Thiru.V.Saravanan as school headmaster. The competent authority clearly erred in overturning this decision and promoting Thiru.V.Ramesh instead of Thiru.V.Saravanan. The Hon'ble Supreme Court in the decision reported in **2007 (6) SCC 382 (S.Sethuraman vs. R.Venkatraman and others)** dealt with the scope of the said rule. It observed that promotion in terms of Rule 15 will have to be made primarily on the basis of merit and ability. As regards the power exercised by the appellate authority, the Hon'ble Supreme Court held that the appellate authority has indisputably a plenary power. It may not only consider the respective educational qualifications and other activities of the respective candidates for the purpose of arriving at a decision as



to which of the two candidates had better merit and ability, but it should exercise its jurisdiction keeping in view the views of the Managing Committee. If two views are possible, ordinarily, the view of the Managing Committee should be allowed to prevail.

10. In fact, while dismissing WP(MD)No.9385 of 2010 by order dated 18.10.2011, the aforesaid ratio was referred to and extracted in the said order. In this case, the first respondent ought to have borne in mind the said principle. The first respondent failed to apply correct principle of law. This Court will have to refer to the disciplinary action taken against Thiru.V.Ramesh. The allegation against the said Ramesh was that he used to go on unauthorised leave and that he came in a drunken condition to the hostel. The Commissioner for Differently Abled reduced the punishment into one of severe warning. He did not exonerate him. Thus, the delinquency against him stood established. That apart, the first respondent did not hear the school management or Thiru.V.Saravanan before proceeding to overturn the decision of the school committee. There is a clear violation of the principles of natural justice. The first respondent did not bear in mind the views expressed by the selection committee.

11. Therefore, the order impugned in these writ petitions is set aside. Even on merits, this Court is of the view that the decision taken by the school management to promote Thiru.V.Saravanan instead of Thiru.Ramesh by taking into account the additional qualifications possessed by Thiru.Saravanan and the fact that Thiru.V.Ramesh was warned severely by the first respondent in the disciplinary action, has to be sustained and upheld. The first respondent had misconstrued the scope of his powers.

12. Therefore, the first respondent is directed to approve the appointment of Thiru.V.Saravanan as Headmaster of the Gandhigran Santhi High School for Deaf with effect from 01.06.2010 and disburse the consequential benefits. Accordingly, both the writ petitions stand allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

<https://hc.services.courts.gov.in/hc/services/>

1. The Commissioner for Differently Abled,

Government of Tamil Nadu, K.K.Nagar, Chennai - 600 078.



2. The District Differently Abled Welfare Officer,
Kokkirakulam, Tirunelveli District.

+ 1 cc TO Mr.F.Deepak , Advocate in SR No. 66552

+ 1 cc TO Mr.R.R.Kannan , Advocate in SR No. 66516

+ 1 cc TO The Special Government Pleader in SR No. 66952

SKM

AE/SV/SAR1/14.06.2018/6P/6C

Order in
W.P(MD) Nos.203 & 251 of 2017
and
WMP(MD) Nos.161, 198 & 199 of 2017
and WMP(MD) No.6344 of 2018
04.06.2018