



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

and

THE HONOURABLE MR.JUSTICE P.D.AUDIKESSAVALU

W.A. [MD]No.1299 of 2018

and

C.M.P. [MD]Nos.9240 and 10555 of 2018

M.Srikanth

... Appellant/4th Respondent

Vs.

1. V.Rajesh Kanna

...1st Respondent/Writ Petitioner

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

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

4. The Secretary,
N.S.V.V.Boys Higher Secondary School,
Pattiveeranpatti-624 211,
Dindigul District.

...2nd to 4th Respondents/
2nd to 3rd Respondent

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent against the order of Writ Court dated 23.03.2018, made in W.P.(MD) No.4709 of 2014.

Prayer in WP(MD).No. 4709/ 2014 :

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 pertaining to the impugned order in Na.Ka.No.41D/2013 dated 6.11.2013 on the file of the 3rd respondent and consequential order in Mu.Mu.88391/W5/E2/2013 dated 27.2.2014 on the file of the 1st respondent and quash the same as illegal consequently direct the respondent no.1 to 3 to promote the petitioner as PG Assitant (English) in the 3rd responent school from date of vacancy with all consequential benefits within a time stipulated by this Honble Court.

For Appellant

: Mr.V.Panneer Selvam

<https://hcservices.ecourts.gov.in/hcservices/> For Respondent No.1

: Mr.M.Ajmalkhan,
Senior Counsel,
For Mr.J.Lawrance



For Respondents 2&3 : Mr.A.K.Baskarapandian,
Special Government Pleader
For Respondent No.4 : Mr.D.Venkatesh

J U D G M E N T

[Judgment of the Court was delivered by **K.K.SASIDHARAN, J.**]

Challenge in this intra-Court Appeal is to the order dated 23 March, 2018, in W.P.(MD)No.4709 of 2014, setting aside the appointment of the appellant in the post of P.G. Assistant in English.

THE BACKGROUND:

2. The first respondent was employed as B.T. Assistant (English) in N.S.V.V. Boys Higher Secondary School, the fourth respondent in this appeal. The appellant was employed as B.T.Assistant in Tamil in the very same Institution. The appellant and the first respondent submitted applications for appointment to the post of P.G. Assistant in English. The Management appointed the appellant as P.G. Assistant, by order dated 03 October, 2013. Feeling aggrieved by the said appointment, the first respondent filed an appeal before the Joint Director of School Education, Chennai. The Appellate Authority called for remarks from the Management. The Management, on receipt of the notice issued by the Appellate Authority, passed a resolution dated 06 November, 2013 considering the *inter se* merits. The Appellate Authority rejected the appeal taking into account the fresh resolution dated 06 November, 2013. The order passed by the Appellate Authority was put in issue before the Writ Court in W.P.(MD)No.4709 of 2014.

3. The learned Single Judge found that the appellant was promoted as P.G. Assistant only on account of his seniority. There was no consideration of the *inter se* merit, as provided under Rule 15(4)(i) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974. The learned Single Judge, therefore, quashed the selection and directed the Management to undertake a fresh exercise. The said order is under challenge at the instance of the fourth respondent in the Writ Petition.

RIVAL SUBMISSIONS:

4. The learned counsel for the appellant contended that the *inter se* merit was considered by the Management and a resolution was passed on 06 November, 2013. According to the learned counsel, the Management considered the relative merit objectively and a decision was taken to appoint the appellant. The learned Single Judge was, therefore, not correct in setting aside the selection of the appellant.

5. The learned Senior Counsel appearing for the first respondent, while supporting the order passed by the learned Single



Judge, contended that there was no consideration of the *inter se* merits and the appellant was appointed only on the basis of his seniority. According to the learned Senior Counsel, there was total non-compliance of the statutory provisions and as such, the learned Single Judge was justified in setting aside the selection.

ANALYSIS:

6. It is not in dispute that the appellant and the first respondent were eligible for appointment to the post of P.G. Assistant. The appellant was senior to the first respondent. The post in question could be filled up only in accordance with the procedure prescribed under Rule 15(4)(i) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974. The Managing Committee was expected to consider the merit and ability and only in case both the candidates are found equal in all respects, the seniority would come into play. There was no consideration of the relative merits and ability when the resolution was passed by the Managing Committee at the first instance, pursuant to which, the appointment order was issued to the appellant on 03 October, 2013. It was only when the Appellate Authority called upon the Management to submit its remarks with regard to the selection of the appellant, that a fresh resolution was passed on 06 November, 2013, determining the *inter se* merit. The fact that the Management passed a fresh resolution dated 06 November, 2013 clearly supports the case of the first respondent that there was no consideration of the merit and ability initially when the appellant was selected to the post of P.G. Assistant.

7. When the Statute says that a particular thing should be done in a particular manner, it shall be done in that manner alone.

8. The Management was expected to comply with Rule 15(4)(i) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 in its true spirit. The earlier resolution proceeds as if seniority was the sole criteria for appointment to the post of P.G. Assistant. The Management realized its mistake later and the same resulted in passing a fresh resolution on 06 November, 2013 determining the relative merits and ability of the two candidates, who were in the zone of consideration. The learned Single judge was, therefore, perfectly correct in setting aside the selection of the appellant, as it was in violation of the mandatory provisions of the Statute. We, therefore, do not find any ground made out by the appellant for our interference.

9. In the upshot, we dismiss the Intra-Court Appeal. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

Sub Assistant Registrar(CS-I)



To

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 Mr.V.Panneer Selvam, Advocate Sr.No.94646

+1cc to SPL.Govt.Pleader, Sr.No.94606

+1cc to Mr.J.Lawrance, Advocate Sr.No.94576

+1cc to Mr.D.Venkatesh, Advocate Sr.No.94533

SML

KM/PM/SAR1/07.12.2018/4P/7C

Judgment made in
W.A. [MD]No.1299 of 2018
Dated: 08.11.2018