

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.A. No. 1344 of 2014
and
M.P. No. 1 of 2014

1. The State of Tamil Nadu
Rep. by its Secretary to Government,
Education Department,
Secretariat,
Fort St. George,
Chennai - 600 009.
 2. The Director of Elementary Education,
College Road,
Chennai - 600 006.
 3. The District Elementary Education Officer,
Tanjore.
 4. The Additional Assistant Elementary Education Officer,
Kumbakonam.
- ... Appellants/
First to Fourth Respondents

-vs-

1. B. Rajavel
... Respondent/
Petitioner
2. Bharathi Aided Primary School
Rep. by the Secretary,
Alamankurichi,
Kumbakonam.
... Respondent/
Fifth Respondent

PRAYER:- Writ Appeal filed under Clause 15 of Letter Patent,
praying to set aside the order dated 09.10.2013 passed in W.P.
No. 27805 of 2013.

Prayer in W.P. No. 27805 of 2013: To direct the 2nd respondent to approve the appointment of the petitioner as Secondary Grade Headmaster w.e.f. 13.4.1998 in the 5th respondent school with all consequential benefits in the light of the order passed in W.P.No.16383 of 2000 dated 3.11.2008 confirmed by the order in W.A.No.1408 of 2010 dated 8.12.2011 on the basis of the representation dated 23.4.2013.

For Appellants : Mr. C. Munusamy,
Special Government Pleader

For Respondents : Mr. S.N. Ravichandran (for R1)

J U D G M E N T

(Judgment of the Court was delivered by P.D. AUDIKESAVALU, J.)

The intra-Court Appeal arises out of the order dated 09.10.2013 in W.P. No. 27805 of 2013 passed by the Learned Judge of this Court. The parties are hereinafter referred to as per their description in the Writ Petition for the sake of convenience.

2. The chronological sequence of events leading to the filing of this Writ Appeal are given below:-

- (i) The vacancy arose to the post of Secondary Grade Headmaster in the School of the Fifth Respondent due to the retirement of the previous incumbent on 28.02.1998 and the Third Respondent by proceedings in O. Mu. No. 3024/A5/98 dated 06.04.1998 granted permission to fill up that vacancy.
- (ii) Since the existing teachers had relinquished promotion, the Fifth Respondent had resorted to fill up that vacancy by selection from the open market and it was notified to the District Employment Exchange to furnish a list of eligible candidates for that post with five years teaching experience. As there were no eligible candidates sponsored by the District Employment Exchange, the Fifth Respondent issued an advertisement in the newspaper on 04.04.1998 for that post.
- (iii) The Petitioner had passed B.A., in the year 1991 and B.Ed., in the year 1992 and had worked as teacher from 02.01.1993 to 16.04.1996 at Lord Krishna Matriculation School and again from 01.06.1996 to 10.04.1998 at National Vidhyalaya CBSE School.
- (iv) The Petitioner had applied for the post of Headmaster and the School Committee selected the Petitioner by order dated 13.04.1998.

- (v) The Fifth Respondent submitted the proposal dated 15.04.1998 to the Third Respondent for approving the appointment of the Petitioner as Headmaster.
- (vi) The Third Respondent returned that proposal without approving the appointment of the Petitioner on the ground that the Petitioner did not have the required qualification for the post of Secondary Grade Headmaster in terms of G.O. Ms. No. 559, Education Science and Technology Department dated 11.07.1995 issued by the Government of Tamil Nadu.
- (vii) A batch of Writ Petitions were filed in this Court challenging G.O. Ms. No. 559, Education Science and Technology Department dated 11.07.1995, and the same were dismissed by order dated 19.05.1998 and confirmed by the Division Bench of this Court by order dated 21.06.2001 in Secretary & Correspondent, Uswathun Hasana Oriental (Arabic) Girls Higher Secondary School -vs- State of Tamil Nadu [2002 WLR 173] with certain observations.
- (viii) In furtherance to the aforesaid decision of this Court, the Government of Tamil Nadu had issued G.O. Ms. No. 155, School Education (D2) Department dated 03.10.2002 in which permission was granted for approval of qualified graduates appointed in the already sanctioned vacancies for the period from 11.07.1995 to 19.05.1998 in the post of permanent Secondary Grade Teachers in Private Schools, if they had successfully completed training for a period of one month in a short term course on child psychology in their respective District Teachers Education and Training Institute (DIET).
- (ix) Subsequently, the Government of Tamil Nadu by G.O. Ms. No. 36, School Education (B1) Department dated 22.03.2005 granted permission to provide training for a period of one month in child psychology to Graduate Teachers appointed directly as Primary School Headmasters after getting undertaking from them that they should satisfy the five years of teaching experience reckoning from the date of completion of training and that they were willing to receive salary as Secondary Grade Teachers for five years and salary as Headmasters after completion of five years, and the requirement of the satisfying qualifications prescribed in item No. 1-A of Annexure-V as per Rule 15(6) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, was relaxed to that extent.
- (x) In pursuance thereof, the Petitioner underwent training in child psychology and the Second Respondent by order Rc. No. 4748/05/A4 dated 22.08.2005 approved the appointment of the Petitioner as Secondary Grade Headmaster on the following conditions:-
 - (a) He will be permitted Secondary Grade Time Scale (4500-125-7000) from the date of appointment 25.06.2005 and from the next date of completion of five years service as Secondary Grade Teacher, he will be permitted the

- scale of pay of Primary School Headmaster.
- (b) He should not claim any financial benefit and advance increment for higher educational qualification.
 - (c) His appointment is approved subject to the condition that he should work under any management, in any District, if he is considered to be found surplus and junior.
 - (d) As per Government Order No. 525, School Education Department dated 29.12.1997, the attendance of Boys and Girls students to be maintained without any shortfall.
- (xi) Since the grant-in-aid was not sanctioned for the period from 13.04.1998 to 25.06.2005, when he completed training in child psychology, the Petitioner filed W.P. No. 27805 of 2013 in this Court seeking a direction to the Second Respondent to approve his appointment as Secondary Grade Headmaster with effect from 13.04.1998 in the school of the Fifth Respondent with all consequential benefits in the light of the order passed in W.P. No. 16383 of 2000 dated 03.11.2008, confirmed by the order in W.A. No. 1408 of 2010 dated 08.12.2011 on the basis of the representation dated 23.04.2013.
- (xii) The Learned Judge, who heard the Writ Petition, by order dated 09.10.2013, in the light of the cases cited by the Petitioner in the order dated 03.11.2008 in W.P. No. 16383 of 2000, which was confirmed in order dated 08.12.2011 in W.A. No. 1408 of 2010, was of the view that the Petitioner was entitled to the benefit of grant-in-aid even for the period from 13.04.1998 to 25.06.2005 in addition to what had been granted in the order dated 22.08.2005 by the Second Respondent and directed the Second Respondent to consider the representation dated 23.04.2013 made by the Petitioner and pass appropriate orders in that regard and disposed the Writ Petition.

Aggrieved thereby, the First to Fourth Respondents have preferred this appeal.

3. We have heard Mr. C. Munusamy, Learned Special Government Pleader appearing on behalf of the First to Fourth Respondents, Mr. S.N. Ravichandran, Learned Counsel appearing for the Petitioner and perused the materials placed on record, apart from the pleadings of the parties.

4. The question that arises for consideration in this appeal is whether the Petitioner is entitled for salary by way of grant-in-aid from the First to Fourth Respondents for the period from 13.04.1998 to 25.06.2005 in the post of Secondary Grade Teacher in the School of the Fifth Respondent? It requires to be noticed at the outset that the qualifications for the post of Headmaster in Elementary and Middle School stipulated in item No.1-A in

Annexure-V as prescribed in Rule 15(6) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, made in the exercise of the power conferred in Section 19 of the Tamil Nadu Private Schools (Regulation) Act, 1973, are the following:-

- (1) S.S.L.C.;
- (2) Trained Secondary School Leaving Certificate (hereinafter referred to as 'T.S.L.C.' for short) of Secondary Grade or its equivalent; and
- (3) Should have worked as Secondary Grade Teacher in any recognised School for a period of not less than five years after obtaining the T.S.L.C. of Secondary Grade or its equivalent.

Section 20 of the Tamil Nadu Recognised Private Schools Regulation Act, 1973, creates an absolute bar for any person to be employed as a teacher in a Private School without possessing the required qualifications after the commencement of the Tamil Nadu Recognised Private Schools Regulation Act, 1973.

5. After duly considering the aforesaid statutory provisions, the Division Bench of this Court in Secretary & Correspondent, Uswathun Hasana Oriental (Arabic) Girls Higher Secondary School -vs- State of Tamil Nadu [2002 WLR 173], has held that the requirement of T.S.L.C. of Secondary Grade is a mandatory requirement for teaching in Primary School, as such teacher is required to know the behaviour of the children and kindergarten methods to bring up children and it would be improper to equate the teachers who have been training in T.S.L.C. with those possessing B.T. or B.Ed., Degree, which is meant for teaching students in High School and Higher Secondary level.

6. The Hon'ble Supreme Court of India has also taken the same view as evident from the decisions in P.M. Latha -vs- State of Kerala [(2003) 3 SCC 541], Yogesh Kumar -vs- Govt. of NCT, New Delhi [(2003) 3 SCC 548] and Dilip Kumar Ghosh -vs- Chairman [(2005) 7 SCC 567] while dealing with similar provisions in the corresponding statutes of other States in the country. It would be useful here to refer to the decision of the Hon'ble Supreme Court of India in Dilip Kumar Ghosh -vs- Chairman [(2005) 7 SCC 567] in which it has been held as follows:-

"10. The Rules, as noticed above, were framed primarily for recruitment of teachers for primary school and the Rules were designed to give an incentive to the teachers who are specifically trained to teach in primary schools. The rationale behind the framing of this Rule is that JBT/PTTC certificate trained teachers should be appointed so that they can impart proper education to the primary school students in terms of the aims and object with a trained hand. The Rules purposely laid an emphasis that all the candidates for teachers in primary schools who

possessed JBT/PTTC should be appointed for a development of the child. The primary education is up to fourth standard. There is a middle education and then secondary and higher secondary education. For teaching in the primary school, therefore, one must know the child psychology and development of a child at a tender age. As already noticed, the candidates like the appellants who are trained in B.Ed., degree are not necessarily to be equipped to teach the students of primary class. They are not trained and equipped to understand the psychology of a child of tender age."

7. The Division Bench of this Court in Government of Tamil Nadu -vs- J. Metildaviji (Order dated 21.03.2018 in W.A. No. 935 of 2014) in which one of us (K.K. Sasidharan, J.) is a party, has held as follows:-

"13. There are no statutory provisions under the School Regulation Act giving relaxation in the matter of experience. The Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 also contain the requirement of basic qualification and experience for appointment to the post of Headmaster. There is no provision giving relaxation in the Regulations also. We therefore, make the position very clear that the candidates for appointment to the post of Middle School Headmaster must have five years of experience as a teacher. We also make it clear that there is no provision for giving relaxation in the matter of either qualification or experience."

The Hon'ble Supreme Court of India in State of Orissa -vs- Mamata Mohanty [(2011) 3 SCC 436] after referring to the earlier decisions governing the various issues which are also arise for consideration in the present case, has held that a person who did not possess the requisite qualification on the date of appointment shall not be entitled for grant-in-aid scheme till he completes the deficiency, and that his case could be considered only from the date of completing the deficiency for extending the benefit of grant-in-aid scheme. It would be useful to refer to relevant passages in that decision which are squarely applicable to the facts of this case, and the same are extracted below:-

"29. Education is the systematic instruction, schooling or training given to the young persons in preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. Education connotes the process of training and developing the knowledge, skill, mind and character of students by formal schooling. The

excellence of instruction provided by an educational institution mainly depends directly on the excellence of the teaching staff. Therefore, unless they themselves possess a good academic record/minimum qualifications prescribed as an eligibility, it is beyond imagination of anyone that standard of education can be maintained/enhanced.

33. it is evident that education is necessary to develop the personality of a person as a whole and in totality as it provides the process of training and acquiring the knowledge, skills, developing mind and character by formal schooling. Therefore, it is necessary to maintain a high academic standard and academic discipline along with academic rigour for the progress of a nation. Democracy depends for its own survival on a high standard of vocational and professional education. Paucity of funds cannot be a ground for the State not to provide quality education to its future citizens. It is for this reason that in order to maintain the standard of education the State Government provides grant-in-aid to private schools to ensure the smooth running of the institution so that the standard of teaching may not suffer for want of funds.

34. Article 21-A has been added by amending our Constitution with a view to facilitate the children to get proper and good quality education. However, the quality of education would depend on various factors but the most relevant of them is excellence of teaching staff. In view thereof, quality of teaching staff cannot be compromised. The selection of the most suitable persons is essential in order to maintain excellence and the standard of teaching in the institution. It is not permissible for the State while controlling the education it may impinge the standard of education....

37. It is a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all further proceedings

consequent thereto will be non est and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin.

40. lacking eligibility as per the rules/advertisement cannot be cured at any stage and making appointment of such a person tantamounts to an illegality and not an irregularity, thus cannot be cured. A person lacking the eligibility cannot approach the court for the reason that he does not have a right which can be enforced through Court.

50. In absence of an enabling provision for grant of relaxation, no relaxation can be made. Even if such a power is provided under the Statute, it cannot be exercised arbitrarily. Such a power cannot be exercised treating it to be an implied, incidental or necessary power for execution of the statutory provisions. Even an implied power is to be exercised with care and caution with reasonable means to remove the obstructions or overcome the resistance in enforcing the statutory provisions or executing its command. Incidental and ancillary powers cannot be used in utter disregard of the object of the Statute. Such power can be exercised only to make such legislation effective so that the ultimate power will not become illusory, which otherwise would be contrary to the intent of the legislature.

51. More so, relaxation in this manner is tantamount to changing the selection criteria after initiation of selection process, which is not permissible at all. Rules of the game cannot be changed after the game is over.

56. It is a settled legal proposition that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief.

57. This principle also applies to judicial pronouncements. Once the court comes to the conclusion that a wrong order has been passed, it becomes the solemn duty of the court to rectify the mistake rather than perpetuate the same....

58. We are fully alive of the object and purpose of according recognition and affiliation to educational institutions. It is the educational authorities of the State which grant recognition to a Committee of Management for opening or running an educational institution. Affiliation is granted by the particular University or Board for undertaking the examination of the students of that college for awarding degrees and certificates. Therefore, while granting the recognition and affiliation even for non-governmental and non-aided private colleges, it is mandatory to adhere to the conditions imposed by them, which also include the minimum eligibility for appointment of teaching staff. The authority at the time of granting approval has to apply its mind to find out whether a person possessing the minimum eligibility has been appointed...."

8. It was in furtherance to the observations of the Division Bench of this Court in Secretary & Correspondent, Uswathun Hasana Oriental (Arabic) Girls Higher Secondary School -vs- State of Tamil Nadu [2002 WLR 173] that the Government of Tamil Nadu issued G.O. Ms. No. 155, School Education (D2) Department dated 03.10.2002 granting permission for approval of qualified graduates for appointment in already sanctioned vacancies in the post of permanent Secondary Grade Teachers appointed during the period from 11.07.1995 to 19.05.1998 in the Private Schools on condition that they should successfully complete the short term training for a period of one month in child psychology at their own expense in their respective District Teachers Education and Training Institute (DIET). It was further permitted by the Government of Tamil Nadu in G.O. Ms. No. 36, School Education (B1) Department dated 22.03.2005 to provide training in child psychology for one month to the Graduate Teachers who are appointed directly as Primary School Headmasters after getting declaration from them to the effect that they should satisfy the five years of teaching experience reckoning from the date of completion of training and that they were willing to receive salary as Secondary Grade Teachers for five years and salary as Headmasters after completion of five years, and requirement of the qualifications stipulated in item No. 1-A of Annexure-V as prescribed in Rule 15(6) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, was relaxed to that extent to the appointment of Graduate Teachers directly as Primary School Headmasters without T.S.L.C.

9. It is evident from the aforesaid factual matrix viz-a-viz the legal position governing the matter in controversy that the Petitioner, who did not hold the requisite educational qualification of T.S.L.C. and teaching experience of five years

after obtaining T.S.L.C., could not have been appointed as Primary School Headmaster on 13.04.1998. It was only in view of the benefits extended to the B.Ed., graduates appointed till 19.05.1998, if they had successfully completed the short term training in child psychology, that they were permitted by the Respondents to work in the post of Primary School Headmaster. In other words, the entitlement of the Petitioner to salary as grant-in-aid from the Respondents could be derived only in terms of G.O. Ms. No. 36, School Education (B1) Department dated 22.03.2005 read with G.O. Ms. No. 155, School Education (D2) Department dated 03.10.2002, from the date following his successful completion of the one month training of the short term course in child psychology. Admittedly, the Petitioner had successfully completed training in child psychology only on 25.06.2005. As a corollary, it would follow that the functioning of the Petitioner as Primary School Headmaster from 13.04.1998 to 25.06.2005 could not be approved by the Respondents. This would mean that the period in which those persons, who had B.Ed., degree without T.S.L.C., worked as Headmaster could not be reckoned for the purpose of grant-in-aid from the Government till they successfully underwent the short term training for a period of one month in child psychology. As such, in the present case, the services of the Petitioner in the school of the Fifth Respondent till 25.06.2005 could not be reckoned for the purpose of salary by way of grant-in-aid from the First to Fourth Respondents. We are fortified in arriving at this conclusion by the decisions of the Division Benches of this Court in State of Tamil Nadu -vs- Pallivasal Primary School [(2004) 2 LW 591] and in Director of Elementary Education -vs- Sundaravel Raj (Order dated 21.03.2018 in W.A. (MD) No. 74 of 2015).

10. Coming to the contention of the Petitioner that the relief sought in the Writ Petition had been granted to similarly placed persons by this Court in Joint Director of Elementary Education -vs- N.S. Meenakshi (Order dated 20.03.2007 in W.A. No. 442 of 2007) confirming the order dated 06.11.2006 in W.P. No. 21006 of 2006, and in State of Tamil Nadu -vs- Rational Primary Aided Elementary School (Order dated 08.12.2011 in W.A. No. 1408 of 2010) confirming the order dated 03.11.2008 in W.P. No. 16383 of 2000, we find that those orders have been passed without reference to the binding decision of the Division Bench of this Court in State of Tamil Nadu -vs- Pallivasal Primary School [(2004) 2 LW 591] holding the field. In any event, those orders, which run counter to the legal principles that have been extracted supra from the authoritative pronouncement of the Hon'ble Supreme Court of India in State of Orissa -vs- Mamata Mohanty [(2011) 3 SCC 436], have been denuded of their status as precedent and cannot be relied upon to extend the same benefit to the Petitioner in this case.

11. Hence, we are of the considered view that it would be erroneous to extend the benefit of payment the salary by way of grant-in-aid from the Government for the period from the date of his initial appointment on 13.04.1998 till 25.06.2005 when he completed the short term training in child psychology. This would not, however, preclude the right of the Petitioner to invoke Section 70 of the Indian Contract Act, 1872, to pursue legal remedies for recovery of the salary for that period from the Fifth Respondent (Management of the aided school) who had extracted work from him as held by the Hon'ble Supreme Court of India in Government of Andhra Pradesh -vs- K. Brahmanandam [(2008) 5 SCC 241] in a similar fact situation. It is needless to add here that the benefit of payment of salary by way of grant-in-aid to the Petitioner as Secondary Grade Teacher for the period of five years from 25.06.2005 and as Headmaster of Primary School for the period after the completion of five year period as Secondary Grade Teacher, in terms of the order in Rc. No. 4748/05/A4 dated 22.08.2005 passed by the Second Respondent remains undisturbed.

12. In the result, the Writ Appeal is allowed, the order dated 09.10.2013 in W.P. No. 27805 of 2013 is set aside and the Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

vjt

Sub Assistant Registrar

To

1. The Secretary to the Government of Tamil Nadu,
Education Department,
Secretariat,
Fort St. George,
Chennai - 600 009.

2. The Director of Elementary Education,
College Road,
Chennai - 600 006.

3. The District Elementary Education Officer, Tanjore.

4. The Additional Assistant Elementary Education Officer,
Kumbakonam.

+1 cc to the Government Pleader, S.R.No.22059

PP(CO)
SSM(05/04/2019).

W.A. No. 1344 of 2014