

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2019

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.27426 of 2019

& WMP No.26888 of 2019

Nehru Primary School,
rep. by its Manager & Correspondent,
Tirunelveli District.

.. Petitioner

Vs

1. The State of Tamil Nadu,
rep. by its Chief Secretary to Government,
Fort St.George,
Chennai-09.

2. The Director of School Education,
College Road, Chennai-06.

3. The Director of Elementary Education,
College Road, Chennai-06.

4. The District Educational Officer,
Tirunelveli.

5. The Block Educational Officer,
Palayamkottai, Tirunelveli.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the entire records connected with the impugned order passed by the 1st respondent in Lr.No.23903/Tho.Ka-2(1)/2018, dated 28.3.2019 confirming the order passed by the 3rd respondent in Na.Ka.No.006047/G1/2017 dated 19.07.2018, quash the same and consequently, direct the respondents to approve the appointment of Thiru.J.M.L.Jamal Mohammed Lebbai as Headmaster of the petitioner school with effect from 01.09.2014 with all consequential monetary benefits.

For Petitioner : Mr.S.N.Ravichandran
For Respondents : Mr.C.Munusamy, Spl.GP

O R D E R

This petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus, to call for the entire records connected with the impugned order passed by the 1st respondent in Lr.No.23903/Tho.Ka-2(1)/2018, dated 28.3.2019 confirming the order passed by the 3rd respondent in Na.Ka.No.006047/G1/2017 dated 19.07.2018, quash the same and consequently, direct the respondents to approve the appointment of Thiru.J.M.L.Jamal Mohammed Lebbai as Headmaster of the petitioner school with effect from 01.09.2014 with all consequential monetary benefits.

2. The petitioner school is an aided minority institution. A vacancy arose for the post of Primary School Headmaster on 01.01.2013. Initially, in the said vacancy, one Tmt.M.Resavamma, who was working as Secondary Grade Teacher was appointed on 01.01.2013, who later on 31.08.2014, tendered a letter expressing her unwillingness to continue as Headmistress due to her ill health. Likewise, other eligible teachers working in the school also expressed their unwillingness to be appointed as Headmaster of the school. In such circumstances, the petitioner school, being minority institution, of its choice, selected and appointed one Thiru.J.M.L.Jammal Mohammed Lebbai as Headmaster with effect from 31.08.2014, who also joined the post. Thereafter, on 4.10.2014, the petitioner school sent proposal for approval of the appointment of the Headmaster. However, by order dated 19.07.2018, 3rd respondent refused to approve the appointment of the Headmaster on the ground that two Secondary Grade teachers were found surplus in the school. Aggrieved by the same, the petitioner preferred an appeal before the 1st respondent, who also confirmed the order of the 3rd respondent vide order dated 28.03.2019, on the ground that the appointed incumbent did not possess five years of teaching experience. Challenging both the orders passed by 3rd and 1st respondents, the petitioner school has come forward with the present Writ Petition.

3. Learned counsel appearing for the petitioner would contend that the impugned orders of the respondents 1 and 2 are liable to be quashed since the grounds stated therein for rejection of the approval of the appointment of headmaster, are untenable and cannot be sustained. He would point out that the primary grounds for rejection of the approval of the appointment of headmaster of the school as found in the impugned orders are that there are two/three Secondary Grade Teachers posts were found surplus in the school and that the appointee did not have

five years experience. As regards these, the learned counsel would submit that surplus of two/three Secondary teachers posts as surplus in the school is nothing to do with the appointment of headmaster since it was made against sanctioned permanent vacancy and that the appointee did not possess five years experience is contrary to record as at the time of appointment, he had four years and one month experience and on the date of impugned order, dated 19.7.2018, he had 8 years and 11 months experience. Learned counsel also pointed out that by G.O.Ms.No.97, the Government has relaxed five years teaching experience for appointment of headmaster and without considering these aspects, the respondents 1 and 3 have passed the impugned orders mechanically without applying their minds, which cannot be sustained. Hence, the learned counsel would implore this Court to direct the respondents to approve the appointment of the headmaster while setting aside the impugned orders.

4. No doubt, being a Minority Institution, it is open to the petitioner to make appointment of Headmaster of its choice, provided such Headmaster appointed is well qualified, as per the Rules framed under the Tamil Nadu Private Schools (Regulation) Act, 1973. The appointment to the post of Headmaster is governed by Rule 15(4)(ii) of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974, which read as thus:

"4(i)

(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.

(ii) If no qualified and suitable candidate is available by method (i) above, -

(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 the prior permission of the District Educational Officer in respect of Pre-primary, Primary and Middle School and that of the Chief Educational Officer, 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.]"

5. Selection and appointment of Headmaster in a school, are of prime importance in administration of that educational institution. The Headmaster is the key post in the running of the school. He is the hub on which all the spokes of the school are set around whom they rotate to generate result. A school is personified through its Headmaster and he is the focal point on which outsiders look at the school. A bad Headmaster can spoil the entire institution, an efficient and honest Headmaster can improve it by leaps and bounds. The functional efficacy of a school very much depends upon the efficiency and dedication of its Headmaster. In various cases, the Hon'ble Supreme Court observed that the post of the headmaster was of pivotal importance in the life of the school, therefore the right to choose the headmaster is perhaps the most important facet of the right to administer a school. In "A.M. Patroni v. E.C. Kesvan's case, the Hon'ble Apex court observed clearly the importance of the role of the headmaster in the life of the institution. The post of the headmaster is of pivotal importance in the life of a school. Around him wheels the tone and temper of the institution on him depends the continuity of its traditions, the maintenance of discipline and the efficiency of its teaching, and therefore, the right to choose the headmaster is perhaps the most important facet of the right to administer the school, and we must hold that imposition of any trammel thereon except to the extent of prescribing the requisite qualification and experience cannot but considered as a violation of the right guaranteed by Art 30 (1) of the constitution. To hold otherwise will make the right a teasing illusion, a promise of unreality".

6. Therefore, in the matter of selection and appointment of a Headmaster which is a key post in the running of the school, utmost care and caution has to be taken to see that a well qualified and apt person be selected. In the present case, admittedly, the incumbent who was selected for the post of Headmaster, i.e. one J.M.L.Jamal Mohammed Lebbai, has no requisite teaching experience i.e. five years as on the date of proposals sent to the authorities. Ofcourse, it is true that in number of occasions, the authorities and this Court has granted exemption to such of those appointees who were not having five years of teaching experience. But such relaxation has been granted in the peculiar circumstances, when no candidates for appointment of Headmaster were available either from among the working teaching staff and also from direct recruitment through Employment Exchange. In the present case, it is the case of the petitioner that one Tmt.M.Resavamma, who was earlier appointed

as Headmistress, had given a letter expressing her unwilling to hold the post due to her ill health and that there were no other eligible candidates were available in the school, which prompted the petitioner to select and appoint the present incumbent J.M.L.Mohammed Lebbai as Headmaster. When no eligible candidates are available in the school for being appointed as Headmaster, the next course available for the petitioner is to appoint teachers from any other school and to go for direct recruitment, after getting necessary prior permission from the authority concerned. The petitioner has to approach the Employment Exchange seeking to sponsor the eligible candidates and even the school found that the sponsored candidates were not suitable, then it has to effect advertisement through local news papers and make selection from open market. Without resorting to these as contemplated under the Rules, the petitioner school has straight away selected and appointed an ineligible candidate, which in my opinion, cannot be approved and also rightly, the authorities have not approved the same. Though being minority institution, the petitioner has absolute right to select and appoint headmaster of its choice, but it should be in compliance with the Rules contemplated in the matter of appointment to the post of Headmaster and de horsing the same, under the coverage of minority institution, the petitioner cannot select and appoint an ineligible candidate.

7. For the foregoing reasons, this Court does not find any scope to interfere with the impugned orders passed by the respondents 1 and 3. Accordingly, the Writ Petition fails and the same is dismissed. No costs. Consequently, connected WMP is closed. However, dismissal of the present writ petition would not be an embargo for the petitioner school to select and appoint Headmaster of its choice, but subject to the compliance of the Rules governing in the matter of appointment to the post of Headmaster.

सत्यमेव जयते -s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Chief Secretary to Government,
The State of Tamil Nadu,
Fort St.George,
Chennai-09.

2. The Director of School Education,
College Road, Chennai-06.
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Tirunelveli.
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+1 cc to the Government Pleader sr79697
+1 cc to Mr.S.N.Ravichandran Advocate sr79168

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