

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

RESERVED ON	10.06.2019
DELIVERED ON	13.06.2019

CORAM:

THE HON'BLE MR.JUSTICE K.RAVICHANDRABAABU**and****THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY****W.A. (MD) No.551 of 2019****and****C.M.P (MD) Nos.4650 and 4921 of 2019**

- 1) The State of Tamil Nadu,
Rep. by its Secretary to Government,
School Education Department,
Fort St.George, Chennai - 600 009
 - 2) The Director of Elementary Education,
Chennai 600 006
 - 3) The Joint Director of Elementary Education(Aided),
Chennai 600 006
 - 4) The District Elementary Educational Officer,
RMS Road, Madurai 625 001
 - 5) The Assistant Elementary Educational Officer,
Madurai South,
Madurai 625 001
- .. Appellants / Respondents

Vs.

Nehru Middle School,
Rep. by its Secretary,
No.240 A, South Marret Street,
Madurai

.. Respondent/ Writ Petitioner

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent Act against the order passed by this Court in W.P.(MD) No.1371 of 2018, dated 15.03.2019.

Prayer in WP(MD)No. 1371/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to call for the records pertaining to the order in **ந.க.எண்.3686/2017** **அ/ நாள். 05.01.2018** passed by the fourth respondent and wash the same and direct the respondents to approve the appointment of Smt. Flora Mary as Headmistress of the petitioner school from the date of appointment ie., 19.05.2010 will all consequential benefits.



For Appellants

: Mrs.S.Srimathy,
Special Government Pleader

For Respondent

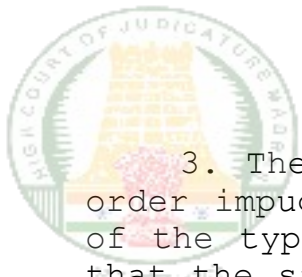
: Mr.Issac Mohanlal,
Senior Counsel
For Mr.P.Krishnasamy

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J U D G M E N T(The Judgment of the Court was made by **SENTHILKUMAR RAMAMOORTHY, J**)

This Writ Appeal is filed against the order dated 15.03.2019, whereby W.P.(MD)No.1371 of 2018 was allowed and the third respondent/ 3rd appellant herein was directed to approve the appointment of Mrs.Flora Mary as Head Mistress of the petitioner School with effect from 19.05.2010. By the said order, the Court also held that, in view of the closure of the School on 02.09.2018, Mrs.Flora Mary would not be entitled to salary for the period after 02.09.2018 but that she would be entitled to salary from the date of her appointment on 19.05.2010 up to 02.09.2018. Because the Writ Petitioner School has been closed, it was directed that she shall be redeployed elsewhere and that she would be entitled to salary once she is redeployed with continuity of service and other notional benefits.

2. At the hearing, the learned counsel for the Appellants referred to Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 (the Recognised Private Schools Rules), and submitted that the Respondent School was obligated to first consider the qualified/eligible teachers from that School for appointment as Headmistress/Headmaster before considering a teacher from that School without the prescribed five years experience. In this regard, she referred to page no.44 of the typed set of papers filed by the Appellants, namely, the Service Register of the School and contended that the candidates listed therein at Serial Nos.2, 3, 4 & 6 had the requisite five years experience and that, therefore, the said persons should have been considered for appointment instead of Mrs.Flora Mary. She further submitted that the letters obtained from the persons listed at Serial Nos.2, 3 and 4 with regard to relinquishment by them of their right to promotion as Headmaster/Headmistress were not submitted to the Elementary Education Department for approval and that, therefore, the said letters could not be relied upon to justify the appointment of Mrs. Flora Mary. As regards the person listed at Serial No.6 on page no.44, namely Thiru.Vadivel, it was submitted that the alleged letter of relinquishment was not referred to or reflected in the Service Register. On this basis, the learned counsel for the Appellants contended that the requirement that an unqualified person should not be appointed when there are eligible candidates in the same School was not fulfilled in the instant case.



3. The learned Special Government Pleader also referred to the order impugned in the Writ Petition which is at Page Nos.69 and 70 of the typed set of papers filed by the Appellants and pointed out that the said order cites two reasons for rejecting the request for approval, namely, that Mrs.Flora Mary did not have five years experience for direct appointment and that it could not be ascertained whether the qualified/eligible candidates have duly relinquished their right to such appointment.

4. In reply, the learned senior counsel appearing for the Respondent pointed out that the person listed at Serial No.6 of page no.44, namely, Vadivel, submitted a letter relinquishing his right to be appointed as Headmaster due to his family situation and pointed out that the said letter was at page no.7 of the typed set of papers. He also referred to the proceedings dated 21.04.2010 issued by the District Elementary Education Officer, Madurai, wherein the two options are set out, namely: persons with five years of experience in the same School or direct appointment of suitable candidates. He also referred to the order impugned in the writ petition at page nos.69 and 70 and pointed out that the only reason cited therein is the lack of five years experience on the part of Mrs.Flora Mary.

5. The pleadings, documents and oral submissions of both sides were carefully considered.

6. The main question that arises in this Writ Appeal is whether the Respondent School is entitled for approval in respect of the appointment of Mrs.Flora Mary as Headmistress as held in the Writ Petition and whether the impugned order in the Writ Petition is liable to be interfered with. We find that the learned Judge has recorded categorically in the impugned order at paragraph no.4 that the other qualified/eligible candidates working in the same School had given letters expressing their unwillingness to work as Headmaster/Headmistress. This finding of the learned Judge is not controverted by the learned counsel for the Appellants except to the limited extent of submitting that the approval of the District Elementary Education Department was not obtained in respect of the letters of relinquishment. In this regard, it is relevant to state that the Recognised Private Schools Rules do not specify that the approval of the District Elementary Education Department should be obtained in respect of such letters of relinquishment.

7. The additional objection with regard to the letter of relinquishment of Vadivel is that it was not entered in the Service Register. Nevertheless, it is the admitted position that none of the four eligible candidates, including Vadivel, filed proceedings to challenge the appointment of Mrs.Flora Mary. This fact was also expressly adverted to by the learned Judge at paragraph no.4 wherein it is stated that "....If they were really aggrieved, they would have certainly challenged the selection of Mrs.Flora Mary....".



8. The learned counsel for the Appellants also submitted that, at this juncture, there is no sanctioned post of B.T. Assistant and, therefore, it is not possible to comply with the impugned order. This contention is not tenable because the Respondents in the Writ Petition/ Appellants herein were directed to appoint Mrs. Flora Mary as Headmistress and not as B.T. Assistant. The only clarification in the impugned order is that she would be entitled to draw the salary of a B.T. Assistant until she completes the requisite five years of experience.

In view of the foregoing discussion and analysis, we do not find any infirmity in the impugned order or reasons to interfere therewith. Accordingly, the Writ Appeal is liable to be and is hereby dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

/ True Copy /

Sub Assistant Registrar (CS-)

Sts

- 1) The Secretary to Government of Tamilnadu,
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- 2) The Director of Elementary Education,
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- 5) The Assistant Elementary Educational Officer,
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Madurai 625 001

+1 CC to M/s.P.KRISHNA SAMY, Advocate (SR-68699[F] dated 14/06/2019)
+1 CC to M/s.SPL GP (SR-68888[F] dated 14/06/2019)

Judgment made in
W.A. (MD) No. 551 of 2019
Dated: 13.06.2019