



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON :30.04.2019

PRONOUNCED ON :30.07.2019

CORAM:

**THE HONOURABLE MR. JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

WA(MD)No.506 of 2019

K.Athisayamary ... Appellant / petitioner
Vs.

- 1.The State
represented by
the Secretary to the Government,
School Education Department,
Secretariat, Chennai.
- 2.The Director of Elementary Education,
Directorate of Elementary Education,
DPI Campus, College Road,
Chennai.
- 3.The Secretary,
Hindu Primary School,
Veerapandian,
Panagudi,
Tirunelveli District.
- 4.The District Elementary Educationall Officer,
Tirunelveli District.
- 5.The Assistant Elementary Educational Officer,
Valliyoor, Tirunelveli District. ... Respondents / Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent to set aside the order dated 03.01.2018 passed by this Court in WP (MD)No.19096 of 2014.

Prayer in WP(MD). 19096/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus or direction in the nature of writ calling for the records relating to the proceedings of the order in Letter No.7602/ Ni.Va.2(2) /2014 dated 16.10.14 and quash the same and



further directing the 1st respondent to grant necessary teaching experience to the petitioner as per G.O.M.S.No.97 School Education Department dated 5.7.01 and further directing the 4th respondent to approve the appointment of the petitioner as Primary School Headmaster in the 3rd respondent School.

For Appellant

: Mr.G.Prabhu Rajadurai

For Respondents

: Mr.A.K.Baskarapadian
Special Government Pleader

JUDGMENT

[JUDGMENT OF THE COURT WAS DELIVERED BY JUSTICE B.PUGALENDHI]

This appeal is filed as against the order dated 03.01.2018 passed by this Court in WP(MD)No.19096 of 2014.

2.The appellant and the 3rd respondent are one and the same. The appellant was appointed as Headmistress of the 3rd respondent Primary School on 09.04.2012 and the proposal for approval of the said appointment was rejected by the 5th respondent by order dated 04.09.2013, on the ground that the appellant was not having required five years teaching experience and therefore, the appellant/ writ petitioner had filed a writ petition before this Court in WP(MD) No.19708 of 2013 and the same was allowed by this Court vide order dated 06.02.2014 by setting aside the order passed by the 5th respondent and also with a direction to the 1st respondent to pass appropriate orders within a period of two months. The 1st respondent, without considering the order passed in WP(MD)No.19708 of 2013, once again rejected her claim by order dated 16.10.2014, on the ground that exemption from possessing five years teaching experience cannot be granted and hence, the approval for the appointment also cannot be accorded. The order of the 1st respondent in letter No.7602 / Ni.Va.2(2)/2014 dated 16.10.2014, rejecting the proposal for approval of the appointment was once again challenged before this Court in WP(MD)No.19096 of 2014 and for a consequential direction to the 1st respondent to grant exemption to the appellant from possessing five years teaching experience, as per GO.Ms.No.97, School Education Department, dated 05.07.2001. This Court by order dated 03.01.2018 dismissed the said writ petition, on the ground that the recruitment process was not conducted in a bona fide manner. Aggrieved over the same, this writ appeal has been filed.

3.This writ appeal was listed for admission on 26.04.2019 and at the request of the learned Counsel for the appellant and the Special Government Pleader, the appeal was posted to 30.04.2019, as to the admission of the appeal.

<https://hcservices.ecourts.gov.in/hcservices/>

4.According to the learned Counsel for the appellant that the



interview process was conducted in a bona fide manner and it can be traced from the materials placed before this Court and the Writ Court, on presumption and surmises, had concluded that the recruitment process was not conducted in a bona fide manner. The 3rd respondent management has constituted separate interview committees consisting of two experts for conducting the interview and on the proposed date of the interview, the appellant alone participated and the persons sponsored by the employment exchange have not turned up and hence, the appellant was appointed tentatively subject to approval and the Employment Exchange had also issued the non availability certificate for the required qualification. Though this Court has issued a direction to the first respondent to consider the case of the petitioner, in the light of the relaxation of rule granted to similar other persons, without considering the same, the 1st respondent has passed the impugned order and the writ Court, without appreciating the legal issues, dismissed the writ petition on surmises and conjectures and hence, prays for appropriate orders.

5.The learned Special Government pleader appearing for the respondents submitted that the appellant is the candidate as well as she is also the recruiting authority and the interview was held on 06.03.2012 and the school committee, selecting the appellant / writ petitioner, as the Headmistress passed a resolution on 06.03.2012, even before obtaining the non-availability certificate from the employment exchange on 05.04.2012. Further, the appellant does not possess the requisite qualification of five years of teaching experience and therefore, the order passed by the 1st respondent is in order and hence, the Writ Court has rightly dismissed the petition and therefore, prays for dismissal of this writ appeal.

6.This Court paid it's best attention to the rival submissions made by the learned Counsel on either side and also perused the materials placed on record.

7.A perusal of the materials shows that the appellant and the 3rd respondent herein are one and the same. The appellant has taken charge as Secretary of the Hindu Primary School at Panagudi and immediately, she dismissed the erstwhile Headmaster namely one Chandrasekar in the year 2010 and another Secondary Grade Teacher namely Kasthuri. As against the dismissal, erstwhile Headmaster Chandrasekar has filed a writ petition before this Court in WP(MD) No.3119 of 2011 and the same is pending. The another Teacher Kasthuri has also filed a writ petition before this Court in WP(MD) No.12934 of 2011 and after obtaining liberty, she is pursuing her case before the Sub Court, Tirunelveli in CMA No.25 of 2011.

8.The 3rd respondent school is a non-minority institution and in proposition to the students strength, two posts namely, Secondary Grade Teacher and Primary School Headmaster were sanctioned to the School. By order dated 12.10.2011, the appellant as the Secretary, School Committee obtained permission from the 4th respondent and appointed herself as the Headmistress, as no suitable candidate was



available within the school.

9. According to the appellant, applications have been invited through paper publication dated Nil, from the Secondary Grade Teachers, who are having five years of teaching experience and they had to apply within a period of one week, from the date of publication to the appellant herein. The District Employment Officer, Tirunelveli vide his letter in reference No.X2/122/2011, dated 20.02.2012, communicated a list of four candidates, who are having qualifications of Secondary Grade Teachers with five years of experience. But, according to the appellant, the candidates sponsored by the employment exchange have not appeared for the interview and interview was also conducted on 06.03.2012 and finally, the school committee passed a resolution, selecting the appellant, on 06.03.2012 and non-availability certificate from the employment exchange was also obtained on 05.04.2012.

10. The proposal for approval of the appointment of the writ petitioner / appellant was submitted by the appellant to the 4th respondent, through 5th respondent, on 01.06.2012. The 5th respondent had also obtained an undertaking deed that the appellant would not claim the Headmistress salary for the period, which is to be exempted. However, by proceedings in Oo.Mu.No.1060/B1/2012, dated 04.09.2013, the 5th respondent returned the proposal on the ground that the appellant was not having the requisite qualification of experience. The said proceedings of the 5th respondent dated 04.09.2013 was challenged in WP(MD)No.19708 of 2013 and this Court by order dated 06.02.2014, directed the 1st respondent to consider the said proposal and accordingly, the 1st respondent by his letter No.7602/Na.Ka.2/(2)2014 dated 16.10.2014, rejected the proposal.

11. Admittedly, on the date of her appointment ie., on 09.04.2012, the appellant was not possessing the statutory requirement of five years teaching experience as the secondary grade teacher as stipulated in Annexure V vide Rule 15(b) of the Tamil Nadu Recognised Private Schools (Regulation), 1974. She has also not possessed the minimum qualification of a pass in Teachers Eligibility Test, which is an essential qualification as per the Right to Free and Compulsory Education Act, 2009. The appellant made an application to herself in the capacity of 3rd respondent, knowing her ineligibility to the post of Headmistress that she was not possessing the required five years experience, called for the list of candidates from the employment exchange with five years of teaching experience. Similarly the publication was also made, calling for applications from those who are having five years of teaching experience. The publication did not prescribe the date of interview, but called for the application within a period of one week from the date of publication. The 1st respondent is the competent authority to grant exemption from possessing five years of teaching experience, under Section 20(3) of Tamil Nadu Private Schools Regulation Act, 1973. The 1st respondent by following a decision of this Court in P. Natrajan Vs Palanisamy reported in 1996



WLR 434 rejected the application that the relaxation of rule cannot be extended and it cannot be made a routine, if it is relaxed, then the purpose of the enactment of the Rule itself would be defeated.

12. In this regard, the Hon'ble Supreme Court in Bedanga Talukar Vs Saifuldullah Khan and ors, reported in (2011) 12 SCC 85 has held as follows:

"29

. In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There cannot be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant statutory rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised, has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Articles 14 and 16 of the Constitution of India."

13. A Division Bench of this Court in W.A.Nos.1634 and 1635 of 2009, dated 17.08.2016 [In Secretary to Government, Information and Tourism Department, Fort St. George, Chennai and another Vs. A.K.Perumal and others) has held as follows:

"8. Relaxation of rules is an exception to the rules and cannot be the rule itself. What the appellants are doing is in fact nullifying the rules by repeatedly exercising the power of relaxation, even though the eligible candidates on merit are available, in order to facilitate the recruitment of persons who are otherwise not eligible under the rules. This is completely impermissible."

14. Admittedly, in this case also, the appellant had made an application to herself in the capacity of 3rd respondent, knowing that she is not having required qualification of five years of teaching experience. In the capacity as 3rd respondent, she ought to



have called for application from the candidates who are similarly placed. When the intention of the 3rd respondent is to seek exemption as per GO.97, when the list of candidates of sponsored by the employment exchange have not turned up, then the 3rd respondent in all fairness, ought to have called for the candidates from the District Employment Exchange, who are qualified as secondary grade teachers, but not having five years of experience.

15.This Court is of the view that relaxation can never be claimed as a matter of right so also the competent authority / Government cannot grant relaxation in a routine manner. By granting relaxation, the competent authorities are creating inequality and causing discrimination amongst the employees. When the power of relaxation is granted based on the whims and fancies of the competent authorities, the same causes frustration in the minds of the employees who all are similarly placed.

16.As rightly pointed out by the writ Court, it appears that the recruitment process was not conducted in a bona fide manner and there is no reason to interfere with the order of the 1st respondent dated 16.10.2014 and the order 03.01.2018, passed by the writ Court in WP(MD)No.19096 of 2014 and accordingly, the writ appeal is dismissed. No costs.

Sd/-

Assistant Registrar (AD-II)

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Sub Assistant Registrar(CS)

To

- 1.The Secretary to the Government,
School Education Department,
Secretariat, Chennai.
- 2.The Director of Elementary Education,
Directorate of Elementary Education,
DPI Campus, College Road, Chennai.
- 3.The Assistant Elementary Educational Officer,
Valliyoor, Tirunelveli District.
- 4.The District Elementary Educational Officer,
Tirunelveli District

Order made in
WA (MD) No.506 of 2019
30.07.2019