

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SUBRAMONIUM PRASAD

W.A.No.3961 of 2019

and

C.M.P.No.24837 of 2019

1. The Director of Elementary Education,
College Road, Chennai - 600 006.
2. The District Educational Officer / East
College Road, Chennai - 600 006.
3. The Block Educational Officer,
Royapuram Union, No.11,
Davidson Street, Chennai - 600 001. ... Appellants

-vs-

1. P. Manikandan
2. The Secretary,
B. Subbrayan Middle School
Moolakothalam Basin Bridge,
Chennai 21. ... Respondents

Appeal filed under Clause 15 of the Letters Patent against the order dated 19.07.2019 passed in W.P.No.3991 of 2019 on the file of this Court.

WP.No. 3991 of 2019 Prayer: To call for the entire records connected with the impugned proceedings of the 2nd respondent in Na.Ka.No.3585/A3/2018, dated 06.08.2018 and quash the same and consequently direct the respondents to approve the appointment of the petitioner as Secondary Grade Teacher in the 4th respondent school w.e.f. 12.12.2008, with all consequential monetary benefits.

For Appellants : Mr.C. Munusamy
Spl.G.P (Edn.)

For 1st Respondent : Mr.S.N. Ravichandran

JUDGMENT
(Delivered by the Hon'ble Chief Justice)

The appeal preferred by the State against the impugned judgment dated 19.07.2019 is primarily focussed on the ground that the learned Single Judge has committed an error in allowing the writ petition of the respondent-writ petitioner for his appointment on the post of Secondary Grade Teacher in the fourth respondent School with all consequential benefits with effect from 2008, inasmuch as the respondent-petitioner is ineligible having not passed the Teacher Eligibility Test (TET). The sum and substance of the argument is that any claim of continuance without possessing the minimum eligibility qualification is unsupported in law and therefore, the impugned judgment deserves to be set aside.

2.The background in which this dispute has arisen appears to be that two vacancies arose in the Institution, one on 31.05.2006 and the other on 30.11.2008. Under the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, which was applicable at the time when the disputed appointment was made, the procedure for such appointment by direct recruitment stood governed by the provisions of Rule 15 (4) (iii) (c) thereof, which further makes a provision that in the case of appointment by direct recruitment, the School Committee "shall obtain prior permission" of the District Educational Officer. The applicability of the Rule remains undisputed by the other side in relation to the disputed appointment when it was stated to have been made, for which permission had been sought and which was not formally granted by the authority concerned.

3.The intimation which was given about such appointment was not accepted vide order dated 09.03.2009. This was followed by the proceedings dated 04.04.2009, that came to be challenged by the Management of the Institution in W.P.No.26684 of 2010. The said writ petition was disposed of with the observation that the Assistant Elementary Educational Officer, who had communicated the disapproval on 09.03.2009, had no jurisdiction to reject the said request and had further observed that the cadre strength was available, therefore, the order dated 04.04.2009 suffered from infirmity and was accordingly set aside.

4.The Court, however, also noted the fact that the Management had proceeded to make the appointments without prior permission as time would be taken for getting prior permission and therefore, in the interest of students, appointments were made and the salary was being paid by the Management itself. The Court observed that it could not ignore the interest of the students that was rightly taken care of by the Management by making direct appointments.

5.The protection which was extended under the said judgment

is contained in paragraph 8 thereof, which is extracted hereinafter:-

"8.The first respondent is directed to grant prior permission for appointment of two secondary grade teachers in the petitioner's school within four weeks from the date of the receipt of a copy of this order. It is made clear that the services of the already appointed teachers would commence only from the date of grant of permission from the first respondent and not before that."

(emphasis supplied)

6.A perusal of the said observations and directions cumulatively amounts to virtually accepting the appointments already made by the Management including that of the respondent-petitioner.

7.It is, however, undisputed that the other appointee, namely, Mrs.Sumathi, abandoned her claim and subsequently, the Management again, without seeking prior permission, proceeded to appoint one Ms.J.Revathi. The said appointment was, however, not approved and became subject matter of challenge in W.P.No.34244 of 2017, that was allowed on 03.01.2018 upholding the appointment of the said teacher. The State, through its Educational authorities, filed W.A.No.1771 of 2018 that has been partly allowed, but substantially dismissed vide judgment dated 19.06.2019 upholding the appointment of the teacher. It is thus clear that out of the two vacancies, the appointment made against the other vacancy has been upheld by this Court. We have perused the said judgment dated 19.06.2019, which has been allowed to become final, but we are not persuaded by the reasoning given therein inasmuch as the said judgment does not lay down any ratio decidendi and is an arrangement made in the exercise of extraordinary jurisdiction, which is only confined to the facts of that case and does not have the effect of a binding precedent. Without, therefore, being influenced by any observations made therein, we proceed to examine the validity of the impugned judgment in the present case.

8.As noted above, the judgment in the petition filed by the Management dated 06.09.2011 that has become final as extracted hereinafter clearly accepts the already appointed teachers with a rider that the services of such teachers would commence only from the date of granting of permission by the first respondent and not before that. It is undisputed that no intra-court appeal or any other challenge was raised against the said judgment.

9.The permission dated 27.10.2011 is on record, whereafter, the Management proceeded to issue a fresh advertisement and invited applications from all sources including the Employment Exchange. The respondent-petitioner was offered an appointment

by the Management pursuant to this with effect from 01.12.2011. The said documents pertaining to the appointments were then forwarded to the Educational authorities presumably to ensure payment of salary as the Institution is a Government-aided Institution and the post falls within the sanction category for which salary has to be disbursed from the State funds. It is at this stage that the order dated 06.08.2018 came to be passed by the District Educational Officer, Chennai, refusing to accord approval and pay salary to the respondent-petitioner. Assailing the same, the respondent-petitioner filed the writ petition giving rise to this appeal and the same has been ultimately allowed directing that even though the respondent-petitioner shall be eligible for salary with effect from the date of granting of permission, that is, 27.10.2011, yet for other purposes, his services and service benefits shall be counted with effect from 12.12.2008, which is the date of his first appointment that was subject matter of controversy in the previous writ petition.

10.Learned Special Government Pleader appearing for the appellants-State has urged that the learned Single Judge could not have extended any such benefits even in respect of the period for which no legal sanction existed nor did the judgment dated 06.09.2011 extend any such benefit. It is, therefore, submitted that on both counts, the impugned judgment deserves to be set aside, keeping in view the fact that the fresh appointment as alleged was not sustainable as the respondent-petitioner on the date of his first appointment did not possess the TET qualification, which is not in consonance with the Government Order issued on 08.11.2011 fixing the eligibility of possessing TET qualification as a compulsory eligibility criteria for appointment as a secondary grade teacher. Thus, it is urged that neither the initial nor the subsequent appointment could be validated through a process of judicial review as has been done by the learned Single Judge and therefore, the impugned judgment deserves to be set aside.

11.On the other hand, learned counsel for the respondent-petitioner contends that the Institution had been unnecessarily dragged into litigation prolonging the grant of permission for no valid reason and even otherwise, if the appointment of the respondent-petitioner in the year 2008 had been made prior to the grant of permission, the same cannot be invalid on account of the inaction of the appellants, who purposely and willfully did not grant the permission keeping the matter pending at their end. Thus, any inaction on the part of the appellants cannot defeat the right of the Management to proceed to make appointments and consequently, the respondent-petitioner is entitled to the benefits as observed by the learned Single Judge with effect from 2008 itself.

12.The next argument of the learned counsel for the

respondent-petitioner is that these questions are no longer open for the appellants to contend before this Court in the light of the directions issued in paragraph 8 of the judgment dated 06.09.2011 in the writ petition filed by the Management that has been extracted hereinabove. The contention is that the writ having been issued against the State, and no appeal having been filed against the same, the State cannot absolve itself from complying with the said direction, which binds the State to treat the appointment of the respondent-petitioner to be valid subject to the riders mentioned therein.

13. Learned counsel for the respondent-petitioner then contends that even otherwise the Rules as applicable even if the permission was granted, later on, the same would relate back to the date of appointment inasmuch as a learned Single Judge of this Court in the case of C.R. Arun Kumar vs. Director of School Education, Chennai, reported in (2006) 2 M.L.J. 308, has observed that once the request of the Management is granted, it will relate back to the date of appointment.

14. We have considered the submissions raised and we find that in order to clear the cobweb, we should clearly lay down the law as per the Rules applicable bereft of the factual controversy involved herein. For this, reference be had to Rule 15 (4) (iii) (c) and the Note therein, which are as follows:-

"15. Qualifications, conditions of service of Teachers and other persons. -

(1) ...

(2) ...

(3) ...

(4) (i)...

(ii)...

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

(a)

(b)

(c) Direct recruitment.

In the case of appointment from any other school or by direct recruitment, the School Committee shall obtain prior permission of the District Educational Officer in respect of Pre-Primary, Primary and Middle School and that of the Chief Educational Officer in respect of High Schools and Higher Secondary Schools, 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."

(emphasis supplied)

15. The provision categorically and unequivocally requires that in the case of an appointment by direct recruitment, the

School Committee shall obtain prior permission of the District Educational Officer. The aforesaid phrase, therefore, mandates the School Committee to obtain prior permission setting out the reasons for making the appointment. The phrase, therefore, in no manner of doubt, is mandatory inasmuch as the words 'shall' and 'prior' both oblige the School Committee to compulsorily obtain permission before any appointment is made. The very purpose of the Rule appears to be the control in the hands of the permitting authority to examine as to whether the appointment is being proceeded with in accordance with Rules or not. The reason is not far to see inasmuch as the institutions governed by the said Rules, even though privately managed, receive funds from the State Government for disbursement of salary. The disbursement of grants is governed by the provisions of Rule 11 (2) of the 1974 Rules, which is extracted hereinafter:-

"11. Payment of grants. -

(1) ..

(2) The authority competent to sanction grant shall be the District Educational Officer.

...

16. The control of the disbursement of grants enables the responsibility of the officer concerned to disburse the grants and salary only in respect of such appointments that are proposed as per Rules and it is for this reason that Rule 15 mandatorily requires a prior permission as indicated hereinabove. Any deviation from the Rule would, therefore, not validate or regularise an otherwise invalid appointment. The prior permission is a sine qua non and cannot be interpreted in a way that even a subsequent permission will validate an appointment which has been made without prior permission. The word 'shall' cannot be read as 'may' inasmuch as the word 'prior' makes it compulsory for the School Management Committee to proceed with the appointment and to grant the status of a teacher to a candidate only if such prior permission has been obtained. In the absence of the fulfillment of any such condition, the competent authority would be under no obligation to release salary or disburse the grants as envisaged under Section 11 (2) of the 1974 Rules. A precondition cannot be avoided so as to regularise an invalid exercise, the commencement whereof is in violation of the rule.

17. Having laid down the foundation, what is to be examined in the present case is the impact of the judicial interventions on the facts of the present case. From the affidavits on record, we find that the Management came up with a plea that even though they proceeded to adopt a second round of selection process, consequent to the grant of permission on 27.10.2011, yet, the same was inadvertent and was not required. We do not find this to be a valid explanation inasmuch as the Management had sought the permission pursuant to the judgment dated

06.09.2011 and it, therefore, was well advised to seek permission as per the judgment itself. We have gone through the permission which has been granted by the department vide proceedings dated 27.10.2011, which is extracted hereinunder:-

"With reference to the letter received from the Royapuram range Assistant Elementary Educational Officer, recommending to approve the secondary grade Teachers post as stated below.

1. Tmt.P.Kousalya Secondary grade teachers retired on 31.5.2009 - vacant post.
2. Thiru.T.Bhoopathy Secondary grade teacher retired on 30.11.2011 - vacant post.

- 1) Permission is hereby accorded to fill the above two posts of Secondary Grade teacher vacant posts as per the Tamilnadu Government Private Schools Regulation Act, 1973 and Rule 1974 sub rule 15(4) (11) (11).
- 2) Secondary grade teachers to handle classes 1-5 can be appointed in the scale of pay 5200-20200 + Grade pay 2800.
- 3) While filling up the post, it should be ensured whether it is eligible as per the Government GO 231 School Education Department dated 11.08.2010.
- 4) While appointing new teachers as stated in the sl.no.1 and two the Government GO 85 Personnel and Administrative Reforms dt.6.5.2000 should be followed for case rotation.
- 5) The persons appointed should possess the requisite qualification, S.S.L.C., H.S.C., and Secondary Grade diploma certificate should be possessed.
- 6) The guidelines and conditions stated in the Government Order No.4 dt.19.1.2004 and GO no.125 School Education (X2) Department dt.12.11.2003 should be followed.
- 7) For classes 1 to 5 teachers male/female ration 25:75 should be adhered.
- 8) District Employment Office to be contacted for the list of candidates seeking employment. Should be advertised through newspaper. Applications should be received as per the notice board and the eligible candidates can be selected. The above tasks should be recorded in a register and it should be maintained.
- 9) The School Correspondent and the Assistant Elementary Educational Officer is hereby informed that this permission order is valid for 2011-12.
- 10) The School Correspondent and the Assistant Elementary Educational Officer is hereby informed that the school correspondent should renew the

order and structural stability certificate to get approved the appointment of the teachers.

The School Correspondent and the Assistant Elementary Educational Officer is hereby informed that the school permanent recognition order, management registration, sanitary certificate, NOC for Fire renewed certificate to be enclosed while sending the proposal for approval of the newly appointed teachers."

18.A perusal of the aforesaid proceedings does not indicate that the authorities have approved of the appointment of the respondent-petitioner, but what we find further is that the said permission was in continuity of the directions issued by the High Court in the judgment dated 06.09.2011. The said judgment and the consequential permission, therefore, are not divorced from each other and rather, the permission appears to be supplemental to the directions issued by the High Court. The judgment dated 06.09.2011 categorically records the date from which the appointment of the teachers already appointed are to be accepted and which is the date of grant or permission. Thus, the grant of permission is clearly linked with the appointments which had already been made by the Management and not bereft of the same. Thus, a judicial intervention, therefore, changes the texture of the case and hence, any invalidity as suggested by the learned counsel for the appellants State cannot be now permitted to be read into or existing in the appointment of the respondent-petitioner, when the State did not choose to challenge the judgment dated 06.09.2011. The same has a binding effect and the appellants are estopped from raising any plea contrary to the directions issued in the judgment dated 06.09.2011. It is this aspect which impels us to refrain from interfering with the judgment of the learned Single Judge, which also has not discussed the legal provisions that were directly applicable to the controversy relating to the seeking of a mandatory prior permission as also the grant of approval/financial sanction from the competent authority.

19.The judgment relied on by the respondent petitioner in the case of C.R.Arun Kumar (supra) of considering grant of permission relatable to the date of appointment is unacceptable in law inasmuch as it clearly contradicts the provisions of Rule 15 (4)(iii)(c), which issue does not appear to have been discussed in the aforesaid judgment.

20.The contention also taken in the counter-affidavit of the Management that the Government Letters dated 04.03.1992 and 12.03.1992 do not require the Management to seek prior permission in vacancies caused due to death, resignation or retirement also does not hold water in view of the clear mandate of Rule 15 (4)(iii)(c) that has been considered by us hereinabove.

21. In the background and what has been reasoned out by us, even though we do not approve of any legal principle having been settled under the impugned judgment or in the other judgments relating thereto, yet, on account of the peculiar facts of this case, that emanate from the judgment dated 06.09.2011 as discussed hereinabove, we decline to interfere with the appointment of the respondent petitioner as upheld under the impugned judgment.

22. However, we set aside the observation made by the learned Single Judge by which the other benefits have been extended with effect from the date of appointment in the year 2008. We further clarify that any benefits to the respondent arising out of the appointment in question will be only from the date as referred to in the judgment dated 06.09.2011 and as specified in the impugned judgment with effect from 27.10.2011. We are also not dwelling into the question of eligibility and possession of TET qualification on the facts of the present case, inasmuch as the permission itself was granted on 27.10.2011 prior to the enforcement of the Rules making TET a compulsory qualification, which is with effect from 15.11.2011 in the State of Tamil Nadu and even otherwise, as the entire process of the disputed appointment and possession of qualifications relates back to the year 2008, when the litigation commenced and when there was no requirement of possession of TET qualification under the Rule.

The Writ Appeal is, accordingly, allowed in part, with the aforesaid observations. There shall be no order as to costs. Consequently, C.M.P.No.24837 of 2019 is closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

sra

To

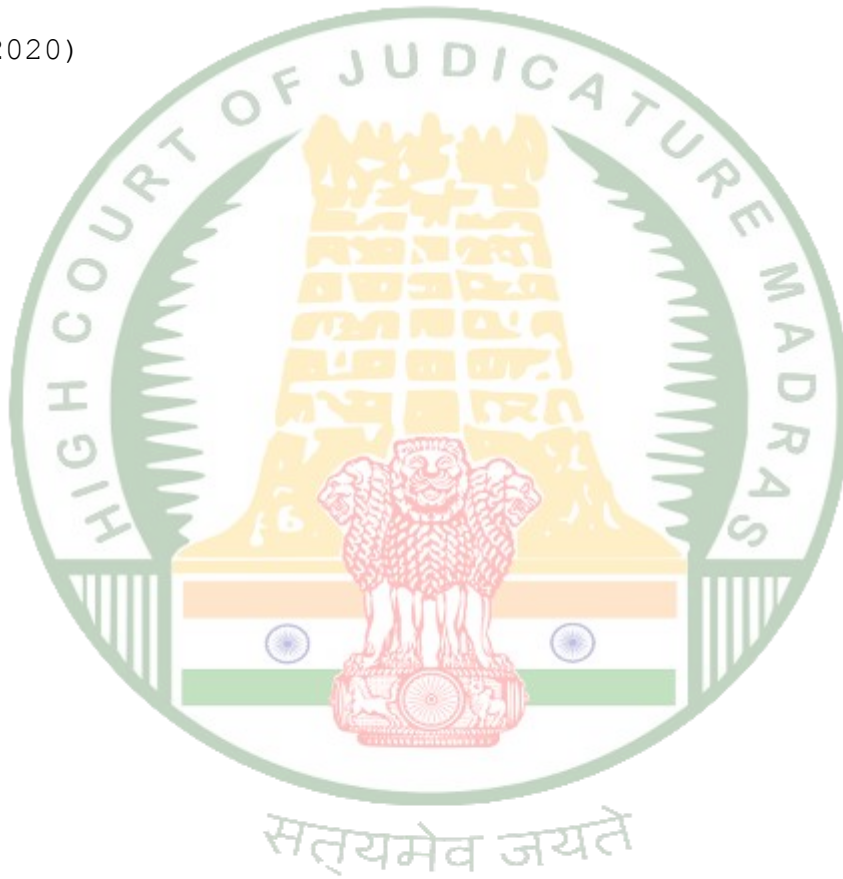
1. The Director of Elementary Education,
College Road,
Chennai - 600 006.
2. The District Educational Officer / East
College Road,
Chennai - 600 006.

3. The Block Educational Officer,
Royapuram Union,
No.11, Davidson Street,
Chennai - 600 001.

+1cc to Mr.SN.ravichandran, Advocate, S.R.No. 4496
+1cc to the Government Pleader, S.R.No. 5283

W.A.No.3961 of 2019

LN(CO)
GN(11/02/2020)



WEB COPY