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Cont P.No.1163 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.09.2021
PRONOUNCED ON : 02.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Cont.P.No.1163 of 2018

N.Vennila,
3/312-1, Middle Street,
Theevambalpuram Post,
Thiruthurai Poondi Taluk,
Thiruvarur District

... Petitioner

vs.

1.A.Thiyagarajan,
The District Elementary Education Officer,
Nagapattinam, Nagapattinam District

2.Ramamirdham,
The Secretary and Correspondent,
Mahatma Gandhi Aided Middle School,
Ayakkaranpalam-II,
Vedaranyam Taluk,
Nagapattinam District

.. Respondents

PRAYER: Contempt petition filed under Section 11 of the Contempt of Courts Act, 1971 to punish the respondent for wilful disobedience of the order passed by this Court in Contempt Petition No.1050 of 2017 in W.P.No.42997 of 2016 dated 10.11.2017.

For Petitioner : Mr.V.Kasinatha Bharathi

For R1 : Mr.L.S.M.Hasan Fazal
Government Advocate.



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For R2 : Mr.S.Concioas Ilango

ORDER

Earlier, the petitioner has filed the writ petition in WP.No.42997 of 2016 which came to be disposed before this Court by an order dated 09.12.2016. In the writ petition, it was observed as under:

“3. The learned counsel for the petitioner has drawn the attention of this Court to the recommendation of the 4th respondent made to the 3rd respondent and would submit that in the light of the positive recommendation, there may not be any impediment on the part of the 3rd respondent to approve the petitioner's appointment on 28.04.2015. Learned counsel further invited the attention of this Court to the order dated 25.07.2011 made in WP(MD) No.3772/2008 (S.Christy Vs.The Chief Education Officer, Kanyakumari District at Nagercoil, Kanyakumari District – 629 001 and others) and to yet another order dated 17.09.2012 made in WP(MD) No.12251/2012 (Parvathi Sankar Primary School rep by its Secretary P.Muthusamy Vs. The District Elementary Educational Officer, Tirunelveli) and would submit that in the light of the settled position of law, once the post is sanctioned and is lying vacant, no prior permission of the respondents is necessary to appoint teachers and prays for appropriate orders.

4. Heard the submissions of Mr.V.Anandamoorthy, learned Additional Government Pleader appearing for the respondents 1 to 4.

5. Though the petitioner has prayed for a larger relief, this Court, in the light of the above facts and circumstances and without going into the merits of the



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same, directs the 3rd respondent to act on the recommendation of the 4th respondent dated 15.12.2015 in Na.Ka.No.807/Aa1/2015 as well as the letter of the Joint Director of the Elementary Education (Aided), Chennai – 600 006 in O.Mu.No.24205/ G2/2016 dated 26.10.2016 and pass orders on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner as well as to the 5th respondent / school.

6. The writ petition stands disposed of with the above direction. No costs.”

2. Pursuant to the above order, the 1st respondent passed an order dated 14.03.2017 and rejected the request to approve the appointment of the petitioner on the ground that no prior permission was obtained from the District Educational Officer.

3. Therefore, the petitioner filed Contempt Petition.No.1050 of 2017 before this Court. The said contempt petition was disposed by an order dated 10.11.2017 with the following observation:-

“ 5. In the light of the facts and circumstances of the present case, this Court has directed the respondent/contemnor to reconsider the proposal sent by Mahatma Gandhi Aided Middle School, Ayakkaranpulam II, Vedaranyam Taluk, Nagapattinam District to approve the appointment of the petitioner subject to the fulfillment of the necessary criteria and qualification and such an exercise should be carried out within a period of six weeks from the date of receipt of copy of this order and communicate the decision taken to the petitioner as well as to the 5th respondent.



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6. *With the above observation, this contempt petition is closed.*”

4. After the contempt petition was closed with the above observation, the 1st respondent has passed an order dated 05.01.2018 stating that the petitioner did not have requisite qualification for being appointed as a teacher in the 2nd respondent school. The reasons given for rejecting the approval to the appointment of the petitioner are as under:

“(i) Application was made on 24.11.2015 to fill up two posts of Secondary Grade Teacher in Mahatma Gandhi Aided Middle School and the same was received by the District Elementary Education Office through the Assistant Elementary Educational Officer, Vedaraniyam. Consequently, the Secretary of the School preferred an appeal to the Joint Director of Elementary Education, Tamil Nadu Chennai on 14.07.2016. Thereafter another he has sent another appeal representation to the Director of Elementary Education on 22.09.2016, seeking permission to fill up the posts. But the secretary has not pointed out in representation seeking permission with regard to the appointment already made. Hence there it is not proper to seek for approval of the appointment made on 28.05.2015, while has applied for permission and made an appeal seeking orders on the representation seeking permission to fill up the post. The claim of the petitioner is quite contrary to each other.

(ii) In so far as Minority Aided Schools are concerned, all functions or activities are being decided by the School Committee. While so, the School Committee has passed resolution only to fill



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up the post. It is submitted that a perusal of the records reveals that the secretary has made the appointment of the petitioner without the resolution of the School Committee.

(iii) A list of candidates sponsored by the District Employment Office has to be obtained and such candidates have to be interviewed. There is no record to show that no interview was conducted in respect of candidates sponsored by the Employment Exchange and consequently the denied the right of the candidates registered at the District Employment Office which is against the appointment rules.

(iv) Notification in the daily newspaper was published on 25.04.2015 and called for personal interview on 28.04.2015. It was though reported that two candidates appeared for interview namely Tmt.F.Anthoni Arockiamary Princy, and Tmt.N.Vennila, the application of Tmt.Vennila alone produced and the application of another candidate is not available under due signature of the candidate.

(v) In the order of appointment of N.Vennila dated 28.05.2014, it is not mentioned about the name of person in whose place she was appointed. In view of the above lapses and irregularities, the approval of the appointment was rejected as per the orders of the respondent proceedings Rc.4968/A5/2016 dated 05.01.2018. Aggrieved by the above orders, the petitioner has again filed this Iind contempt petition.

5. Regarding the averments in para 2 of the affidavit of the petitioner, it is submitted that as already stated above, the Secretary of the School has sent representation on 24.11.2015 to fill up two posts of Secondary Grade

<https://hcservices.ecourts.nic.in/hcservices/> Teacher in Mahatma Gandhi Aided Middle School and the same was



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received by the District Elementary Educational Officer through the Assistant Elementary Educational Officer, Vedaranyam. Consequently, the Secretary of the School preferred an appeal to the Joint Director of Elementary Education, Tamil Nadu, Chennai on 14.07.2016. Thereafter, the petitioner has sent another appeal representation to the Director of Elementary Education on 22.09.2016, seeking permission to fill up the posts. The Secretary of the School has never stated in the above representations that the petitioner was already appointed as Secondary Grade Teacher with effect from 28.04.2015. It is submitted that the petitioner has filed Writ Petition No.42997 of 2016 seeking direction to the respondents to approve the appointment.”

6. The learned counsel for the petitioner submits that the respondents are searching for new reasons for frustrating the attempt of the petitioner to be regularized even though the petitioner was sponsored by the Employment Exchange.

7. In this connection, the petitioner has referred to registration with the Employment Exchange and the list of Secondary Grade Teacher in O.C. General Non Minority, Vedaranyam Taluk and the vacancy that was prevailing at the time of the appointment.

<https://hcservices.ecourts.gov.in/hcservices/> 8. The learned counsel for the petitioner has also referred to resolution



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dated 05.05.2015 of the 2nd respondent's School wherein the resolution was passed by the said School Committee for appointing the petitioner as a Secondary Grade Teacher with the 2nd respondent's school. Therefore, it is submitted that the appointment of the petitioner was in accordance with the provision of Rule 15 of the Tamil Nadu Private School Regulation Rules, 1974.

9. Appearing on behalf of the 1st respondent, the learned Government Advocate for the 1st respondent submits that entire appointment of the petitioner is contrary to the procedure prescribed under Rule 15 of the aforesaid Rule as no advertisement was given nor there was any proof to show that the candidates were called and interviewed. Therefore, he submits that the contempt petition is liable to be dismissed.

10. Heard the learned counsel for the petitioner and the learned Government Advocate for the 1st respondent. I have also perused the records and orders have been passed earlier in W.P.No.42997 of 2016 dated 09.12.2016 and the order passed in Contempt Petition No.1050 of 2017 dated 10.11.2017.

11. Facts are not in dispute. The petitioner was appointed by the 2nd Respondent School on 28.04.2015 pursuant to the vacancy caused on



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account of death of A.S.Gandhi, Secondary Grade Teacher and on account of promotion of one R.Paravathi, Secondary Grade Teacher to the post of Middle School Headmaster in the place of A.Kalyani, who retired on superannuation on 31.05.2010 in Mahatma Gandhi Aided Middle School, Ayakkaranpulam II, Vedaranyam Taluk, Nagapattinam District.

12. The 2nd respondent school categorically stated that the petitioner was appointed against any one of the two vacancies referred to above though not against any one of the two vacancies. In this case, the 1st respondent has given five different reasons for rejecting the request of the 2nd respondent School to approve the appointment of the petitioner which has been extracted above.

13. Appointment to the various categories of the teacher in a Government Aided School is governed by the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1973 framed and the rules made under the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 as it stood at the time of the initial appointment of the petitioner.

14. Rule 15(4) of the above rules prescribed the method to be adopted. Relevant portion of Rule 15(4) (ii) of the aforesaid Rules reads as under:-

“15 Qualifications, Conditions of Service of Teachers and Other

Persons:

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- (1) The number of teachers and other persons employed in a private school shall not exceed the number of posts sanctioned by Director of School Education, from time to time, with reference to the academic requirements teacher-pupil ratio and overall financial considerations.
- (2) (i) The school committee of every private school shall enter into an agreement with the teacher or other person in Form VII-A or VII-B if the appointment is for a period exceeding three months.”
 - (i-a) The school committee of every private school shall into an agreement with the person appointed as Junior Grade Teacher in Form VII-C.
- (3) In a regular vacancy, a fully qualified candidate shall be appointed only on a regular basis. However, in a temporary vacancy, i.e. Leave vacancy, deputation for training or suspension of the Teacher's certificate , a Teacher or other person may be appointed for a specified period. In such cases, the agreement to be executed shall be in Form VII-B.
- 4(i) Promotion shall be made on grounds of merit and ability, seniority being considered only when merit and ability are approximately equal.
 - (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.; or**
 - (ii) **Promotion from among the qualified Vocational Instructors in that School;**
 - (iii) **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

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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' 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.)

(d).....

(4-A)

(5).....

15. Insofar as appointment from any other school or by **direct recruitment** is concerned, the School Committee has to obtain a 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 the 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.

16. The five reasons given by the first respondent for rejecting the request to approve the appointment of the petitioner cannot be sustained in the light of the fact that the procedure to be complied under the Rules are only directory and there is substantive. Further, procedures are hand maids of justice and not mistress of law though no doubt when law mandates a



particular thing to be done in a particular manner, it should be done in that manner. The 1st respondent can also *post facto* approve the appointment if there was a real vacancy as otherwise education would be a causality, if there was a real necessity to make such appointment but approval is not given in time.

17. The records indicate that the petitioner was called for an interview after an advertisement was issued in a daily Newspaper. It cannot be to the prejudice of the petitioner, merely because the School Committee of the 2nd respondent had not obtained prior permission from the District Educational Officer for appointing the petitioner as a Secondary Grade Teacher. Therefore, even if the appointment of the petitioner was contrary to the procedure under Rule 15(4) of the aforesaid Rules, it can not be construed as a serious lapse since the official respondents take time to approve the appointments.

18. Though the prayer in the contempt petition is to punish the 1st respondent, no useful purpose will be served by punishing the 1st respondent as the 1st respondent has discharged his duties though not strictly in accordance of the Act and the relevant G.Os or the orders of this Court. Therefore, to meet the ends of justice, it would suffice if a direction is given

<https://hcservices.ecourts.gov.in/hcservices> to the 1st respondent and the present incumbent to approve the appointment



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of the petitioner, subject to the 1st respondent or the present incumbent confirming that the requirements were satisfied by the 2nd respondent School that there was no scope for **promotion from among the other qualified teachers in the 2nd respondent school; or for Promotion from among the qualified Vocational Instructors from the 2nd respondent School.**

19. Therefore, the contempt petition is disposed by directing the first respondent to approve the appointment of the petitioner as a Secondary Grade Teacher in the 2nd respondent school subject to the above observation from the date of her initial appointment i.e. from 28.04.2015 or from the time when actual vacancy arose, whichever is later together with all attendant and monetary benefits to the petitioner. The said exercise should be carried out by the 1st respondent within a period of eight weeks from the date of receipt of a copy of this order.

SD/-

ASSISTANT REGISTRAR(COMM.CASES)

kkd

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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GS/25/11/2021



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To

The District Elementary Education Officer,
Nagapattinam, Nagapattinam District