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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.07.2021

PRONOUNCED ON : 09.08.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.25800 of 2019

&

WMP.Nos.25249, 25250, 31837, 31838 of 2019

and WMP.Nos.12264 & 12267 of 2020

Mark Donald Carron

... Petitioner

Vs.

- 1.The State Government of Tamil Nadu
rep. by its Secretary,
Education Department (Higher Education),
Fort St. George,
Chennai-600 009.
- 2.The Director of Higher Secondary School Education,
College Road, DPI Compound,
Nungambakkam,
Chennai-600 006.
- 3.The Joint Director of Higher Secondary School Education,
College Road, DPI Compound,
Nungambakkam,
Chennai-600 006.
- 4.The Chief Educational Officer,
Office of the Chief Educational Officer,
Egmore, Chennai-600 008.
- 5.The District Educational Officer (West),
DPI Compound,
Nungambakkam,
Chennai-600 006.
- 6.The Correspondent,
St. George's Anglo-Indian Higher Secondary
School and Orphanage,
738, Periyar EVR Salai, Shenoy Nagar,
Chennai-600 030.
- 7.J.Wesly Hudson
(R7 impleaded vide order dated 20.08.2020
made in WMP.12027/2020 in W.P.25800/2019
by VPNJ)

... Respondents



PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records culminating in the order of the fourth respondent dated 22.08.2019 made in O.Mu.No.4961/E5/2019 and to quash the same and consequently direct the fourth respondent to approve the appointment of the petitioner as Headmaster of the sixth respondent school with effect from 31.05.2018 with all attendant service benefits.

For Petitioner : Ms.G.Thilagavathy, Sr. Counsel
for Mr.R.Gopinath

For Respondent :Mr.K.V.Sajeev Kumar
Nos.1 & 3 Counsel for Government

For Respondent :Mr.V.Prakash, Sr. Counsel
No.6 for Mr.Adrian D.Rozario

For Respondent :Mr.G.Sankaran
No.7

O R D E R

The present Writ Petition is heard through Video Conferencing on 29.07.2021.

2. Heard Ms.G.Thilagavathy, learned Senior counsel appearing for the petitioner and Mr.K.V.Sajeev Kumar, learned Government counsel appearing on behalf of the official respondents 1 to 5, Mr.V.Prakash, learned Senior Counsel appearing for the sixth respondent, as well as Mr.G.Sankaran, learned counsel for the seventh respondent.

3. The petitioner is aggrieved against the order of the fourth respondent herein, whereby his appointment with the sixth respondent School as Headmaster was not approved, on the ground that, the petitioner did not possess the experience as a Post Graduate Teacher for being appointed as Headmaster. The learned Senior counsel appearing for the petitioner contended that the respondents have been periodically granting approvals by initially appointing the petitioner as Secondary Grade Teacher on 29.08.2003 on consolidated pay, which was entered in the service register of the petitioner. Thereafter, the Management had granted confirmation to the petitioner as Graduate Teacher Assistant on 01.06.2006, which corresponding service was also entered in the service register with the approval of the Inspector of Anglo Indian Schools with effect from 01.06.2006.

4. The learned Senior counsel submitted that as per G.O.Ms.No.100, School education Department, dated 27.06.2003, the post of Secondary Grade Teacher was upgraded to BT Assistant with the proposal of the Management and the



Inspector of Anglo Indian Schools, had also granted approval for the post of BT Assistant on 21.04.2009 and the corresponding scale of pay for the post of BT Assistant was approved with effect from 01.06.2006. Since the petitioner was working as a BT Assistant and the corresponding scale of pay was also extended to him, the contention of the educational authorities that the petitioner did not possess the experience as a Post Graduate Teacher, is unsustainable.

5. In support of her contentions, the learned Senior counsel placed reliance on a decision of the learned Single Judge passed in W.P.No.12113 of 2011 dated 03.06.2014, in the case of The Manager/Correspondent, V.K.P.Higher Secondary School Vs. The State of Tamil Nadu, Department of School Education, Chennai and Others, for the proposition that the appointment of a teacher is a discretion exercised by the Management, which cannot be curtailed through regulations and consequentially, the approval for such appointment cannot be denied. The learned Senior counsel also placed reliance on the decision of the Hon'ble Division Bench in W.A.(MD) No.1397 of 2014 dated 20.07.2017, whereby the learned Single Judge's view in the aforesaid case came to be affirmed. The reliance was also placed on the decision of the Hon'ble Supreme Court in the case of T.M.A. Pai Foundations and others V. State of Karnataka & Others dated 31.10.2002 reported in 1993 (4) SCC 788 in the aforesaid proposition and by quoting so, it was submitted that the experience prescribed under Rule 15 (4) of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974 [hereinafter referred to as 'Rules'], is no longer good in law.

6. On the contrary, Mr.K.V.Sajeev Kumar, learned Government Counsel submitted that the petitioner was never promoted to the post of BT Assistant and no such order of promotion is reflected in his service register. It is also his contention that the revision in the pay scale of the petitioner, applicable to the post of BT Assistant, is erroneous and cannot be relied upon, as an experience of a Post Graduate Teacher. Since the petitioner herein did not work as a PG Assistant, which is the prescribed qualification for the post of Headmaster, in accordance with the provisions of the Rules, there is no infirmity in the rejection order.

7. Mr.V.Prakash, learned Senior counsel placed his submission on similar lines as that of the learned Government Counsel and submitted that the petitioner had applied for appointment to the post of Headmaster, in pursuance to a notification issued in the month of April, 2018 and was appointed on 31.05.2018. It is his submission that, at the time of appointment, the petitioner's experience was mistakenly treated as a Post Graduate Assistant in view of the entry of his scale of pay as BT Assistant in his service register and a mere entry will not confer a right to the



petitioner to claim possession of experience as a Post Graduate Assistant. In view of Rule 15(4)(b) of the Tamil Nadu Private Schools (Regulation) Rules, the appointment of the petitioner to the post of Headmaster, was not valid. For such a proposition, the learned Senior counsel relied on a decision of this Court in the case of A.Andi Vs. State of Tamil Nadu, Education Department and Others passed in the order dated 16.11.2012 in W.P.(MD) No.5160 of 2007.

8. Mr.G.Sankaran, learned counsel appearing for the impleaded respondent submitted that in view of the irregular appointment of the petitioner to the post of Headmaster, this respondent though was a qualified and meritorious candidate, was not considered for appointment in view of the petitioner's appointment. The learned counsel reiterated the submissions of the learned Government Counsel, as well as the learned Senior counsel for the Management School and further submitted that the contentions of the petitioner that Rule 15(4)(b), with reference to feeder post for promotion to the post of Headmaster is not applicable to a Minority Institution, cannot be countenanced, in view of the decisions of this Court.

9. I have given careful consideration to the submissions made by the respective counsels.

10. It is not in dispute that the petitioner herein was appointed to the post of Headmaster in the sixth respondent School, pursuant to notification for direct appointment issued in the month of April, 2018. Prior to such appointment, the petitioner was employed at St.Matthias Anglo Indian Hr. Sec. School, Vepery, Chennai as a Junior Grade Secondary Grade Teacher. At the time of such appointment, the petitioner claimed that he was promoted and confirmed as a BT Assistant in English Subject at St.Matthias Anglo Indian Hr. Sec. School. Such holding of the post of a BT Assistant in the erstwhile School is disputed by the respondents herein.

11. The mode of appointment for any teacher of a recognized Private School, is prescribed under Rule 15(4) of the Rules, which prescribes that the procedure for filling up of a regular vacancy of a teacher shall be through promotion and if no qualified and suitable candidate is available for such promotion, the vacancy can be filled through appointment of other persons employed in that school, provided they are fully qualified to hold the post of teachers or through appointment of teachers from any other School or through direct recruitment.

12. In the present case, the sixth respondent had sought for filling up of the vacancy for the post of Headmaster through direct recruitment.



13. Rule 15(4) (iii) of the Rules also stipulates that in case appointment from any other school or from direct recruitment is made, the School Committee shall obtain prior permission of a Chief Educational Officer in respect of Higher Secondary Schools and such appointments shall be made either from the category of Headmaster of the respective Schools or from the category of Post Graduate Assistants in the relevant subjects, provided they possess the prescribed qualifications.

14. The qualifications prescribed for appointment of a Headmaster in a Higher Secondary School is stipulated in Annexure V(IV) of the Rules, which reads as follows:-

Name of the post	Qualifications
(1)	(2)



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Name of the post	Qualifications
1. Headmaster or Headmistress (Higher Secondary Schools)	i) [A Master's Degree of a University in the State for teaching any of the languages under Parts I and II or subjects under Part III, Group "A" of the syllabus for Higher Secondary Courses or a Master's Degree of equivalent standard in any one of the subjects or languages, specified in the said syllabus or a certificate issued by the University of Madras for having under the Certificate Course in Science and Humanities for Graduate Teachers in High Schools during the year 1960-1964;] ii) B.T. or B.Ed. Degree or its equivalent, iii) Experience for a period of not less than ten years as B.T. Schools Assistant or Pandit in a Secondary School or Training School or Higher Secondary School recognised by the Director of School Education: Provided that the experience in the category of Headmaster and Headmistress in a school recognised by the Director of School Education shall be taken into account for calculating the experience in the category of B.T. Assistant.

15. Thus, when the School Committee intends to fill up the regular vacancy of a Headmaster of a Higher Secondary School through appointment of teachers from any other School or through direct recruitment, the incumbent for such post is required to hold the prescribed Post Graduate Educational qualifications, together with experience as a B.T. Assistant or a Post Graduate Assistant from a recognized Higher Secondary School.



16. In the background of the prescribed essential qualifications and experience under the Rules, the substantial issue which gains significance to the issue involved in the present case is as to whether the prescription of 10 years experience as a Post Graduate Teacher under aforesaid Rule is mandatory or not?

17. At the outset, this Court expresses its consciousness to the fact that one of the essential requirements of experience under the Rules is not put under challenge in this Writ Petition.

18. Through the impugned order of the fourth respondent dated 22.08.2019, the Authorities have declined to approve the appointment of the petitioner as Headmaster on the ground that he did not possess 10 years experience as a Post Graduate Teacher, for being appointed as a Headmaster in a Private Higher Secondary School. The petitioner has assailed the order of rejection through two primary contentions.

19. Firstly, it is stated by the learned Senior counsel that Rule 15(4) has been diluted following the decisions of the Hon'ble Supreme Court in T.M.A. Pai's case (supra) and by the Hon'ble Division Bench of the Madras High Court in the case of The District Educational Officer, Cheranmadevi, Tirunelveli District Vs. T.Mariagnanam and another passed in W.A.(MD) No.1496 of 2017, by holding that the Rule is an interference to the right of administration to a Minority Management and violative of Article 30 of the Constitution of India and therefore the reason assigned in the impugned order that, non possession of a Post Graduate Teaching experience would be an embargo, cannot be sustained.

20. Secondly, and presumably as an alternate argument, the learned Senior Counsel attempted to draw an inference from the entries in the service register of the petitioner whilst he was in service at St. Matthias Anglo Indian Hr. Sec. School with regard to his revision of scale of pay equivalent to a Junior Grade B.T. Assistant, with effect from 01.06.2006 and submitted that in view of the approval of the petitioner's scale of pay, on par with B.T. Assistant, the petitioner is deemed to have possessed the necessary teaching experience also. In the light of such a contention, the reasoning assigned in the impugned order, was found fault with.

21. Insofar as the first contention raised by the petitioner that the Post Graduate teaching experience is not an essential requirement for being appointed to the post of Headmaster, is concerned, it would be appropriate to straightaway refer to the decision of the Hon'ble Supreme Court in the case of Kolawana Gram Vikas Kendra Vs. State of Gujarat and others reported in 2010 (1) SCC 133, whereby the Hon'ble Supreme Court had ratified the claim of the Educational Authorities for a No Objection Certificate,



touching upon the appointment made by a Selection Committee of the Minority Institution and held that such claim for NOC, will not amount to any unconstitutional interference in the internal working of a Minority Institution.

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22. The aforesaid decision of the Hon'ble Supreme Court in Kolawana Gram Vikas Kendra's case (supra) was followed by a Hon'ble Division Bench of this Court in the case of The Government of Tamil Nadu, Education Department, Chennai and others Vs. St. Aloysius Higher Secondary School, Royappanpatti, Madurai District and batch etc., reported in 2011 (1) Mad LJ 1041. In this decision, the Hon'ble Division Bench, while dealing with the powers of the Authorities to interfere with the appointment of teachers by a Minority School, held that such appointments requires the approval of the Government and further held that the persons who possess the requisite qualification alone can be appointed under the Tamil Nadu Educational Rules. The relevant portion of the order reads as follows:

"12. The Power of authorities has been clearly set out in Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 and Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. Rule 6 of Tamil Nadu Minority Schools (Recognition and Payment of Grant), 1977 contemplates that approval for appointment of teachers is mandatory before receiving any grant and therefore, minority institutions cannot say merely some teachers have been appointed in regular vacancies, release of grant is automatic even before the approval of appointment of teachers made by the competent authorities. Granting approval to the appointments of staff in minority educational institutions by the Government was upheld by the Supreme Court in [Kolawana Gram Vikas Kendra v. State of Gujarat and others] (2010) 1 SCC 133.

...

16. According to the respondents, the right to appointment itself was curtailed by the impugned circulars. The association mainly contended that appointments sought to be made is only in respect of sanctioned post and they being minority institution, there is no need or necessity for getting any prior approval from the educational authorities for making such appointment. According to the association, the ban imposed on appointment had infringed their right prohibiting them from appointing teachers. This argument of the respondents is legally not sustainable. It is clear that even though it is a minority Institution, in so far as appointment in the



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case of sanctioned post is concerned, though no prior approval is necessary, such appointments made has to be approved by the Government. The appointment of teacher cannot be made unilaterally if there is a disqualification or other defects in the candidate. The person who possess requisite qualification alone can be appointed."

23. A similar view, has been taken by a learned Single Judge of this Court in the case of A.Andi (supra) in the order dated 16.11.2012 passed in W.P.(MD) No.5150 of 2007. The relevant portion of the order reads thus:

17.In order to find out as to whether the petitioner's appointment was validly made or not, the relevant provision under the Tamil Nadu Recognised Private (Regulation) Rules, 1974 is extracted hereunder:-

Rule 15(4) (d) reads as follows:-

(d)Appointment to the post of Headmaster of Higher Secondary School shall be made by the method specified in clause (ii) either from the category of Headmasters of High Schools or Teacher's Training Institutes or from the category of Post Graduate Assistants in academic subjects or Post-Graduate Assistants in Languages provided they possess the prescribed qualifications.

18.Annexure V of sub-clause IV deals with qualifications for appointment as teachers in Higher Secondary Schools, wherein the qualification for the post of Headmaster or Headmistress of the Higher Secondary Schools are stated as follows:-

Name of the Post Qualifications

1.Headmaster or Headmistress (Higher Secondary Schools)

(i)A Master's degree of a university in the State for teaching any of the languages under Parts I and II or subjects under Part III, Group "A" of the

syllabus for Higher Secondary courses or a Master's Degree of equivalent standard in any one of the subjects or languages specified in the said syllabus or a certificate issued by the University of Madras for having undergone the certificates course in Science and Humanities for Graduate Teachers in High Schools during the year 1960-1964.]

(ii)B.T. or B.Ed., degree or its equivalent.

(iii) Experience for a period of not less than ten years as B.T. School Assistant or Pandit in a Secondary School or Training School or



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Higher Secondary School recognised by the Director of School Education:

Provided that the experience in the category of Headmaster and Headmistress in a School recognised by the Director of School Education shall be taken into account for calculating the experience in the category of B.T. Assistant.

19. From the combined reading of the above said provisions made under Rule 15(4)(d) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 as well as sub-clause (IV) of Annexure V, it is seen that in order to get

appointed as Headmaster or Headmistress of the Higher Secondary School, one should necessarily possess the educational qualifications or other experience qualifications, as contemplated under sub clause IV of Annexure V of the said rules and that such appointment to the post of Headmaster of the Higher Secondary School shall be made from the category of Headmasters of the Higher

Secondary Schools or from the category of Post-Graduate Assistants in academic subjects or Post-Graduate Assistants in Languages, provided they possess the prescribed qualifications. Thus, a combined reading of both the provisions shows

that it is not sufficient for a person to hold the qualification prescribed under sub-clause IV of Annexure V alone, but he should also satisfy the

requirement of Rule 15(4)(d). In other words, he should be from the feeder category to the post of Headmaster of the Higher Secondary School. As admittedly, the petitioner was not serving as P.G. Assistant in the 4th respondent School at the time of appointing him as Headmaster of the Higher Secondary School, I find that there is a clear violation of Rule 15(4)(d) of the said rules and consequently, the very appointment of the petitioner to the post of Headmaster was not validly made.

20. No-doubt, the petitioner was possessing the requisite educational qualifications namely, M.A.(Economics), M.A.(Tamil) and M.Ed. degree, but that itself could not confer him any right to get appointed as Headmaster of the Higher Secondary School, unless he also satisfy the requirement made under Rule 15(4)



petitioner in his erstwhile School, revising the scale of pay to that of a Junior Grade B.T. Assistant may not confer upon the petitioner the post of a B.T. Assistant or a Post Graduate Teacher. This Court does not intend to go into the sanctity of such conferment of scale of pay of the petitioner, since it is felt that it would suffice to point out the conspicuous absence of the petitioner's promotion as a Post Graduate Teacher in the service records, which would consequently dis-entitle him to qualify for the required experience as a Post Graduate Teacher. As detailed in the preceding paragraphs of this order, the promotion of a Teacher in a Private Minority Institution mandates the approval of the Government Educational Authorities. Such a requirement is also ratified in the judicial precedents relied upon by this Court. Moreover, when the Government provides a Grant-in-Aid to such Minority Institution, there would be an obligation on its part to verify the vacancy of a Teacher vis-a-vis., the Teacher-Student ratio and such an obligation on the Government, which provides the Grant-in-Aid, cannot be discarded.

28. Similarly, the appointment order dated 01.06.2006 relied upon by the petitioner is not a valid order, in the absence of any approval of appointment by the Government Educational Authorities. Incidentally, this appointment order dated 01.06.2006 is not reflected in the service records of the petitioner in the erstwhile School records. Above all, when this Court has categorically held that such appointments should be supported by the approval of the Government Educational Authorities, claiming a teaching experience through an unapproved promotion, cannot support the petitioner's case in any manner. Thus, the second ground raised by the petitioner, to assail the impugned order declining approval of his appointment as a Headmaster, also cannot be sustained.

29. Mr. G.Sankaran, learned counsel appearing for the seventh respondent reiterated the arguments advanced by the other respondents and questioned the petitioner's appointment as a Headmaster on similar lines. The seventh respondent incidentally, is the Assistant Headmaster of the sixth respondent School. As per Rule 15(4), the regular vacancy of a Headmaster requires to be filled through promotion and only in cases when no qualified or suitable candidate is available for promotion, the vacancy can be filled through appointment of teachers from any other school or through direct recruitment. The seventh respondent herein, who is the senior most Post Graduate Assistant working in the respondent School from the year 1993 is duly qualified and possesses the required Post Graduate teaching experience to be promoted to the post of a Headmaster in a Private Minority Educational Institution. This factual aspect has not been denied by the sixth respondent herein. In this factual scenario, the seventh respondent herein, being the only senior-most candidate, fit for promotion, ought to have been promoted to



the post of Headmaster, but for the petitioner's appointment. Now that, this Court has categorically held that the Writ Petitioner would not be entitled to continue his post as Headmaster in the sixth respondent School and by applying the procedure that requires to be adopted for filling up a regular vacancy to the post of Headmaster through promotion as per Rule 15(4), the sixth respondent School is obligated to appoint the seventh respondent herein, as its Headmaster.

30. In the light of the above observations, this Court does not find any infirmity or illegality in the impugned order of the fourth respondent dated 22.08.2019, declining approval of the petitioner's appointment as a Headmaster in the sixth respondent School and accordingly, the impugned order of the fourth respondent dated 22.08.2019, is hereby affirmed. In view of the same, the Writ Petitioner namely, Mr. Mark Donald Carron, is declared as not fit to hold or continue the post of Headmaster in the sixth respondent School. Accordingly, the sixth respondent is at liberty to relieve the Writ Petitioner from the post of Headmaster. Consequently, there shall be a direction to the sixth respondent herein, to promote the seventh respondent namely, Mr.J.Wesly Hudson as the Headmaster of their School and issue appropriate promotional orders, atleast within a period of two weeks from the date of receipt of a copy of this order. Such an appointment shall be subject to the approval of the Government Educational Authorities.

31. With the above observations and direction, the prayer in the present Writ Petition, stands rejected. Consequently, the connected Miscellaneous Petitions are closed. There shall be no orders as to costs.

DP

s/d-
Assistant Registrar(CO)

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Sub-Assistant Registrar

To

1.The Secretary,
Government of Tamil Nadu
Education Department (Higher Education),
Fort St. George,
Chennai-600 009.

2.The Director of Higher Secondary School Education,
College Road, DPI Compound,
Nungambakkam,
Chennai-600 006.



3.The Joint Director of Higher Secondary School Education,
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4.The Chief Educational Officer,
Office of the Chief Educational Officer,
Egmore, Chennai-600 008.

5.The District Educational Officer (West),
DPI Compound,
Nungambakkam,
Chennai-600 006.

- 1 cc to M/s. R. Gopinath, Advocate Sr.39322
 - 1 cc to M/s. G. Sankaran, Advocate SR.39319
 - 1 cc to Government Pleader Sr.39478
- +2cc to Mr.Adrian D.Rozario, Advocate Sr.39229[11/08/2021]

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W.P.No.25800 of 2019

RR(CO)
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