



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.01.2020

DELIVERED ON : 09.02.2021

WEB COPY

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD) No.13745 of 2014

and

M.P. (MD) .No.2 of 2014

M.Francisco Antony

... Petitioner

Vs.

1.The Director of School Education,
College Road,
Chennai.

2.The Chief Education Officer,
Nagercoil,
Kanyakumari District.

3.The District Education Officer,
Thuckalai Educational District,
Thuckalai,
Kanyakumari District.

4.The Superintendent,
Kottar and Colachel Vicariate of RC Schools,
Assisi Church Campus,
Nagercoil,
Kanyakumari District.

5.St. Mary's Higher Secondary School,
represented by the Correspondent,
Colachel,
Kanyakumari District.

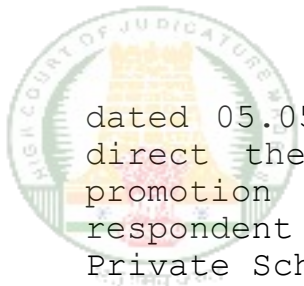
6.Everestin Jose

7.M.Joseph Justus

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings of the 4th respondent in Nil dated 03.04.2014 and in Ref.No.K/C/93/05.05.2014

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dated 05.05.2014 and quash the same as illegal and consequently to direct the respondents 4 and 5 and consider the petitioner for promotion to the post of P.G. Assistant (Zoology) in the 5th respondent school as per Rule 15(4) of the Tamil Nadu Recognized Private School Regulation Rules, 1974.

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For Petitioner

: Mr.M.Ajmalkhan,
Senior Counsel for
M/s.Ajmal Associates

For respondents 1 to 3 : Mr.N.Shanmugaselvan,
Special Government Pleader

For respondents 4, 5, 7: Mr.Isaac Mohanlal,
Senior Counsel for
Mr.K.Ragatheesh Kumar

For respondents 6 : No appearance

ORDER

This writ petition has been filed by the petitioner challenging the orders of the 4th respondent dated 03.04.2014 appointing the 6th respondent as P.G. Assistant (Zoology) with effect from 03.04.2014 and dated 05.05.2014 rejecting the representation of the petitioner dated 15.03.2014.

2. The learned senior counsel appearing for the petitioner submitted that in the year 1994, the petitioner was appointed as B.T. Assistant (Science) in the self financing stream of the 5th respondent aided minority institution run by the 4th respondent. Though the petitioner was initially promised that he would be accommodated in the vacancy under the regular stream as a P.G. Assistant (Zoology), he was ignored and he was made to continue under self financing stream till 2007. On 31.05.2008, the petitioner was in a regular vacancy that arose in view of retirement of one John Mary. While so, in August 2013-14, the Education authority inspected the school and found that the post of three B.T. Assistant (Science) are in surplus by the staff fixation order dated 03.10.2013 and they were need to be deployed to other schools. At the same time, due to retirement of one A.Rajammal P.G. Assistant in Zoology, a vacancy arose in the 5th respondent school. Therefore, the B.T.Assistant working in the 5th respondent approached the Correspondent on 26.03.2014 with a representation to consider eligible candidate for promotion as P.G. Assistant, instead deploying them to other schools. As the petitioner was fully qualified and senior most to be appointed as P.G. Assistant among the regular staff in the school, the petitioner preferred an application to the respondents on 15.03.2014 requesting to consider him for promotion. As there was no response to the same, the



petitioner filed a writ petition in W.P.(MD).No.6348 of 2014 seeking a direction to the 5th respondent school to promote him as P.G. Assistant (Zoology) with effect from 01.04.2014 by considering his representation dated 15.03.2014. This Court by order dated 11.04.2014, directed the 4th respondent therein to consider the representation of the petitioner dated 15.03.2014.

3. The learned senior counsel appearing for the petitioner would further submit that in the meantime, as the 4th and 5th respondents took active steps to appoint another candidate of their choice without considering the candidature of the petitioner, the petitioner filed another writ petition in W.P.(MD).No.11409 of 2014 seeking for a direction to the respondents therein to fill up the post of P.G. Assistant (Zoology) in accordance with Rule 15 of the Tamil Nadu Recognized Private School Regulation Rules, by considering his representation dated 26.03.2014. This Court, by order dated 12.08.2014, was pleased to grant an interim order not to approve the appointment of any other person as P.G. Assistant in the school. Immediately thereafter, the 4th respondent filed a typed set of papers on 12.08.2014 containing the appointment order of the 6th respondent dated 03.04.2014 and also the order of rejection of the petitioner's representation, dated 05.05.2014. Thereafter, challenging both the above orders, the petitioner has filed this writ petition.

4. The learned senior counsel appearing for the petitioner would further submit that Rule 15(4) mandates that the appointment as teachers in the school shall be made by promotion from among the qualified teachers already in the service of the same school and only if no such qualified teacher is available amongst the existing teacher of the school, the Management can effect appointment by direct recruitment, after proper notification. He would further submit that the petitioner possessed M.Sc., M.A., B.Ed., as qualification, whereas the 6th respondent possessed only M.Sc., B.Ed. degree. Though the petitioner has been working as B.T. Assistant (Science), he has been taking classes for higher secondary students also and thus, he has greater experience than the 6th respondent. The petitioner was the only qualified teacher available in the 5th respondent school for promotion. But, the 4th respondent, without following the above rule, has appointed the 6th respondent who was working as P.G. Assistant in the self financing stream of the 5th respondent school. As the impugned orders have been passed in violation of Rule 15(4) of the Rules, the same are liable to be set aside.

5. In support of the above submission, the learned senior counsel for the petitioner relied upon the following decisions:

(a) B.Devashanthini Vs. the Director of School Education, reported in (2011) 4 MLJ 450;

(b) Ivy C.da.Conceicao Vs. State of Goa, reported in 2017 (1) C.W.C. 903;



- (c) Secy.Malankara Syrian Catholic College Vs. T.Jose and others, reported in 2007 (1) SCC 386; and
(d) T.M.A. Pai Foundation and others, reported in 2002 (8) SCC 481.

6.The learned senior counsel appearing for the contesting respondents 4, 5 and 7/School would submit that the 5th respondent school is one among the several recognized educational institutions established and administered by the Roman Catholic Diocese of Kottar. In the academic year 1994-95, the petitioner was initially appointed as Secondary Grade Teacher in the 5th respondent school in self- finance stream. Later, he was appointed as B.T. Assistant (Science) in the aided stream with effect from 02.06.2008. The DEO also approved the appointment of the petitioner. The petitioner is now handling classes upto 10th standard. While so, on 01.04.2014, one post of P.G. Assistant in Zoology fell vacant due to the retirement of one Tmt.A.Rajammal. For filling up the said post, the Management considered all the eligible candidates serving in the school including the petitioner. On an overall consideration of their merit and ability, outlook and ideology, the Management found the 6th respondent herein, who had already been serving in the school as P.G. Assistant in Zoology under the self finance stream from 03.08.2009, as the most suitable person for the post and accordingly, by order dated 03.04.2014, appointed him as P.G. Assistant in Zoology with effect from 03.04.2014. The 6th respondent has been serving in the said post till date. But, the proposal for approval to the appointment of the 6th respondent is still pending before the 3rd respondent in view of the interim order passed by this Court. While so, suppressing the factum of issuance of appointment order to the 6th respondent, the petitioner filed W.P.(MD).No.6348 of 2014 before this Court for a direction to the 4th respondent to consider his representation for appointment to the post of P.G. Assistant. This Court, by order dated 11.04.2014, directed the 4th respondent to dispose of the representation within a stipulated time and as such, the 4th respondent considered the representation of the petitioner and as the post had already been filled up by appointing the 6th respondent and as it has been found that the 6th respondent was meritorious than the petitioner, rejected the request of the petitioner and communicated the same to the petitioner through registered post on 05.05.2014. The petitioner also received the same on 06.05.2014.

7. The learned senior counsel appearing for the School would further submit that while so, without challenging the rejection order and suppressing the factum of receipt of same, the petitioner has filed another writ petition in W.P.(MD).No.11409 of 2014 on 01.07.2014, seeking a direction to the respondents to fill up the post only by promotion in accordance with Rule 15 of the Rules, by considering his representations dated 26.03.2014 and 10.06.2014, and obtained an interim order. Thereafter, the petitioner filed the present writ petition challenging the orders rejecting the petitioner's representation and also appointment order of the 6th



8. The learned senior counsel appearing for the School would next submit that at the time of consideration, the petitioner was possessing with M.Sc., M.A., and B.Ed., degree, whereas the 6th respondent was possessing with M.Sc., M.Phil., and B.Ed., degree and the 6th respondent has been working in the post of P.G. Assistant (Zoology) from 2009 onwards in self finance stream, whereas the petitioner was taking classes upto 10th standard. Thus, the 6th respondent was meritorious than the petitioner. He would further submit that though the school is governed by the Tamil Nadu Recognized Private Schools (Regulation) Act and Rules, some of the provisions abrogating the right of the minority management were declared as not applicable including Rule 15(4). In support of the said contention, he relied upon the following decisions:

(a) Eka Ratchagar Sabai Higher Secondary School and others Vs. K.Sumathi and another (2008) 1 MLJ 322;

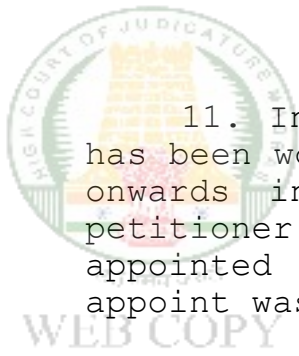
(b) A.Belvavendran Vs. the Joint Director of School Education and others, (2010) (1) CWC 343;

(c) V.Kanikai vs. Director of School Education, Chennai and others (2012) 8 MLJ 417 and

(d) S.Francis vs. The Joint Director of School Education and others, unreported decision in W.A.No.1143 of 2012 dated 31.07.2014. Even under Rule 15(4) no automatic promotion is contemplated and the only right derivable under the Rule is the right to be considered. The management in this case considered all the eligible candidates serving in the school including the petitioner and found the 6th respondent meritorious than the other candidates and hence, appointed him. Thus, he prayed to dismiss this writ petition.

9. Heard the learned senior counsel appearing for both sides and perused the records carefully.

10. It is well settled that the promotion cannot be claimed either as automatic or as a matter of right. It is also well settled that an aided minority educational institution has a right to appoint a person, who is according to them, is most suited to the post. The decisions relied on by the parties makes it clear that the Tamil Nadu Recognized Private Schools (Regulation) Act and the Rules framed thereunder, cannot be said to be not applicable to the minority institutions as a whole and it is only some provisions which impinge upon the constitution right given to the minority institution under Article 30(1) of the Constitution of India are not applicable to the minority institution. As per Rule 15(4)(ii) of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974 the appointment of the teachers shall be made by promotion from among the qualified teachers in that school and if no qualified and suitable candidate is available, the institution can appoint the other persons employed in that school, provided he/she is fully qualified to hold the post of teacher.



11. In this case, it is not in dispute that the 6th respondent has been working in the school as P.G. Assistant (Zoology) from 2009 onwards in self-finance stream. It is seen that earlier the petitioner who was working under the self-financing stream, was appointed as B.T. Assistant (Science) in the year 2008 and his appointment was also approved by the DEO.

12. It is stated by the petitioner that he is a qualified and senior most person eligible to be promoted to the post of P.G. Assistant (Zoology), but his candidature has not been properly considered by the Management. According to the Management, all the eligible candidates, including the petitioner, have been considered by the Management. At the time of consideration, the petitioner was possessing M.Sc. M.A., B.Ed. qualification, whereas the 6th respondent was possessing M.Sc., M.Phil., B.Ed., qualification and the petitioner was taking classes upto 10th standard, whereas the 6th respondent was working as P.G. Assistant (Zoology) from 2009 onwards in self-finance stream. As the 6th respondent possessed with more qualification and experience rather than the petitioner, the Management selected the 6th respondent as suitable candidate and appointed him to the post of P.G. Assistant (Zoology).

13. When the similar issue arises for consideration, a learned Single Judge of this Court has held in the decision in **V.Kanickai Vs. Director of Education, Chennai and others**, reported in (2012) 8 MLJ 417 as follows:

"16. At the outset, Rule 15(4)(i) enumerated above makes it very clear that the promotion is on the basis of merit and ability, seniority will be only secondary in cases where merit and ability of candidates are equal. Therefore, in the light of Rule 15(4)(i) of the Rules, one cannot claim promotion either as automatic or as a matter of right. It is ultimately for the authority to promote as per the rule to decide about the merit and ability. The manner in which the ability has to be assessed is decided by the authority as well as the authority empowered under law in its exercise. It is certainly not for the Court to interfere and to say that some other candidate is better qualified simply because there are two opinion, to substitute its own view. On the factual matrix, it is the categorical case of the fourth respondent, who has admitted that the petitioner has been working in the same school as B.T. Assistant Teacher in Tamil and the fourth respondent has considered the name of the petitioner and also other eligible teachers in the other schools and having considered that the fifth respondent even though she was not working in the same school and working in some other Diocese is better suitable and



has come to the conclusion that the fifth respondent is more meritorious and having ability, she was appointed.

17. In such view of the matter, when once the petitioner has been considered as it is averred by the fourth respondent in the counter affidavit and the petitioner cannot have as a matter of right to be promoted as Secondary Grade Teacher in Tamil, the contention of the learned counsel for the petitioner that Rule 15(4) of the Rules has not been followed, has no basis at all. This is apart from the fact that Rule 15(4) in my considered view is not applicable to the minority institution as per the long established and judicial precedence."

14. As stated supra, the promotion cannot be claimed as a matter of right. The petitioner has only a right to be considered. The Management has already considered the case of the petitioner and rejected him. The petitioner has not made out a case of any violation or discrimination by the Management in appointing the 6th respondent. There is no merit in this petition. Hence, this Court is inclined to dismiss this petition.

15. In the result, this Writ Petition is dismissed. It is stated by the learned senior counsel for the school that in view of the interim order granted by this Court, the appointment of the 6th respondent has not been approved and he has been working without salary. Hence, the respondents are directed to approve the appointment of the 6th respondent if there is no other impediment and if not already approved, and grant all the service and monetary benefits to the 6th respondent within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Bala

To

1.The Director of School Education,
College Road, Chennai.

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2.The Chief Education Officer,
Nagercoil,
Kanyakumari District.

3.The District Education Officer,
Thuckalai Educational District,
Thuckalai,
Kanyakumari District.

+1 CC to M/s.ISSAC CHAMBERS, Advocate (SR-4197[F] dated
10/02/2021)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-4554[F] dated
11/02/2021)

order made in
W.P (MD) No.13745 of 2014
09.02.2021

VB (03.03.2021) 8P 6C