



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 05.01.2022

Pronounced on : 31.01.2022

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CORAM:

THE HONOURABLE MRS.JUSTICE S. SRIMATHY

**W.P(MD) Nos. 17926 of 2013 and 973 of 2014 and
M.P(MD) .No. 2 of 2013 and M.P(MD) .No.1 of 2014**

K. Sundar Rajan : Petitioner in W.P(MD).No.17926/2013

K. Ramkumar : Petitioner in W.P(MD).No.973/2014

..VS..

1. The Joint Director of Elementary Education (Aided),
and Appellate Authority (Aided Schools),
DPI Campus, College Road,
Chennai - 600 006.

2.The District Elementary Educational Officer,
Thanjavur District,
Thanjavur.

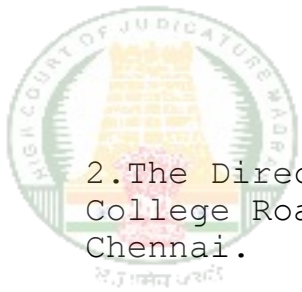
3.The Additional Assistant Elementary Educational Officer,
Thiruvudaimaruthur,
Thanjavur District.

4.The Secretary,
Ramakrishna Aided Middle School,
Natchiyarkovil - 612 602.

5.K. Ramkumar
(R5 is impleaded vide Court order
dated 240-8.2021 in WMP(MD).No.974 of 2017)
in WP(MD).No.17926 of 2013

: Respondents in W.P(MD).No.17926/2013

1.The State of Tamil Nadu,
Rep. By its Secretary,
Department of School Education,
Fort St. George, Chennai.



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

3.The Joint Director of Elementary Education,
(Aided Schools),
College Road,
Chennai.

4.The District Elementary Educational Officer,
Thanjavur,
Thanjavur District.

5.The Secretary,
Ramakrishna Aided Middle School,
Nachiyarkoil,
Thanjavur District.

6.Sundar Rajan,

7.Additional Assistant Elementary Educational Officer,
O/o. The Assistant Elementary Educational Officer,
Thiruvudaimaruthur Range,
Thanjavur District.

PRAYER in WP(MD).No.17926 of 2013 : Writ Petition filed under Article 226 of the Constitution of to issue a Writ of Certiorari to call for the records of the 1st respondent proceedings in Na.Ka.No.19487 /H2/2012, dated ... 03/2013 served on the petitioner on 09.10.2013 and quash the same.

PRAYER in WP(MD).No.973 of 2013 : Writ Petition filed under Article 226 of the Constitution of to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the 3rd respondent by his proceedings in Na.Ka.No.19487 /H2/2012, dated ... 03/2013 served on the petitioner on 07.10.2013 and quash the same as illegal in so far as it relates to the petitioner and consequentially to direct the respondents to promote the petitioner as B.T. Assistant (Tamil) in the 5th respondent school in the light of Rule 15(4)(ii)(i) of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974.

For Petitioner
in W.P(MD).No.17926 of 2013 : Mr. F. Deepak

For petitioner
in W.P(MD).No.973 of 2014 : Mr. Mohammed Ibrahim
for M/s. Ajmal Associates



For Respondents 1 to 3 : Mr. R. Ragavendran
in W.P(MD).No.17926 of 2013 Government Advocate (Civil Side)

For Respondents 1 to 4 : Mr. R. Ragavendran
in W.P(MD).No.973 of 2014

For 4th respondent : No appearance
in in W.P(MD).No.17926 of 2013

For 5th respondent : Mr. Mohammed Imran
in W.P(MD).No.17926 of 2013

For R5 and R6 : No appearance
in W.P(MD).No.973 of 2014

COMMON O R D E R

The Writ Petition in W.P.(MD).No.17926 of 2013 is filed by Mr. Sundar Rajan to call for the records of the 1st respondent proceedings in Na.Ka.No.19487 /H2/2012, dated ... 03/2013 served on the petitioner on 09.10.2013 and quash the same.

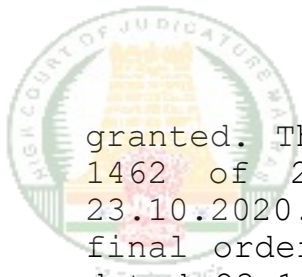
2. The Writ Petition in W.P.(MD).No.973 of 2014 is filed by Mr. Ramkumar to call for the records relating to the impugned order passed by the 3rd respondent by his proceedings in Na.Ka.No.19487 /H2/2012, dated ... 03/2013 served on the petitioner on 07.10.2013 and quash the same and consequently, direct the respondents to promote the petitioner as B.T. Assistant (Tamil) in the 5th respondent school in the light of Rule 15(4)(ii)(i) of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974.

3. The petitioner in W.P.(MD).No.17926 of 2013 viz., K. Sundar Rajan, was appointed as Secondary Grade Teacher in the 4th respondent school on 04.02.2002 and his appointment was approved by the Department. While in service he qualified with B.Lit., in the year 2007, thereby, he became eligible for the promotion to the post of B.T. Assistant Tamil in the 4th respondent school on 16.07.2009. Due to the promotion of the incumbent Mr. Elango as B.T. Assistant in Maths, the post of Secondary Grade Teacher felt vacant. As per the G.O.Ms.No.100 School Education Department, dated 27.06.2013, whenever the vacancies to the post of Secondary Grade Teacher arises for Standards 6 to 8 the same would be upgraded as B.T. Assistant and the post ought to be filled up with B.T. Assistant. Since the said Sundar Rajan is qualified for the promotion to the post of B.T. Assistant, he was given promotion in the upgraded post vide order dated 16.07.2009.



4. One Mr. K. Ramkumar working as Vocational Instructor (Weaving) in the same school submitted an application to the 1st respondent herein alleging the promotion granted to the petitioner is illegal. The said K.Ramkumar has stated he is qualified with B.Lit., and D.T.Ed and had filed Writ Petition in W.P.(MD).No.15746 of 2009 and this Court vide order, dated 10.08.2009 directed the second respondent to consider the representation of the petitioner dated 27.07.2009 and pass orders. The second respondent passed an order rejecting the claim of the said Ramkumar seeking promotion to the post of B.T. Assistant on 09.06.2010. Further, the second respondent vide order dated 02.08.2010 approved the Sundar Rajan's promotion to B.T. Assistant, Tamil from the date of promotion i.e., on 16.07.2009. Aggrieved over, the said Ramkumar, Vocational Instructor filed W.P.(MD). No. 9943 of 2010, challenging the order of rejection dated 07.06.2010 and this Court vide order dated 02.08.2010 directed the first respondent to consider the appeal filed by the said Ramkumar on merits and in accordance with law within a period of four weeks. The first respondent through proceedings dated 23.10.2010 rejected the appeal submitted by the said Ramkumar for the reasons that the said Ramkumar has studied B.Lit., and D.T.Ed., simultaneously and therefore, he is not eligible under law and has also stated that the said Ramkumar has not handled any classes for the students in the subjects, since he being the Vocational Instructor. The first respondent has also cancelled the approval of the promotion of the said Sundar Rajan stating that the School Management has not followed the "Subject Roaster" while filling up the vacancies to the post of B.T. Assistant. Consequently, the second respondent vide proceeding dated 11.11.2010 cancelled the order of approval of promotion to the said Sundar Rajan and directed the school management to fill up the vacancy post of B.T. Assistant with science qualified teachers. The petitioner Sundar Rajan, aggrieved by the order of the first respondent and has contended that the said order was passed without providing any opportunity to the petitioner and the same is violation of principles of Natural Justice.

5. Further, it is submitted that G.O.Ms.No.144 School Education Department, dated 04.07.2008 was passed and the subsequent Government Letter No.2980/B2/2008-1, dated 22.10.2008 by which the restriction of Subject Roaster in English, Science and Maths Subjects was relaxed and it was made open to other subjects as well and this Court has held in several cases imposing subject Roaster is not valid and it is violation of the provisions of Tamil Nadu Recognized Private Schools (Regulation) Act and Rules. Challenging the said order dated 23.10.2010, as well as the orders of the 2nd respondent dated 11.11.2010 another W.P(MD). No. 14424 of 2010 was filed and the said Writ Petition was admitted and interim order was



granted. The said Ramkumar also filed Writ Petition in W.P(MD). No. 1462 of 2011 challenging the order of first respondent dated 23.10.2020. Both the Writ Petitions were taken up together and final order dated 06.06.2012 was passed by which the impugned order dated 23.10.2020 was set aside and the matter was remitted back to the first respondent to pass order afresh after hearing the petitioner within a period of four weeks. Thereafter, the first respondent has passed an order in Na.Ka.No.19487/H2/2012, dated .. 03.2013 signed on 30.07.2013 and served on the third respondent on 09.10.2013. However, the first respondent has repeated the earlier order dated 23.10.2010 in verbatim. The said order rejects the promotion to both petitioners in Writ Petitioners viz., Sundarrajan as well as Ramkumar. The writ petitioners allege the first respondent has not granted any opportunity before passing the said order. The averments in W.P(MD). No. 973 of 2014 is also one and the same.

6. The District Elementary Education Officer has filed counter for the both writ petitions. The respondents have stated both Sundar Rajan as well as Ramkumar are not eligible for promotion and has substantiated the impugned order. In the impugned order it has been stated that "subject roaster" was not followed while promoting the said Sundar Rajan.

7. As far as Ramkumar is concerned the respondents have stated in the counter that he has studied B.Lit. and D.T.Ed. in the same academic year, he has not taken subject class in the school and is serving as vocational instructor. The school has rejected the candidature of the said Ramkumar, for the reason if the promotion is granted then there will not be teacher for weaving class.

8. Heard the Learned Counsel for the petitioners in both the writ petitions and the Learned Counsel for the respondents and perused the materials placed on record.

9. The impugned order has rejected the promotion of the said Sundar Rajan, since the School has not followed the subject roaster. The said Sundar Rajan's contention is that the School has discretionary power to appoint any teacher as per their need. The G.O. 144 School Education Department dated 04.07.2008 read with subsequent letter in No. 29809 / B2 / 2008 -I dated 22.10.2008, by which the restriction of subject roster in English, Science and Maths subjects was relaxed and it was made open to other subjects also depending upon the need of the school. This Court has held in several cases that imposing subject roaster in making appointment is not valid. It is seen that the except for this there is no objection from the official respondents, which means the said Sundar Rajan is otherwise qualified. However the said subject roaster objection is applicable to the rival candidate Ramkumar also and that is why the



official respondents had rejected the promotion to both the candidates.

10. The impugned order rejects the appointment of the said Ramkumar since he has qualified both B.Lit. and D.T.Ed. on the same year. However the said Ramkumar has clarified stating that he did B.Lit. in the academic year 2002-2003, 2003-2004, and 2004-2005. D.T.Ed. examinations in October 2006 and December 2006, which means he joined in the academic year 2005 and has written the examinations in 2006. Moreover he had experience for 8 years and as per G.O. Ms. No. 1843 Education Department dated 27.09.1979 he was permitted to appear only in examination based on the 8 years experience. The other reason stated against the said Ramkumar is that other experienced persons are available and if the Ramkumar is promoted then no weaving classes could be taken to students. The said Ramkumar is objecting to these two reasons stated by the school management.

11. As far the subject roster is concerned then both the candidates are not eligible. However this Court in several cases has held that the subject roster is not contemplated in the Tamil Nadu Private School Regulation Act. In the Corporate Manager CSI Corporate Schools VS. The State of Tamil Nadu reported in 2006 (5) CTC 504 has held that the said requirement is in violation of the provisions of the Tamil Nadu Recognised Private School (Regulation) Act, 1973 and G.O. Ms. No. 125 School Education (X2) Department dated 12.11.2003. This is followed in the Correspondent, Britannia Higher Secondary School, Chennai VS State of Tamil Nadu represented by its Secretary, Department of School Education, Chennai and others reported in 2007 (2) MLJ 760 held that the said Act 29/74 does not contemplate any subject roster to be followed regarding the appointment of Middle Grade Graduate teachers. Therefore the objection of the respondents is erroneous and the same is liable to be set aside. Therefore this Court is of the considered opinion that the said Sundar Rajan is eligible to be promoted.

12. Now the question is whether the said Ramkumar is eligible. The said Ramkumar has no teaching experience in the subject but is experienced in the weaving. The Learned Counsel submitted that experience cannot be put against the said Ramkumar since there is no mention of "experience" in the Act. The relevant Rule 15(4) is extracted:

Rule 15 ...

(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 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

Under Section 15(4) the candidates shall be considered on merit and ability and when it is equal then seniority shall be considered. In the present case both the candidates have merit since both have same qualification. Both have ability to teach since they are in the teaching profession for very many years. The said Sundarrajan has more experience in teaching the subject. But the said Ramkumar has experience in teaching vocational. Therefore, this Court is of the considered opinion the said Sundarrajan is having advantageous position.

13. Moreover, under Rule 15(4) firstly it is stated that "Promotion among the qualified teachers in that school" shall be granted. Thereafter only the "Promotion from among the qualified Vocational Instructors in that school". Since the qualified teachers in that school comes first the said Sundar Rajan wins over the said Ramkumar. Therefore the promotion granted to the said Sundar Rajan is legally valid.

14. Therefore the school is directed to grant the promotion to the said Sundar Rajan and pay all monetary benefits. The school is also directed to consider the case of the said Ramkumar, if any vacancy arises in the school and a weightage shall be granted to the said Ramkumar.

15. With the above direction the writ petition filed by Sundar Rajan in W.P. (MD). No. 17926 / 2013 is allowed. The writ



petition filed by Ramkumar in W.P. (MD). No. 973 / 2014 is dismissed. No costs. Connected all miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS I)

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/ /2022

Sub Assistant Registrar(CS)

trp

To

1. The Joint Director of Elementary Education (Aided),
and Appellate Authority (Aided Schools),
DPI Campus, College Road,
Chennai - 600 006.
- 2.The District Elementary Educational Officer,
Thanjavur District,
Thanjavur.
- 3.The Additional Assistant Elementary Educational Officer,
Thiruvidaimaruthur,
Thanjavur District.
- 4.The Secretary,
State of Tamil Nadu,
Department of School Education,
Fort St. George, Chennai.
- 5.The Director of School Education,
College Road,
Chennai.

+1 CC to M/s.F.DEEPAK, Advocate (SR-3178[F] dated 31/01/2022)

+1 CC to M/s.SPL.GP (SR-3324[F] dated 01/02/2022)

**W.P(MD) Nos. 17926 of 2013 and 973 of 2014 and
M.P(MD) .No. 2 of 2013 and M.P(MD) .No.1 of 2014
31.01.2022**

MGJ(22.02.2022) 8P 8C