



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2023

CORAM

THE HON'BLE Mr. JUSTICE **C. V. KARTHIKEYAN**

W.P.No.24625 of 2019

SBM High School
Rep. by its Correspondent
Mr. D. David Livingston
Trichy Main Road, Namakkal.

.. Petitioner

Vs.

1.The State of Tamil Nadu
Rep. by the Secretary to Government,
Education Department,
Fort St. George,
Chennai – 9.

2.The Director of School Education
College Road,
Chennai – 6.

3.The Chief Educational Officer
Namakkal.

4.The District Educational Officer
Namakkal.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus, to call for the entire



records connected with the impugned order passed by the 4th respondent in O.Mu.No.4024/A3/2019 dated 14.05.2019 and to quash the same and direct the 3rd respondent to approve the promotion of the Tmt.R.Keili Rosalin Saral as Headmistress in the petitioner school w.e.f 02.04.2018 with all consequential monetary benefits and other attendant benefits by counting the teaching experience rendered by her in the petitioner school from 15.06.2011 to 01.04.2018, in light of the order passed in W.P.No.24213 of 2005 dated 15.02.2008.

For Petitioner .. Mr. S. N. Ravichandran

For Respondents .. Mr. U. Bharanidharan, AGP

ORDER

The Writ Petition has been filed in the nature of Certiorarified Mandamus seeking records relating to O.Mu.No.4024/A3/2019 dated 14.05.2019 and quash the same and consequentially direct the 3rd respondent / the Chief Educational Officer, Namakkal, to approve the promotion of Tmt. R. Keili Rosalin Saral as Headmistress of the petitioner school / SBM High School, Namakkal, with effect from 02.04.2018 and grant consequential monetary benefits and attendant benefits. The petitioner



school also seeks that the teaching experience of R. Keili Rosalin Saral from 15.06.2011 to 01.04.2018 should be taken into account. The petitioner school also places reliance on an earlier order passed with respect to the very same school in W.P.No.24213 of 2005 dated 15.02.2008.

2. It had been stated in the affidavit filed in support of the writ petition, that the petitioner school, a religious minority institution and recognized as minority institution under Article 30 of the Constitution of India was originally stated in the year 1923 as a Middle School. The Middle School was upgraded as High School in the year 1990. The Government granted sanction by GO.Ms.No.1059 dated 06.11.1992. The District Educational Officer grant recognition to the High School with effect from 1990. It is also stated that the school is governed by the provisions of the Tamil Nadu Recognized Private Schools (Regulation) Act and Rules.

3. The petitioner school had appointed four teachers as BT Assistant Teachers and another individual as a Record Clerk on various dates in the year 2011. The teacher whose approval is now sought, R. Keili Rosalin Saral was so appointed as BT Assistant Teacher on 15.06.2011. Thereafter, in



accordance with the rules and guidelines, the petitioner school had forwarded all the above appointees for approval as BT Assistant Teachers and Record Clerk to the 4th respondent, the District Educational Officer, Namakkal. By proceedings dated 29.08.2016 this proposal was rejected by the 4th respondent claiming that the posts were not sanctioned and that the appointments were made in excess of the sanctioned posts. It is also claimed that they were in violation of the Rule 15(1) of Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974.

4. The petitioner and several other schools then filed W.P.No.7123 of 2010. A common order was passed on 27.04.2012. The relevant portion of the order is as follows:

“28.This Court cannot issue a direction for sanction of posts by issuing a Writ of Mandamus. However, on the facts and circumstances of these cases and having regard to the admitted position that the petitioner schools are granted recognition with Aid and the reasons stated by the respondents being want of funds and not sanctioning



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additional posts to other schools, which are found against the respondents, I am constrained to pass the following order.

The impugned orders issued by the respective respondents are set aside and the respondents are directed to consider and sanction additional posts to the petitioner schools based on the availability of students strength in aided standards/subjects, for which the petitioner schools sought for sanction of additional posts within a period of three months from the date of receipt of a copy of this order.

While considering the said aspect, the claim of the petitioner schools shall not be rejected on the ground of want of funds and also on the ground that the petitioner schools admit the students in additional sections without prior permission from the department and on the alleged reason that other schools are not sanctioned with posts as per G.O.Ms.No.525, School Education (D-1) Department, dated 29.12.1997, as the said issues are already held



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against the respondents.

It is made clear that if the petitioner schools are found eligible to get sanction of additional posts and if qualified teachers are appointed, such posts shall be sanctioned from the academic year, in which the schools are eligible to get sanction of additional posts and arrears of salary from the date of appointment to such teachers who are qualified, are to be paid.

While assessing the claim of the petitioner schools, the respondents are bound to consider the student strength assessed from time to time by the appropriate authority for each academic year, i.e., average attendance of August.”

5. In the meanwhile, the vacancy arose for the post of BT Assistant (History), on 01.10.2016 due to the retirement of the teacher, who was holding that post. The petitioner school appointed R.Keili Rosalin Saral as BT Assistant (History) by order dated 03.10.2016. Again a proposal was forwarded to the 4th respondent on 27.10.2016 seeking approval and grant. The 4th respondent by an order dated 19.05.2017 granted approval with



effect from 03.10.2016. Thereafter, the Headmistress who was serving in the school retired on attaining the age of superannuation on 31.03.2018. The petitioner school then again appointed R. Keili Rosalin as Headmistress of the school by resolution dated 30.03.2018. This promotion from BT Assistant (History) to Headmistress was also forwarded as a proposal on 20.09.2018 to the 4th respondent. There was a direction to resubmit the proposal. Then the impugned order was passed on 14.05.2019, by which the 4th respondent refused to approve the promotion of R. Keili Rosalin Saral as Headmistress of the school, on the ground that the said appointment is in violation of Rule 15(i) of the Tamil Nadu Recognized Private Schools Regulation and that she did not have five years of teaching experience. This order of the 4th respondent put in test in this writ petition.

6. In the counter affidavit filed by the 4th respondent, it had been stated that the order in W.P.No.7123 of 2010 had made it clear that if the petitioner school is found eligible to get sanction of additional posts and if qualified teachers are appointed, such posts shall be sanctioned from the academic year, in which the schools are eligible to get sanction for the additional posts. It had been very specifically stated that R.Keili Rosalin



Saral, who was appointed as BT Assistant on 15.06.2011 was actually not qualified, since she had written her final B.Ed. Examination only in December 2011. It is therefore stated that the initial appointment itself was not proper. This had been related back to the directions in W.P.No.7123 of 2010, wherein, a learned Single Judge had stated that “if qualified teachers are appointed, then the posts should be sanctioned”.

7. It had then been stated that since the particular initial appointment was unlawful, she had then continued to work in a post for which sanction was not granted. Finally, sanction was granted only on 02.10.2016 and it had therefore been stated that the entire previous years of service till 02.10.2016 cannot be taken into consideration. It had therefore been contended that if the service from 02.10.2016 is taken into consideration, she will again not be qualified to be appointed as Headmistress since she had not rendered her service as BT Assistant teacher for a continuous period of five years prior to the appointment to Headmistress. Holding those two grounds against the proposal forwarded by the petitioner school, the 4th respondent justified the rejection of such proposal appointing R. Keili Rosalin Saral as Headmistress of the petitioner school.



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8. Heard arguments advanced by Mr. S. N. Ravichandran, learned counsel for the petitioner and Mr.U. Bharanidharan, Additional Government Pleader for the respondents.

9. The learned counsel for the petitioner took the Court through the facts as stated above and stated that the order in the earlier writ petition in W.P.No.7123 of 2010, had been wrongly interpreted by the respondents. The learned counsel pointed out the relevant portion in the said order, which related to the petitioner school, and stated that the order implied that if the school was eligible to get sanction of additional posts and if qualified teachers are appointed, then such posts shall be sanctioned from the academic year, in which the schools are eligible to get sanction of the additional posts. The learned Single Judge had also stated that arrears of salary from the date of appointment to such teachers who are qualified must be paid. It had therefore been contended by the learned counsel that when the post had fallen vacant and R. Keili Rosalin Saral was found eligible, and since she had worked as teacher continuously from 15.06.2011 when she



was first appointed, the entire period of service should be taken into consideration. The learned counsel then pointed out the approval granted to R.Keili Rosalin Saral as Headmistress with effect from 03.10.2016 by the proceedings dated 19.05.2017 by the District Educational Officer at Namakkal. The order was only consequent to the retirement on attaining the age of superannuation by the previous Headmaster.

10. The learned counsel then placed reliance on the judgment of a learned Single Judge of this Court reported in **2008 Writ L.R 441, S. Manivannan Vs. the Director of School Education and others**, wherein the learned Single Judge had an occasion to examine the issue with respect to the very same regularization namely, requirement of five years of teaching experience for appointment of the Headmaster and on examining the facts in that particular case, though the school itself had not been granted recognition, held that since the individual who was proposed to be appointed as Headmaster had actually been working, his appointment should be approved.

11. The learned counsel placed reliance on yet another judgment in



W.P.(MD).No.520 of 2008, K. Navaneetha Krishnan Vs. The Director of School Education, Chennai, wherein, again the issue of five years of qualification was examined and it had been held as follows:

“9.From the perusal of the above qualifications, prescribed under the Rules, which is the only governing rule for appointment to the post of High School Headmaster, I am of the view that the order passed by the respondents that five years teaching experience is an unaided school, cannot be treated as qualification towards experience, is unsustainable. As rightly contended by the learned counsel for the petitioner, in the said prescribed qualification, it is not stated that five years experience should be from a recognized aided school. Hence, the impugned order rejecting approval stating that the service rendered in an unaided school cannot be taken as experience for the purpose of promotion to the post of Headmaster is liable to be set aside. In fact I had an occasion to consider a similar issue and the said judgment is reported in 2008(5) MLJ 462. The said judgment is directly applicable



examination only in December – 2011, but, however, she had been appointed prior to that date as BT Assistant on 15.06.2011. The rejection of the proposal sent earlier of her name along with others had therefore been justified. Thereafter, it had been stated that she had rendered her service only in an unsanctioned post and the respondents had refused to grant approval or recognition of her service till 02.10.2016, since she had not put in five years of teaching experience as is required under the rules to be promoted as Headmistress. It is therefore contended by the learned Additional Government Pleader that there had been fundamental violation of rules by the petitioner in first appointing the said individual as BT Assistant even though she was not qualified and thereafter in continuing her appointment in an unsanctioned post and thereafter seeking regularization with effect from 02.10.2016. It is therefore contended that the appointment to her as Headmistress has been correctly rejected and she was not eligible to get aid from 02.04.2018 in the post of Headmistress. The learned Additional Government Pleader therefore insisted that the writ petition should be dismissed.

14. I have carefully considered the arguments advanced.



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15. The petitioner school is governed by Tamil Nadu Recognized Private Schools (Regulation) Act and Rules. It is stated that Rule 15 would apply, which relates to qualification, condition of service of teachers and other persons. Rule 15(1) is as follows:

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

(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 over all financial considerations.

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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



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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.

(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 School or Teachers' Training Institutes or from the category of Post Graduate Assistants in academic subjects or Post-Graduate Assistants in Language provided they possess the prescribed qualifications.”

16. In this case the petitioner school had appointed R. Keili Rosalin Saral as BT Assistant with effect from 15.06.2011 along with three other BT Assistants and one Record Clerk. All the five proposals were forwarded to the 4th respondent / the District Educational Officer. Those proposals were rejected. It was claimed that they had been appointed in posts, which were not sanctioned and was in violation of the aforementioned Rule 15(1) of the



Tamil Nadu Recognized Private Schools (Regulation) Rules, since, it was in breach of Teacher-pupil ratio.

17. In the counter affidavit there is yet another reason given, which is equally serious namely that the individual R.Keili Rosalin Saral had actually written her final B.Ed examination in December – 2011, but was appointed by the petitioner school even in June – 2011 without being fully qualified. But, however, there is no issue as to whether after writing the examination, she stood qualified. She however, continued to work in the unsanctioned post. Her post was finally recognized as BT Assistant only on 02.10.2016. Thereafter, she had been promoted on vacancy which arose to the post of Headmistress. She was disqualified to act as Headmistress was only on the ground that she had worked in an unsanctioned post till 02.10.2016.

18. This naturally meant that she did not have five years of teaching experience, which according to the respondents would make her eligible to appoint as Headmistress. The fact that she was eligible for promotion or that she was working as BT Assistant teacher had not been denied or disputed. She may or may not have five years of experience, but the respondents



never questioned the appointment as BT Assistant. This would impliedly mean that she had qualified so far as the educational qualifications are required. This would also mean that the only disqualification held against her was holding the post in an unsanctioned post after she got qualification in B.Ed and till she was appointed in a sanctioned post.

19. The respondents have not pressed further the issue of initial appointment made on 15.06.2011 owing to lack of qualification, but had moved further holding that her appointment till 02.10.2016 could not be recognized by them. But that she could be recognized as BT Assistant (History) with effect from 02.10.2016 has been admitted by the respondents. If there is this admission, they cannot turn around and point about her lack of educational qualification. This lack of educational qualification, therefore had subsided at one particular point of time, when she had actually qualified and passed her B.Ed examination and if she had never passed her B.Ed examination, she would never have been approved as BT Assistant (History) on 02.10.2016.

20. Then the issue further narrows down only with respect to her



service in the unsanctioned post as BT Assistant Teacher. This issue has been examined by the learned Single Judge in the judgment reported in **2008 Writ L.R. 441, S. Manivannan Vs. the Director of School Education and others**. There the school itself was initially not recognized. Thereafter, the school become recognized. It had been held by the learned Single Judge that the individual concerned there had been working as teacher and that is borne out by the service records. It was therefore, held that his appointment as Headmaster should be approved even though he was working technically in an unsanctioned post prior to that particular promotion as Headmaster. The ratio would directly apply.

21. In the instant case, it had been held by the respondents that R.Keili Rosalin Saral had never passed B.Ed examination, and she cannot and should not have been considered as BT Assistant teacher on 02.10.2016. They had however so recognized her. Therefore, it is only logical, following the ratio laid down in the aforementioned judgment, that if, from the date of her qualification for B.Ed degree, she is eligible to work as BT Assistant teacher, though the post may not have been sanctioned, her teaching experience in the unsanctioned post should also be recognized.



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22. Following the ratio laid down in the aforementioned judgment, I hold that the respondents should have taken into consideration her earlier experience. It is only logical since she was only functioning as teacher. It is not the case of the respondents that she did not function as teacher in the earlier block period. If that period is taken into consideration, then she would naturally get five years of experience, which is the minimum requisite to be promoted as Headmistress.

23. In view of this particular fact, having the five years of experience, I would direct the respondents to approve her promotion as Headmistress and grant necessary aid, which would enable the necessary benefits and monetary benefits to be sanctioned for that particular post. The respondents may pass necessary orders as aforesaid within a period of sixteen weeks from the date of receipt of a copy of this order. This Writ Petition stands allowed. No costs.

25.07.2023

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Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

Speaking order: Yes/No

To

1. The Secretary to Government,
Education Department,
Fort St. George,
Chennai – 9.
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C.V.KARTHIKEYAN,J.

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