



W.A(MD)No.33 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.02.2023

CORAM :

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE SUNDER MOHAN**

W.A(MD)No.33 of 2013

V.Panchavarnam

.. Appellant / Petitioner

Vs.

1.K.Balasubramanian,
Headmaster,
Kumaran Middle School,
Ramanathapuram,
Ramanathapuram District.

2.The Secretary,
Kumaran Middle School,
Ramanathapuram,
Ramanathapuram District.

3.The District Elementary Educational Officer,
Ramanathapuram,
Ramanathapuram District.

.. Respondents / Respondents



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PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent Act, against the order, dated 14.12.2012, made in W.P(MD)No.14128 of 2003.

For Appellant : Mr.R.Senthilkumar

For Respondents : Mr.M.Jerin Mathiew
For R1 & R2

: Mr.J.Ashok
Additional Government Pleader
For R3

JUDGMENT

DR.G.JAYACHANDRAN, J.
and
SUNDER MOHAN, J.

The appeal is filed by the unsuccessful writ petitioner, who sought for the notional promotion as Headmaster in the Kumaran Middle School, Ramanathapuram, run by the second respondent.

2. The case of the appellant is that he was appointed as Physical Education teacher in the second respondent school on 16.10.1973. He had



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all required qualifications to be promoted as Headmaster of that school when vacancy fell. However, the management instead of scrupulously following the provisions of Rule 15(4) of the Tamilnadu Recognised Private Schools (Regulation) Rules, 1974, appointed the first respondent as Headmaster after conducting a mock interview. The management was brought to notice about their attempt to violate Rule 15(4). However, they went ahead with the selection process and appointed the first respondent and the same was approved by the third respondent vide proceedings dated 26.09.2003. Hence, writ of certiorarified mandamus filed to call for the records and quash the proceedings of the third respondent dated 26.09.2003. Pending writ petition, the petitioner attained superannuation. The learned Single Judge, after considering the averment made in the affidavit filed in support of the writ petition and the counter filed by the management found that the management, after passing a resolution dated 16.04.2003 to go ahead with the selection process, inviting applications soon after the retirement of one Manickam, who retired as Headmaster on attaining superannuation on 31.03.2003 also thought fit that in addition to the petitioner, who was serving as Physical Education Teacher in their school,



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they could invite applications from employment exchange and conduct interview consisting of educationists and select one among them as Headmaster on merits, pursuant to which the petitioner has also participated in the interview but not selected, dismissed on the ground that it is not an add and fast Rule that the qualified candidate available in the institute to be promoted as Headmaster since the post is very sensitive, the management can go for the candidate who are more suitable for the post. As far as the present case is concerned since the challenge itself is not against the selection notification or appointment of the first respondent but the subsequent order of approval issued by the third respondent ratifying the appointment of the first respondent, the writ petition is not sustainable. Further, the learned Single Judge has also taken note of pendency of the disciplinary proceedings against the writ petitioner which has disentitled him for considering to the post of Headmaster. As far as the mandate under Rule 15(4) of the Tamilnadu Recognised Private Schools (Regulation) Rules, 1974, the learned Single Judge has taken note of the resolution passed by the school committee on 01.03.2003 and the prior approval obtained by the management from the Education Department to go ahead



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with the interview process inviting applications from the eligible candidates.

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Interpreting Rule 15(4) and the object behind the said Rule, the learned Single Judge has held that the purpose of Rule 15(4) is to give priority to the inhouse candidate and they are not denied the opportunity of getting promotion and as far as in this case is concerned the writ petitioner has also called to participate in the interview. Therefore he cannot challenge the selection process as violation of Rule 15(4). According to the learned Single Judge, it is not technical flaw which vitiated the process of selection. Further, the learned Single Judge has also taken note of the dictum laid by the Hon'ble Supreme Court in *N.Ammad vs. Manager, Emjay High School*, reported in **AIR 1999 SC 50**, wherein the importance of the post of Headmaster been emphasised and same cannot be filled by person, who is less qualified when better qualified person is available. Therefore, the management of the School should be given wide freedom to choose person for holding such a key post subject to course of restriction regarding the qualification prescribed by the State. The judgment of the learned Single Judge is challenged on the ground that participation in the interview cannot act as an estoppel against the writ petitioner since there cannot be estoppel



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against the writ petitioner while Rule 15(4) categorically show that management cannot go for candidates outside the institution if person qualified for the promotional post is available and even after making a clear representation to consider his candidature by a representation dated 23.04.2003 and a copy marked to all the authorities in School Education Department, the appointment of the first respondent as Headmaster in contrast to the Rule is vitiated by arbitrariness. The learned counsel would also submit that since the writ petitioner/appellant has attained superannuation, notional promotion may be given to him with the financial benefits.

3. The learned Additional Government Pleader appearing for the State would submit that the writ appeal is unsustainable not only for the reasons stated by the learned Single Judge for dismissing the writ petition but also for not exercising the right of statutory appeal provided under the Act and for not challenging the promotion granted to the management to go for interview to select candidate to the post of Headmaster.



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4. The learned counsel appearing for the management/respondents 1 & 2 listing out the proceedings initiated against the appellant and cited it as a disqualification for him to hold the post of Headmaster which prompted the management to seek better candidate, submitted that the management cannot be forced with a substandard person to head the institute. He also would submit that Rule 15(4) of the Tamilnadu Recognised Private Schools (Regulation) Rules, 1974, does not put embargo on the management to search for a better and suitable candidate if the candidate available in the School is not up to the expectation. He would read the Rule 15(4) (iii) which says that if no qualified and suitable candidate is available by method (i) & (ii) above, appointment on other persons either from other school or through direct recruitment is permitted.

5. For convenient sake Rule 15(4) is extracted here:

“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.



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(ii) Appointments to the various categories of teachers shall be made by the following methods:-

- (i) Promotion among the qualified teachers in that school;
- (ii) Promotion from among qualified vocational instructors in that school;
- (iii) If no qualified and suitable candidate is available by method (i) and (ii) 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 recruitment the School Committee shall obtain the 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, Teacher 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.



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(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 Teachers' 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.”

6. On cumulative appreciation of the rival submissions, this Court finds that the appellant herein though was senior at that point of time, in the opinion of the school management he was not suitable for the post of Headmaster. Therefore, after obtaining due permission from the school authority, had proceeded with the selection process and had selected the first respondent. The appellant, who claims to be aggrieved by the said appointment has not preferred any appeal to the Chief Education Officer, who is the appellate authority in case of any violation of Rule 15 of the Tamilnadu Recognised Private Schools (Regulation) Rules, 1974. The appellant has also not chosen to challenge the appointment order as rightly pointed out by the learned Single Judge. The approval of the appointment



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alone been challenged and the reason for challenging the approval also does not carry any merit in view of Rule 15(4) (iii) of the Tamilnadu Recognised Private Schools (Regulation) Rules, 1974.

7. In the result, this writ appeal is dismissed. No costs.

[G.J.,J.] & [S.M.,J.]

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NCC : Yes/No
Index : Yes / No
Internet : Yes / No
PJJ

To
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2.The District Elementary Educational Officer,
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