



W.A(MD)Nos.628 & 768 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.06.2023

CORAM :

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**W.A(MD)Nos.628 and 768 of 2022
and
C.M.P(MD)Nos.5236 and 6523 of 2022**

W.A(MD)No.628 of 2022:-

E.R. Higher Secondary School,
Rep. by its Secretary,
R.Suseela Rengarajan
Chinthamani,
Trichy.

... Appellant

vs.

1. The Joint Director of School Education (Higher Secondary),
Chennai.

2. The Chief Educational Officer,
Trichy.

3. The District Educational Officer,
Trichy.

4. V.Ramakrishnan

... Respondents

PRAYER : Appeal filed under Clause 15 of Letters Patent,
against the order passed in W.P(MD)No.16051 of 2020 dated
23.11.2021.



WEB COPY



W.A(MD)Nos.628 & 768 of 2022

For Appellants : Mr.V.Panneer Selvam
For R1 to R3 : Mr.D.Sadiq Raja
Additional Government Pleader
For R4 : Mr.Isacc Mohanlal, Senior Counsel

W.A(MD)No.768 of 2022:-

Dr.S.Chandran

... Appellant

vs.

1. The Joint Director of School Education (Higher Secondary),
Chennai.

2. The Chief Educational Officer,
Trichy.

3. The District Educational Officer,
Trichy.

4. The Secretary,
E.R. Higher Secondary School,
Chinthamani,
Trichy.

5. V.Ramakrishnan

... Respondents

PRAYER : Appeal filed under Clause 15 of Letters Patent,
against the order passed in W.P(MD)No.18393 of 2020 dated
23.11.2021.

For Appellant : Mr.K.Hemakarthiskeyan
For R1 to R3 : Mr.D.Sadiq Raja
Additional Government Pleader
For R5 : Mr.Isacc Mohanlal, Senior Counsel



W.A(MD)Nos.628 & 768 of 2022

COMMON JUDGMENT

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

Challenge in these two writ appeals is to the order of the learned Single Judge who had dismissed the writ petitions in W.P(MD)Nos.16051 & 18393 of 2020 filed by the appellants herein. The challenge in those writ petitions was to the order of the Joint Director of School Education, Chennai, dated 14.10.2020 in and by which, he had allowed the appeal filed by the private respondent in these writ appeals namely, V.Ramakrishnan, challenging the appointment of the appellant in W.A(MD)No.768 of 2022 as the Headmaster of E.R Higher Secondary School, Tiruchirappalli.

2. The private respondent has mounted a challenge to the appointment of the appellant in W.A(MD)No.768 of 2022 mainly on the ground that he was not given an opportunity to participate in the selection process which was done in a secretive manner without notice to him. The post of Headmaster of the school had remained vacant and the appellant in W.A(MD)No.768 of 2022, a junior P.G. Assistant, was appointed as a Headmaster(in-charge). Aggrieved, the private respondent in these appeals approached this Court



W.A(MD)Nos.628 & 768 of 2022

seeking a direction to appoint a permanent Headmaster. This Court by order dated 19.06.2019 in W.P(MD)No.13150 of 2019 directed the school management to appoint a Headmaster by following Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974. Pursuant to the said direction, the Chief Educational Officer, Tiruchirappalli, wrote to the school on 17.09.2019 requiring the school to take immediate action. Consequently, the school management published a notice in the notice board on 09.10.2019 requiring all qualified P.G teachers to appear for a written test and an interview to be conducted on 13.10.2019 at 10.00 a.m. in the school premises. It is stated that 9 out of 11 teachers participated in the process of selection and the appellant in W.A(MD)No.768 of 2022 was selected and appointed on 13.10.2019 and he assumed charge as Headmaster on 14.10.2019. Aggrieved by the said selection, the private respondent herein filed an appeal before the Joint Director complaining that he was not given an opportunity. The Joint Director did not dispose of the appeal in a reasonable time which led to the private respondent again approaching this Court for a Mandamus directing the Joint Director to dispose of the appeal. This Court allowed the writ petition and directed the Joint Director of School



W.A(MD)Nos.628 & 768 of 2022

Education to dispose of the appeal within a specified time.

Thereafter, the appeal came to be disposed of by the Joint Director who allowed the appeal and set aside the appointment of the appellant in W.A(MD)No.768 of 2022 directing the school management to re-do the exercise of appointment of the Headmaster. It is this order which was subject matter of challenge in the writ petitions.

3. The Writ Court had agreed with the contention of the private respondent and the reasoning of the Joint Director to the effect that since no notice was given to the private respondent regarding the selection process, the same is vitiated and the school was required to re-do the selection process. Pending writ petition, there was an interim order allowing the appellant in W.A(MD)No.768 of 2022 to continue as Headmaster. In view of the above proceedings, the appointment of the appellant in W.A(MD)No.768 of 2022 as Headmaster was not approved by the competent authority.

4. We have heard Mr.V.Panneer Selvam, learned counsel appearing for the school, Mr.K.Hemakarthiskeyan, learned counsel



W.A(MD)Nos.628 & 768 of 2022

appearing for the appellant in W.A(MD)No.768 of 2022, Mr.D.Sadiq Raja, learned Additional Government Pleader appearing for the official respondents and Mr.Isacc Mohanlal, learned Senior Counsel appearing for the private respondent.

5. It is the contention of Mr.V.Panneer Selvam that a publication in the notice board is sufficient notice to the teachers as they are all teachers in the same school and they are bound to see the notice board every day. He would also further point out that Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, does not even contemplate a selection process. It only says that promotion shall be by merit and ability and seniority cannot govern the issue. Therefore, according to Mr.V.Panneer Selvam, it is open for the management to assess the merit and ability even without conducting a selection process and therefore the selection of the appellant in W.A(MD)No.768 of 2022 cannot be faulted and both the Joint Director and the Writ Court had erred in introducing a concept of natural justice or *Audi alteram partem* in a matter of selection. Mr.Hemakarthiskeyan, learned counsel for the appellant in W.A(MD)No.768 of 2022 would support the said stand.



6. Contending contra, Mr.Isaac Mohanlal, learned Senior Counsel appearing for the private respondent would submit that Rule 15(4)(ii)(i) contemplates promotion from among qualified teachers in that school. Therefore, it necessarily involves at least the subjective satisfaction regarding the merit and ability. According to the learned Senior Counsel, once the Management chooses to have a selection process, all qualified teachers should be given an opportunity and the very fact that the appointments were done in a hurried manner by issuing a notice on 09.10.2019 and calling for a written examination and a viva voce on 13.10.2019 would show that there is a design to exclude the private respondent.

7. We have considered the submissions of the learned counsel on either side.

8. Though a very interesting question regarding the duty of the private management in making a selection for a Headmaster has been raised, the subsequent events that had taken place deter us from going into the issue regarding the need for selection process or the need for notice to each and every eligible candidate. The said



W.A(MD)Nos.628 & 768 of 2022

subsequent event is the superannuation of the appellant in W.A(MD)No.768 of 2022. Rightly or wrongly, the appellant in W.A(MD)No.768 of 2022 has been appointed as a Headmaster and he has functioned as Headmaster from 14.10.2019 to 04.01.2023 till the private respondent was made as in-charge Headmaster by the School Education Department. It is also brought to our notice that in January 2023, the school has been put under direct payment in view of certain disputes within the management and for non filing of Form-VII. Mr.Panneer Selvam would submit that the said order has been challenged separately by the management and the writ petition is pending.

9. Be that as it may, since now that the appellant in W.A(MD)No.768 of 2022 has worked as a Headmaster for nearly three years, we do not think we should deny him the benefits that he would get. As we already pointed out, the rule position is very nebulous. The rules do not contemplate a selection process and it only requires promotion to be done based on merit and ability. The management can choose any method for assessment of merit and ability of the candidate. The subjective satisfaction of the



W.A(MD)Nos.628 & 768 of 2022

management on the merit and ability cannot be tested by the appellate authority. In such circumstances, merely because a selection process was carried out and it is claimed that one of the teachers or one of the qualified candidates did not have notice of the selection process, the very selection would not be vitiated. We should not be taken to have laid down the law that a selection process is unnecessary or notice to all eligible candidates is unnecessary. Whether the absence of selection process or the absence of notice would vitiate the selection process is the question. In the circumstances of the present case, we are relieved of the burden of deciding that question because of the superannuation of the appellant in W.A(MD)No.768 of 2022. He having worked as Headmaster, we do not think that he should be denied the monetary benefits.

10. Therefore, the writ appeals are disposed of with a direction to the department to approve the appointment of the appellant in W.A(MD)No.768 of 2022 Dr.S.Chandran as a Headmaster with effect from 14.10.2019 till 30.06.2022. Though the appellant in W.A(MD)No.768 of 2022 has continued to function as a Headmaster



W.A(MD)Nos.628 & 768 of 2022

till 04.01.2023, we are denying him the benefits of service from 01.07.2022 to 04.01.2023, because, that period was period of extension which was qualified by the department to the effect that his services were extended only as a P.G teacher and not as a Headmaster. Therefore, the mere fact that he functioned as a Headmaster would not enable him to seek the monetary benefits for that period. It is made clear that the appellant would be entitled to salary and other benefits as a P.G. Assistant for the period between 01.07.2022 and 04.01.2023. The benefits due to the appellant in W.A(MD)No.768 of 2022 shall be calculated and paid within a period of six months from the date of receipt of a copy of this judgment. No costs. Connected miscellaneous petitions is closed.

(R.SUBRAMANIAN, J.) & (L.VICTORIA GOWRI, J.)
12.06.2023

Index : Yes / No
Internet : Yes
Neutral Citation : Yes / No
bala

To

1. The Joint Director of School Education (Higher Secondary),
Chennai.



W.A(MD)Nos.628 & 768 of 2022

2. The Chief Educational Officer,
Trichy.

3. The District Educational Officer,
Trichy.



WEB COPY



W.A(MD)Nos.628 & 768 of 2022

R.SUBRAMANIAN, J.
and
L.VICTORIA GOWRI, J.

bala

COMMON JUDGMENT MADE IN
W.A(MD)Nos.628 and 768 of 2022
DATED : 12.06.2023