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W.A.(MD) No.880 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.10.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN**

**W.A.(MD) No.880 of 2020
and
C.M.P.(MD) No.4832 of 2020**

- 1.The Director of Elementary Education
Chennai
- 2.The District Elementary Educational Officer
Trichy
- 3.The Assistant Elementary Education Officer
Trichy-Urban, Trichy

... Appellants

-vs-

- 1.E.Vinolin Isabella
- 2.VOC Middle School
rep.by its Manager and Correspondent
Pathuvai Nagar, East Chinthamani
Trichy

... Respondents



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Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 09.12.2019, passed in W.P.(MD) No.7822 of 2013, on the file of this Court.

For Appellants : Mr.D.Sadiq Raja
Additional Government Pleader

For Respondents : Mr.K.Ragatheesh Kumar
for M/s.Isaac Chambers for R1

J U D G M E N T

[Judgment of the Court was made by S.M.SUBRAMANIAM, J.]

This intra-court appeal has been instituted by the Education Department against the order dated 09.12.2019, passed in W.P.(MD) No.7822 of 2013.

2. The first respondent / writ petitioner was appointed as Headmistress directly in the second respondent – School, which is a Minority Aided Institution. The School Management sent a proposal to the competent authority of the Education Department seeking approval of the appointment of the first respondent as Headmistress in the School. The District Elementary



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Educational Officer, Trichy, returned the proposal stating that the recognition given for sixth standard to eighth standard were expired and the application has to be submitted for temporary recognition and the first respondent ought to have possessed five years of teaching experience as Secondary Grade Teacher on the date of her appointment in the School as on 05.04.2010. The second respondent – School has permanent recognition for the first standard to fifth standard. The application submitted for extension of recognition for the standards 6 to 8 was filed on 04.08.2011 and it was kept pending and even as on date, no such temporary recognition was granted in favour of the second respondent – School.

3. Learned Additional Government Pleader appearing for the appellants mainly contended that the first respondent was an unqualified candidate. She was irregularly appointed as Headmistress directly in the Minority Aided School and therefore, the return of proposal was in accordance with Clause-I(1-A) of Annexure-III of the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977.



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4. Further, it is contended that the learned Single Judge relied on the counter affidavit filed by the District Elementary Education Officer, which is not relevant with reference to the Rules as stated above and therefore, based on the incorrect interpretation of the counter affidavit, the writ petition was allowed and thus, this writ appeal is to be considered.

5. Learned counsel appearing for the first respondent opposed the above contentions of the learned Additional Government Pleader by stating that in Paragraph No.11 of the the counter affidavit, dated 23.03.2016, filed by the District Elementary Education Officer, it is categorically stated that the first respondent was appointed on 05.04.2010 and the basic requirement of five years teaching experience has completed on 05.04.2015. In such circumstances, the Government is empowered to grant relaxation / exemption and approve the appointment of the first respondent as Headmistress. That being the factum considered by the learned Single Judge, there is no infirmity in respect of the findings made in the impugned order.

6. Learned counsel for the first respondent, in support of his contentions, placed reliance upon the Judgment of the Division Bench of this



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Court, dated 09.11.2018 in W.A.(MD) No.951 of 2011 ***[The Correspondent vs. The State of Tamil Nadu]***. The relevant portion of the said Judgment is extracted hereunder:

10.No doubt, it is true that the State Government has got absolute discretion in the matter of exemption under Section 20(3) of the Tamil Nadu Recognised Private School Act, 1973. However, the said provision has been exercised in many cases, as if the persons, who are appointed as Headmasters without having the required five years experience, are approved as a matter of routine, on condition that they can get the salary applicable to the post of Headmaster or Headmistress, only after completion of five years experience as a teacher.

11.It is seen that the learned Special Government Pleader conceded the position in the two matters before the Division Bench of this Court above referred to. In such circumstances, this Court is inclined to allow this writ appeal in terms of the order passed by the Government in similar cases and the judgments of the Division Bench of this Court.

12.It is also submitted that Rev.Fr.Varghese Thomas was appointed in 2004 in the post of Headmaster and is still functioning as Headmaster, however, without getting salary either to the post of teacher or to the post of Headmaster.



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13.As a result, the writ appeal is allowed and the order of the learned Single Judge in W.P.(MD)No.12941 of 2010, dated 28.01.2011 is set aside and W.P.(MD)No. 12941 of 2010 is allowed. The impugned order, in the writ petition, passed by the third respondent in Na.Ka.No. 85414/D1/E3/2007, dated 18.05.2010, is quashed. However, having regard to the peculiar circumstances of the case, this Court directs the respondents 1 to 3 to approve the appointment of Rev.Fr.Varghese Thomas as Headmaster with effect from the date of appointment. Upon the incumbent completing the period of five years teaching experience, he shall be given the salary of Headmaster. Till he completes 5 years, the incumbent shall be given salary as applicable to B.T.Assistant. The said exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

7. Further, it is contended that there are several other judgments supporting the case of the first respondent and therefore, the writ appeal is to be rejected.



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8. We have considered the submissions made by the learned counsel on either side.

9. Fundamentally, the rule applicable for appointment to the post of Headmaster (Elementary and Middle School) unambiguously stipulates that the candidate should have worked as Teacher in recognized schools for a period of not less than five years after obtaining the T.S.L.C. of Secondary Grade or its equivalent. The educational qualifications prescribed under the Rules are mandatory and therefore, the question of relaxation of educational qualification does not arise, while appointing the Headmistress directly under the Rules.

10. While undertaking the process of appointment, the Rules are to be followed scrupulously. Relaxation of qualification is an exception. The power of relaxation even by the Government is to be exercised discreetly, if any gross injustice is identified and not otherwise. The routine exercise of the power of relaxation is detrimental, which will result in unconstitutionality and more so, it would cause discrimination or invalidation of the rules prescribing educational qualifications for appointment to the post of Headmaster /



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Headmistress in the Schools. If the power of relaxation is exercised to dilute the Rules, it cannot be accepted and in the present case, the submission made on behalf of the first respondent in this regard is unacceptable.

11. Learned Additional Government Pleader appearing for the appellants relied on the order of the Supreme Court of India, dated 24.03.2023 in Civil Appeal No.1951 of 2023 [***The State of Tamil Nadu and others vs. Nehru Middle School and another***], wherein the Apex Court has considered the very same issue and held as follows:

“...It is not in dispute and cannot be disputed that for appointment as Head Mistress / Head Master, five years teaching experience as teacher was must.

...Once a candidate who lacks the requisite teaching experience cannot be permitted to continue on the said post on which he/she is appointed on the condition that she may be paid the salary on the lower post till she acquires the requisite experience, such an order would be giving a premium to an illegal appointment.”

12. The contention made in this regard on behalf of the employee was negated by the Supreme Court and therefore, all other Judgments of the



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Division Bench or the learned Single Judge of the High Court are denuded to loose its status as precedent and therefore, now the legal position would be that the candidates, who possess the requisite qualifications as per the Rules, alone are eligible for appointment directly as Headmistress in the School irrespective of the fact that it is a Government School or Aided School or Aided Minority Institution.

13. The right to administer the Minority Institution would not confer any power to dispense with the educational qualifications contemplated under the Rules. Thus, the School Management is bound by the educational qualifications and experience as contemplated under the Rules while undertaking the process of appointment to the post of Headmaster / Headmistress.

14. Beyond this, the educational qualifications and experience contemplated under the Rules have got certain importance and relevance. A candidate possessing requisite educational qualification and experience alone would be in a position to perform his / her duty as Headmaster / Headmistress effectively and efficiently. Thus, the wisdom of the legislation in



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this regard cannot be undermined nor diluted by the Courts by exercising the power of judicial review and thus, we are of the considered opinion that the stand of the appellants in this regard is sound enough to arrive at a conclusion that the appointment of the first respondent, who was appointed directly as Headmistress without possessing the five years of teaching experience, is to be construed as an illegal appointment. Illegality in appointments cannot be cured and the power of relaxation cannot be exercised in order to eradicate the illegality occurred in the appointments and thus, we are inclined to interfere with the order impugned in this writ appeal.

15. Accordingly, the writ appeal is allowed and the order dated 09.12.2019, passed in W.P.(MD) No.7822 of 2013, is set aside. No costs. Consequently, connected miscellaneous petition is closed.

[S.M.S., J.]

[V.L.N., J.]

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NCC : Yes / No
Index : Yes / No
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