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W.P.(MD)No.15025 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.15025 of 2018

and

W.M.P.(MD)No.13563 of 2018

K.Mahadevan

.

... Petitioner

VS.

1.The District Educational Officer,
opposite to Post Office,
Chinna Chokikullam,
Tallakullam, Madurai-625 002.

2.The Secretary,
Thiyagarajar Higher Secondary School,
Vasanthanagar, Madurai-625 003.

3.S.V.Ramanathan

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to impugned order, dated 05.04.2018, passed by the 1st respondent and to quash the same, consequently, to direct the 1st



W.P.(MD)No.15025 of 2018

WEB COPY

respondent to grant approval to the promotion of petitioner as Head Master of the 2nd respondent School and to pay all monetary benefits to the petitioner within the time stipulated by this Court.

For Petitioner	: Mr.S.Pon Senthil Kumaran
For R1	: Mr.V.Om Prakash Government Advocate
For R2	: Mr.R.Prithviraj
For R3	: No appearance

ORDER

This writ petition is filed for issuance of a writ of Certiorarified Mandamus, to quash the impugned order, dated 05.04.2018, passed by the 1st respondent and consequently, to direct the 1st respondent to grant approval to the promotion of petitioner as Headmaster of the 2nd respondent School and to pay all monetary benefits to the petitioner within the time stipulated by this Court.



W.P.(MD)No.15025 of 2018

WEB COPY

2. The brief facts of the case are that the petitioner was appointed as part time Teacher in the 2nd respondent school on 27.08.1982. Subsequently, on 01.4.1990, his service was regularized and was made full time Teacher. Thereafter. The 2nd respondent appointed the petitioner as in-charge Headmaster from 01.09.2011 to 31.05.2012, as the then incumbent Head Master went on sick leave. Thereafter the post of Headmaster in the 2nd respondent school became vacant on 31.05.2015 due to the retirement of then Headmistress P. Meenambal. Thus, the school committee after considering the merit and ability and experience vide resolution, dated 31.05.2015, had promoted the petitioner as Headmaster of the 2nd respondent school with effect from 02.06.2015.

3. The 2nd respondent had forwarded the proposal to the 1st respondent for getting approval for the promotion to the post of Headmaster. In the meantime, on 31.05.2017 the petitioner had attained superannuation. The petitioner was promoted and was discharging his



W.P.(MD)No.15025 of 2018

WEB COPY

the merit and ability, promoted the petitioner as Headmaster and the 3rd respondent did not raise any objection for the promotion.

4. Infact, the 3rd respondent was one of the signatories to the resolution passed by the school committee to promote the petitioner as Headmaster. The 1st respondent having allowed the petitioner to work as Headmaster and after extracting the work denying the approval is illegal. Hence, left with no other option, the petitioner has filed this writ petition.

5. Interestingly, the 2nd respondent has not filed counter affidavit. The 1st respondent has filed detailed counter affidavit stating that the 2nd respondent School is a non-minority School. The 2nd respondent placed the petitioner as in-charge Headmaster and the same will not give any right to the petitioner to be posted in such Headmaster post. It is only an internal arrangement and the same cannot be cited to the petitioner's advantage. The 2nd respondent promoted the petitioner with effect from



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W.P.(MD)No.15025 of 2018

02.06.2015 in the retirement vacancy of Meenambal. It is the responsibility of the management to call for willingness from all the P.G. Teachers and choose a person in accordance to rules. As per Section 15(4) of Tamil Nadu Private Schools Regulation Act, the candidate shall be selected based on merit cum ability and seniority would be considered when merit and ability are equal.

6. The School Committee is the appropriate authority to fill up the post of Headmaster. While selecting the candidates, the School Committee should assess the merit and ability. While assessing the respective merit and ability of the candidates, their extra curricular activities may be taken into consideration. The 2nd respondent did not produce any documents to establish the merit and ability of the petitioner. The management was specifically instructed to produce the required documents but the management did not submit any documents. Hence, the selection process of the management of the School was



W.P.(MD)No.15025 of 2018

WEB COPY

unconstitutional. The deliberate process amongst the members of the Selection Committee to choose the best candidate available for promotion was imperative to the post of Headmaster. The School should follow the provisions of the statute. The service of post of P.G. Assistant alone has to be taken to determine the seniority. The petitioner was promoted as P.G. Assistant on 01.06.2005 whereas the 3rd respondent came to the School as P.G. Assistant on transfer in the year 1999. Therefore, the 3rd respondent is senior to the petitioner.

7. In respect of the aided institutions, each aided school is a separate unit of appointment for the purpose of appointment, transfer, promotion, etc. If one Teacher employed in any aided School is transferred and appointed on migration to another aided School after getting the prior approval, such Teacher will have to lose his seniority and he will be treated as the junior most in the seniority list, as per G.O.Ms.No.1289, Education, dated 18.06.1982. In the present case, the



W.P.(MD)No.15025 of 2018

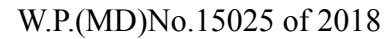
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3rd respondent has lost the seniority already on migration. Now, the respondents without considering the seniority had posted the petitioner as Headmaster, which is against the rules. Hence 1st respondent prayed to dismiss this writ petition.

8. Heard Mr.S.Pon Senthil Kumaran, learned Counsel appearing for the petitioner, Mr.V.Om Prakash, learned Government Advocate appearing for the 1st respondent and Mr.R.Prithviraj, learned Counsel appearing for the 2nd respondent and perused the records.

9. The 3rd respondent is served with notice and his name is printed in the list. But he has not appeared before this Court either in person or through an advocate and he has not filed counter affidavit as well.

10. After perusing the records and the counter affidavit filed by the 1st respondent, this Court has given its anxious consideration. The



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9/15



W.P.(MD)No.15025 of 2018

WEB COPY

hearing these facts, this Court is of the considered opinion that the 1st respondent is doing a proxy litigation on behalf of the 3rd respondent. The interesting part is that the 3rd respondent who has not chosen to engage any Advocate to contest this writ petition, is circulating a letter through the 1st respondent, that too it is dated, 12.04.2023, but the writ petition was filed in the year 2018. Hence this Court is of the considered opinion that there is malicious intention for the 1st respondent not to approve the promotion of the petitioner appointment.

11. It is seen that the 3rd respondent was not originally appointed by the School. He was transferred to the School on migration from some other School. The petitioner was appointed by the 2nd respondent School. The post of Headmaster is a very sensitive post for a School. The management would always prefer a person who is having a very conducive relationship with the management and the management has



W.P.(MD)No.15025 of 2018

WEB COPY

every right to appoint any person of their choice. The criteria are that the management ought to select a person based on merit and ability and if two or more persons are available with the same merit and ability, seniority will be considered.

12. In the present case, the School Committee after analyzing the eligible candidates have appointed the petitioner. If the 3rd respondent is really interested in getting the promotion, the 3rd respondent ought to have objected and contested at the earliest point of time, i.e., when the petitioner was promoted in the year 2015, the 3rd respondent has not submitted any objections to the school or to the 1st respondent. But interestingly, the 3rd respondent has submitted objection when the writ petition is posted for final hearing, that too, the objection is, dated 12.04.2023. Therefore, this Court is of the considered opinion that the objections of the 3rd respondent submitted through 1st respondent cannot be entertained at all.



W.P.(MD)No.15025 of 2018

WEB COPY

13. The petitioner had served in the said post and has also retired on 31.05.2017. Having served in the post of Headmaster from 31.05.2015 to 31.05.2017 the petitioner is entitled to the terminal benefits and pension benefits in the post of Headmaster. Therefore, it is totally unreasonable on the part of the 1st respondent not to approve such a promotion until the retirement of the petitioner. Now the respondent is not granting the pension for the Headmaster post and the same is atrocious.

14. The impugned order states that the petitioner has taken the service records. But on 19.03.2018 itself the School has submitted the service records to the 1st respondent, as per the letter, dated 19.03.2018, signed by the 2nd respondent School. Therefore, there is inconsistent communication by the 1st respondent. The 2nd respondent has already submitted the entire records to the 1st respondent. The 1st respondent shall



WEB COPY



W.P.(MD)No.15025 of 2018

To

The District Educational Officer,
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W.P.(MD)No.15025 of 2018

S.SRIMATHY, J

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W.P.(MD)No.15025 of 2018

13.04.2023