



Writ Appeal No.387 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.01.2024

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

Writ Appeal No.387 of 2021

Nehru Primary School
Rep., by its Manager & Correspondent
Tirunelveli District. ... Appellant

Vs

- 1.The State of Tamil Nadu,
Rep., by its Chief Secretary to Govt.,
Fort., St., George,
Chennai – 9.
- 2.The Director of School Education,
College Road, Chennai – 6.
- 3.The Director of Elementary Education,
College Road, Chennai – 6.
- 4.The District Educational Officer,
Tirunelveli.
- 5.The Block Educational Officer,
Palayamkottai, Tirunelveli. ... Respondents



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PRAYER: Writ Appeals have been filed under Clause 15 of Letter Patent against the order dated 16.09.2019 made in W.P.No.27426 of 2019.

For Appellants : Mr.S.N.Ravichandran

For Respondents : Mr.R.Kumaravel AGP

JUDGMENT

(Order of the Court was made by Mr.K.KUMARESH BABU.,J.)

This Intra-Court Appeal had been preferred against the order of the learned Single Judge rejecting the claim of the appellant wherein they had challenged the orders passed by the first respondent confirming the order of the third respondent and to direct the respondents to approve the appointment of the Headmaster in the appellant's school w.e.f., 01.09.2014.

2. Heard Mr.S.N.Ravichandran learned counsel appearing for the appellants, R.Kumaravel learned Additional Government Pleader appearing for the respondents.

3. The learned counsel appearing for the appellant would submit that the appellant is a primary aided school and having a sanctioned strength of one Headmaster and six Secondary Grade Teachers. The Teachers strength



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in the school have been varied on the basis of the intake of the students, but however, the sanctioned strength of the Headmaster had remained the same.

4. The learned counsel appearing for the appellant would submit that the post of primary school Headmaster fell vacant due to the retirement of the incumbent Headmaster on 31.12.2012. One Tmt.M.Resavamma, senior most Secondary Grade Teacher was appointed as Headmistress w.e.f., 01.01.2013. In the resultant vacancy, one Thiru.J.M.L.Jamal Mohammed Lebbai was appointed as the Secondary Grade Teacher as Management staff from 01.06.2013. On 31.08.2014, the said Tmt.M.Resavamma tendered a letter indicating that she was not willing to continue as a Headmistress due to her ill health. When the same was offered to the next senior most Teacher, the said senior most Teacher also refused to accept the offer of becoming the Headmaster of the school. All other Teachers working in the said school had also refused to take up the responsibility of the Headmaster. Thiru.J.M.L.Jamal Mohammed Lebbai however accepted the offer and was appointed as school Headmaster on



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31.08.2014.

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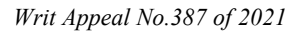
5. He would further submit that a proposal dated 04.10.2014 was addressed to the District Educational Officer, Tirunelveli through the fifth respondent for approval of appointment to the post of Headmaster. However, the fifth respondent had returned the proposal by a proceedings dated 29.11.2014, on the premise that two Secondary Grade Teacher posts were found surplus in the academic year 2012-13. He would submit that the excess Secondary Grade Teacher, than the sanctioned strength cannot in any way stand in the way of approval to the post of Headmaster which is admittedly not in excess of the sanctioned strength. In such circumstances, the appellant's school had resubmitted the proposal indicating that what was sought for the approval was to the post of the sanctioned strength of the Headmaster. However, without considering the same in its proper perspective, the fourth respondent had rejected the request by stating that the Teacher had not passed the Teacher Eligibility Test (TET). The said order came to be challenged by the Headmaster in W.P.No.15781 of 2015, but however, he had withdrawn the same.



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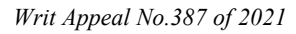
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6. He would further submit that in the interregnum, the Hon'ble Apex Court as well as the Division Bench of this Court in the judgments reported in **(2014) 8 SCC 1** and **2016 (5) CTC 639** respectively had held that the instances of TET qualification insofar as the minority institution concerned are bad. Thereafter, the appellant's institution had again sent a request for approval of appointment of Thiru.J.M.L.Jamal Mohammed Lebbai, as Headmaster w.e.f. 01.09.2014. As the same was not considered, the appellant had approached this Court in W.P.No.3757 of 2017 and by order dated 15.02.2017, this Court had directed the third respondent to consider and dispose of the representation. As the order of this Court was not complied with, the appellant had issued a notice of contempt and on receipt of the same, by the impugned order dated 19.07.2018 rejected the request of approval. Aggrieved against the same, the appellant had preferred an appeal before the first respondent on 19.09.2018 and the same had also been rejected. Challenging the same, the appellant had preferred a Writ Petition, which had also been rejected.



6. Further, the learned counsel would submit that the third re-

7.As regards the other reason given by the respondents in re-



8. Countering his arguments, R.Kumaravel, learned Additional Government Pleader relying upon the reply affidavit filed by the fourth respondent to the grounds of appeal would contend that as per the terms of Rule 15(4)(i) of the Tamil Nadu Private Schools Act, promotions should be made on merit and ability and that the seniority should only be considered when merit and ability are approximately equal.



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9.He would further submit that if the post of Headmaster shall be filled up from various categories of Teachers, firstly by promotion and from among the qualified Teachers and if there is no candidate available, then permission of the District Educational officer or Chief Educational Officer concerned would have to be obtained for making a direct recruitment. These procedures have not been adopted by the school in appointing the Headmaster. He would submit that on the date of appointment namely 31.08.2014, the said Headmaster appointed by the school did not have the requisite experience for appointment to the post and therefore, the initial order of appointment is itself bad and on that ground alone, the application had been rightly rejected by the respondents and upheld by the Court.

10.He had also placed reliance upon the judgment of Division Bench of this Court in W.A.No.1179 of 1993, etc., batch, dated 06.09.1994 and to contend that the provisions of Tamil Nadu Private Schools Act, 1993 does not violate any constitutional guarantee and therefore, the said regulations would also apply to the minority institutions. He would further



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contend that when the appointment to the post of Headmaster had been made from an unqualified person, the school cannot seek for approval of the authorities concerned for payment of salary. Therefore, he would seek no interference is required in the impugned order passed by the learned Single Judge.

11.In reply, the learned counsel appearing for the appellant would submit that the Headmaster was appointed in the year 2014 and he had been continuously working. The claim of the institution, it can at least be considered for approval from the date when the said Headmaster acquires teaching experience of 5 years and to that effect, the Court can mould the relief to direct the respondents to grant approval atleast from 2015.

12.We have considered the submissions made on either side and perused the materials placed on record.

13.It is an admitted fact that the appellant school had been per-



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mitted a sanctioned strength of one Headmaster and six Secondary Grade Teachers for the academic year 2010-11. But however, in the subsequent years based upon the students strength, the same had been revised and the sanctioned strength stood thus one for Headmaster and two for the Secondary Grade Teachers. The appellant had appointed one Thiru J.M.L.Jamal Mohammed Lebbai, as a Secondary Grade Teacher under its Management. It had not sought for approval of his appointment as Secondary Grade Teacher, since on the date of his appointment, he had been in excess of the sanctioned strength. However, since the sanctioned Secondary Grade Teachers had refused to take up the post of Headmaster, when Tmt.M.Resavamma resigned the post of Headmaster as she was not able to do the additional work, the said Thiru J.M.L.Jamal Mohammed Lebbai was appointed to the post of Headmaster. On his appointment, approval was sought for to recognize him in the sanctioned strength of Headmaster. The said approval had been turned down by the respondents. Initially the request had been turned down by citing that there were two surplus Teachers in the cadre of Secondary Grade Teachers and therefore, the claim could not be considered.



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14.It is not disputed that the said Headmaster, who had been appointed, whose proposal had been returned, had continued as a Teacher in the said school. Thereafter, a further representation dated 08.05.2015, had been submitted to the second respondent herein, as there was no orders passed, the appellant had approached this Court by challenging the Government Order in G.O.Ms.No.181, dated 15.11.2011 and also for a consequential direction to direct the third respondent to approve the appointment of the Headmaster w.e.f., 01.09.2014. The original proceedings returning the proposal was never challenged by the appellant school. Subsequently, a fresh proposal had been resubmitted on 10.02.2017 to the fourth respondent praying for an approval of appointment of the Headmaster.

15.The learned Single Judge had directed the second respondent to consider and dispose of the representation dated 08.05.2015, on merits and also directed the fourth respondent to consider the resubmission of the proposal dated 10.02.2017 and pass appropriate orders. Pursuant to the said



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direction, since no orders have been passed, the appellant was constrained to issue a notice of contempt on 06.03.2017. Thereafter, the second respondent has passed an order of rejection of the representation of the appellant by contending that the person, who had been appointed as a Headmaster on the date of his appointment, did not possess 5 years of teaching experience and since the said person had been directly appointed as without any approval from the department, also could not be considered for approval.

16.A further reason has also been assigned that there are already three surplus Teachers working in the school and therefore, the proposal for new appointment as Headmaster cannot be recommended. An appeal preferred against the order before the first respondent had also meant the similar fact.

17.The appellant had appointed the said Thiru J.M.L.Jamal Mohammed Lebbai, as a Secondary Grade Teacher on 01.06.2013, and thereafter, he had been appointed as Headmaster on 31.08.2014. Even though the original request of the appellant to approve the post of Head-



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master, when the appointment of Thiru J.M.L.Jamal Mohammed Lebbai, was negatived, the appellant had not challenged the same, but subsequently had made a representation in the year 2015 to the second respondent to consider the request for approval. Pending the request of the approval with the second respondent, the appellant seems to have resubmitted the proposal of the approval to the fourth respondent in the year 2017.

18.The learned Single Judge had given direction to both second and fourth respondents to consider the representations as well as the re-submission of proposal respectively. The second respondent has proceeded to pass the order impugned herein. However, the fourth respondent had not passed any orders on the proposal resubmitted by the appellant which itself in our view is contemptuous.

19.Be that as it may, the reason assigned by the respondent is :-

- a) there are surplus Teachers in Secondary Grade Teachers;
- b) the appointed person does not possess five years of experience as a



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Teacher to be appointed as Headmaster; and

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c) there are no prior permission sought for from the Department.

With regard to the reasons assigned, we shall deal with them separately .

20.As regards the first reason given, it could be seen that the school had originally sanctioned strength of one Headmaster and six Secondary Grade Teachers. The sanctioned strength with regard to the Headmaster continued to be the same and the Secondary Grade Teachers varied in lieu of the lesser intake of the students by the school. If the authorities have found that there has been a surplus teachers in a particular school, it is their duty to take action to transfer such surplus teachers to place where there is requirement of Teacher. The respondents have not taken any such action to transfer such surplus Teachers from the appellant's school for which the appellant cannot be faulted with.

21.Further the sanctioned strength of the Headmaster had been always shown as vacant, since the post of Headmaster had not been approved by the respondents. The respondents cannot be allowed to club



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the sanctioned strength of the Headmaster and the Secondary Grade Teachers to reject the claim of the appellant by contending that there is a surplus Teachers in the Secondary Grade Teacher post. If such a contention is allowed to be upheld, then the appellant would be put to hardship to run the school without a Headmaster.

22.Coming to the second reason that has been sought to be made in non-suiting the approval in respect of the appointment is that the said incumbent did not possess the required qualification of five years experience.

23.It is to be noted that the appellant's school had not challenged the initial order of rejection passed by the fourth respondent. It had re-submitted its proposal in the year 2017, the respondents had calculated the experience of the incumbent Headmaster based upon the proposal of the year 2014. If the resubmitted proposal is taken up, the said incumbent would have more than five years of experience as a Teacher, as it is not the case of the respondent that the said incumbent was not performing his duty



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as a Teacher from 01.09.2014. In that context, the reason assigned by the third respondent to contend that the incumbent did not have minimum experience to be appointed as Headmaster would also have to fail.

24.It is pertinent to note that the Government has issued G.O.Ms.No.97, dated 05.07.2001, prescribing qualifications and procedure for appointing Headmaster in Elementary Middle School. From a reading of the aforesaid G.O., it could be seen that the first preference should be given to a Teacher working in the same institution. Only after exhausting the above method, the other methods namely, calling for names through employment exchange or direct recruitment can be restored. Only in such cases, where a direct recruitment is being sought to be made either by the school or from the employment exchange, then the prior permission should be sought for.

25.In the present case, it is not disputed that the said Thiru J.M.L.Jamal Mohammed Lebbai, had been working as a Secondary Grade Teacher in the appellant's school for him to be appointed. It is also pertinent to note that the aforesaid order also provides for relaxation of five



years experience qualification.

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26.In such view of the matter, all three reasons assigned by the second respondent as affirmed by the first respondent would necessarily have to be interfered with.

27.However, the learned Single Judge without analysing the facts of the present case in its proper perspective, dismissed the Writ Petition solely on the ground that there was no prior permission accorded by the re-spondents and that such appointment had been not through employment exchange. In such circumstances, we are inclined to interfere with the order passed by the learned Single Judge as also the impugned orders passed by the respondents which was put to test in the Writ Petition.

28.Even though the appellant had claimed for an approval of appointment of the Headmaster from the year 2014, we are not inclined to entertain the same as when the initial proposals were rejected in the year 2014, the same had not been further challenged by the appellant school. It had resubmitted a fresh proposal in the year 2017 to the fourth respondent



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and utmost they will be entitled for approval only from that date.

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29.In fine, the Writ Appeal is allowed and the order of the learned Single Judge is set aside and consequentially the impugned orders passed by the respondents dated 28.03.2019 and 19.07.2018 in the Writ Petition are also set aside. As a sequel, the following direction is issued:-

The fourth respondent herein is directed to take up the proposal re-submitted by the appellant dated 10.02.2017, as directed by this Court in W.P.Nos.3757 of 2017, dated 15.02.2017 and pass orders of approval atleast from the said date the proposal was resubmitted by the appellant. Such exercise shall be done, within a period of four weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs.

(R.S.K.,J.)

(K.B., J.)

29.01.2024

Index: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation:Yes/No

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R.SURESH KUMAR., J.
and
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pbn

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