



Writ Appeal No.1366 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Dated: 22.02.2024

CORAM

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

Writ Appeal No.1366 of 2021

S.U.Vinayagam,
S/o.M.S.Ulaganathan

... Appellant

Vs.

1. The District Educational Officer,
Chennai East, Chennai – 600 021.
2. The Secretary,
Sir, Thiagaraya College Higher Sec.
School Committee,
Chennai – 600 021.
3. R.Poovizhi

.. Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to call for the records of the orders passed in common by the learned single Judge in W.P.Nos.14777 and 15242 of 2014 to consider insofar as this appellant is concerned which connected with the orders passed in W.P.No.15242 of 2014 dated 09.12.2020 and to set aside the same.



Writ Appeal No.1366 of 2021

For Appellants : Mr.G.Alagesan
For Respondent : Mr.V.P.R.Elamparithi
Additional Government Pleader
[R1]
Mr.B.Ravi [R2]
R3- No appearance

JUDGMENT

(Judgment of the Court was delivered by R.SURESH KUMAR,J.)

This writ appeal has been directed against the order passed by the Writ Court dated 09.12.2020 made in W.P.No.15242 of 2014.

2. In fact, the learned Judge of the Writ Court by the said order dated 09.12.2020 disposed two writ petitions by a common order filed by two teachers, as against the said order only the present appeal has been filed by the appellant.

3. The appellant/writ petitioner claimed to have been working for some time in the second respondent school as Post Graduate Teacher in Maths subject as a management nominee or appointee. It is to be noted that his employment as P.G. Teacher in the school is not in a permanent vacancy. However, during the year 2013 permanent vacancy in various



Writ Appeal No.1366 of 2021

subjects as well as maths since have arisen, in order to full up the post of P.G.Teacher in Maths subject and other subjects, a common selection drive was undertaken by the second respondent/school management and accordingly, the petitioner/appellant was selected for the post of P.G.Teacher, Maths in the selection on permanent basis and an appointment order dated 05.12.2013 was also issued, pursuant to which, it is the claim of the petitioner/appellant, he had been working for some time.

4. However, immediately that kind of appointment made by the school not only against the petitioner/appellant but also similarly placed teachers, who had been selected and appointed for various subjects was challenged before this Court in W.P.No.33942 of 2013 on the ground that those appointment had been made without following the procedures established in the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 and the rules had not been followed.

5. When the writ petition came up for hearing on 17.12.2013, it was informed on behalf of the school before the Writ Court that the entire selection and appointment made including the appointment in



respect of the petitioner/appellant had been cancelled by the decision taken by the school committee dated 16.12.2013. Recording the said submission made by the school, the said writ petition was disposed of.

6. Though the writ petitioner/appellant was not a party to the said writ petition after coming to know about the said development that, once the appointment has been cancelled by the resolution dated 16.12.2013 nevertheless, the petitioner/appellant had not chosen to challenge such a cancellation, in fact the appellant/petitioner participated in the subsequent selection process, which was conducted in the month of May, 2014 for the said post of P.G.Teacher in Maths subject.

7. During the selection process, the school management had selected the fourth respondent viz., Poovizhi, who is the third respondent herein as P.G.Teacher Maths in the said vacancy on permanent basis.

8. Only challenging the said appointment made against the said Poovizhi, the petitioner had chosen to file the said writ petition in W.P.No.15242 of 2014. With similar relief another writ petition had been filed by one K.Mabel Rani in W.P.No.14777 of 2014 and those writ



petitions were heard together and disposed of by a common order dated 09.12.2020.

9. Heard Mr.G.Alagesan, learned counsel appearing for the appellant, Mr.V.P.R.Elamparithi, learned Additional Government Pleader appearing for the first respondent and Mr.B.Ravi, learned counsel appearing for the second respondent.

10. The learned counsel appearing for the appellant has submitted that, first of all the petitioner/appellant was selected and appointed by an order dated 05.12.2013, pursuant to which, he had been working for sometime. When that being so, behind his back that appointment had been cancelled, which has not been informed to him, therefore, he had no occasion to challenge the said order.

11. Subsequently, when they called for further selection process in the Month of May, 2014, without prejudice to his right to challenge such a earlier cancellation, the petitioner/appellant participated in the selection process and in the selection process, the petitioner/appellant ought to have been selected, the reason being that, since he had already been



working as a management appointee of-course on temporary basis for some time in the school, based on which, his selection should have been considered.

12. In support of his contention, the learned counsel has relied upon Rule 15(4)(ii)(a) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 [hereinafter referred to as 'said Rule']. By relying upon the said Rule, the learned counsel would contend that, if there are no qualified and suitable candidate available for appointment, appointment of other persons employed in that school provided if they are fully qualified to hold the post of teachers, can be considered and appointed.

13. If that being so, since the appellant/petitioner had already been worked in the school primacy should have been given only to the petitioner/appellant and accordingly, he should have been selected and appointed, therefore, the non-selection of the petitioner/appellant by the second respondent school is in violation of the aforesaid rule. Therefore, mainly on that ground the learned counsel appearing for the petitioner wants to assail the said order passed by the learned Judge, which is impugned herein.



14. However, Mr.B.Ravi, learned counsel appearing for the school has contend that the appellant/petitioner had never been worked as permanent teacher in a vacancy caused permanently as approved by the concerned authorities. For stopgap arrangement, normally this kind of adhoc appointment would be made by the management of the school and such an engagement since has been made against the petitioner/appellant that cannot be treated as a permanent employment within the meaning of Rule 15 of the said Rule as has been quoted by the learned counsel, therefore, on that ground, the petitioner/appellant cannot claim any primacy over other candidates.

15. Learned counsel would also submit that the cancellation order dated 16.12.2013 as per the resolution passed by the management of the school committee has never been questioned or challenged and the petitioner/appellant since has chosen to participate in the subsequent selection process went on in May 2014, then the claim that he has made with regard to the earlier appointment also would go and therefore, in the selection process best candidate alone would be selected based on the performance of the candidate in the interview and also after having evaluated the credentials of the teacher, such kind of selection would be



Writ Appeal No.1366 of 2021

made by the selection committee, therefore such a selection cannot be questioned by the petitioner/appellant, he contended.

16. We have considered the said submission made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

17. Insofar as the claim that has been made by the petitioner/appellant that he should have been considered as a candidate to be selected in view of Rule 15(4) (ii) (a) of the said Rule is concerned, the word "employed", that has been occurred in the said Rule means a person permanently employed in the school, if any one has been appointed by the management for stop gap arrangement such kind of arrangement cannot be treated as an employment or with the word "employed" as has been used in the said provision and therefore, the primacy as claimed by the petitioner/appellant with all other candidates, who participated in the selection process along with the petitioner/appellant cannot be granted to the petitioner/appellant.



18. Moreover, insofar as the candidature of the petitioner/appellant is concerned, though he was earlier selected and appointed on 05.12.2013 that was cancelled on 16.12.2013 and it has been brought to the notice of this Court in the earlier writ petition, recording the same, the said writ petition was closed. Subsequently, the further selection process went on, where he has been participated and this aspect has been considered by the learned Judge in the impugned order to the following effect:

“26. As already pointed out above, the petitioners, though appointed on 5.12.13, even according to their own version, were barred from even signing the attendance and their appointments were cancelled on 16.12.13 by the school committee due to nonfollowing of the mandatory conditions and further, their appointments were not approved by the school committee even at the first instance. Further, a perusal of the appointment order issued to the petitioners reveal that the said appointments are subject to the approval of the District Educational Officer. The appointment order also reveals that the petitioners have no claim over the management for remuneration for the service rendered in the event of their appointments not being approved by the District Educational Officer. However, in the case on hand, the school committee itself



not having approved the appointment of the petitioners, the question of appointment of the petitioners being approved by the District Educational authorities does not even arise. That being the case, the school committee not having given its approval, there is no question of cancellation of their appointments and even otherwise, the illegal appointment of the petitioners were cancelled by the school committee by a subsequent resolution dated 16.12.13, which was intimated to this Court on 17.12.13 and the petitioners having not chosen to challenge the said cancellation, but partook in the selection process, which was held in May, 2014, and the petitioners not having come out successful, challenging the said selection process is per se impermissible in view of the inalienable dicta laid down by the Hon'ble Apex Court in a catena of decisions supra.

27. Insofar as the contention of the petitioners that they were not party to the writ petition in W.P. No.33942/13 at the behest of one Karunanidhi, based on which the 2 nd respondent herein took a stand that the appointment of the petitioners were cancelled, which was recorded by this Court, and, therefore, the said cancellation would not have the approval of law, inasmuch as the petitioners were not heard, however, the said contention is liable to be rejected for the simple reason that as pointed out above the appointment of the petitioners not having been made in consonance with Section 18 of the



Act, the whole selection process and the consequent appointment of the petitioners itself is invalid and vitiated and the said invalidity cannot be cured by merely impleading the petitioners in W.P. No.33942/13 and hearing them, as no legal right accrues on the petitioners to ventilate their grievance.

28. On a holistic consideration of the entire issue, coupled with the materials available on record, this Court is of the considered view that the grievance projected by the petitioners does not stand the test of legal scrutiny and, therefore, this Court has no hesitation to hold that these petitions, at the instance of the petitioners are liable to be dismissed.”

19. Therefore, all these aspects since have been considered in proper perspective by the learned Judge and answers have been given as to how and why the candidature of the petitioner/appellant cannot be considered to be the most suitable candidate to be selected considering his earlier employment pursuant to 05.12.2013 appointment.

20. Those reasons given by the learned Judge in the order impugned is justifiable, therefore, we do not find any ground to interfere with the said reasoning given by the learned Judge as well as the ultimate conclusion reached by him.



Writ Appeal No.1366 of 2021

Resultantly, this appeal fails and accordingly, it is dismissed. No costs.

(R.S.K.,J.)

(K.B., J.)

22.02.2024

Index: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

mp

To

The District Educational Officer,
Chennai East, Chennai – 600 021.



WEB COPY



Writ Appeal No.1366 of 2021

R.SURESH KUMAR., J.
and
K.KUMARESH BABU.,J.

mp

Writ Appeal No.1366 of 2021

22.02.2024