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W.P. No.14976 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2024

CORAM

THE HONOURABLE MRS.JUSTICE N.MALA

W.P. No.14976 of 2016

and

W.M.P.No.13070 of 2016

G.Gnanasekaran

...Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by its Secretary,
Education Department,
Secretariat, Chennai 600 009.
2. The Director of Elementary Education,
College Road, Chennai 600 006.
3. The District Elementary Education Officer,
Madurai.
4. The Additional Assistant Elementary Education Officer,
Melur, Madurai District.
5. The Manager and Correspondent,
Abul Galam Azad Middle School,
Melur, 625 106.

...Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorarified mandamus calling for the entire records connected with the impugned order passed by the 2nd respondent in Na.Ka.No.24417/G3/2015 dated Nil 11.2015 and quash the same and directing the 2nd and 3rd respondents to approve the appointment of the petitioner as Middle School Graduate Headmaster w.e.f. 09.11.2012 in the 5th respondent school with all consequential benefits, in the light of the decision in Pramati Educational Cultural Trust and others vs. Union of India and others reported in 2014 (8) SCC 1.

For Petitioner : Mr. S.N.Ravichandran

For R1 to R4 : Mr.S.Prabhakaran
Government Advocate

For R5 : Mr.K.Sathish Kumar

ORDER

This writ petition is filed challenging the order of the 2nd respondent dated --.11.2015 by which the 2nd respondent rejected the proposal for approval of the petitioner's appointment as Middle School Graduate Headmaster with effect from 09.11.2012.

2. Brief Facts:

2.1. The petitioner, who holds a post graduate degree in M.A. (History) with B.Ed., registered the same with the District Employment Exchange. The petitioner worked as a Graduate Teacher (History) from 2006

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to 2012 in various schools, accumulating 5 years and 2 months of teaching experience. The petitioner, thereafter, joined the 5th respondent school which is an aided religious minority school governed by the Tamil Nadu Recognised Private Schools (Regulation) Act. The 5th respondent school, being a minority school appointed the petitioner as Graduate Middle School Headmaster by order dated 09.11.2012 and the petitioner also joined on the same day.

2.2. The 5th respondent school submitted a proposal on 27.11.2012 to the 3rd respondent through the 4th respondent for approval of the petitioner's appointment as Graduate Headmaster. The 4th respondent returned the proposal on 04.01.2013 for rectifying certain defects. The 5th respondent school resubmitted the proposal after rectification on 21.01.2013 and the 4th respondent forwarded the same to the 3rd respondent *vide* letter dated 05.03.2013. On 23.09.2013 the 3rd respondent again returned the proposal and after rectification, the school resubmitted the proposal on 29.10.2013. The proposal was again returned on 04.12.2013, on the ground that the petitioner had not passed the Teacher Eligibility Test (hereinafter referred to



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as "TET") as required in G.O.Ms.No.181 School Education (C2)

Department, dated 15.11.2011.

2.3. Thereafter, the proposal was resubmitted on 06.12.2013 and the same was rejected by the 3rd respondent on 03.06.2014. The petitioner preferred an appeal to the 2nd respondent against the rejection of the proposal on 09.09.2014. As the appeal was not considered, the petitioner filed a writ petition in W.P.No.5082 of 2015 for a direction to dispose of his appeal. This Court, by order dated 18.03.2015, disposed of the said writ petition with a direction to the 2nd respondent to consider the petitioner's appeal dated 03.06.2014 within 3 months.

2.4. In spite of the aforesaid order of this Court, the 2nd respondent did not pass orders on the petitioner's appeal. Hence, the petitioner was constrained to issue a contempt notice on 27.10.2015 and also filed a contempt petition in Contempt Petition No.163 of 2016. Only after the receipt of the notice in the Contempt Petition, the 2nd respondent passed the impugned order dated --.11.2015 rejecting the petitioner's appeal. The



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petitioner, aggrieved by the said order, has filed this writ petition.

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3. The 3rd respondent filed a counter stating that the 5th respondent school appointed the petitioner without forming the School Committee to obtain permission from the District Elementary Educational Officer concerned on furnishing the reasons for direct appointment of the petitioner; that the petitioner was appointed directly as Middle School Headmaster without following the procedure such as filling up the post by obtaining a list of eligible candidates for the post of Headmaster in the District Employment Exchange and by issuing paper advertisement; that the petitioner was appointed without obtaining prior permission for direct appointment; that the 5 year teaching experience of the petitioner was not endorsed by a competent authority and that the petitioner had not complied with the NCTE norms and G.O.Ms.No.181. The 3rd respondent, therefore, prayed for dismissal of the writ petition.

4. The 5th respondent filed a counter reiterating the facts stated in the petitioner's affidavit. It was further submitted that Rule 15(4) of the Tamil



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Nadu Private Schools (Regulation) Rules, 1974, is not applicable to

minority institutions and therefore, there was no need to call for the employment list to make the appointment. As for the petitioner's experience, it was stated that the petitioner had five years of teaching experience in IMS School. It was also mentioned that none of the teachers working in the 5th respondent's school had expressed willingness to take the post of Headmaster, leading to the petitioner's appointment. Additionally, the 5th respondent stated that the post of Headmaster was a sanctioned post, and the appointment was made within the sanctioned strength. The 5th respondent therefore prayed that the writ petition be allowed.

5. The learned counsel for the petitioner submitted that all the grounds raised by the 2nd respondent in the impugned order are untenable. According to the learned counsel, the grounds 1, 2 and 4 were untenable inasmuch as the 5th respondent school was an aided religious minority school. The learned counsel further submitted that ground 3 of the impugned order relating to service certification by DEEO / DEO was untenable as the petitioner had submitted the certificate of the Inspector of



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Matriculation Schools certifying that the petitioner had 5 years of experience. The learned counsel for the petitioner further submitted that the petitioner ought not to be blamed for the failure of the 3rd and 4th respondents to furnish the said certificate to the 2nd respondent. The learned counsel further submitted that the 3rd respondent's reasoning that the petitioner did not comply with the G.O.Ms.No.181 which related to the passing of TET was erroneous and in ignorance of the fact that G.O.Ms.No.181 did not apply to minority educational institutions. The learned counsel for the petitioner relied upon the Division Bench judgment of this Court in the case of *Eka Ratchagar Sabai Higher Secondary School and others vs. K.Sumathi and another* reported in (2008) 1 MLJ 322 and also the judgment of Hon'ble Supreme Court in the case of *Paramati Educational and Cultural Trust and others vs. Union of India and others* reported in 2014 (8) SCC (1) in support of his case. The learned counsel for the petitioner finally submitted that pending the writ petition, the approval was given on 28.06.2017, but subject to the result of the writ petition.

6. The learned Government Advocate appearing for respondents 1 to



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4, relying on the counter affidavit submitted that as the petitioner did not pass TET, the 3rd respondent was justified in rejecting the proposal. The counsel further submitted that the reasons assigned by the appellate authority in the impugned order were justified and therefore, the writ petition was bereft of any merit.

7. Heard both sides and perused the materials placed on record.

8. The petitioner was appointed as Middle School Graduate Headmaster in the 5th respondent institution. The 5th respondent school submitted a proposal for approval of the petitioner's appointment as Graduate Headmaster but the same was rejected by the 3rd respondent which was also confirmed by the 2nd respondent. The petitioner, therefore filed the writ petition challenging the impugned order of the 2nd respondent confirming the order of the 3rd respondent.

9. In the impugned order the following reasons were assigned for rejecting the 5th respondent's proposal for approving the petitioner's



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appointment as Middle School Graduate Headmaster:

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"i. Since B.T. Assistants, Secondary Grade Teachers, Physical Education Teachers and Craft Teachers are working in the Abul kalam Azad minority Middle school. When the eligible teachers are available for promotion to the post of Headmaster based on the seniority, without considering the them for promotion, and no reasons has assigned nor placed for appointment of Headmaster directly.

ii. When the appointment made directly in the minority school, the school committee of the Middle school would obtain permission from the concerned District Elementary Education Officer, on furnishing the reasons for direct appointment and no such order was enclosed.

iii. Rule 15(6) with annexure 5 of the Tamil recognised private school (Regulations) Act, 1974 stipulates the prescribed qualification for middle school headmaster is B.Ed qualification with five years teaching experience. Further as per G.O. Ms. No 116, School Education Dept, dated 14.07.2006 the service rendered in the unaided recognised school would be endorsed by the DEEO/DEO. No such document was enclosed for the same.

iv. While filling up the middle school headmaster post, the school has to obtain list of eligible candidates for the post of headmaster in the district employment exchange. Paper advertisement also to be issued for filling up the vacancy of the middle school headmaster. And also the Personal interview should be conducted for the candidates of the employment exchange and candidates applied through the paper advertisement. No such documents have been furnished in this regards.

Without following the above procedures the appointment of Thiru G.Gnanasekaran as Middle school headmaster was made directly and



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hence ordered that the approval of appointment could not be granted as

government per rules."

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10. It is seen that all the aforementioned grounds emanate from Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules. It is pertinent to note that the Division Bench of this Court in the case of *Eka Ratchagar Sabai Higher Secondary School supra* held in para 15 as follows:

"15. Judged in light of the observations made by the Supreme Court in Secretary, Malankara Syrian Catholic College v. T. Jose (supra), the provisions which lay down qualification for appointment of teachers are obviously required to be followed; whereas the procedure contemplated in Rule 15(4) of the Rules severely constricting the scope of the discretion of the Management in appointment of teachers and confining the same to a particular source would be violative of Article 30(1). Therefore, such provisions are not required to be followed by the minority institutions. In view of the above, we cannot agree with the view expressed by the learned single Judge under the impugned judgment and such decision is liable to be over-turned."

Therefore, it is clear that Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules is not applicable to minority schools. Hence,



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the reasons assigned by the 2nd respondent in the impugned order cannot be sustained.

11. One more aspect which requires consideration is the stand of the official respondents in the counter that the petitioner did not comply with the requirement of G.O.Ms.No.181 relating to the acquisition of TET qualification. The learned counsel for the petitioner relying on the judgment of the Honourable Supreme Court in *Paramati Educational and Cultural Trust and others supra*, and the Division Bench judgment of this Court in *The Chief Educational Officer and another vs. S.Christy and others* (W.A.(MD)No.463 of 2014 dated 02.04.2014), submitted that TET qualification was not required for teachers appointed in Minority Schools.

12. The judgment of the Supreme Court in *Paramati Educational and Cultural Trust* case was followed by the Division Bench of this Court in a batch of cases in W.A.Nos.313 of 2022 etc., dated 14.06.2023. The Honourable Division Bench held that a pass in TET as required for appointment of teachers in non minority schools would not apply to



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minority schools.

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13. In the light of the Supreme Court judgment which was followed by the Division Bench of this Court in in W.A.Nos.313 of 2022 and etc, I am of the view that the the rejection order of the 3rd respondent relating to TET qualification cannot be sustained.

14. For the foregoing discussions, the impugned order is liable to be interfered with and it is accordingly set aside.

15. In the result, this writ petition is allowed and the official respondents are directed to approve the appointment of the petitioner by passing appropriate orders within a period of 6 weeks from the date of receipt of copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

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Speaking (or) Non-Speaking order
Neutral Citation: Yes / No
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To:

1. The Secretary ,
Education Department,
Secretariat, Chennai 600 009.
2. The Director of Elementary Education,
College Road, Chennai 600 006.
3. The District Elementary Education Officer,
Madurai.
4. The Additional Assistant Elementary Education Officer,
Melur, Madurai District.
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N.MALA, J.

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