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W.P.No.13703 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2024

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.13703 of 2020
WMP Nos.17040 and 17041 of 2020

R.Raja

... Petitioner

VS.

1. The Chief Educational Officer,
Salem District,
Salem.

2. The District Educational Officer,
Salem Rural,
Salem District.

3. The Secretary,
Velasamy Chettiar Higher Secondary School,
Omalur 636 455,
Salem.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating of the impugned proceedings issued by the 3rd respondent in Na.Ka.No.18/2020 dated 03.09.2020 and to quash the same and consequently direct the Respondents to consider the petitioner for



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promotion to the post of P.G.Assistant (Physics) in the 3rd respondent school in the existing vacancy with consequential and attendant benefits as per the orders passed in W.P.No.14096 of 2019 dated 26.06.2020 as confirmed in the orders in W.A.No.2859 of 2019 dated 19.02.2020 and to pass.

For Petitioner : Mr.G.Sankaran, SC

For Respondents : Mrs.S.Mythreye Chandru (for R1 and R2)
Special Government Pleader

Mr.Godson Swaminathan (for R3)
for M/s.Isaac Chambers

ORDER

This writ petition has been filed challenging the order passed by the 3rd respondent dated 03.09.2020 thereby rejected the request made by the petitioner seeking promotion to the post of P.G.Assistant in Physics.

2. The petitioner was initially appointed as B.T..Assistant (Science) in the 3rd respondent school. The 3rd respondent school is a government aided school. The petitioner is qualified with M.Sc. (Physics) and he is eligible to be promoted to the post of P.G.Assistant (Physics). There are ten sanctioned posts of P.G.Assistants (Physics) including the post of P.G.Assistant (Physics) available in the 3rd respondent school. The post of



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P.G.Assistant (Physics) became vacant from 01.06.2018. Though the petitioner was directed to take classes for Higher Secondary classes, the petitioner was not promoted to the post of P.G.Assistant (Physics), instead the petitioner was declared surplus in the post of B.T.Assistant and deployed to a minority school by proceedings dated 18.01.2019, which was challenged before this Court in W.P.No.14096 of 2019.

3. This Court by an order dated 26.04.2019, quashed the order of deployment and directed the 3rd respondent to consider the case of the petitioner for promotion to the post of P.G.Assistant (Physics) in the existing vacancy, if the petitioner is found fit in all aspects, by following the necessary formalities as provided under the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974.

4. Aggrieved by the same, the respondents filed an appeal in W.A.No.2859 of 2019 and the same was also dismissed, by an order dated 19.02.2020 and directed the 3rd respondent to consider the case of the petitioner for promotion to the post of P.G.Assistant (Physics), in accordance with law. However, the request made by the petitioner was



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rejected by an order dated 03.09.2020.

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5. Mr.G.Sankaran, the learned senior counsel appearing for the petitioner submitted that the 3rd respondent failed to follow Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974. The Rule 15(4)(ii)(i) says that the appointment to the various categories of teachers shall be made by promotion from among the qualified teachers from the school. Rule 15(4)(i) says that the promotion shall be made on the grounds of merit and ability, seniority being considered only when merit and ability be equal. The petitioner is the single/sole eligible candidate working in the feeder post for promotion to the post of P.G.Assistant (Physics) and as such, the question of seniority would not arise and the petitioner ought to have been promoted to the post of P.G.Assistant (Physics), but, the 3rd respondent conducted test for assessment of merit and ability of the petitioner, which is applicable when there is more than one eligible candidate for promotion to the post of P.G.Assistant (Physics), only because the petitioner approached this Court as against the order of deployment and succeeded and further this Court directed to consider the



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petitioner's request for promotion to the post of P.G.Assistant (Physics), as there was a vacancy in the 3rd respondent school.

6. In support of his submission, the learned Senior Counsel relied upon the judgment of this Court in W.P.No.25002 of 2006 dated 12.10.2009 in the case of L.Gopal v. State of Tamil Nadu and others, wherein it is held that for evaluating merit and ability of a teacher, the educational qualifications possessed by him which are more relevant in the filed of teaching the subjects concerned alone need be considered. The possession of other qualifications and more number of degrees outside the purview of the teaching subjects by a teacher is not a relevant factor to find out merit, ability and suitability. The merit and ability can be assessed only in respect of the required relevant qualification and the percentage of the results produced by the teacher in the subject he handles. He further submitted that in so far as the petitioner is concerned, his performance is excellent and all students have passed in the 10th Standard public examination in his subject and had given 100% results.

7. The District Educational Officer, Salem, has filed a counter



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affidavit on behalf of respondents 1 and 2. Further, the 3rd respondent School had also filed the counter affidavit. A perusal of the same and the submissions made by Mrs.S.Mythreye Chandru, learned Special Government Pleader, appearing for the respondents 1 and 2 and the Mr.Godson Swaminathan, learned counsel appearing for the 3rd respondent School, revealed that pending writ petition, once again the petitioner was found surplus in the 3rd respondent school and he has been deployed to Sri Ramakrishna Saradha Government Aided Higher Secondary School, Salem vide proceedings of the 1st respondent dated 23.07.2024. Accordingly, the petitioner was relived from the 3rd respondent school and joined in the said school. Therefore, there is no question of promotion of the petitioner to the post of P.G.Assistant (Physics) in the 3rd respondent school.

8. In order to promote the petitioner to the post of P.G.Assistant (Physics) the 3rd respondent ought to have verified the merit and ability of the petitioner. Though petitioner is qualified with M.Sc.(Physics), he completed his Post Graduation through distance education and secured II Class. He also secured III Class in his UG degree [B.Sc. Physics] and II Class in his B.Ed degree.



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9. Therefore, as directed by this Court, the 3rd respondent decided to constitute a Selection Committee and issued the circular dated 08.06.2020, thereby informed the eligible candidates in the school for P.G. Assistant posts including the petitioner that their candidature would be considered by involving a procedure for written test, model class and oral interview. The petitioner had applied and submitted his proforma. The petitioner had written the examination and secured 9 marks out of 70. Though the 3rd respondent conducted examination, the answer sheet was evaluated by other P.G.Assistant (Physics) teachers from different school. The answer sheet of the petitioner is also produced before this Court.

10. On perusal of the answer sheet, the petitioner has secured only 9 marks out of 70. He has secured 18% marks out of 100 for the model class and in the interview conducted by the selection committee, he had secured 33%. Thereafter, it was placed before the Selection Committee in its meeting held on 19.06.2020 and considering the overall performance of the petitioner on merit, ability, skill and his competence to teach, in the interest of students, the candidature of the petitioner was rejected, however, he



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could continue as B.T.Assistant in the 3rd respondent school.

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11. The Selection Committee had considered the promotion of the petitioner as per the Rule 15 (4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974. It is relevant to extract the Rule 15(4) of the said Rules, which says about the qualifications, conditions of service of teachers and other persons.

15. Qualifications, conditions of service of teachers and other persons.

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(1)

(2)

(3)

(4) (i) Promotion shall be made on grounds of merit and ability, seniority being considered only when merit and ability are approximately equal.

[(ii) Appointments to the various categories of teachers shall be made by the following methods: -

(i) Promotion among the qualified teachers in that school.

(ii) If no qualified and suitable candidate is available by method (i) above, -

(a) Appointment of other persons employed in that school, provided they are fully qualified to hold the post of teachers.



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(b) Appointment of teachers from any other school.

(c) Direct recruitment. In the case of appointment from any other school or by direct recruitment the School Committee shall obtain the prior permission of the District Educational Officer in respect of Pre-primary, Primary and Middle School and that of the Chief Educational Officer in respect of High Schools and Higher Secondary Schools, Teacher Training Institutions setting out the reasons for such appointment. In respect of corporate body running more than one school, the schools under that body shall be treated as one unit for purpose of this rule.

(d) Appointment to the post of Headmaster of Higher Secondary School shall be made by the method specified in clause (ii) either from the category of Headmasters of High Schools or Teachers' Training Institutes or from the category of Post-Graduate Assistants in academic subjects or Post-Graduate Assistants in Languages provided they possess the prescribed qualifications.

12. Thus, it is clear that any promotional post has to be filled up by considering the merit, ability and suitability of candidature by following the process of selection. Therefore, the promotion to the post of P.G.Assistant (Physics) is not automatic. It is also relevant to rely upon the judgment of the Hon'ble Division Bench of this Court reported in **2007-4-LW 617** in the case of ***Eka Ratchagar Sabai Higher Secondary School, and another v. K.Sumathi and another***, wherein this Court had held as follows:

“16. Even assuming that Rule 15(4) of the Rules is applicable and



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therefore the Management had to follow such procedure, there is no requirement in the Rule nor there is any judicial pronouncement laying down that promotion has to be made only on the basis of seniority. As indicated in the Rule itself, only when a suitable candidate possess the qualification is available from the staff, his case can be considered. In the present case, the Management had given an option to Respondent No.1 to participate in the interview. This was obviously with a view to assess the merit of Respondent No.1. It is no doubt true that simultaneously the Management had also given opportunity to outsiders to participate in the interview. But, merely because of that, it cannot be said that in-service candidates' right had been violated. It is quite possible to hold that the Management in order to avoid delay may think of simultaneously interviewing in-service candidates along with the outsiders and when in-service candidate is found meritorious, such candidate is required to be preferred where Rule 15(4) is applicable. However, merely because such candidate is being interviewed along with other outsiders may not be a factor to vitiate the selection.

13. Therefore, the selection process which was adopted by the selection committee of the 3rd respondent cannot be said to be in violation of Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974. Further, the Selection Committee of the 3rd respondent which comprised subject experts from outside assessed the merit and ability of the petitioner by conducting written examination, modal class and oral interview and as a result, the petitioner had secured 9 marks in the written



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examination out of 70 and 18% marks in the model class and 33% marks in the oral interview. Therefore, the petitioner was not selected for promotion to the post of P.G.Assistant (Physics).

14. In view of the above, the judgment relied upon by the learned Senior counsel for the petitioner is not helpful to the case on hand. Further, the obligation of the 1st and 2nd respondents, is restricted to ensure that the 3rd respondent follows the procedures required under the rules and therefore, they cannot interfere with the decision of the 3rd respondent. Hence, this Court finds no infirmity or illegality in the order passed by the 3rd respondent. The writ petition is devoid of merits and liable to be dismissed.

15. Accordingly, the Writ Petition stands dismissed. No Costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

06.08.2024

Index : Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
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Salem.
2. The District Educational Officer,
Salem Rural,
Salem District.



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G.K.ILANTHIRAIYAN, J.

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