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W.P.Nos.26958 & 28064 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.26958 & 28064 of 2022
W.M.P.Nos.26170 & 27347 of 2022

D.Nanthakumar

...Petitioner in both
W.Ps.

-Vs -

1. The Commissioner of School Education,
College Road,
Chennai – 600 006.
2. The Joint Director of School Education,
(Higher Secondary)
College Road,
Chennai – 600 006.
3. The Chief Educational Officer,
Namakkal District,
Namakkal.
4. The Secretary,
Sengunthar Mahajana Higher Secondary School,
Gurusamy Palayam,
Rasipuram Taluk,
Namakkal District – 637 403.

... Respondents in
W.P.No.26958/22

1. The Commissioner of School Education,
College Road,
Chennai – 600 006.
2. The Joint Director of School Education,



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(Higher Secondary)
College Road,
Chennai – 600 006.

3. The Chief Educational Officer,
Namakkal District,
Namakkal.
4. The District Educational Officer,
Namakkal District,
Namakkal.
5. The Secretary,
Sengunthar Mahajana Higher Secondary School,
Gurusamy Palayam,
Rasipuram Taluk,
Namakkal District – 637 403.

... Respondents in
W.P.No.28064/22

Prayer in W.P.No.26958 of 2022: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the fourth respondent to consider the case of petitioner for promotion to the post of P.G. Assistant in Political Science in the fourth respondent school and promote him by following the procedure enumerated under Rule 15(4) of Tamil Nadu Private School Regulation Rules, 1974 framed under Tamil Nadu Private School Regulation Act, 1973, with service and monetary benefits without resorting to fillup the post of P.G. Assistant in Political Science by way of Direct Recruitment.

Prayer in W.P.No.28064 of 2022: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondents in relation to the



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proceedings issued in Na.Ka.No.14/2022 dated 20.07.2022 issued by the fifth respondent and quash the same and issue a consequential direction to the fifth respondent to promote the petitioner as P.G. Assistant in Political Science with all consequential benefits and issue a direction to the respondents 1 to 4 to approve the promotion of the petitioner to the post of P.G. Assistant in Political Science in the fifth respondent school.

In W.P.26958 of 2022

For Petitioner : Mr.R.Saseetharan
For Respondents
For R1 to R3 : Mrs.S.Mythereye Chandru
Special Government Pleader
For R4 : Mr.J.Jayamalan
For Mr.S.Niduchizhiyan

In W.P. 28064 of 2022

For Petitioner : Mr.R.Saseetharan
For Respondents
For R1 to R4 : Mrs.S.Mythereye Chandru
Special Government Pleader
For R5 : Mr.J.Jayamalan
For Mr.S.Niduchizhiyan

COMMON ORDER

The writ petition in W.P.No.26958 of 2022 has been filed for direction directing the fourth respondent to consider the case of the petitioner for promotion to the post of P.G. Assistant in Political Science in the fourth respondent school by following the procedural enumerated under Rule 15(4) of the Tamil Nadu Private School Regulation Rules,



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1974 (hereinafter referred to as “the Private School Rules”) framed under the Tamil Nadu Private School Regulation Act, 1973 (hereinafter referred to as “the Private School Act”).

2. While pending the above writ petition, the request made by the petitioner was rejected by an order dated 20.07.2022 by the fifth respondent. Therefore, the petitioner challenged the said order dated 20.07.2022 in W.P.No.28064 of 2022. Hence the prayer sought for in the writ petition in W.P.No.26958 of 2022 has become infructuous.

3. Insofar as the writ petition in W.P.No.28064 of 2022 is concerned, the case of the petitioner is that he was appointed as Drawing Master on 05.08.1996 in the fifth respondent school and his appointment was duly approved for the purpose of teaching grant by the authorities concerned. The fifth respondent school is a private aided and recognised school, receiving teaching grant from the State of Tamil Nadu. Therefore, it shall function in accordance with the provision of the Private School Act and Private School Rules framed under it. The petitioner has been working as Drawing Master for the period of 26 years. The petitioner is qualified and eligible to be appointed as B.T. Assistant to teach sixth to



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eighth standards and eleventh and twelfth standards in the higher secondary school as a P.G. Assistant. The post of Drawing Master carries same scale of pay as that of the secondary grade teacher.

4. In the fifth respondent school, a vacancy in the post of P.G. Assistant in the Political Science arose on 01.05.2022 due to the retirement of incumbent. The petitioner is an eligible teacher to the post of P.G. Assistant Political Science by way of promotion. Therefore, he made representation to consider him for promotion to the post of P.G. Assistants. However the said request was rejected on the ground that in order to appoint P.G. Assistants must have obtained a bachelor's degree and master's degree in the same subjects or their equivalent in respect of which recruitment is made. However, the petitioner had qualified in bachelor's degree in the subject of History and he is qualified in the post graduate degree in Political Science. Therefore, he is not eligible to be appointed or promoted to the post of P.G. Assistant in the subject of Political Science. Aggrieved by the same, the petitioner filed the writ petition in W.P.No.28064 of 2022.

5. The learned counsel appearing for the petitioner submitted



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that as per Section 15(4) of the Private School Rules, framed under the Private School Act, a vacancy in the post, which arises permanently shall be filled up under Rule 15(4)(ii) of the Private School Rules, appointments to the various category of teachers shall be made by following methods :-

- (i) promotion from the qualified teacher in that school or
- (ii) promotion among the qualified vocational instructors in that school
- (iii) if no qualified and suitable teacher is available in the above said methods (a) the appointment of other persons employed in that school, provided they are fully fully qualified to hold the post of teacher (b) appointment of teachers from any other school. (c) direct recruitment.

5.1. Therefore in the case of appointment from any other school or by direct recruitment, shall obtain prior permission from the educational authorities and in the case of high and higher secondary school, the competent authority is the Chief Educational Officer, under Sub Rule 15(6) of the Private School Rules. It is very clear that the teacher and other persons employed in the private school shall possess the qualification specified in Annexure-V. Accordingly, for the purpose of



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qualification for appointment, the said Annexure-V has grouped the teachers in the private school into four classes viz., High Schools, Schools for Deaf and Dumb, Blind and mentally retarded, Training Schools and Higher Secondary Schools. The post of Drawing Master comes under category 14, class-I and the post of P.G. Assistant in subjects comes under Category-2, class IV schools. Therefore, the petitioner is eligible for the promotion to the post of P.G. Assistant.

5.2. Accordingly, the qualification prescribed for the post of P.G. Assistants in the Annexure-V is a master degree or its equivalent standards in the subjects in respect of which the appointment is made. Further other things being equal preference shall be given to those who have studied the same subject in which, he has has obtained the post graduate degree as main subject under Part III in degree level. Since the petitioner possess the said qualification, he is eligible and suitable person available in the fifth respondent school for promotion to the post of P.G. Assistant in Political Science.

5.3. He further submitted that the petitioner sought for information under Right to Information Act, with regard to qualification



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to be followed in the private aided school from the first respondent. He was also provided with information that the qualification prescribed under Annexure-V of the Private School Rules, has to be followed for effecting promotion in the private aided school. Therefore, the sub Rules framed under Article 309 of the Constitution of India is not applicable to the private aided school.

5.4. In support of his contention, the learned counsel appearing for the petitioner relied upon the judgment reported in **2002 3 CTC 336** in the case of ***S.Mohamood Basha Vs. The Director of Collegiate Education*** in which, the Hon'ble Single Judge of this Court by relaying upon the another judgment of this Court reported in **1995 WLR 277** in the case of ***Saliar Maharaja Hr. Sec. School Vs. the Joint Director of School*** held that, so far as the aided schools are concerned, the Rules cannot be treated as statutory rules framed under Article 309 of the Constitution of India as the very Article is inapplicable to the private school. Rule 12A of the Tamil Nadu State and Subordinate Service Rules cannot be regarded as statutory rule so far as the employees of the aided colleges are concerned.



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6. Heard the learned counsel on either side and perused the materials available on records.

7. On perusal of the counter affidavit filed by the fourth respondent and the submission of the learned Special Government Pleader appearing for the respondents 1 to 4 revealed that the petitioner is not qualified with same subject both in the under graduate and post graduate degree. He had acquired under graduate degree in the subject of B.A. History and he had qualified in the post graduate degree in the subject of Political Science. Therefore, he is not qualified for the post of P.G. Assistant in Political Science. The provisions of Annexure-V of the Private School Rules and the proviso says that other things being equal, preference shall be given to those who have studied the same subject in which he has obtained the post graduate degree as main subject under part II in degree level.

8. The fifth respondent school filed counter and the learned counsel appearing for the fifth respondent submitted that a vacancy arose due to voluntary retirement of one M.Manoharan with effect from



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30.04.2022 in the post of P.G. Assistant, Political Science and the petitioner had applied for the said post. In order to assess his learning and teaching capability, since he was appointed as Drawing Master on his technical qualification, the petitioner was directed to appear before the Committee. However the petitioner did not appear before the committee to assess his learning and teaching capability to appoint him in the post of P.G. Assistant Political Science.

9. That apart, the petitioner had acquired SSCL, higher grade in Drawing, B.A.(History), B.Ed., M.A. (Political Science) through correspondence courses. He has not following the pattern of study as 10+2+3+2 as per the government orders. Further, the fifth respondent school had sent a proposal seeking permission to fill up the post of P.G. Assistant by direct recruitment and the same was duly permitted by the third respondent by its proceedings dated 16.09.2022. The Rule 15(4) of the Private School Rules is reads as follows:-

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

(1).....

(2).....



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(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.*

(b) *Appointment of teachers from any other school.*

(c) *Direct recruitment”*

10. Thus it is clear that the promotion shall be made on grounds of merit and ability. However, the petitioner failed to appear before the Committee to assess his learning and teaching capability to appoint him in the subject of Political Science as P.G. Assistant. Therefore, the petitioner failed to satisfy the first limb of the Rule. Hence, the judgment cited by the learned counsel appearing for the petitioner is not applicable



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to the case on hand. The fifth respondent rightly rejected the request made by the petitioner and this Court finds no infirmity or illegality in the order passed by the fifth respondent. Both the writ petitions are devoid of merits and liable to be dismissed.

11. Accordingly, both the writ petitions are dismissed. Consequently, connected Miscellaneous Petitions are closed. There shall be no order as to costs.

19.02.2024

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No

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G.K.ILANTHIRAIYAN. J.

rts

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