



W.P.No.29297 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.02.2024

Coram:

THE HONOURABLE MR. JUSTICE BATTU DEVANAND

Writ Petition No.29297 of 2017

Siva Karpagavalli,  
Secondary Grade Teacher (Special Grade),  
Killivalavan Aided Middle School,  
Siruvarapur, Kammapuram Union,  
Cuddalore District.

.. Petitioner

/versus/

1.The Director of Elementary Education,  
DPI Campus, College Road,  
Chennai 600 006.

2.The District Elementary Educational Officer,  
Cuddalore, Cuddalore District.

3.The Assistant Elementary Educational Officer,  
Kammapuram Union,  
Cuddalore District.

.. Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent relating to the order in A.Thi.Mu.No.4508/அ2/2015, dated 08.11.2016 quash the



W.P.No.29297 of 2017

same and to issue consequential direction to the respondents to fill up the post of Headmaster in Killivalavan Aided Middle School, Siruvarappur, Kammapuram Union by promoting the petitioner.

For Petitioner :Mr.G.Amalraj

For Respondents :Mr.V.Manoharan,  
AGP(Education)

-----

### ORDER

This Writ Petition has been filed against the order of the second respondent in A.Thi.Mu.No.4508/A2/2015, dated 08.11.2016 and to issue a consequential direction to the respondents to fill up the post of Headmistress in Killivalavan Aided Middle School, Siruvarappur, Kammapuram Union, by promoting the petitioner.

2. A counter-affidavit has been filed by the second respondent.

3. The case of the petitioner is that, she was appointed as Secondary Grade Teacher on 19.04.1989 in Killivalavan Aided Middle School, Siruvarapur and she had put in 27 years of unblemished service without any promotion sofar. After entering into the service, she



W.P.No.29297 of 2017

WEB COPY

acquired degree of Master of Arts in Tamil in December 2002 and decree of Bachelor of Education with Tamil I and II as optional subjects in May 2013. Though the petitioner possessed requisite qualification for promotion to the post of Middle School Headmistress and she was the senior most Secondary Grade Teacher in the said school, the post of Headmistress of the School has become vacant consequent to the retirement of one Thiru.Killivalavan on 31.05.2016 on superannuation.

4. The petitioner was not considered for promotion. The correspondent of the school was passed away on 28.04.1998. There were no consensus among the legal heirs of the deceased correspondent with regard to the Management of the School affairs. All efforts made to put the School under the control of the legal heirs of the deceased correspondent proved futile and the School was brought under the direct control of the Educational Authorities. The second respondent submitted a proposal to the first respondent for appropriate orders regarding the disbursement of other monetary benefits to the staff of the School to the third respondent. Based on the recommendation of the second respondent and the order issued in G.O.Ms.No.238, School Education



W.P.No.29297 of 2017

WEB COPY

dated 26.05.1997, the first respondent has permitted the second respondent to claim and disburse through the third respondent with the following benefits to the Teachers of the School:

- (1)Sanction of annual increments;
- (2)Sanction to all kinds of leave (including surrender leave);
- (3)Sanction of advance from the provident fund and festival advance;
- (4)Sanction of gratuity and retiral benefits;
- (5)According Selection Grade/Special Grade; and
- (6)Fixation of scale of pay and sanction and disbursement of arrears.

5. The second and third respondents vested with the powers to grant all sort of benefits. While so, the petitioner made a representation on 04.07.2016 to the Joint Director of Elementary Education (Aided), requesting her promotion to the post of Headmistress in the said School. The said representation was forwarded to the second respondent and the second respondent, vide, impugned order dated 08.11.2016, informed the petitioner that, her request is not feasible of compliance on the ground



W.P.No.29297 of 2017

WEB COPY

that the School is functioning under the direct payment by the department. It is also informed that only after the formation of School Committee by the Management, action will be initiated to fill up the post of Headmistress in that School as per the guidelines framed under the Tamil Nadu Private Schools (Regulation) Act, 1973 and the Rules 1974 framed thereunder. Aggrieved by the said order, the petitioner has constrained to file this Writ Petition.

6. In the counter-affidavit filed by the second respondent, it is averred that as per Section 18 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, the School Committee is responsible to consider the request of the petitioner. It is also averred that the legal heirs of the deceased correspondent have not arrived at consensus to form the Educational Agency and the School Committee and there was no response from the legal heirs. Consequently, the first respondent has issued orders dated 27.07.2000 for the day to day administration of the School mentioning certain issues. It is also averred in the counter-affidavit that, the representation dated 04.07.2016 submitted by the petitioner seeking promotion as Headmistress of the said School was



W.P.No.29297 of 2017

WEB COPY

examined by the second respondent and rejected the request of the petitioner vide, impugned order dated 08.11.2016 for the reason that the appointment and promotion will be considered only after the constitution of the School Committee, as required under Tamil Nadu Private School (Regulation) Act, 1973 and the Rules made thereunder.

7. The learned counsel for the petitioner submits that the post of Headmaster/Administrative of the Middle School is governed by the Special Rules in Tamil Nadu Elementary Educational Subordinate Service Rules. The petitioner possessed the qualification required for promotion to the post of Headmistress and she became eligible for the promotion and accordingly, she made a representation for promotion to the post of Headmistress in the said School. The second respondent rejected the same with invalid reasons.

8. The learned counsel appearing for the petitioner also submits that from the year 1998, after the demise of the then correspondent, the legal heirs of the deceased correspondent are not coming forward to settle the issue and to take over the Management of the School. The first



W.P.No.29297 of 2017

WEB COPY

respondent issued the order dated 27.07.2000 for the day to day administration of the School with regard to the salary and the service benefits to the teaching employees working in the said School. It is the duty of the respondents to consider the appointment of the petitioner on promotion as Headmistress in the said School. Admittedly, the post of Headmaster falls vacant with effect from 31.05.2016. The Learned Counsel for the petitioner further submits that the 1<sup>st</sup> respondent without considering the issue in proper perspective, passed the impugned order, which is unsustainable and sought to allow the Writ Petition.

9. On the other hand, the Learned Additional Government Pleader(Education) appearing for the respondents submits that as per Section 18 of the Tamil Nadu Recognised Private School Regulation Act, 1973, the functions of the School Committee and the responsibility of Educational Agency are provided and the respondents have no role to consider the request of the petitioner for promotion to the post of the Headmaster/Headmistress. The 1<sup>st</sup> respondent has passed the order for day to day administration of the School in the interest of the school and the staff only. The petitioner has to represent the Management for



W.P.No.29297 of 2017

promotion after formation of the School Committee.

WEB COPY

10. The Learned Additional Government Pleader (Education) for the respondents also submits that, as per provisions of the Act 1973 and as per the Rules made thereunder, there is no obligation on the part of the respondents to discharge all functions of the School Committee in the absence of the School Committee and requested to dismiss the Writ Petition.

11. This Court gave an anxious consideration to the contents of the respective counsels and examined the materials available on record carefully.

12. The admitted facts of the case are that, the petitioner was working as a Secondary Grade Teacher in Killivalavan Aided Middle School, Siruvarapur, from 19.04.1989. She possessed all required the qualifications and became eligible for the promotion to the post of Middle School Headmistress. The post of the Headmaster, wherein the petitioner is working, become vacant with effect from 31.05.2016



W.P.No.29297 of 2017

WEB COPY

consequent to the retirement of one Thiru Killivalavan on superannuation. The petitioner submitted a representation to the first respondent through the Joint Director of Elementary Education (Aided) on 04.07.2016 seeking promotion to the post of Headmistress in the said School. The said representation was rejected by the second respondent by order dated 08.11.2016. It is also admitted fact that, the legal heirs of the deceased correspondent are not coming forward to take up the Management of the School from 28.04.1998.

13. Under those circumstances, the first respondent has issued orders in proceedings in K.Dis.301410/E/J3/2000, dated 27.07.2000 for day to day administration of the school with regard to the salary and the service benefits to the teaching employees. The request of the petitioner for promotion has been rejected by the impugned order saying that the respondents have no authority to consider the same and the petitioner has to approach the School Management after its formation.

14. In the considered opinion of this Court, it is appropriate to extract Sections 18 and 18-A of the Tamil Nadu Recognised Private



W.P.No.29297 of 2017

WEB COPY

Schools (Regulation) Act, 1973, for better adjudication of the case.

“18. Functions of the school committee and responsibility of educational agency under the Act. - (1) Subject to the provisions of this Act and the rules made thereunder, the school committee shall have the following functions, namely: -

(a) to carry on the general administration of the private school excluding the properties and funds of the private school;

(b) to appoint teachers and other employees of the private school, fix their pay and allowances and define their duties and the conditions of their service; and

(c) to take disciplinary action against teachers and other employees of the private school.

(2) The educational agency shall be bound by anything done by the school committee in the discharge of the functions of that committee under this Act.

(3) For the purposes of this Act, any decision or action taken by the school committee in respect of any matter over which the school committee has jurisdiction shall be deemed to be the decision or action taken by the educational agency.

**18A. Appointment of Special Officer in certain cases. - (1) (a)**

Where the Government, on receipt of a report from the Director of School Education or otherwise, are satisfied that the management of any private school –

(i) is responsible, whether on or after the date of commencement of the Tamil Nadu Recognised Private Schools (Regulation) and Private Colleges (Regulation) Amendment Act, 1982 (Tamil Nadu Act 48 of 1982), for the maladministration, lapses or irregularities of such private school; or

(ii) has neglected whether on or after the date of commencement of the Tamil Nadu Recognised Private Schools



WEB COPY



W.P.No.29297 of 2017

(Regulation) and Private Colleges (Regulation) Amendment Act, 1982 (Tamil Nadu Act 48 of 1982) to discharge any of the duties imposed on, or to perform any of the functions, entrusted to such management by or under this Act, or any rule or order made or direction issued thereunder, the Government may, after giving to such, management an opportunity to make representation and for reasons to be recorded in writing, by an order, suspend the management and appoint a special officer for a period not exceeding one year or till the reconstitution of the management (in accordance with the law applicable to the reconstitution of such management) whichever is later.”

15. On bare reading of Section 18, the functions of the school committee and responsibility of educational agency are provided therein. In Section 18-A, it is provided that if the Government are satisfied, based on the report of the Director of School Education or otherwise that the Management of any private school is responsible for the maladministration, lapses or irregularities of such private school, has neglected to discharge any of the duties imposed on, or to perform any of the functions, entrusted to such management by or under this Act or any rule or order made or direction issued thereunder, the Government may suspend the Management and appoint a Special Officer for a period not exceeding one year or till reconstitution of the Management. But, before passing such order, the Government have to give an opportunity to the Management to make their representation.



W.P.No.29297 of 2017

WEB COPY

16. In the present case, the Management Committee, Killivalavan Aided Middle School, Siruvarapur, where the petitioner is working as a Secondary Grade Teacher from 19.04.1989, has become defunct with effect from 28.04.1998, from the date of death of the then correspondent. Till now, after expiry of 26 years, the issue is not settled sofar. The School Management Committee is not formed, as per the order issued by the first respondent in the year 2000. The day to day affairs of the School being administered by the second respondent.

17. Under these circumstances, it is the statutory obligation on the part of the first respondent to invoke Clause (ii) of Sub-Section (1) of Section 18-A of the Tamil Nadu Recognised Private Schools(Regulation)Act, 1973. But, without discharging the statutory duty provided under 18-A of the Act 1973, the respondents are shifting their responsibility on the School Committee.

18. As and when the first respondent passed the order on 27.07.2000 for the day to day administration of the School, as the legal heirs of the deceased correspondent of the said School are not coming



W.P.No.29297 of 2017

WEB COPY

forward for formation of the new School Committee, the first respondent ought to have invoked the power vested under Section 18-A of the Tamil Nadu Recognised Private Schools(Regulation)Act, 1973, considering that the Management Committee of the School has neglected to discharge its duties and ought to have appoint a Special Officer to discharge the functions of the School Committee. Without acting as per the Section 18-A of the Tamil Nadu Recognised Private Schools(Regulation)Act, 1973, the first respondent miserably failed to discharge its statutory functions. The first respondent and the Officers of the Education Department miserably failed to discharge their statutory duties vested under Section 18-A of the Tamil Nadu Recognised Private Schools (Regulation)Act, 1973.

19. Normally, it is the dream of every employee to get promotion to the higher post, if they are fully qualified and the vacancy is available. In the present case, though the petitioner has acquired all the qualifications for promotion to the post of Headmistress and the vacancy is also available from 31.05.2016, rejecting the request of the petitioner by the impugned order is unreasonable and unjustified.



W.P.No.29297 of 2017

WEB COPY

20. Under these circumstances, this Court has no hesitation to hold that the first respondent, without invoking Section 18-A(1)(ii) of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, rejected the representation of the petitioner dated 04.07.2016 in routine manner which is unsustainable and untenable. As such, the order impugned in this Writ Petition is liable to be set aside.

21. For the reasons stated above, the Writ Petition is allowed with the following directions:-

(i) The order in A.Thi.Mu.No.4508/A2/2015, dated 08.11.2016 passed by the second respondent is hereby set aside.

(ii) The first respondent shall send a report to the State Government of Tamil Nadu, as per the Section 18-A Clause (ii) Sub-Section (1) of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, to enable the State Government of Tamil Nadu to appoint a Special Officer to discharge the functions of the School Committee.

(iii) The Special Officer, to be appointed shall consider the request of the petitioner for appointment as a Headmistress to Killivalavan Aided Middle School,



W.P.No.29297 of 2017

Siruvarampur, Kammapuram Union, Cuddalore District.

(iv)The entire exercise shall be completed, within a period of three months, from the date of receipt of a copy of this order.

22. There shall be no order as to costs.

20.02.2024

Index:yes/no  
Speaking order/non speaking order  
Neutral citation:yes/no  
ari

To:

1.The District of Elementary Education,  
DPI Campus, College Road,  
Chennai 600 006.

2.The District Elementary Educational Officer,  
Cuddalore, Cuddalore District.

3.The Assistant Elementary Educational Officer,  
Kammapuram Union,  
Cuddalore District.



WEB COPY



W.P.No.29297 of 2017

BATTU DEVANAND, J.

ari

W.P.No.29297 of 2017

20.02.2024