



WP(MD) No.143 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.06.2024**

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD) No.143 of 2024

Devangar Girls Higher Secondary School,
Rep. by its Secretary
N.Manimaran

... Petitioner

Vs.

1.The Director of School Education,
DPI Compound, College Road,
Chennai- 600 006.

2.The Chief Educational Officer,
Virudhunagar District, Virudhunagar.

3.The District Educational Officer,
Virudhunagar District, Virudhunagar.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the respondents to receive the proposal dated 11.12.2023 submitted by the petitioner and to approve the appointment of Mrs.Kanchana in the post



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of PG Assistant (Physics) with effect from 12.01.2023.

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For Petitioner : Mr.G.Prabhu Rajadurai

For Respondents : Mr.T.Amjadkhan

Government Advocate

ORDER

The present writ petition has been filed seeking a Writ of Mandamus, to direct the respondents to receive the proposal dated 11.12.2023 submitted by the petitioner and to approve the appointment of Mrs.Kanchana in the post of PG Assistant (Physics) with effect from 12.01.2023.

2. Heard Mr.G.Prabhu Rajadurai, learned counsel for the petitioner and Mr.T.Amjadkhan, learned Government Advocate for the respondents.

3. The petitioner is a Linguistic Minority Institution and one Kanchana has been appointed as PG Assistant (Physics) against the sanctioned vacancy on 12.01.2023. Consequently, a proposal has been



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sent to the second respondent/Chief Educational Officer for approval through the third respondent/District Educational Officer. However, the approval has not been forwarded to the second respondent by stating the reason of the pending writ petition in WP(MD)No.16351 of 2023 filed by one Jeeva. The said Jeeva has filed the writ petition questioning her deployment to some other school from the petitioner school.

4. It is learnt that the said Jeeva has joined in the transferee school, ie., AVM Higher Secondary School, Vilampatti on 16.06.2023 and she is currently working there. In fact, the said Jeeva was working as a BT Assistant in the petitioner school and not a PG Assistant. Hence, it is strange to see that the 3rd respondent has returned the proposal vide the impugned order dated 13.12.2023 by stating that the said Jeeva has given a request to promote her to the post of PG Assistant (Physics) and to that effect, the said writ petition is pending.

5. It is seen from the other writ petition in WP(MD)No. 16351 of 2023 filed by Jeeva that she has sought prayer to redeploy her



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to the petitioner school and then promote her to the post of PG Assistant(Physics). Unless the said Jeeva's deployment order is cancelled and she is redeployed to the petitioner school, there is no necessity to hold the grant of approval to the appointment of Kanchana to the post of PG Assistant(Physics). The petitioner school being the Minority Institution, the management can make appointment by calling for applications directly and appoint eligible persons as per Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974.

6. For ready reference Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, is extracted hereunder:

*"15(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 from 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."*



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7. However, the issue of applicability of the said Rule to the Minority Institutions has been dealt by the Division Bench of this Court in W.A.No.367 of 2007, which was filed challenging the order passed in W.P.No.11120 of 2001. The said writ petition was filed by the Teacher who was denied promotion in compliance of Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974. The learned Single Judge allowed the writ petition in favour of the petitioner therein. However the management has taken it on appeal in W.A.No.367 of 2007. The Division Bench has settled the legal position on the above issue by holding that Rule 15(4) is not applicable to the Minority Institutions in view of the rights conferred on such institutions under Article 30(1) of the Constitution of India. It is appropriate to extract the relevant part of the judgment as below:

"14. As observed in TMA Pai Foundation's case, essential ingredients of the management including admission of students and recruitment of staff, cannot be regulated. It is of course true that the earlier decision of the single Judge in M. Chelladorai's case, which we have already noticed, also purported to rely upon the observations made in TMA Pai Foundation's case. However, now that the matter has been decided by the Supreme Court in (2007) 1 SCC 386 after referring to other earlier decisions, we do not think that the interpretation



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given earlier by different learned single Judges of this Court can hold good. The necessary conclusion, therefore, is that the discretion of the Management to appoint teacher of its own choice (of course a teacher who is otherwise qualified and eligible as per the prescribed regulations) cannot be curtailed through the process of rules, regulations or other executive instructions as such rules, regulations or executive instructions would violate the right of the minority institution under Article 30(1) of the Constitution.

15. Judged in light of the observations made by the Supreme Court in (2007) 1 SCC 386 (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.

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



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opportunity to outsiders to participate in the interview. But, merely because of that, it cannot be said that inservice candidates' right had been violated. It is quite possible to hold that the Management in order to avoid delay may think of simultaneously interviewing inservice candidates along with the outsiders and when inservice 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."

8. On similar facts, some other petitioner has also filed W.P(MD)No.1697 of 2012 wherein it has been categorically held that Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, is not applicable to the Minority Institutions and hence promotion cannot be claimed to the post of PG Assistant in Minority Institutions by the individuals as a matter of right.

9. In view of the autonomy conferred on the Minority Institutions and special privileges attached to such institutions in accordance with Article 30(1) of the Constitution of India, there is no bar for the petitioner's management to appoint Kanchana to the post of PG Assistant (Physics). Hence, it is unnecessary for the 3rd respondent to



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return the proposal on this ground without forwarding it to the 2nd respondent.

10. In view of the same, this writ petition is **disposed of**.

The impugned order dated 13.12.2023 is set aside. The petitioner is at liberty to re-present the proposal and on receiving the same the 3rd respondent shall forward it to the 2nd respondent, if it is otherwise found in order, in order to enable the 2nd respondent to grant approval in accordance with its own merits. No Costs.

03.06.2024
(1/2)

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
PJJ

To

1.The Director of School Education,
DPI Compound,
College Road,
Chennai- 600 006.



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2.The Chief Educational Officer,
Virudhunagar District,
Virudhunagar.

3.The District Educational Officer,
Virudhunagar District,
Virudhunagar.



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R.N.MANJULA, J.

PJL

**Order made in
W.P.(MD)No.143 of 2024**

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