



WP(MD) No.17757 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **31.07.2024**

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.17757 of 2024

and

W.M.P.(MD)No.15237 of 2024

Vijayan

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Secretariat, Fort St.George,
Chennai - 9.
 - 2.The Director of School Education,
Dpi Campus, Chennai - 6.
 - 3.The District Education Officer,
Tiruchendur,
Thoothukudi District.
 - 4.The Correspondent,
Mary Ann Best Girls Higher Secondary School,
Pandaranchettivilai - 628203,
Thoothukudi District.
- ... Respondents



WP(MD) No.17757 of 2024

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records relating to the order passed by the 3rd respondent in his proceedings in O.Mu.No.2111/A1/2021 dated 03.08.2021 and quash the same as illegal and consequent direction may be issued to the respondents 1 to 3 to approve the petitioner's appointment as office Assistant from the date of his appointment on 02.04.2018 in 4th respondent School and to pay all the monetary and service benefits with arrears from grant in aid within stipulated time.

For Petitioner : Mr.T.A.Ebenezer

For Respondents : Mr.T.Amjad Khan

Government Advocate

ORDER

The petitioner has filed this Writ Petition challenging the order passed by the 3rd respondent in his proceedings in O.Mu.No. 2111/A1/2021 dated 03.08.2021 with a consequential direction to the respondents 1 to 3 to approve the petitioner's appointment as office Assistant from the date of his appointment on 02.04.2018 in 4th respondent School and to pay all the monetary and service benefits with arrears from grant in aid within stipulated time.



WP(MD) No.17757 of 2024

WEB COPY

2. Heard the learned counsel on either side.

3. By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

4. The petitioner was appointed as an Office Assistant in the fourth respondent school on 02.04.2018. The fourth respondent school sent a proposal to the third respondent, for approving the appointment of the petitioner, which was returned on 05.02.2019 requiring to attach minority status to Thoothukudi Nazereth Diocese. Again the proposal was re-presented by the fourth respondent school, which was also returned by the third respondent on 03.09.2019 stating that with regard to minority status, a writ petition is pending and it would be considered on the basis of the said judgment to be passed in that writ petition. For the third time, the proposal for approving the petitioner's appointment was re-submitted by the fourth respondent school, before the third respondent, which was also returned through the impugned order dated 03.08.2021 stating that the post should be filled in through promotion



WP(MD) No.17757 of 2024

WEB COPY

and that prior sanction has to be obtained, if no deployment is done in respect of surplus. Challenging the same, this writ petition has been filed.

5. The learned counsel appearing for the petitioner submitted that insofar as the fourth respondent management is concerned, it is a minority aided school and hence, Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 is not applicable to the fourth respondent school. He further submitted that even from the academic year 2017-18, the post of Office Assistant is shown as sanctioned post and there is no question of surplus at all.

6. The learned Government Advocate appearing for the respondents 1 to 3 submitted that the petitioner is not estopped from challenging the said order dated 03.08.2021 and only by accepting the impugned order herein dated 03.08.2021, the fourth respondent school has re-submitted the same on 10.08.2023.



WP(MD) No.17757 of 2024

WEB COPY

7. The learned counsel appearing for the petitioner submitted that though the proposal was re-submitted by giving required clarification, it has not been considered so far and hence, he prayed this Court to quash the impugned order dated 03.08.2021.

8. Insofar as the legal position as to the existing promotional opportunities under Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 is concerned, it is made clear that it will not be applicable to the minority institutions, in view of the rights conferred under Article 30 (1) of the Constitution of India.

9. A direct reference can be made by various judgments of this Court, in one of which, this Court, in WP(MD)No.143 of 2024, dated 03.06.2024, clarified as under:-

“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:-



WEB COPY



WP(MD) No.17757 of 2024

(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."*

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



WEB COPY



WP(MD) No.17757 of 2024

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 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



WEB COPY



WP(MD) No.17757 of 2024

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 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



WP(MD) No.17757 of 2024

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

10. Insofar as the other objection that there is surplus, it is not substantiated by the respondents. The staff strength has been fixed in the academic year 2017-2018. The post of Office Assistant is very much available as against the sanctioned strength. Therefore, there cannot be any difficulty for the respondents to accord sanction / approval to the appointment of the petitioner with effect from the date of his appointment. Even though the fourth respondent school has re-submitted proposal, it cannot be construed that the school has accepted the reasons stated in the impugned order dated 03.08.2021. Hence, the impugned order is liable to be set aside.



WP(MD) No.17757 of 2024

WEB COPY

11. In view of the aforesaid observations, the impugned order dated 03.08.2021 is set aside and this writ petition is allowed accordingly. The respondents are directed to consider the proposal submitted by the fourth respondent school on 10.08.2023 and pass orders approving the appointment of the petitioner within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

31.07.2024

NCC: Yes/No
Index : Yes/No
sm



WP(MD) No.17757 of 2024

WEB COPY To:-

- 1.The State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Secretariat, Fort St.George,
Chennai - 9.
- 2.The Director of School Education,
Dpi Campus, Chennai - 6.
- 3.The District Education Officer,
Tiruchendur,
Thoothukudi District.



WEB COPY



WP(MD) No.17757 of 2024

R.N.MANJULA, J.

sm

Order made in
W.P.(MD)No.17757 of 2024

31.07.2024