



WA(MD). No.926 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date : 16/04/2024

CORAM

Justice N.SESHASAYEE
and
Justice P.VADAMALAI

**WA(MD). Nos.926 of 2015, 930/2015, 1301/2016, 6 and 7 of 2017 and
869/2018 and MP Nos.12155 and 12165/2016 and 5389/2018**

WA(MD) No.926/2015

R.Kishorechand

... Appellant

Vs

1.S.Prathibha

2.The Chief Educational Officer,
CEO Office, Nagercoil

3.The District Educational Officer,
Kuzhithurai, Kanyakumari District

4.Arumanai Higher Secondary School,
rep. by its Correspondent and Manager,
Arumanai
Vilavancode Taluk
Kanyakumari District

... Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent
against the order dated 16.07.2015 in WP(MD) No.13486 of 2014.

For Appellant : M/s.K.Ragatheeshkumar for
Mr.H.Thayumanaswamy



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For Respondents : Mr.Mohammed Imran for
M/s.Ajmal Associates for R1
Mr.Xavier Rajini for R4
Mr.D.Sadiq Raja for R2 & R3
Additional Government Pleader

COMMON JUDGMENT

(Judgment of the Court was delivered by N.SESHASAYEE, J.)

These batch of appeals arise out of three writ petitions. Two of which were filed by a certain Kishore Cchand and another was filed by Dr.S.Prathibha, and the issue relates to the appointment of Prathibha as a Headmistress of Arumanai Higher Secondary School. Kishorechand was the outgoing Headmaster of the school when he superannuated on 31.05.2013. Prathiba was appointed in the vacancy so created.

2.1. The school concerned is a linguistic minority school in Kanyakumari District and its appointment of Prathibha for the said post was recommended for approval by the school to the District Educational Officer vide its proceedings dated 10.07.2014. The District Educational Officer declined to approve the same on the ground that Prathibha did not possess the minimum eligibility for being considered for the post



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since she had not served a minimum of 10 years in the feeder category.

Indeed, she had served in the very school only for 8 years 9 months and 26 days.

2.2. Prathiba had served in the school between 02.06.1997 and 06.01.2007. In between she was also stated to be leave on loss of pay. She then took a break from the school and joined M/s.Vellore Institute of Technology, Vellore on 28.05.2007 to 31.12.2008 as Senior Lecturer then as Assistant Professor from 01.01.2009 to 25.02.2010. According to her, she resigned the job at VIT and joined the school on 01.10.2012. It may have to be stated here that Kishore Chand was due to retire on 30.09.2012, but his service was extended for the rest of the academic year, and he actually retired only on 31.05.2013.

2.3. Prathibha would now contend that on 01.10.2012, she joined the school and that she had served in the school between 01.12.2012 and 31.05.2013, and that this period should have given credit to, and the reminder year must be rounded off. She had also alleged that Kishore Chand is from the family of management of the school and is a close



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relative of the correspondent of the school and that even after his superannuation he is interfering with the smooth running of the school by her.

2.4. So far as the school is concerned, in its counter it supported both Prathibha and Kishorechand partially. So far as legitimacy of Prathibha to the post of Headmistress of the school is concerned, the management supported Prathibha. On the allegation of Kishore Chand's post retirement-interference with the school activities, the management supported the case of Kishore Chand and said there is such interference.

2.5. The officials have stuck to their rules. Their counter says that Prathibha had not completed the minimum qualified service in the feeder category for being appointed as Headmistress of the school.

3. When the matter came before the learned Single Judge, he had found,

- a) That Kishore Chand, being a superannuated past Headmaster of the school, had no locus standi to challenge the appointment of Prathibha, dismissed his two petitions and slapped a cost of Rs.



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50,000/- on him and directed the same be paid to Balar Illam, 12 Jawahar Road, Madurai – 625 002;

- b) Inasmuch as Prathibha had served in M/s VIT, Vellore and since she had served in a higher position, her service in a College must be reckoned for computing the minimum qualifying service in the feeder category and accordingly, held that Prathibha had completed 10 years minimum qualifying service for being appointed. In other words, the learned Single Judge has held that the appointment of Prathibha to the post of Headmistress of the school is valid and legitimate;
- c) Prathibha in her affidavit had alleged that between 01.10.2012 and 31.05.2013, she had served in the school. Kishore Chand denied it and had alleged that when once his service as the Headmaster of the school was extended from 01.10.2012 to 31.05.2013, Prathibha's appointment during that period was kept in abeyance. Since Prathibha had filed a false affidavit vis-a-vis her contention that she indeed had joined the school from 01.10.2012, a cost of Rs.50,000/- was imposed on her. This has triggered a batch of writ appeals, which are now before this Court.



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4. Kishore Chand has challenged the orders passed against him where the learned Judge has questioned his locus standi in two appeals [WA(MD) Nos.6 and 7 of 2017] and has also independently challenged the order passed in favour of Prathibha in W.P.No.926/2013.

5. So far as the appeals filed by Kishore Chand are concerned, as rightly found by the learned Single Judge, he does not have locus standi either to sustain any one of the three appeals that he had filed. Necessarily, they have to be dismissed.

6. Turning to the appeal filed by Prathibha in W.A.(MD) No.930/2015 is concerned, she in essence has challenged the imposition of cost of Rs. 50,000/- by the learned Single Judge for making certain false statement vis-a-vis her service in her affidavit. The direction was to pay the cost to Munavvaraa Girls Orphanage Home, Alagar Koil Main Road, Madurai. Though Prathiba has challenged this part of the order, she still had paid the said sum to the Orphanage.



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7.1 The learned counsel for Prathibha submitted that she had provided the facts and it appears that there should have been some miscommunication between her and her counsel who apparently had drafted the affidavit, which she had signed inadvertently without checking the correctness of the facts. On instructions, he also added that there is no intent on the part of his client to make any false statement before this Court. He pleaded that she may be pardoned for the inadvertent mistake that she had committed and added that she has already paid the cost imposed on her to the Orphanage, and that she does not want any return of the money.

7.2 This part of the submission of the learned counsel for Prathibha appears fair and reasonable. After all these are all mistakes that commonly happens, though in fitness of things it should be avoided. This Court, therefore, only choose to caution Prathibha from making any wrong statements even inadvertently or mistakenly before any Court in future. Accordingly, her appeal W.A.930 of 2015 is accordingly closed.



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8. There is yet another appeal filed by Mrs.Dhaya. This appeal is WA(MD) No.869/2018. Her contention is that by appointing Prathibha as the Headmistress, who suffered from lack of minimum eligibility criteria for being appointed as headmistress, the appellant in this appeal had been denied promotion even though she was fully qualified, and her grievance is that by virtue of the impugned order of the learned Single Judge, her fortunes were entirely killed. This Court is informed that subsequent to the order of the learned Single Judge, Prathiba herself was terminated from service in a domestic enquiry vide proceedings of the management dated 05.01.2017 and that Dhaya too had superannuated on 31.07.2023 without ever being appointed as a Headmistress. In view of the same, her efforts to have her appointed as a Headmistress has come to a knot and hence, WA(MD) No.869/2015 has become infructuous.

9. This leaves the appeal filed by the authorities in WA(MD) No. 1301/2016 alone for consideration. Heard the learned Special Government Pleader as well as the learned counsel for Prathibha.



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10. What is not in dispute is that Prathibha did not possess the requisite eligibility criterion as prescribed for being considered for the post of Headmistress in the said school. As earlier mentioned, she was required to serve a minimum of 10 years in the feeder category whereas she had served only for 8 years 6 months and 26 days. The learned Single Judge has directed that the period of her service when she served in the Vellore Institute of Technology, Vellore might have to be reckoned for computing the minimum eligibility criteria since the post of the senior Lecturer or Assistant Professor of a College is superior to the post of the feeder category to a post of Headmistress.

11. This Court finds it difficult to subscribe to the said view of the learned Single Judge. When posts are created by the Government, it is for the Government to prescribe the eligibility criteria, and this Court in judicial review is not expected either to tinker or tamper with the rules of promotion. Those are part of the service conditions and this Court is only expected to ascertain whether all the stakeholders confirmed their conduct to the procedure prescribed by the Statute and the Rules framed thereunder and not to design or prescribe its own set of Rules.



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12. It could not be derived that the time which Prathibha has spent in Vellore Institute of Technology, Vellore as a teaching faculty cannot be clubbed with her term of service in the school. This would readily imply that her name could not be considered for being appointed as a Headmistress of the school on 01.06.2013. This Court, however, understands that she had served in the school from 01.06.2013 till her termination on 05.01.2017. Given the circumstances, the best possible solution for her problem would be to take away the balance period that she required to complete the 10 years of service in the feeder category from her service since 01.06.2013 so that she might continue in service, if only she has been in service. This option however, may not have any relevance since Prathibha is not in service today.

13.1 The learned counsel for Prathibha would now submit that for the last few years, there is no regular Headmaster/Headmistress for the school owing to the pendency of not only this proceedings but also certain internal dispute within the management which included dispute over the correspondentship of the school, wherein it is held that Prathibha has been terminated by one who was not competent to order



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her termination. The said statement is merely recorded as those papers are neither before this Court nor can this Court take cognizance of. It is now left to Prathibha to defend her interest in a separate proceedings if she is so desirous and keen.

13.2 The learned counsel for Prathibha also submitted that Prathibha is entitled for the salary for the period between 01.12.2012 and 31.05.2013. She is now required to approach the school management and the authorities for the same. As and when a representation/application is made by her, both the management of the school as well as the authorities are required to address the same strictly in accordance with law.

14. Learned counsel for Kishorechand will now make a statement that the dispute is within the family as to who should be the Correspondent and underscored the fact that the school continues to be a linguistic minority school and has its constitutional right to make appointment is still intact. Turning to the cost imposed on him, the learned counsel submitted that The learned counsel submitted that at the end of the day, the stands of



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Kishore Chand stands vindicated today when this Court has allowed WA(MD) No.1301/2016. This implies Kishore Chand was only interested in ensuring that the rule of law is upheld. Having made a statement, the learned counsel submitted that Kishorechand would still consider making payment to the Balar Illam not as a penalty but out of his consent for the inmates of the home. The said statement of the learned counsel is recorded and therefore, this Court modifies the word, 'cost' to one of 'voluntary gift of Kishorechand.

15. To conclude, this Court allows WA(MD) No.1301/2016 subject to the observations hereinabove made. No costs. Consequently all connected Miscellaneous Petitions filed in all the appeals are closed.

(N.S.S.,J.) (P.V.M.,J.)
16.04.2024

NCC : Yes/No
Index : Yes/No
RR



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TO

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- 2.The District Educational Officer,
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