



WA(MD)No.705 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : **18.06.2024**

Pronounced on : **19.07.2024**

CORAM :

JUSTICE N.SESHASAYEE
and
JUSTICE L.VICTORIA GOWRI

W.A(MD)No.705 of 2020
and CMP(MD)No.4173 of 2020

1. Director of Elementary Education,
D.P.I.Compound,
College Road,
Nungambakkam,
Chennai – 600 006.

2. District Elementary Educational Officer,
Thoothukudi District,
Thoothukudi District.

3. Additional Assistant Elementary Educational Officer,
Kovilpatti, Thoothukudi District. ...Appellants/Respondents

Vs.

Adi Dravidar Primary School,
Represented by its Secretary,
Mr.S.Krishnasamy, South Thittankulam,
Kovilpatti – 628 502
Thoothukudi District

..Respondent/Petitioner

PRAYER: Writ Appeal is filed under Clause 15 of Letter Patent as
against the order passed by this Court dated 08.01.2019 in W.P(MD)No.
7751 of 2016.



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For Appellants : Mr.D.Sadiq Raja
Additional Government Pleader
For Respondent : Mr.G.Thalaimutharasu

J U D G M E N T

[Judgment was delivered by **N.SESHASAYEE, J.**]

This appeal is preferred by the respondent in W.P.(MD) No.7751 of 2016 challenging the order dated 08.01.2019 of the learned Single Judge allowing the petition. The controversy involved pertains to the appointment of a certain Packiaselvi as a Secondary Grade Teacher in Adi Dravidar Primary School at Kovilpatti, which is arrayed in this appeal as the sole respondent.

2. The substantial facts that lead up to the institution of this case are not in dispute, and they are bullet pointed as below:

- (a) The respondent is a aided minority school. While so, for filling up a vacancy which arose following the superannuation of a teacher, the School moved the authorities for its permission to fill up the vacancy and the same was accorded by the authorities. Following this, the respondent-school required the District Employment Office to sponsor names, from among those whom the



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Employment Exchange had recommended, the school committee selected a certain Packiyaselvi. This was on 28.03.2003.

(b) The School Committee recommended the name of the selectee for the approval of the authorities. In the meantime, there arose a dispute within the School Committee that led to the institution of O.S.No.85 of 2003 before the District Munsif Court, Kovilpatti. In the said suit, the learned District Munsif had passed an order of interim injunction restraining the authorities from approving the name of the above referred to selectee for filling up the vacancy. Consequently, the authority could not lend his approval to the appointment of Packiaselvi.

(c) Some time in 2008, the suit came to be dismissed, following which, the School Committee assumed office and it sought the approval of the authority concerned for the appointment of the Secretary and that was duly accorded. Then came up the issue of according approval to Packiaselvi, who to remind, was selected *vide* proceedings of the School Committee dated 28.03.2003. This was rejected by the 2nd appellant *vide* his proceedings dated



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03.05.2010 and that came to be challenged before the 1st appellant.

The 1st appellant *vide* proceedings dated 28.01.2016, chose not to accord his approval to the appointment of Packiaselvi and confirmed the order of the 2nd appellant. The reasons that formed the basis of the order, the 2nd appellant are:

- In 2008-2009 academic year, one post of Secondary Grade Teacher has been absorbed to the general pool which implied that the School does not have the vacancy to which Packiaselvi could be accommodated.
- In terms of Right to Education Act, 2009 (hereinafter referred to as “the RTE Act” for brevity), only those who have passed the Teachers Eligibility Test alone can be appointed.

This order of the 1st appellant came to be challenged in W.P.(MD) No. 7751 of 2016.

3. In his order, the learned Single Judge had relied on the judgment of a Full Bench of this Court in ***Director of Elementary Education, Chennai-6 and others Vs S.Vigila*** [2006 (5) CTC 385] and engaged himself in working the student-teacher ratio as has been suggested by the Court in ***S.Vigila's*** case, and directed that Packiaselvi appointment be



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approved. This order of the learned Single Judge is now under challenge in this appeal.

4.1 Mr.D.Sadiq Raja, learned Additional Government Pleader made two pointed arguments:

- (a) What was valid in 2003 when Packiaselvi was appointed was no more valid after the academic year 2008-2009, since by then the vacancy in the school had been absorbed to the general pool. Therefore, unless the School has the sanctioned number of teachers, Packiaselvi's appointment could not be approved;
- (b) Between 2003 when Packiaselvi was selected for appointment and 2016 when the 1st appellant had passed his order, the RTE Act had come into force on 01.04.2010, and it replaced all the other criteria *vis-a-vis* the appointment to be made. So far as the Act goes, Section 23 of the RTE Act stipulates that teacher to be appointed should be eligible for appointment as a teacher and relaxation is given only to those cases, where a State does not have adequate number of institutions for training the teachers or educating the teachers but at any rate, proviso to Section 23(2) of the RTE Act stipulates that in all cases where a serving teacher does not possess



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the requisite eligibility, they have to acquire the eligibility within five years from the date of coming into force of the Act, which was later extended to another four years.

4.2 Continuing his argument, learned Additional Government Pleader submitted that the learned Single Judge did not appear to have an occasion to consider these aspects and has relied essentially on the ratio of the Full Bench. Indeed, ratio in *S.Vigila's* case came up for consideration before a Division Bench in *Secretary to Government and Others Vs Iruthaya Amali and Another* [(2021) SCC OnLine Mad 125], wherein the said Bench had held that post RTE Act, 2009, the effect of the ratio in *S.Vigila's* case has been literally nullified. He also added that as on today, going by teacher-student ratio, the school has one more teacher as surplus, for withdrawing which the Department is yet to take necessary steps. And, till now the concerned selectee Packiaselvi has not approached this Court.

5.1 Per contra, the learned counsel for the respondent argued that it was not due to the fault of the respondent that Packiaselvi's appointment was not approved, but it was due to an order of interim injunction passed by



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the civil court in O.S.No.85 of 2003, restraining the authorities from granting approval to Packiaselvi. Indeed, the trial court in its judgment in O.S.No.85 of 2003 has pointedly discussed this issue that how the plaintiff before the court had concocted the facts to interfere with the appointment of Packiaselvi.

5.2 Placing reliance on the ratio in *K.Nehru Vs. the State of Tamil Nadu, rep. By its Secretary to Government, Labour and Employment Department, Chennai and others* [2008 (7) MLJ 417], the learned counsel submitted that the First Bench of this Court has categorically declared that in matters pertaining to appointment, the Rule pertaining to the selection process as on date of commencement of the selection process alone matters and that midway through a selection process, the Rules of selection cannot be changed. Here, in this case, the appointment was made some time in 2003, and that process cannot be interfered with by any change of circumstances.

6. Rival submissions are carefully weighed. Let the facts be briefly re-arranged and re-stated:

- Some time in 2003, the respondent had commenced the selection



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process in filling up the vacancy that arisen owing to superannuation of a teacher. There is no flaw in the selection process or at least that was not the case of any one of the parties herein. A certain Packiaselvi was selected for filling up that vacancy and it is also not in dispute. That the school has forwarded the name of the selectee for the approval of the Department is also not in dispute and that the Department could not sanction or lent its approval to the selection of Packiaselvi due to the order of interim injunction passed in O.S.85 of 2003 is also an admitted fact.

- Due to the inability of the Department to approve the selection of Packiaselvi, she remained as a selected candidate, and there it stopped. The road was cleared for the authorities to re-visit the process of approval to the selection of Packiaselvi when the trial court dismissed O.S.No.85 of 2003. But, now the Department faced another situation. The vacancy that was required to be filled up through Packiaselvi had been identified as surplus in view of fall in strength of the students. This apart, the RTE Act with its own prescription of students-teachers ratio also came into force.
- What could be derived from the above said facts is that



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Packiaselvi, though was selected for filling up a vacancy in 2003, remained only as a selected candidate even in 2009 as the approval of the authorities to her appointment was not happening. But, the authorities considered the case of Packiaselvi. There is no vacancy where she could be fitted-in as that vacancy has been surrendered to the common pool. Apparently, no claim for the post absorbed to the common pool was made by the school.

- Therefore, at one hand, there is a selected candidate and on the other hand there is no vacancy where the selected candidate could be fitted-in. If at all, the selected candidate should be fitted-in, then, the school must retrieve back the post that was surrendered to the general pool.
- Now, the learned Additional Government Pleader has informed the Court that as on today, the total strength of the school has fallen to 53, and in the school, there is now one more teacher who is now found to be in surplus in terms of the students-teachers ratio as per the norms of the RTE Act.

7. It is, therefore, not a case of changing the Rules in the middle of a selection process as believed by the respondent, but, it is all about lack of



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vacancy to fit the selected candidate. This Court in judicial review cannot create a post. On the other hand, it is duty bound to take into consideration the change of circumstances affecting the cause of action and this change of circumstance has arisen even before the writ-petition was filed. This Court considers that the respondent is on a bad wicket.

8. There is another angle to this case. Packiaselvi was selected some 21 years ago. It is not known whether Packiaselvi, who was selected to fill up a vacancy some 21 years ago, is still willing to take up the job. This Court can understand if the respondent school is fighting for anything that affects its general interests, such as for instance, when a post of teacher was treated as surplus and was absorbed to the general pool, but cannot appreciate why the school is bent upon to canvass a case of an individual who was merely selected for the post, more so when the selectee does not appear to have any grievance.

9. This Court considers that the respondent has grossly misconceived its right as well as its approach to the case. Necessarily the appeal has to be allowed.



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10. In conclusion, this Court allows this appeal and sets aside the order of the learned single Judge dated 08.01.2019 in W.P(MD)No.7751 of 2016. No costs. Consequently, connected miscellaneous petition is closed.

(N.S.S., J.) (L.V.G., J.)
19.07.2024

Index : Yes / No
Neutral Citation : Yes / No
Abr/CM



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To,

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Chennai – 600 006

2. District Elementary Educational Officer,
Thoothukudi District,
Thoothukudi District.

3. Additional Assistant Elementary Educational Officer,
Kovilpatti,
Thoothukudi District.

4. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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and
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Pre-delivery Judgment made in
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