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W.P.(MD) No.10619 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD) No.10619 of 2017

and

W.M.P.(MD) Nos.8101 & 10711 of 2017

N.Pownraj

... Petitioner

-vs-

- 1.The Secretary to Government
School Education Department
Fort St.George, Chennai
- 2.The Joint Director of School Education
(Higher Education)
College Road, Nungambakkam
Chennai-6
- 3.The District Educational Officer
Srivilliputhur, Virudhunagar District
- 4.The Secretary
Nadar Higher Secondary School
Zamin Kollankondan
Rajapalayam Taluk
Virudhunagar District
- 5.K.Senthil Murugan

... Respondents



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W.P.(MD) No.10619 of 2017

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling for the records in respect of the impugned order issued by the first respondent *vide* G.O.(4d) No.31, dated 17.05.2017, and quash the same as illegal and against the law laid down in ***G.Annamalai vs. The Secretary and others***, reported in ***2007 (1) CTC 462*** and ***R.Rajanarayanan vs. Joint Director***, reported in ***2008 (6) CTC 175***.

For Petitioner : Mr.R.Murali
for Mr.K.Govindarajan

For Respondents : Mr.T.Amjad Khan
Government Advocate for R1 to R3
Mr.N.Dilip Kumar for R4
Mr.T.Pon Ramkumar for R5

ORDER

This writ petition has been filed challenging the impugned order dated 17.05.2017, passed by the first respondent, under Section 45 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 (in short, “Private Schools (Regulation) Act, 1973”).



W.P.(MD) No.10619 of 2017

WEB COPY

2. The petitioner was promoted as Headmaster in the fourth respondent – School on 13.02.2006. The said promotion was also approved by the third respondent on 15.11.2007. The fifth respondent was also appointed in the very same School as P.G.Assistant (Commerce) on the very same date of the petitioner's appointment to the said School on 01.06.1994 as P.G.Assistant (Maths). The approval of the petitioner's promotion granted by the third respondent was challenged by the fifth respondent before the second respondent. By order dated 26.07.2012, the second respondent set aside the promotion of the petitioner as Headmaster in the fourth respondent – School. Aggrieved by the same, the fourth respondent – School filed a revision, under Section 45 of the Private Schools (Regulation) Act, 1973, before the first respondent. The first respondent, by the impugned order dated 17.05.2017, confirmed the order of the second respondent and rejected the revision by rejecting the revision filed by the fourth respondent – School. Aggrieved by the same, the petitioner, who was earlier promoted as Headmaster by the fourth respondent – School, has filed this writ petition.



W.P.(MD) No.10619 of 2017

WEB COPY

3. Earlier, during the pendency of the proceedings before the second respondent, the petitioner filed a writ petition before this Court in W.P. (MD) No.16171 of 2012 challenging the order of the third respondent stopping the aid for payment of the petitioner's salary in the post of Headmaster in the fourth respondent – School. By order, dated 16.12.2016 passed in W.P.(MD) No.16171 of 2012, the order of the third respondent stopping the aid for payment of the petitioner's salary in the post of Headmaster was set aside and the writ petition was allowed and a direction was issued to the respondents to pay salary to the petitioner in the post of Headmaster regularly without any default.

4. The petitioner has challenged the impugned order on the following grounds:

- (a) The impugned order has been passed in violation of the principles of natural justice, as no opportunity of hearing was granted to the petitioner, which is violative of Section 45(2) of the Private Schools (Regulation) Act, 1973.



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W.P.(MD) No.10619 of 2017

- (b) Since the third respondent has approved the petitioner's promotion to the post of Headmaster, the question of setting aside the same by the second respondent and first respondent does not arise.
- (c) The petitioner and the fifth respondent were appointed as P.G.Assistant Teachers on the very same date i.e., on 01.06.1994. The fourth respondent – School promoted the petitioner as Headmaster on 13.02.2006. A proposal was also sent by the fourth respondent – School to the third respondent seeking approval for the promotion of the petitioner to the post of Headmaster. The said proposal was also approved by the third respondent by its order dated 15.11.2007. Only based on merit and ability, the petitioner was promoted as Headmaster and therefore, the fifth respondent cannot claim that he ought to have been



WEB COPY

W.P.(MD) No.10619 of 2017

promoted as Headmaster in the fourth respondent – School.

5. Counter affidavits have been filed by the official respondents as well as by the fifth respondent, who has questioned the petitioner's promotion as Headmaster in the fourth respondent – School.

6. The official respondents as well as the fifth respondent have reiterated in their counter affidavits the contents of the impugned order. It is also brought to the notice of this Court by the learned counsel for the petitioner that the fifth respondent has been superannuated on 29.02.2024. In the counter affidavits filed by the respondents, they have not stated anything about Section 45(2) of the Private Schools (Regulation) Act, 1973, which makes it clear that no order prejudicial to any person shall be passed under sub-section (1) unless such person has been given an opportunity of making a representation. Sub-Section (1) of Section 45 of the Private Schools (Regulation) Act, 1973 enables the first respondent (Revisional Authority) to modify, annul, revert or remit for reconsideration any orders passed by the respondents 2 and 3. In the counter affidavit filed by the official respondents,



W.P.(MD) No.10619 of 2017

WEB COPY

it has also not been stated whether any opportunity of hearing was granted to the petitioner or the fourth respondent – School in the impugned proceedings of the first respondent.

7. Learned counsel for the petitioner drew the attention of this Court to the impugned order passed by the first respondent rejecting the revision filed by the fourth respondent – School aggrieved by the order of the second respondent, under which the earlier approval granted for promoting the petitioner as Headmaster in the fourth respondent – School was set aside by the second respondent and would submit that the first respondent has violated the principles of natural justice as no opportunity of hearing was granted to either the fourth respondent – School or the petitioner, the aggrieved parties, before passing the final order. He drew the attention of this Court to Section 45(2) of the Private Schools (Regulation) Act, 1973, as referred to supra, and would submit that excepting for reproducing the grounds of revision filed by the fourth respondent – School, no opportunity of hearing was granted to either the fourth respondent – School or the petitioner and there is no discussion as to why the first respondent is confirming the order of the second respondent. He would submit that mechanically, the first



W.P.(MD) No.10619 of 2017

WEB COPY

respondent has reproduced the order passed by the second respondent and there is no independent assessment made by the first respondent for confirming the order of the second respondent.

8. Admittedly, as seen from the impugned order passed by the first respondent, the first respondent has only reproduced the grounds of revision filed by the fourth respondent – School and there has been no independent assessment made by the first respondent for coming to the conclusion that the order of the second respondent, which was challenged, is correct. There is absolutely no discussion in the impugned order of the first respondent with regard to the grounds raised by the fourth respondent – School in the revision filed under Section 45 of the Private Schools (Regulation) Act, 1973. The first respondent, in the impugned order, has also extracted the report of the second respondent, but surprisingly it is the same order of the second respondent, which has been challenged in the revision filed under Section 45 of the Private Schools (Regulation) Act, 1973. Section 45(2) of the Private Schools (Regulation) Act, 1973 also makes it clear that no order prejudicial to any person shall be passed under sub-section (1) unless such person has been given an opportunity of making a representation.



WEB COPY

W.P.(MD) No.10619 of 2017

9. In the case on hand, as seen from the impugned order passed by the first respondent, admittedly, no opportunity of hearing was granted to the fourth respondent – School or to the petitioner, whose promotion has been challenged, to make their respective representations, subsequent to the filing of the revision by the fourth respondent – School under Section 45 of the Private Schools (Regulation) Act, 1973, which is contrary to Section 45(2) of the Private Schools (Regulation) Act, 1973 and also violates the principles of natural justice. The impugned order passed by the first respondent, which is challenged by the petitioner herein, is certainly prejudicial to the interest of the fourth respondent – School as well as the petitioner herein and therefore, before passing such an order, the first respondent ought to have granted an opportunity of hearing to the fourth respondent – School or to the petitioner herein to enable them to clarify that the promotion of the petitioner to the post of Headmaster was only in accordance with law. Several contentions have been raised by the petitioner in this writ petition as well as in the revision filed by the fourth respondent – School under Section 45 of the Private Schools (Regulation) Act, 1973, which require an in-depth consideration and without any discussion, despite the same, the first respondent has passed the impugned order mechanically confirming the order of the second respondent



W.P.(MD) No.10619 of 2017

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by taking into consideration the report submitted by the second respondent despite the fact that the said report has been challenged by the fourth respondent – School in the revision filed by them under Section 45 of the Private Schools (Regulation) Act, 1973. This Court is not going into the merits and demerits of the respective contentions of the petitioner, fourth respondent – School and the fifth respondent raised in this writ petition. Only on the ground of violation of principles of natural justice and only on the ground that the provisions of Section 45(2) of the Private Schools (Regulation) Act, 1973 have not been adhered to, the impugned order, dated 17.05.2017, passed by the first respondent, is hereby quashed and the matter is remanded back to the file of the first respondent for fresh consideration on merits and in accordance with law, within a time frame to be fixed by this Court.

10. Accordingly, the impugned order, dated 17.05.2017, passed by the first respondent, is hereby quashed. The matter is remanded back to the file of the first respondent for fresh consideration on merits and in accordance with law. The first respondent is directed to pass final orders, after granting an opportunity of hearing to the petitioner, fourth respondent – School and the fifth respondent and also permitting them to file their



W.P.(MD) No.10619 of 2017

WEB COPY

respective written submissions, if they so desire, on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.

11. With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

05.09.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

Note to Office:

Issue order copy by 09.09.2024.

krk

To:

- 1.The Secretary to Government,
School Education Department,
Fort St.George, Chennai.
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W.P.(MD) No.10619 of 2017

ABDUL QUDDHOSE, J.

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