M. Sugantha Jayanthi Vs The Government of Tamil Nadu and Others

Court: Madras High Court

Date of Decision: Sept. 21, 2011

Acts Referred: Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 â€" Rule 15(1)

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: Balan Haridoss for Mr. S.N. Ravichandran, for the Appellant; I. Arokiasamy, G.A. for R1 to R4 and Mr. Godsun Swaminath for R5, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Honourable Mr. Justice K. Chandru

1. The Petitioner has filed the present writ petition, seeking for a direction to the third Respondent District Elementary Education Officer (DEEO)

to approve her appointment as Secondary Grade Teacher with effect from 25.09.1998 as per G.O. Ms. No. 150 School Education (P1)

Department dated 02.07.2007 with all consequential benefits.

2. When the matter came up on 30.09.2009, this Court ordered notice of motion in the writ petition. In M.P. Nos. 1 and 2 of 2009, this Court

directed that any appointment made in favour of any third party will be subject to the result of the writ petition. Subsequently, the writ petition was

admitted on 29.06.2010.

3. On notice from this Court, the 4th Respondent has filed a counter affidavit dated 23.08.2010. The 5th Respondent has filed a counter affidavit

dated 18.08.2010. The Petitioner has filed a rejoinder on 16.08.2010 and also filed written submissions.

4. The facts leading to the filing of the case are as follows:

The 5th Respondent school is a recognized Private School and it is running primary sections. It has got 19 teachers (1 Headmaster + 18

Secondary Grade Teachers). The total strength of the students claimed to be 550. On 31.05.1998, on account of the retirement of one T.

Sivagami, the post of Secondary Grade Teacher fell vacant. The then Manager and Correspondent of the school, who is none other than the

Petitioner"s father- in-law sought permission from the 3rd Respondent DEEO for filling up the post. But even before permission was granted, the

then Manager and Correspondent gave an advertisement on 19.08.1998 in "Dinamalar" Tamil Daily Newspaper calling for applications from

eligible candidates for appointment to the post of Secondary Grade Teacher. On 15.09.1998, the then Correspondent once again sought

permission from DEEO to fill up the post. But no permission was granted. However, on 25.09.1998, he appointed his own daughter-in-law, the

Petitioner as the Secondary Grade Teacher. In the meanwhile, in the year 2005, the Management of the School was transferred to a new

Management.

5. It is the claim of the Petitioner that she was a party to W.A. Nos. 991 to 998 of 1998 batch of cases which was disposed of on 29.06.2001

and she was one of the 22 Teachers. Thereafter, the Government had issued G.O. Ms. No. 150 School Education dated 02.07.2007, permitting

teachers totaling 22 who were having higher qualification and appointed during the period from 19.05.1998 to 29.06.2001 to undergo Child

Psychology Training and consequently to approve their appointment. It is the case of the Petitioner that she alone was singled out. It is on the

strength of the said order, the Petitioner claims that she is eligible to be appointed and her post should be approved. Even as per their own

admission in the written submissions, it was stated that the present school Management had prevented her from discharging her duties from July

2005 and orally stopped her from service on 27.08.2005. It was stated that when posts were available and she was appointed against the regular

post and this Court had also recognized her appointment, there is reason to reject her appointment.

6. The learned counsel for the Petitioner placed upon the judgment of this Court in Swami Niyamananda v. The Director of School Education

dated 03.08.2007 (W.P.(Md) No. 3381 of 2005) and also the judgment of this Court in T.R. Subramanian v. The State of Tamil Nadu

represented by the Secretary, Education Department and others dated 05.11.2008 (W.P. No. 22786 of 2004) in support of his contentions.

7. In the counter affidavit filed by the 4th Respondent, it was stated that though the Petitioner was appointed on 25.09.1998, she had not attended

the school with effect from 01.06.2005 and even the previous correspondent had not handed over the file relating to appointment to the present

management. One Santhakumari, Headmistress of the School had expired and since the Secondary School Teachers were not willing to handle the

post of Headmistress, the 5th Respondent had appointed one Tmt.Baby and submitted approval of her post. He also sought for relaxation for her

holding the said post as she had only 4 1/2 years of service and the Rule requires 5 years of service. The proposal in this regard sent by AEEO to

DEEO is pending because of the interim orders passed by this Court. It was also stated that the earlier appointee Santhakumari herself was

appointed on 08.09.1987 as Secondary Grade Teacher in the vacancy caused due to the retirement of Mrs. R. Saroja. Thereafter, Santhakumari

was appointed as Headmistress on 02.06.2005 on account of the retirement of one M. Panneerselvam and her appointment was approved by the

DEEO. In the vacancy of Secondary Grade Teacher that occurred on account of the appointment of Mrs. Shanthakumari as Headmistress one

Mrs. A. Annathai was appointed on 12.02.2007 and her appointment was also approved by DEEO.

8. The Petitioner''s claim for appointment cannot be countenanced by this Court for more than one reason. Admittedly, the Petitioner has not been

in service since the year 2005 and her non-employment was not held to be invalid by any Court. Secondly, before filling up the post, no approval

was obtained by the then Management and therefore, her appointment cannot be said to be valid in the eye of law. Under Rule 15(1) of the Tamil

Nadu Recognized Private Schools (Regulation) Act, 1973, prior permission is required for filling up any post. Subsequent to the vacancy in the

post on account of retirement of R. Saroja on 31.05.1997 one Santhakumari was appointed and her appointment was approved and subsequently

on her promotion as Headmistress, the resultant vacancy was also filled up by one Annathai on 12.02.2007 and her appointment were also

approved. Therefore, the Petitioner cannot claim to have any stake in the said post as it has been subsequently filled up by three incumbents.

Thirdly, her contention that she was covered by an order in W.A. Nos. 991 to 998 of 1998 and her name finds a place as one of the 22 teachers

is concerned, merely because her name got included does not mean that she is entitled to get relief as per the order of the Division Bench unless

she has been validly appointed by the Management in accordance with the Rules. It is not that she was disqualified because Graduate Teachers are

not entitled to hold the post of Secondary Grade Teachers. The Division Bench was only concerned about such disqualification and as a one time

measure permitted those teachers who were appointed before a particular cut-off date were allowed to be continued with a further direction to

undergo child psychology training for one month.

9. In the present case, the stand of the Department was that she has not been appointed against vacancy approved by the Department and Rules

requires prior permission to fill up the post. If a person is not appointed against the vacancy in accordance with Rules, the general direction given

by the Division Bench cannot be taken as an advantage to smuggle oneself into a vacant post and then start claiming regularization. First of all, in

such matters the teachers have no locus stand to challenge the non-approval by the Department and it is only the Management should have come

to the Court so that the Department will be in a position to appreciate the actual nature of appointment. In the present case, even the present

Management of the School was not in favour of the Petitioner and during the interregnum period, it had already appointed two other persons and

got approval from the Department.

10. As to whether prior approval to fill up the post is mandatory and in the absence of the same whether a school management could have

approached the Court for a direction to grant recognition is the only question to be considered. In this Context, it is necessary to refer to the

judgment of the Supreme Court in State of Tamil Nadu and Others Vs. Amala Annai Higher Secondary School, . In the following paragraphs, the

Supreme Court observed as follows:

11. Secondly, insofar as GOMs No. 340 dated 1-4-1992 is concerned, it is not attracted at all. GOMs No. 340 dated 1-41992 issued by the

Education Department mentions:

Accordingly, the following staffing pattern, was recommended by the Committee for deciding the eligibility for post for the schools in question

(opened in 1987-1988 and earlier).

Thus, GOMs No. 340 dated 1-4-1992 containing norms for sanction of posts is applicable to the High Schools opened in 1987-1988 and earlier.

In the present case, the School was upgraded to High School in 1988-1989.

12. Thirdly, the Division Bench as well as the Single Judge overlooked and ignored sub-rule (2) of Rule 6 of the Rules, 1977 which reads:

6. (2) Payment of monthly staff grant shall be made only in respect of qualified and admissible teachers actually employed in minority schools

whose appointments have been approved by the authorities concerned according to the number of posts sanctioned to the institution concerned.

Admittedly, in the present case, the management of the School appointed Ms Rosary as Junior Assistant to a nonsanctioned post. The explanation

of the management that she was appointed in anticipation of orders from the competent authority hardly merits acceptance.

13. Fourthly, as per the norms issued in relevant GOMs the strength of the School during 1990-1991 ought to be 300 and above while the

students'' strength of the School during 1990-1991 were only 281. As a matter of fact, it is not even the case of the management that during 1990-

1991, the student strength was 300 or more. The student strength during 1993-1994 and subsequent years have no relevance. It is here that the

High Court fell into a grave error because what was important under the relevant GOMs was that the student strength must have been 300 or more

during the years 1988-1989, 1989-1990 and 1990- 1991.

14. Fifthly, the reliance placed by the High Court on GOMs No. 245/Education dated 21-2-1970 is misplaced inasmuch as the said G.O. applied

to clerks who were already employed in and around the year 1964 and has no application to a Junior Assistant appointed to a non-sanctioned

post in 1988-1989.

15. Last but not the least, the High Court erred in directing the present Appellant 1 to sanction one post of Junior Assistant to Respondent 1,

AAHS School from 1-6-1994 overlooking and ignoring that creation and sanction of posts is the prerogative of the executive and the courts

cannot arrogate to them a purely executive power.

11. Subsequently, a similar question also came up before the Supreme court in Kolawana Gram Vikas Kendra Vs. State of Gujarat and Others, ,

in paragraphs 7 to 10, the Supreme Court observed as follows:

7. In our considered view, we do not view this to be interference in the selection process. It would be perfectly all right for a minority institution to

select the candidates without any interference from the Government. However, the requirement of this prior approval is necessitated because it is

for the Government to see as to whether there were actually posts available in the said institution as per the strength of students and secondly;

whether the candidates, who were sought to be appointed, were having the requisite qualifications in terms of the rules and Regulations of the

Education Department. That is precisely the stand taken by the State of Gujarat before us in its counter- affidavit.

8. Para 3 of the said affidavit read as under:

Minority institutions are free to select their teaching and non- teaching staff. No government officer or the representative of the Board was

appointed in the Selection Committee of the minority institution. There is no interference by the Government in the administration of the schools.

However, NOC is required to be obtained to verify whether there is a vacancy of a teacher of a particular subject as per the workload fixed by

the Gujarat Secondary and Higher Secondary Education Board specially when the Government is providing grant-in-aid and that he possesses

minimum required qualification for the post he is appointed.

From the reading of aforementioned Para 3, it is clear that all that the Government wants to examine is as to whether the proposed appointments

were within the framework of the Rules considering the workload and the availability of the post in that institution and, secondly, whether the

selected candidates had the necessary qualifications for the subjects in which the said teachers were appointed. The same applies to the non-

teaching staff also.

9. In view of this clear stand taken by the State Government, we cannot pursue ourselves to hold that the aforementioned Circular amounts to any

unconstitutional interference in the internal working of the minority institution. In that view, we would choose to dismiss these appeals.

10. However, Mr. Ahmadi raised another point saying that if the prior approval or the no-objection certificate, as the case may be, is not awarded

within seven days without any reason, then it would be hazardous for the minority institution to run itself. We do expect the competent authority to

issue the no-objection certificate within the time provided in the said Circular which is of seven days. of course, if there are any objections, the

authority will be justified to take some more time within the reasonable limits.

12. The Petitioner has also not questioned her so called denial of employment before any forum provided under the Act. Only when the Petitioner

had continued in service, the question of approval and the consequential regularization of service will arise. While dealing with the provisions of the

Tamil Nadu Act confirming permanent status on workmen on completion of 480 days of service in 24 calendar months, the Supreme Court in

T.N. Civil Supplies Corpn. Workers Union Vs. T.N. Civil Supplies Corpn. Ltd. and Others, held that such question will be considered only when

the termination of service of such employees was determined finally. It is necessary to refer to the following passage found in paragraph 10:

10. In any event, as stated above, the services of the workmen have been terminated. Therefore, even if the said Act squarely applied and the

establishment of the 1st Respondent was not of a seasonal character and the work was not intermittent, the remedy would now be to file the

appropriate proceedings against the order of termination. In this view of the matter no purpose would be served by dealing with the correctness of

the finding given by the Division Bench.

13. In the light of the above, the writ petition stands dismissed. However, there will be no order as to costs.