

(2009) 07 MAD CK 0425

Madras High Court

Case No: W.A. No. 556 of 2008

A. Belavendran

APPELLANT

Vs

The Joint Director of School
Education and Others

RESPONDENT

Date of Decision: July 27, 2009

Acts Referred:

- Constitution of India, 1950 - Article 30(1)
- Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 - Section 11(1), 12(1), 14, 15, 16
- Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 - Rule 10, 11, 12, 13, 14

Hon'ble Judges: Prabha Sridevan, J; C.T. Selvam, J

Bench: Division Bench

Advocate: M. Ramamoorthi, for the Appellant; A.C. Manibharathi, for R1 and R2 and Joseph Thatheus Jerome, for R3 to R5, for the Respondent

Final Decision: Dismissed

Judgement

Prabha Sridevan, J.

The petitioner is working as Secondary Grade Assistant in the fourth respondent-school, which is fully aided and is also a Christian Religious Minority Education Institution. He was confirmed in service on 14.11.2001. The petitioner has filed this W.P. No. 37693 of 2007, aggrieved by the appointment of the fifth respondent as B.T. Assistant (English), overlooking his right for the said post and in violation of Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 ("Rules" in short).

2. According to the petitioner, he possessed a diploma in teacher education in April, 1987, B.A. (English) degree from Madras University in June, 1991, B.Ed. degree from Manonmaniam Sundaranar University in April, 1993, M.A. (English) degree from

Madras University in May, 1998 and M.Ed. Degree from the same University in October, 1998. The post of B.T. Assistant (English) was held by one Christraj, who resigned from service on 13.4.2004. In his place, one Satheesh was appointed, overlooking the petitioner's claim.

3. The petitioner filed W.P. No. 3619 of 2005 and the fourth respondent, in its counter, stated that the resignation of Christuraj was not approved and therefore, the said writ petition was premature. This Court disposed of the above writ petition on the submissions made by respondents 3 and 4, with an observation that the petitioner's case will be considered in accordance with law along with other eligible persons, if any, in the same school.

4. On 15.11.2007, when the department has relieved Christraj on his resignation, regular vacancy arose and according to the petitioner, he was entitled to be appointed in the regular vacancy and he is the only qualified person to hold the said post. Thereafter, applications were called for from outside the school and the Circular to that effect was also pasted in the notice board, calling for the applications to the post of B.T. Assistant (English), informing them that the interview and the written test was to be held on 21.12.2007.

5. Immediately, the petitioner filed W.P. No. 37693 of 2007. On 20.12.2007, in a miscellaneous petition in M.P. No. 2 of 2007, this Court directed the school to consider the promotion of the petitioner to the said post. But, ignoring the said direction, the respondents had appointed the fifth respondent to the said post and therefore, the fifth respondent was impleaded in the said writ petition.

6. In the counter filed on behalf of third and fourth respondents, the Correspondent of the school submitted that the allegation of the petitioner in the affidavit that the selection to the post of B.T. Assistant was on the basis of the undated circular is wrong, but actually the school issued the circular dated 14.12.2007, informing the teachers in the schools and in the employment rolls of the education Board. It is also submitted that Rule 15(4) of the Rules is not applicable to the minority institutions and even if Rule 15(4) of the Rules applies, it does not prohibit the appointments being made from outsiders, if no suitable candidate with merit is found for promotion in the school.

7. In the interview conducted on 21.12.2007, the writ petitioner and another person participated in the process. According to the respondents, the writ petitioner gave a letter that he alone should be appointed. A comparative evaluation of the candidates' performance is set down in the counter and it shows that in the written test, the fifth respondent had scored more than the writ petitioner; in the model class, the fifth respondent scored more than the writ petitioner and in the oral interview, the writ petitioner scored more than the fifth respondent and in overall assessment, the fifth respondent scored over the writ petitioner and the fifth respondent was more meritorious, efficient and qualified than the writ petitioner.

8. The recommendation of the Board got the concurrence of the third respondent-educational agency and the fifth respondent was appointed on 11.1.2008. Respondents 3 and 4 also submitted that having participated in the selection process, the writ petitioner cannot question the same.

9. To this, a rejoinder affidavit has been filed, wherein it is submitted that the fifth respondent is an outsider. The question put in the selection process related to Theology and not in English and the entire test was biased.

10. Learned Single Judge, following the decision reported in the case of Eka Ratchagar Sabai Higher Secondary School and Anr. v. K. Sumathi and Anr. 2007 (4) LW 617, dismissed the writ petition. As against the same, the present writ appeal has been filed.

11. Learned Counsel appearing for the appellant/writ petitioner submitted that in a batch of writ petitions in W.P. No. 4478 of 1974 etc. batch filed by the respondents, the First Bench of this Court held that Sections 8(1)(a), 11(1)(b), 12(1), 14 to 18, 21(2) to 26, 31 to 33, 39(4), 41 to 45 and Rules 7, 9 except Clauses (e) and (k) of Sub-rules (2) Rules 10 to 14, 16 to 18 and 22 to 24 are inapplicable to minority institutions and therefore, it will be seen that Rule 15 is applicable. The Supreme Court, by their order dated 4.3.2003, had remitted the matters to the High Court for fresh consideration in accordance with law and specifically observed that status quo shall continue.

12. Learned Counsel submitted that the words "status quo shall continue" would mean that Rule 15(4) of the Rules would continue to be applicable to the minority institution and if so, the respondents will have to appoint the petitioner and as per Rule 15(4)(2) of the Rules, only if there are no qualified and suitable teachers in that school, the respondents could have resorted to appointment of Teachers from any other school.

13. Learned Counsel submitted that the stand of respondents 3 and 4 that the fourth respondent comes under corporate Management and the fifth respondent is the Teacher in one of the schools coming under the corporate management is not supported by any record. Learned Counsel submitted that the learned Single Judge, while relying on the decision, has not taken note of the specific orders of the Supreme Court in the appeals filed against the order passed in batch of writ petitions on the applicability of the Act and Rules to the minority institutions.

14. Learned Counsel also submitted that in the case of [The Correspondent, Malankara Syrian Catholic School Vs. J. Rabinson Jacob and Others](#), this Court had held that the Corporate Management has never been accepted, after coming into force of the Act. Learned Counsel also relied on [Dr. Mrs. Shams Vs. The Commissioner of Collegiate Education College Road, Madras and others](#), where the learned Single Judge directed the promotion of the petitioner as head of the department in a minority institution, in view of the fact that the Act and the

scheme are intended to confer benefit on the teacher and the respondents-College cannot deny the said benefits.

15. Learned Counsel also relied on *M. Chelladorai v. Joint Director of School Education and Ors.* 2003 WLR 304, where, again with regard to a minority institution, the learned Single Judge held that for the appointment to the post of B.T. Assistant, Rule 15(4) of the Rules applies and in paragraph 24, learned Judge has held as follows:

24. In the foregoing circumstances, while following the earlier judgment of this Court as well as the law laid down by the Apex Court, as well as that of larger bench in *TMA Pai Foundation's* case, this Court answers the first point in favour of the writ petitioner. The second point is answered holding that the petitioner is entitled to be promoted, as the petitioner alone is in the feeder category and not the 4th respondent. On the third point also this Court holds that Rule 15(4) could very well be pressed into service or enforced by the petitioner as against the third respondent school, which is a minority institution in view of the binding pronouncement of the Apex Court.

16. Learned Counsel appearing for the respondent-School submitted that Rule 15(4) of the Rules is not applicable and the words "status quo" of the Supreme Court cannot be understood to mean that in any event even admitting Rule 15(4) of the Rules is applicable the school should ignore the merit.

17. We have to understand the order of the Supreme Court in civil appeals, which were filed by the State of Tamil Nadu against the order dated 17.12.1975 in the batch of writ petitions in W.P. Nos. 4478 of 1974 etc. The minority schools challenged the validity of most of the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 as invading violation under Article 30(1). The Division Bench, while summing up, declared certain sections as inapplicable to minority institution. In the order of remitting the matter, the Supreme Court held thus:

The several questions raised in these matters are covered by the decision of a Constitution Bench of this Court in writ Petition No. 317/1993-T.M.A. Pai Foundation and Ors. Etc. v. State of Karnataka and Ors. Etc. and connected batch decided on 31st October, 2002. Since larger questions have been decided by this Court, it becomes necessary for the High Courts to re-examine the matters which have been decided and which are in appeal before this Court. The orders of the High Court are, therefore, set aside without expressing any opinion on merits and the matters are remitted to the High Court for fresh consideration in accordance with law.

Status quo shall continue unless the High Court so decides to modify the same by an appropriate application made to it by any of the parties. The parties are at liberty to file fresh pleadings, if any, within the period fixed by the High Courts. It is made clear that all statutory enactments, orders, schemes, regulations will have to be

brought in conformity with the decision of the Constitution Bench of this Court in T.M.A. Pai Foundation's case decided on 31.10.2002. As and when any problem arises the same can be dealt with by an appropriate Forum in an appropriate proceeding.

The appeals are disposed of accordingly.

18. Therefore, the words "status quo" shall be construed only with regard to those provisions, which were declared as inapplicable insofar as they apply to the particular schools. This is because, the Supreme Court, in the same order, observed that the questions raised were covered by the decisions in T.M.A. Pai Foundation's case. Since the larger questions have been decided, the High Court had to examine the matter in the light of what is stated by the Supreme court. The Division Bench did not declare Rule 15(4) of the Rules as inapplicable. We are informed that the school did not challenge it. But, however, the Supreme Court has observed that all statutory enactments, orders, schemes, regulations will have to be brought in conformity with the decision of the Constitution Bench of this Court in T.M.A. Pai Foundation's case decided on 31.10.2002.

19. Therefore, our decision will have to be in line with T.M.A. Pai Foundation's case 2007 AIR SCW 132 cited supra dealt with appointment of Principal under the Kerala University Act, which reads as follows:

27. It is thus clear that the freedom to choose the person to be appointed as Principal has always been recognised as a vital facet of the right to administer the educational institution. This has not been, in any way, diluted or altered by TMA Pai. Having regard to the key role played by the Principal in the management and administration of the educational institution, there can be no doubt that the right to choose the Principal is an important part of the right of administration and even if the institution is aided, there can be no interference with the said right. The fact that the post of the Principal/Headmaster is also covered by State aid, will make no difference.

20. In T.M.A. Pai's case cited supra, in paragraph 161, the second part of the answer to question 5(c) applicable to aided minority institutions runs thus:

For redressing the grievances of employees of aided and unaided institutions who are subjected to punishment or termination from service, a mechanism will have to be evolved, and in our opinion, appropriate tribunals could be constituted, and till then, such tribunals could be presided over by a judicial officer of the rank of District Judge.

The State or other controlling authorities, however, can always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual for being appointed as a teacher or a principal of any educational institution.

Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State, without interfering with the overall administrative control of the management over the staff.

21. The general principles relating to establishment/administration of education institution by minorities as reiterated in P.A. Inamdar's case are as follows:

19(i)

(a) To choose its governing body in whom the founders of the institution have faith and confidence to conduct and manage the affairs of the institution.

(b) To appoint teaching staff (Teachers/Lecturers and Head-Masters/Principals) as also non-teaching staff; and to take action if there is dereliction of duty on the part of any of its employees;

(c) To admit eligible students of their choice and to set up a reasonable fee structure

22. We are concerned only with principle "b" referred above, which deals with their right to appoint teaching staff including teachers and lecturers. Though the learned Counsel appearing for the petitioner submitted that the right of the minority institutions is secured only with reference to appointment of the Principal of their choice, the general principles crystallized above regarding the establishment and administration of education institution would show clearly that the right of the institution to establish and administer the educational institutions by minorities, includes the appointment of teaching staff also and in paragraph 21 of 2007 AIR SCW 132 (cited supra), the Supreme Court has held as follows:

21. We may also recapitulate the extent of regulation by the State, permissible in respect of employees of minority educational institutions receiving aid from the State, as clarified and crystallised in TMA Pai. The State can prescribe:

(i) the minimum qualifications, experience and other criteria bearing on merit, for making appointments,

(ii) the service conditions of employees without interfering with the overall administrative control by the Management over the staff.

(iii) a mechanism for redressal of the grievances of the employees.

(iv) the conditions for the proper utilisation of the aid by the educational institutions, without abridging or diluting the right to establish and administer educational institutions.

In other words, all laws made by the State to regulate the administration of educational institutions, and grant of aid, will apply to minority educational institutions also. But if any such regulations interfere with the overall administrative control by the Management over the staff, or abridges/dilutes, in any other manner, the right to establish and administer educational institutions, such regulations, to

that extent will be inapplicable to minority institution.

23. In 2007(4) LW 617 (cited supra), which is almost identical to the present case, the Division Bench dealt with each of the judgments that have been cited before us. The minority institutions' right of appointment of Principals/Headmasters and Teachers of their choice have been protected under Article 30(1) of the Constitution of India in the above case. As observed by the Supreme Court in St. Xavier's case, the Division Bench held that though it relates to appointment of Principal, the same logic and ratio would be applicable to the appointment of Teachers also and the Division Bench further held that since the matter has been decided by the Supreme Court in the decision in [The Secretary, Malankara Syrian Catholic College Vs. T. Jose and Others,](#)

, the interpretation given earlier by different Judges of this Court cannot hold good and therefore the necessary conclusion is that the discretion of the Management to appoint Teachers 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.

24. We see no reason to differ from the view of the Division Bench of this Court since it is in line with the Supreme Court's pronouncement. Further, we need not go into the applicability of Rule 15(4) of the Rules, since the Supreme Court has observed that all enactments must be brought in line with the T.M.A. Pai Foundation's case. The principles laid down in T.M.A. Pai Foundation's case have been crystallized in P.A. Inamdar's case, which is again reiterated in Secretary, Malankara Syrian Catholic College's case. In such circumstances, the writ appeal is dismissed. No costs.