

# SUPREME COURT OF INDIA

P. Thurai Pandian

Vs.

K. Subramanian

(S.B. Sinha and Cyriac Joseph JJ.)

04.08.2009

## JUDGMENT

**S.B, Sinha, J.**

Leave granted.

1. Parties hereto had been working in a school commonly known as S.M.R.V. Higher Secondary School, Vadasery in the District of Nagercoil, Tamil Nadu. It is a 'private aided school' within the meaning of the provisions of the *Tamil Nadu Recognition of Private Schools (Regulation) Act, 1973* (for short 'the Act').

2. Indisputably the conditions of service of the teachers of the said school are governed by the provisions of the Act and the Rules framed thereunder.

3. Mr. P. Subramanian was the Head Master of the said school. He retired on 31st May, 2003 whereupon a vacancy to the said post occurred. The appellant as also the first respondent were not the seniormost teachers in the said school. But as the first two seniormost teachers expressed their unwillingness to be the Headmaster of the school, the School Selection Committee considered the cases of the appellant and the first respondent only for appointment to the said post. The school adopted a policy of choosing the candidate by secret ballot. The first respondent secured five votes while the appellant secured four. The School Committee appointed the first respondent in the post of Head Master.

4. Inter alia contending that he was more meritorious than the first respondent, the appellant preferred an appeal against the decision of the Selection Committee before the Joint Director of School Education. By an order dated 17th December, 2004 the appeal of the appellant was allowed.

5. We may also place on record that the appointment of the first respondent was not approved by the said Joint Director. However, it must also be noticed that one of the allegations against the first respondent in the inspection reports filed by C.E.O. and D.E.O. was that he had never participated in the Parents Teachers Meeting, Independence Day Celebrations or any of the functions of the school.

6. The first respondent filed a writ petition before the High Court questioning the said order of the Joint Director dated 17th December, 2004. A learned Single Judge of the High Court allowed the said writ petition and directed the School Committee to consider the cases of all eligible candidates for appointment to the post of Head Master.

7. The appellant preferred an intra court appeal thereagainst which, by reason of the impugned judgment, has been dismissed.

8. The question which arose for consideration before the High Court is as to whether the High Court should have interfered with the order passed by the statutory authority in exercise of its writ jurisdiction.

9. By a detailed judgment both the learned Single Judge as also the Division Bench took into consideration the respective qualifications of the appellant as also the first respondent to opine that both the School Committee as also the Joint Director of Schools did not consider the respective merits and abilities of the parties from all perspectives.

10. Referring to the relevant provisions of the Act and the Rules relating to constitution and functioning of the School Committee, the High Court opined that in terms thereof the role of the School Committee must be held to be paramount in the administration of school.

11. Before advertng to the aforementioned question we may notice Rule 15(4) of the *Tamil Nadu Recognized Private Schools Rules, 1974* (for short 'the Rules', which reads as under:-

“15. Qualification, conditions of service of teachers and other persons.-

(4) (1) (i) Promotion shall be made on the grounds of merit and ability, seniority being considered only when merit and ability are approximately equal.

(ii) Appointments to the various categories of teachers shall be made by the following methods.

[i] promotion from among the qualified teachers in that school:

[ii] if no qualified and suitable candidate is available by method (1) as above - (a) appointment of other persons employed in that school, provided they are fully qualified to hold the post of teachers;

(b) appointment of teachers from any other school; (c) direct recruitment.

In the case of appointment from any other school or by direct recruitment, the school Committee shall obtain the prior permission of the District Elementary Educational Officer in respect of Pre- Primary, Primary and Middle School and that of the inspecting officer in respect of High and Higher Secondary Schools, setting out the

reasons for such appointment. In respect of Corporate Body running more than one school, the schools under that body shall be treated as one unit for purpose of this rule.

(d) Appointments to the post of Headmaster of Higher Secondary School shall be made by the method specified in clause (ii), either from the category of Headmasters of High Schools or Teachers' Training Institutes or from the category of Post Graduate Assistants in Academic Subjects or Post Graduate Assistants in language provided they possess the prescribed qualifications.”

12. The Managing Committee of the School indisputably was considering the question of filling up the post of Head Master by way of promotion from amongst the qualified teachers in the school.

“The Selection Committee, thus, had to consider the respective merits and abilities of the qualified teachers for grant of promotion. Both the learned Single Judge as also the Division Bench arrived at a finding of fact that both the appellant as well as the first respondent were duly qualified for holding the said post.

On the aforementioned premise the High Court, in our opinion, cannot be said to have committed any legal infirmity in issuing the impugned directions.”

13. The Joint Director (School Education) may be an appellate authority but there is nothing to show that the statute provides for `finality' of his decision. The appellate authority itself did not hold any viva voce to judge the respective suitability of the contenders to the post. Apart from the respective qualifications of the candidates and/or adverse reports of the C.E.O. against the first respondent, he did not consider any other aspect of the matter.

14. The selection process adopted by the Management of the School was unconstitutional. A deliberative process amongst the members of the Selection Committee to choose the best candidate available for promotion was imperative to the post of Head Master was imperative in nature. The Selection Committee and for that matter the Management of the School must not only function in terms of the provisions of the statute, they were required to maintain fairness in the selection making process. Secret ballot would not be a fair procedure for selecting a candidate for the post of Head Master of a school in view of the fact that holder of the said post should not only possess the educational qualifications but also seniority and administrative ability. The Selection Committee is required to consider other qualities of the candidates also for holding the post of Head Master of an institution.

15. Before, however, we part with this judgment, we must take note of the fact that the School Committee on 25.10.2006 after the judgment of the Division Bench of the High Court dated 12.10.2006 was delivered, issued notice to all the concerned to select the Headmaster again. Admittedly no outsider applied for the said post. Even from within the School also only the appellant and the respondent applied.

16. The appellant has also before us challenged the said notification inviting applications for the post of Headmaster on the ground that as per Rule 15(4) of the 1984 Rules, the School Committee could not have invited applications from outside the School .

17. In our considered opinion, even though applications had been invited, admittedly no such applicant applied for the said post. Even from within the school only the appellant here in P Thural Pandian and respondent No. 1, herein K Subramanium applied. We would, therefore, reject the submission of the learned counsel because at this stage the said argument has become futile, since no outsider has applied for the said post of the Headmaster.

18. We must also further take notice of the fact that the School committee after considering the merit and ability of both the applicants, appointed Respondent No. 1 Mr K subramanium as Headmaster vide Resolution No. 2 dated 25.10.2005. The District Educational Officer on 15.11.2006 approved the proposal for appointment of Mr. K Subramanium as Head master of the School and stated that in view of the common judgment dated 12.10.2006 the appointment order of P Thurai Pandian as Headmaster dated 28.12.2004 be deemed to be cancelled.

19. However on 31.01.2007 a new District Educational Officer was appointed and he cancelled the order of the previous DEO dated 15.11.2006. Respondent No.1, K Subramanium thereafter approached the Madurai Bench of the Madras high Court by filing a writ petition which was marked as WP No. 4341/2007 and obtained an interim stay on 08.02.2007. As a result of the said order of stay respondent No. 1, K Subramanium is at present holding the post of the Head Master of the School.

20. We are hereat not concerned with the challenge to the cancellation of order dated 15.11.2006 of the new District Educational Officer. We need not make any observations on the said matter as the said matter to the best to our knowledge is still sub judice. We would, however, request the High Court to consider the desirability of disposing of the matter pending before it, if not already disposed of.

21. We, therefore, are of the opinion that there is no legal infirmity in the impugned judgment. The appeal is dismissed accordingly. No costs.