

State of Karnataka and ors. Vs. Taj National Educational Society and anr.

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Court : Karnataka

Decided On : Jan-02-2006

Reported in : 2006(104)ECC23; 2006LC23(Karnataka); 2006(2)KarLJ21

Judge : R. Gururajan and ;C.R. Kumaraswamy, JJ.

Acts : [Constitution of India](#) - Article 30 and 30(1)

Appeal No. : Writ Appeal No. 1974 of 2002 and Contempt of Court Case No. 971 of 2002

Appellant : State of Karnataka and ors.

Respondent : Taj National Educational Society and anr.

Advocate for Def. : S.A. Khuddus, Adv. in W.A. No. 1974 of 2002 and ;B. Veerappa, High Court Govt. Adv. in CCC No. No. 971 of 2002

Advocate for Pet/Ap. : B. Veerappa, Hight Court Govt. Adv. in W.A. No. 1974 of 2002 and ;S.A. Khuddus, Adv. in CCC No. 971 of 2002

Disposition : Appeal dismissed

Judgement :

ORDER

R. Gururajan, J.

1. Appellants are before us being aggrieved by the order of the learned Single Judge dated 7-1-2002 passed in W.P. No. 29053 of 1998 in this appeal.

2. Taj National Educational Society ('the Society for short) and Md. Wasig Ahmad Quraishi filed a writ petition in W.P. No. 29053 of 1998 with the following facts:

3. First petitioner-Society is a registered educational aided institution. The post of Headmaster in the Society was lying vacant for nearly 3 to 4 years. The Society issued an advertisement in the newspaper calling for applications from the qualified and eligible candidates to fill up the post of Headmaster in the school run by it. Pursuant to the advertisement, Sri Quraishi made an application and his application was favourably considered by the Society. He was thereafter appointed as Headmaster of the Society. The said appointment was subject to the approval of the education department. Thereafter the Society submitted a proposal in the matter of approval of appointment of Sri Quraishi. The Joint Director in terms of an order dated 22-8-1995 has chosen to reject the proposal on the ground that Sri Quraishi was appointed directly and hence his appointment cannot be approved. Thereafter the society entered into correspondence with the Government in the matter. Ultimately, the matter reached the level of the Commissioner for Public Instructions and he gave an endorsement dated 6-8-1998 and he has chosen to confirm the rejection of proposal on another ground namely that Sri Quraishi did not have the requisite five years of teaching experience in an aided institution. Petitioner aggrieved by the rejection of the proposal made by the Society filed a writ petition as mentioned earlier Matter was contested. After contest, learned Single Judge of this Court has chosen to allow the writ petition and issued a direction to the respondent to approve the appointment of Sri Quraishi in terms of the impugned order. This order is challenged before us by the State Government.

4. Sri Veerappa, learned Government Advocate would invite our attention to the material facts and documents to say that the order of the learned Single Judge requires our interference particularly in the light of the endorsement dated 22-8-1995. He would say that a specific case of the appellant was that Sri Quraishi was appointed directly and such direct appointment cannot be considered in terms of Rule 45 of the Uniform Grant-in-aid Code for Secondary Schools in Karnataka

State, 1962 (for short, 'the Grant-in-aid Code'). He would say that learned Single Judge could not have ordered appointed despite the endorsement dated 22-8-1995. He wants our interference.

5. Per contra, Sri Khuddus, learned Counsel for the respondent would say that the Society is a minority institution and it has the protection of Article 30 of the Constitution. He relies on a judgment of the Supreme Court in N. Ammad v. Manager, Emjay High School and Ors. : AIR 1999 SC50 with regard to his submission of minority in the case on hand. Learned Counsel would also argue that the petitioner respondent was duly appointed on the peculiar facts and circumstances of this case and any disturbance at this stage would cause great hardship and difficulties to the respondent. Lastly he would argue that there is no prohibition as such in terms of Rule 45 of the Grant-in-aid Code in the matter of direct appointment. He wants this appeal to be dismissed.

6. After hearing, we have carefully perused the material on record.

7. It is seen from the material on record that the respondent was appointed pursuant to an advertisement and his appointment was subject to the approval of the education department. There was correspondence between the parties and ultimately the State Government in terms of its endorsement dated 22-8-1995 has chosen to reject the proposal on the ground of direct recruitment. Subsequent correspondence would show that the State Government has confirmed the same in terms of Annexure-J, dated 6-8-1998 by taking another ground of five years experience in terms of an endorsement dated 6-8-1998.

8. Learned Single Judge in the impugned order notices facts of the case and thereafter he holds in para 10 that the respondent/appellants have specifically taken a ground that the post of Headmaster cannot be filled up by direct recruitment. According to the learned Single Judge no endorsement as such was issued and thereafter the learned Single Judge holds in para 11 that the post of a Headmaster of a school cannot be filled by direct recruitment and necessarily it has to be filled up by promotion. He would also hold that the Grant-in-aid Code provides that the Headmaster of a school necessarily requires to be filled up only by promotion among the senior most teachers working in the school and not by

way of direct recruitment. After coming to this conclusion learned Single Judge rejects the defence of the State Government on the ground that, that is not the ground for rejection of the proposal sent by the first petitioner-institution to the respondents. Unfortunately, learned Single Judge has not chosen to see the endorsement at Annexure-J, dated 6-8-1998. The specific plea of the State Government is that the appointment of Sri Quraishi cannot be considered in the light of Annexure-J. We are of the view that the learned Single Judge is not right in holding that there is no material available on record with regard to rejection on the ground of direct recruitment in terms of Rule 45 of the Grant-in-aid Code. We are therefore of the view that the learned Government Advocate is light in saying that the impugned order requires our interference.

9. Learned Counsel refers to a judgment of the Supreme Court in N. Ammad's case, with regard to his contention of the petitioner being minority in character. We have carefully perused the said judgment. A reading of the said judgment would show that the Supreme Court was considering in the said case with regard to appointment of the Headmaster in minority school. The Apex Court ruled that in terms of Article 30(1) of the Constitution right of management is protected. Even otherwise we see that the appointment of Sri Quraishi was subject to the approval to the education department.

10. The further argument is that there is no prohibition as such in terms of Rule 45 of the Grant-in-aid Code in the matter of appointment by way of direct recruitment. We are afraid that this argument is not available in the light of the very Rule itself. Chapter VIII of the Grant-in-aid Code deals with General Conditions of Service. Rule 45 of the Grant-in-aid Code categorically states that while making the appointment of the Heads of the Institution, the management should give consideration to the senior and qualified persons already working in the school or schools under the same management. Unless the senior most member of the staff is unsuitable for the post due to valid reasons, his claim should not be passed over. However, the Assistant Master to be promoted as Headmaster should be trained with at least five years teaching experience. Rule 45(a) would further provide that the application so submitted for the promotional post of Headmaster is to be considered by Selection Committee consisting of the representatives of the

Managing Committee, Head of the Institution and one Educationist nominated by the Managing Committee. The Selection Committee shall recommend a panel of names and arrange them in the order of merit in respect of each appointment and the Managing Committee shall make the appointment. If the Managing Committee makes the appointment not in accordance with the order of merit they shall record the reasons in writing, subject to the approval of the Department. Preference shall be given to trained teachers.

11. From a reading of the Rules what is clear to us is that the Rule 45 categorically requires the post to be filled only by promotion and not by direct recruitment. Unfortunately in the case on hand, the appointment of Sri Quraishi is contrary to Rule 45 of the Grant-in-aid Code. In these circumstances, learned Single Judge could not have issued any direction contrary to Rule 45 of the Grant-in-aid Code.

12. Insofar as the argument of five years experience is concerned we are of the view that since the very appointment of Sri Quraishi is contrary to Rule 45 of the Grant-in-aid Code, his having five years experience is of no consequence, In these circumstances we accept this appeal. Order of the learned Single Judge dated 7-1-2002 passed in W.P. No. 29053 of 1998 is set aside. The order of the State Government rejecting the proposal is confirmed. No costs.

13. CCC No. 971 of 2002.-- We see that this contempt petition has been listed to be heard along with this appeal. Since we have chosen to accept the Writ Appeal No. 1974 of 2002, we deem it proper not to proceed further and we deem it proper to drop the contempt proceedings.