

Nammalwar Vs. the District Educational Officer and ors.

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Court : Chennai

Decided On : Nov-02-1989

Reported in : (1990)1MLJ172

Appellant : Nammalwar

Respondent : The District Educational Officer and ors.

Advocate for Pet/Ap. : Mr. G. Subramaniam

Judgement :

A. S. Anand, C. J.

1. The appellant's petition seeking a writ of mandamus to continue him as headmaster failed before the learned single Judge. He is in appeal.

2. Mr. G. Subramaniam, learned Counsel for the appellant has assailed the judgment of the learned single judge on the ground that by application of Rule 13 (1) (ii) of the Rules relating to Elementary Schools, the Appellant had a right to be declared permanent after serving the institution for a continuous period of one year, and by not giving him the benefit of the said rule, the judgment under appeal stood vitiated.

3. To appreciate the contention raised by Mr. Subramaniam, it would be relevant to extract Rule 13 (1) (ii) of the said Rules. It reads as follows:

R.13 (1) (ii) 'No qualified teacher shall be appointed in a permanent vacancy on a temporary basis or for a stipulated period. All appointments in permanent vacancies shall be made only on probation for a period of one year, but the management may before the expiry of that period extend it to a further period of not exceeding 12 months for reasons to be approved by the Deputy Inspector of Schools. In the absence of any such extension, the teacher shall be deemed to have completed his probation satisfactorily and be confirmed or deemed permanent from the date of completion of probation. A teacher whose probation is extended shall be deemed to have satisfactorily completed his probation at the end of such extended period unless his services are terminated after following the procedure laid down in Sub-rule (2) before the last day of the period of probation and he shall be confirmed or deemed permanent from the date of completion of probation.

A bare reading of the Rule (Supra) suggests that its provision would have application only where the appointment is made against a permanent vacancy, in which event the benefit of the deeming provision would be available to a probationer appointee. The service register, extract whereof has been placed on the record, shows that the nature of the appointment of the appellant was only temporary and that too was against a temporary vacancy. Indeed, the order of appointment issued by the manager and correspondent of the Kasthurba Gandhi Vidyalaya Aided School, Thirumangalam is not happily worded, for it does not say specifically that the appointment was against a temporary vacancy; but that lacuna in the order pales into insignificance on account of the entries in the service register. The fact remains that the appellant was appointed only temporarily against a temporary vacancy. That being the factual position, Rule 13 (1) (ii) of the said Rules has no application to his case at all. The appellant, therefore, cannot claim the benefit of the said Rule to hold the post.

4. In view of what we have noticed above, we dismiss the appeal, though for reasons slightly different from the ones recorded by the learned single Judge. There shall be no order as to costs.