V.Ramesh Vs. the Correspondent

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SooperKanoon Citation : sooperkanoon.com/922894

Court : Chennai

Decided On : Oct-18-2011

Judge : K.Chandru, J.

Acts : Constitution of India - Article 226; Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 - Rule 15(4)(a)

Appeal No. : W.P.(MD)No.9385 of 2010 and M.P.(MD)Nos.1 and 2 of 2010

Appellant : V.Ramesh

Respondent : The Correspondent

Judgement :

1. The petitioner has filed the present Writ petition, seeking to challenge an order dated 31.05.2010 issued by the 1st respondent, appointing the 3rd respondent as a Headmaster in-charge of the 1st respondent / school and after setting aside the same and for a consequential direction to promote the petitioner in the post of Headmaster in the first respondent / school at Sivasailam, Tirunelveli District.

2.When the Writ petition came up for admission on 21.07.2010 notice of motion was ordered.

3.On notice from this Court, the 2nd respondent has filed a counter affidavit dated 10.10.2011. The first respondent / school has also filed a counter affidavit dated 17.10.2011 together with a supporting documents in the form of typed set.

4.The contention of the petitioner was that the order is given in favour of the 3rd respondent was illegal and contrary to G.O.Ms.No.1375 Education Department, dated 06.07.1981, wherein, it is stated that if no qualified and suitable candidate is available in the school, then only person working in other school can be considered for promotion. It must also stated that the person, who appointed as Headmaster of the special school must fully eligible to hold the post. In case of any appointment of any candidate or promotion from any other school, the school committee should obtain a prior permission from the Chief Educational Officer and therefore, since the petitioner being the only available eligible candidate for promotion, the appointment of the 3rd respondent was illegal. The petitioner also fairly admitted that he had suffered a punishment of stoppage of increment for 2 years with commutative effect and he had preferred an appeal and the statutory appellate authority had reduced the punishment to one year. But, the other averments made by the petitioner in the affidavit that he had no other efficacious remedy except to approach this Court under Article 226 of the Constitution is concerned, the same cannot be accepted.

5.Rule 15(4)(a) of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, provides for statutory appellate remedy in case of wrongful promotion to any candidate and the petitioner should avail such a remedy. In the affidavit filed by the 2nd respondent it was stated that 3rd respondent is having a Master's degree in education whereas the petitioner is only having a Bachelor Degree and because of the higher qualification he was selected. The school committee consists of the Chairman and 8 members and an interview was also conducted. Since the 3rd respondent secured more marks in the interview and possessed equal teaching experience like that of the petitioner, he was selected. Such a selection cannot be invalidated. Further, the 3rd respondent did not suffer from any black-mark in his carrier, whereas, the petitioner had one punishment and in so far as the appointment of any candidate in the special school is concerned, their only duty is to forward the communication to the State Commissioner and they were no way responsible for any appointment.

6.In the counter affidavit filed by the 1st respondent / Correspondent, it was stated that the petitioner cannot be considered for promotion to the post of Headmaster

as under Rule 15(4). The school is empowered to test the merit and ability of any person to be appointed as a Headmaster and the petitioner had suffered punishment at the hands of the management, which was also confirmed by the appellate authority and the maintainability of the Writ petition on the ground of an appellate remedy is also raised in the counter affidavit.

7.The disciplinary proceedings initiated against the petitioner is also enclosed in the typed set of papers. The short question that arises for consideration whether this Court exercising powers under Article 226 of the Constitution can be invoked to set aside the appointment of the third respondent.

8.Though the petitioner contended that the 3rd respondent was from some other school, it is seen from the order of promotion that he also belonged to the same school and he was not suffered from any disqualification for being considered as Headmaster.

9.The Supreme Court vide judgment in S.Sethuraman Vs. R.Venkataraman and others reported in 2007(6) SCC 382 dealing with the similar promotion of Headmaster of Higher Secondary School, the Supreme court dealt with the scope of Rule 15(4) and also the relative powers of an appellate authority under Rule 15(4)(a). It was held as follows:

17. While exercising the appellate jurisdiction, the appellate authority has indisputably a plenary power. It may not only consider the respective educational qualifications and other activities of the respective candidates for the purpose of arriving at a decision as to which of the two candidates had better merit and ability, but it should exercise its jurisdiction keeping in view the views of the Managing Committee. If two views are possible, ordinarily, the view of the Managing Committee should be allowed to prevail.

18. It is unfortunate that the High Court failed to apply the correct principles of law in this case. Each one of its reasons, in our considered opinion, is wholly untenable. It suffers from misdirection in law.

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20. If the appellate authority thought otherwise, its order would not be sustainable. It was, therefore, obligatory on the part of the High Court to apply its mind on the jurisdictional question raised by the appellant. It should have tested the orders of the appellate authority and consequently of the learned Single Judge of the High Court, on their own merits and not dehors the same.

21. When the extant rule operating in the field was referred to by the High Court, it should have applied the same. What, therefore, could have been done by the appellate authority was to follow the provisions of the Rules and not to act dehors the same. He was exercising a quasi-judicial function. As an appellate authority and acting under a statute, indisputably he could not have failed and/or refused to take into consideration the relevant factors and base its decision on irrelevant factors or on extraneous consideration.

22. Such a decision keeping in view the scope and ambit of the power of judicial review vested in the High Court under Article 226 of the Constitution of India could have been interfered with on the ground that the order impugned before it contained errors apparent on the face of the record. Whereas the learned Single Judge of the High Court in passing its order took the said principle into consideration, the Division Bench in our opinion failed to do so. Not only despite its attention having been drawn to a number of grounds leading to passing of the order impugned before it became vitiated, the High Court applied the principle of estoppel against the appellant and opined that having submitted himself to the jurisdiction of the appellate authority, he could not be permitted to question the legality of the same. The approach of the High Court in our opinion was wholly erroneous. Principle of estoppel has no application in a case of this nature. The appellant did not and in fact could not confer upon an authority a jurisdiction which he did not derive under the statute. If jurisdiction cannot be conferred by consent, it cannot clothe the authority to exercise the same in an illegal manner. The jurisdiction of the appellate authority pursuant to the order of the Division Bench, which it will bear repetition to state, was passed on consent of the parties is not in dispute but only because the appellant consented to re-examination of the matter by the appellate authority, which it was otherwise entitled to, the same by itself could not have been found to be a ground for his becoming ineligible to challenge

the final order passed by the appellate authority when a large number of jurisdictional errors were committed by it and were otherwise apparent on the face of the record. The Division Bench of the High Court in our opinion, therefore, was not correct in taking the aforementioned view.

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24. Most of the considerations which weighed with it were irrelevant.

10.In the said circumstances, this Court is unable to countenance the prayer made by the petitioner. Hence, the Writ petition stands dismissed. No costs. Consequently, connected M.Ps.are closed.