

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2015

CORAM:

The Honourable Mr.Justice K.K.SASIDHARAN

W.P.No.7684 of 2014
& M.P.No.1 of 2014

R. Jayarathina Gandhi

..Petitioner

-Vs.-

1. State of Tamil Nadu
rep. by its Secretary to Government
School Education Department
Fort St. George
Chennai-600 009.
2. The Director of School Education
DPI Campus
College Road
Chennai-600 006.
3. The Joint Director
(Higher Secondary)
Directorate of School Education
DPI Campus
College Road
Chennai-600 006.

..Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus directing the respondents herein to appoint the petitioner to the post of P.G. Assistant (Tamil) in accordance with G.O.Ms.No.21, School Education (HE2) Department, dated 2 November 2011 without insisting upon the declaration of probation of the petitioner in the post of Junior Assistant.

For Petitioner : Mrs. Dakshayani Reddy

For Respondents: Mr.M.S. Ramesh
Addl. Govt. Pleader

ORDER

The petitioner, who is presently working as Junior Assistant seeks a writ of Mandamus directing the first respondent to appoint him to the post of PG Assistant (Tamil) in accordance with the Government Order in G.O.Ms.No.21, School Education (HE2) Department, dated 2 November 2011 without insisting declaration of probation.

Summary of Facts:

2. The petitioner was initially appointed as Office Assistant on compassionate ground. After declaring probation, he was appointed to the post of Record Clerk vide proceedings dated 12 July 2011. The probation in the post of Record Clerk was declared on 7 August 2012. The petitioner was subsequently appointed to the post of Junior Assistant vide proceedings dated 19 October 2012. His services has also been regularised in the post of Junior Assistant vide order dated 8 April 2013.

3. The Government have issued an order in G.O.Ms.No.21, School Education Department, dated 2 November 2011 reserving 2% of the vacancies in the post of P.G. Assistant to those who are qualified for appointment and working in the Ministerial service. The petitioner is fully qualified for appointment to the post of P.G. Assistant. However his case was not considered by the first respondent on the ground that his probation to the post of Junior Assistant was not declared. This made the petitioner to file the present writ petition.

4. The third respondent filed a counter affidavit wherein it was contended that declaration of probation is a mandatory requirement for considering the case of those who are working in the Ministerial service for appointment to the post of P.G. Assistant. According to the third respondent, probation of the petitioner is yet to be declared and as such he is not eligible for appointment.

Submissions:

5. The learned counsel for the petitioner by placing reliance on the explanation appended to Rule 2(15) of the Tamil Nadu State and Subordinate Service Rules contended that for recruitment by transfer, the candidate need not be a full member or an approved probationer in any other service class or category so specified provided he is a full member or an approved probationer in any other service, class or category. According to the learned counsel, probation of the petitioner has already been declared in the post of Office Assistant and Record Clerk and as such he is fully eligible for appointment as P.G. Assistant by transfer of service. The learned counsel further contended that the respondents have not filled up 2% of the vacancies earmarked for service candidates.

6. The learned Additional Government Pleader contended that the Government have issued an order in G.O.Ms.No.97, Personnel and Administrative Reforms (B) Department dated 14 February 1996 to the effect that persons appointed to the post of Junior Assistant by recruitment by transfer from the post of Record Clerk shall be on probation for a period of two years on duty within a continuous period of three years. The petitioner is still undergoing probation and as such he is not eligible to be appointed as P.G. Assistant.

Analysis:

7. The petitioner was initially appointed to the post of Office Assistant vide proceedings dated 16 November 1999 on the file of District Educational Officer, Namakkal. It was a compassionate appointment. The probation of the petitioner in the post of Office Assistant was declared by the District Educational Officer, Namakkal vide proceedings dated 11 November 2002. The petitioner was thereafter appointed to the post of Record Clerk vide proceedings dated 12 July 2011 on the file of Joint Director (Personnel). The probation of the petitioner in the post of Record Clerk was declared vide proceedings dated 7 August 2012. Thereafter the petitioner was appointed to the post of Junior Assistant vide proceedings dated 19 October 2012. It is also a matter of record that the service of the petitioner in the post of Junior Assistant was regularised vide proceedings dated 8 April 2013 on the file of Joint Director (Personnel), Education Department.

8. The Government have earmarked 2% of the vacancies in the post of P.G. Assistant to those who are working in Ministerial Service in School Education Department on recruitment by transfer, by order in G.O.Ms.No.21, School Education Department, dated 2 November 2011. The petitioner is therefore eligible for appointment to the post of P.G.Assistant (Tamil). The only reason which made the first respondent not to consider the case of the petitioner appears to be his non declaration of probation in the post of Junior Assistant.

9. The core question is whether the declaration of probation in the present post is a condition precedent for appointment to the post of P.G. Assistant against 2% of the vacancies reserved for candidates working in Ministerial service.

10. The Tamil Nadu State and Subordinate Service Rules contained provisions with regard to recruitment by transfer. The explanation appended to Rule 2(15) deals with probation.

"Recruited by transfer:

(15) A candidate is said to be "recruited by transfer" to a service-

.....

Explanation: Where the special rules for a service provide for recruitment to the service or

to any class or category thereof by transfer from any specified service, class or category, a candidate need not, for the purposes of such recruitment be a full member or an approved probationer in the service, class or category so specified, provided he is full member or an approved probationer in any other service class or category."

11. There is no dispute that the probation of the petitioner in the post of Office Assistant was declared on 11 November 2002. Similarly, his probation in the post of Record Clerk was declared vide proceedings dated 7 August 2012. The case of the petitioner therefore would come within the meaning of Explanation to rule 2(15) of the Tamil Nadu State and Subordinate Service Rules.

12. The Government have reserved 2% of the vacancies in the post of P.G. Assistant with a laudable objective of accommodating those working in the Ministerial Service subject to their fulfilment of eligibility criteria. The requirement of completion of probation would not apply to a case of a candidate like the petitioner in case of satisfying the explanation to Rule 2(15) of the Tamil Nadu State and Subordinate Service Rules. I am therefore of the view that the petitioner is eligible for appointment to the post of P.G. Assistant (Tamil) on recruitment by transfer.

Disposition:

13. In the result, a writ in the nature of a writ of Mandamus is issued directing the first respondent to consider the case of the petitioner for appointment to the post of P.G. Assistant (Tamil) in accordance with the Government Order in G.O.Ms.No.21, School Education, dated 2 November 2011 and without insisting to comply with the condition regarding completion of probation in the post of Junior Assistant. Such exercise shall be completed within a period of two months from the date of receipt of a copy of this order.

14. In the upshot, I allow the writ petition. Consequently the connected MP is closed. No costs.

Sd/-
Assistant Registrar
Dated:17.3.15

True Copy

Sub Assistant Registrar

To:

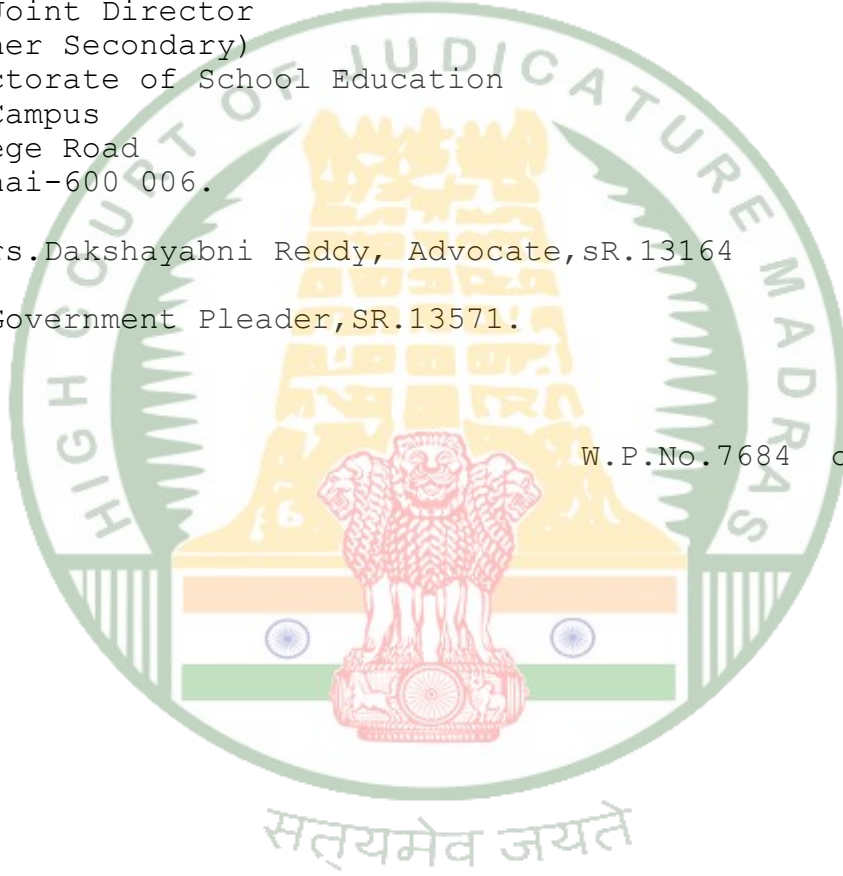
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+1 cc to Mrs. Dakshayabni Reddy, Advocate, SR.13164

+1 cc to Government Pleader, SR.13571.

gr(co)
krd 23/3

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