

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2015

CORAM :

THE HONOURABLE MR. JUSTICE T. RAJA

W.P.NOs. 20075 & 20076 OF 2007

and

M.P. Nos. 1 & 1 of 2007

- | | | |
|--------------|----|-------------------------------|
| 1. M. Komala | .. | Petitioner in W.P. 20075/2007 |
| 2. A. Palani | .. | Petitioner in W.P. 20076/2007 |

Vs.

- | | |
|--|-------------------------------|
| 1. Member - Secretary
Teachers Recruitment Board
4 th Floor, EVK Sampath Bldg.,
College Road
Chennai - 600 006. | |
| 2. The Director of School Education
Chennai - 600 006. | |
| 3. Joint Director of School Education
(Personnel), Chennai - 600 006. | .. Respondents in
both WPs |

PRAYER in both W.Ps.: These Writ Petitions have been filed under Article 226 of the Constitution of India to issue an order of Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the second respondent dated 15.12.2006 in Na.Ka. No. 32385/C6/C 22/2004 and quash the same in so far as the petitioners are concerned and consequently direct the respondents 2 and 3 to issue appointment order to the petitioners as Physical Education Teachers in the cadre of BT Assistants in the scale of Rs.5500/- as per the order of the first respondent dated 20.04.2005 and pass further orders.

For Petitioners	:	Mr. P. Ganesan
in both WPs		for M/s. S. Mani

For Respondents	:	Mr. R. Govindasamy, AGP
in both Wps		

C O M M O N O R D E R

Mrs. M. Komala and Mr. A. Palani, have filed separate writ petitions in W.P. Nos. 20075 and 20076 of 2007 challenging the impugned order dated 15.12.2006 bearing Na.Ka.No. 32385/C6/C 22/2004 issued by the Director of School Education, Chennai, the second respondent herein, to quash the same in so far as the petitioners are concerned, with a consequential direction against the Director of School Education and Joint Director of School Education, the respondents 2 and 3, to issue appointment order to the petitioners as Physical Education Teachers in the cadre of BT Assistants in the scale of Rs.5500/- as per the order of the first respondent dated 20.04.2005.

2. Learned counsel for the petitioners submitted that Mrs. M. Komala acquired B.P.E.S , B.P.Ed and M.P. Ed. qualification and registered her name in the employment exchange as she was eligible for the post of Physical Director Grade I. Similarly, Mr. A. Palani also who acquired M.A., B.P.E.S., M.P. Ed. and M.Phil., registered his name in the employment exchange as he was fully eligible to the post of Physical Director Grade I. While both of them were waiting for employment, the Member Secretary, Teachers Recruitment Board, the first respondent herein, called for applications for the post of Junior Lecturer for District Institute of Education and Training, which is hereinafter called 'DIET'. The first respondent conducted a competitive examination for the post of Junior Lecturer in the year 2002. Both the petitioners being successful, they were appointed as Junior Lecturers in the DIET. The petitioner M. Komala joined as Junior Lecturer in DIET, Keezh Pennathur on 08.02.2002 in the time scale of Rs.5500/- and the petitioner A. Palani joined as Junior Lecturer in DIET, Tirur on the same day in the time scale of 5500/-. After some time, M. Komala was transferred to DIET, Ranipet. However, both the petitioners were relieved from service by order dated 25.02.2004 with effect from 29.02.2004. Since several other persons were also relieved, all of them made a representation to the Government to consider their grievance for appointment in the respective categories in the vacancies in the School Education Department. The Government accepting the reasonable request, directed the first respondent, the Member Secretary, Teachers Recruitment Board, Chennai to give appointment to the teachers those who worked in the DIETs. On the basis of the direction issued by the Government, the first respondent also directed the petitioners to appear for certificate verification in the post of Physical Education Teacher in the cadre of Junior Grade B.T. Assistants on a consolidated pay for Rs.4000/-. The petitioners also appeared before the first respondent for certificate verification on 13.04.2005. Thereafter, the first respondent by letter dated 20.04.2005 informed them that they have been selected for the post of Physical Education Teacher in the cadre of Junior Grade B.T. Assistant in a consolidated

pay of Rs.4000/-. But the genuine grievance of the petitioners herein is, while issuing the appointment order the Joint Director of School Education (Personnel), the third respondent, by order dated 15.12.2006 informed both the petitioners that they have been appointed as Physical Education Teacher in the scale of Rs.4500/-, which is meant for Secondary Grade Post and to that extent both the petitioners were directed to give consent thereof.

3. Challenging the same, learned counsel appearing for the the petitioners would submit that when the first respondent directed both the petitioners to appear for certificate verification for the post of Physical Education Teacher in the cadre of Junior Grade B.T. Assistant on a consolidated pay of Rs.4000/-, on accepting the call letter when both the petitioners appeared for certificate verification on 13.04.2005, after appointing them in the post of Physical Education Teacher in the cadre of Junior Grade B.T. Assistant on a consolidated pay of Rs.4000/-, by the impugned order dated 15.12.2006 cannot inform the petitioners that they have been appointed as Physical Education Teachers in the scale of Rs.4500/- which is meant for Secondary Grade post. Adding further, learned counsel appearing for the petitioners would submit that the counter affidavit filed by the respondents state that the post of Physical Education Teacher in the cadre of Junior Grade B.T. Assistant on a consolidated pay of Rs.4000/- namely, Physical Director Grade-II that comes under Tamil Nadu School Educational Subordinate Service Special Rules in Class VI Number 1 cannot be passed into service against the petitioners. It is not their case that they were alone issued with a letter to appear for Certificate verification for the post of Physical Education Teacher in the scale of Rs.4500/- which is meant for Secondary Grade post, but another person by name Mr.P. Nagaraj, who was also similarly placed like that of the petitioners, after being called for certificate verification, has been selected for the post of Junior Grade B.T. Assistant in DIET in the scale of Rs.5500/-. When Mr. P. Nagaraj, who was appointed like the petitioners and subsequently called for certificate verification by the first respondent, has been selected and appointed in the post of Junior Grade B.T. Assistant by the second respondent, the petitioners alone cannot be compelled to give their consent for Secondary Grade post as Physical Education Teacher in the scale of Rs.4500/-. He also further pleaded that even from the date of appointment till now without their being any promotion whatsoever, both the petitioners are working only as Physical Education Teacher in the Secondary Grade cadre by receiving Rs.4500/- in the consolidated pay of Rs.4000/-.

4. Opposing the above prayer, a counter affidavit has been filed. Mr. R.Govindasamy, learned Additional Government Pleader appearing for the respondents, in support of the impugned order contended that both the petitioners were appointed in the post of Physical Education Teacher in the cadre of Junior Grade B.T.

Assistant on a consolidated pay of Rs.4000/- (Physical Director Grade -II). But the said post comes under Tamil Nadu School Educational Subordinate Service Special Rules in Class VI Number 1 and appointment to the above class and category of service i.e. Physical Director should be made as follows :-

- i. Promotion from among the Physical Education Teachers
or
- ii. Transfer from any post in the service on an identical scale of pay or
- iii. Promotion from any post in the service on a lower scale of pay or
- iv. Recruitment by transfer from any other service

After referring to the above rule, learned Additional Government Pleader further submitted that as per the existing service rules, both the petitioners were appointed as Physical Education Teachers by the second respondent, after getting consent from them to join as Physical Education Teachers in the scale of pay of Rs.4500-125-7000. Therefore, after giving consent they cannot come to this Court by filing Writ petition and ask for promotional posts. Adding further, he stated that there are only 89 posts of Physical Director available in the entire State of Tamil Nadu in School Education Department. But nearly 4716 Physical Education Teachers (in the cadre of Secondary Grade Assistants) are working in the School Education Department, hence, the qualified and suitable candidates for promotion from among the Physical Education Teachers are working in large number. Hence, keeping these aspects in mind, the petitioners were not appointed as Physical Education Teacher in B.T. Assistant Cadre. While replying to the second submission, with regard to Mr.P. Nagaraj it was submitted that there is no different yard stick for appointing Mr.P. Nagaraj.

5. Both the contentions do not impress this Court. In as much as, the petitioners were issued with the letter dated 01.04.2005 by the first respondent directing the petitioners to appear for certificate verification to the post of Physical Education Teacher in the cadre of Junior Grade B.T. Assistant in the consolidated pay of Rs.4000/- and both of them appeared for certificate verification on 13.04.2005. Further, on their appearances the first respondent also by letter dated 20.04.2005 informed that they have been selected as Physical Education Teacher in the cadre of Junior Grade B.T. Assistants on a consolidated pay of Rs.4000/-. However, while issuing the appointment order, the third respondent namely, the Joint Director of School Education (Personnel), Chennai, by the impugned order dated 15.12.2006 informed both the petitioners that they have

been appointed as Physical Education Teacher in the scale of Rs.4500/-, which is meant for Secondary Grade Post, for which they have been directed to give their consent. In the case of Mr. Nagaraj, who was also appointed as a Junior Grade B.T. Assistant by the Teachers Recruitment Board, was subsequently appointed as Junior Grade B.T. Assistant. Whereas in the case of the petitioners, while issuing the appointment order itself, the first respondent by letter dated 20.04.2005 informed them that they have been selected and appointed for the post of Physical Education Teacher in the cadre of Junior Grade B.T. Assistant in the scale of Rs.4500/-, which is meant for Secondary Grade post. Therefore, once the petitioners are declared selected to the post, which is equivalent to B.T. Assistants, the second respondent is to issue the appointment order only to that post for which they have been selected. When the authorities have selected the petitioners to a particular post, in contrary, the second respondent has no power to appoint them in a lower cadre under the pay scale of Rs.4500/- instead of Rs.5500/-.

6. Therefore, both the impugned orders are liable to be set aside on the ground that the respondents do not have authority or power to appoint the petitioners to a lower post, when they were selected to the higher post namely, Physical Education Teacher in the cadre of Junior Grade B.T. Assistant in the scale of pay Rs.5500/-. When all the respondents have appointed Mr. P. Nagaraj as he was selected by the first respondent in the post of Junior Grade B.T. Assistant, it is not known why when the first respondent selected the petitioners for the post of B.T Assistant cadre, the third respondent had issued the impugned order appointing them as Physical Education Teacher in the scale of Rs.4500/- which is meant for Secondary Grade post. Therefore, both the impugned orders are liable to be set aside. Indeed, when the first respondent has rightly selected the petitioners as Physical Education Teacher in the cadre of Junior Grade B.T. Assistants, which is equivalent to Physical Director Grade II in the scale of Rs.5500/-, the second respondent cannot compel the petitioners to give their consent for the lesser post with the lesser pay. Therefore, the impugned orders are set aside.

7. In view of the above, both the writ petitions are allowed. Consequently, the connected Miscellaneous Petitions are closed. No order as to costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

avr

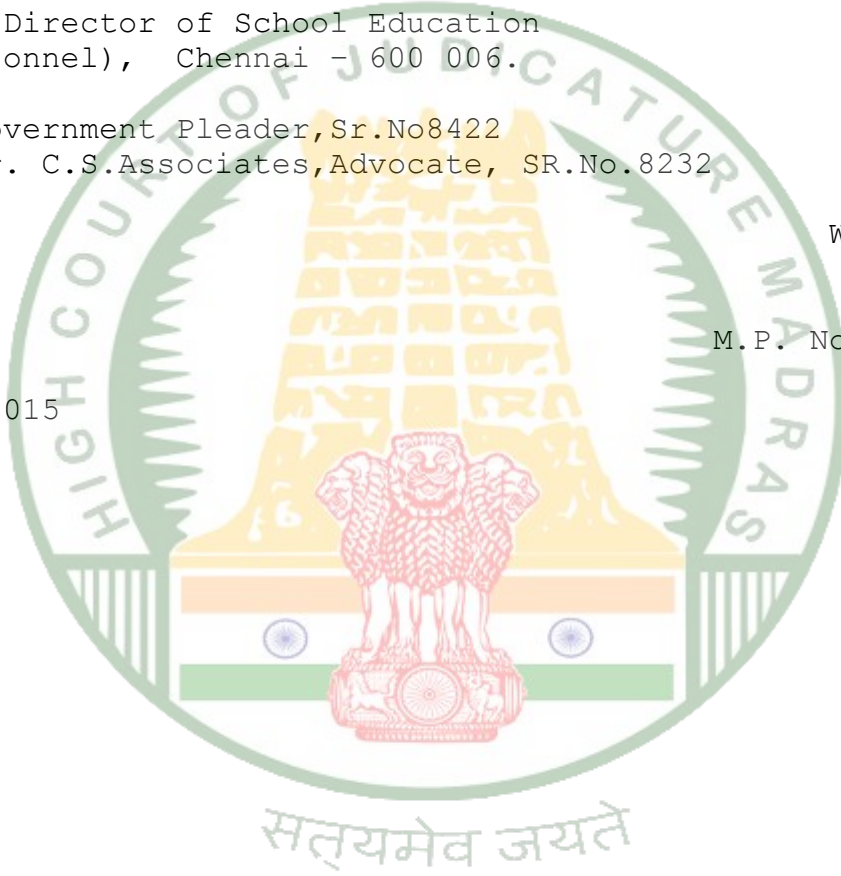
To

1. Member - Secretary
Teachers Recruitment Board
4th Floor, EVK Sampath Bldg.,
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Chennai - 600 006.
2. The Director of School Education
Chennai - 600 006.
3. Joint Director of School Education
(Personnel), Chennai - 600 006.

- 1 cc to Government Pleader, Sr.No8422
- 2 cc to Mr. C.S.Associates, Advocate, SR.No.8232

W.P.NOs. 20075 &
20076 OF 2007
and
M.P. Nos. 1 & 1 of 2007

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