

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2015

CORAM :

THE HONOURABLE MR. JUSTICE T. RAJA

W.P.NO. 6132 OF 2007

S. Jagannathan

.. Petitioner

Vs.

1. The State of Tamil Nadu
rep. by the Secretary
Education Department
Fort St. George
Chennai - 600 009.

2. The Director of Elementary Education
D.P.I., Chennai -6.

3. The District Elementary Education Officer
District Elementary Education Office
Theni.

4. Kammavar Middle School
Rep. by the Secretary
M. Subbalapuram, Andipatty Taluk,
Theni District (R4impleaded as per order
dt. 6.1.2014 in M.P.No.1/13 in W.P.6132/07)

... Respondents

PRAYER: This Writ petition is filed under Article 226 of Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent relating to G.O. Ms. (1D) 52 Education (B1) Department dated 29.03.1994 quash the same and direct the respondents to grant pay to the petitioner in the scale of Middle School Headmaster from the date of his appointment i.e. 14.04.1993 (prayer amended as per order dt. 10.10.2011 in M.Ps. 1 and 2 of 2011 in W.P.6132 of 2007)

For Petitioner : Ms. R. Meenal

For Respondents: Mrs. M.E. Rani Selvam,
AGP for R1 to R3
No Appearance for R4

O R D E R

This Writ Petition has been filed by Mr. S.Jaganathan, seeking for a prayer of Writ of Certiorarified Mandamus, to call for the records of the first respondent relating to G.O. Ms. (1D) 52 Education (B1) Department dated 29.03.1994, quash the same, with a further direction to the respondents to grant pay to the petitioner in the scale of Middle School Headmaster from the date of his appointment i.e. 14.04.1993.

2. Ms. R. Meenal, learned counsel appearing for the petitioner would submit that the petitioner was appointed as a Headmaster in the Kammavar Middle School, M.Subbalapuram on 14.04.1993. Since then he has been receiving salary in the pay scale of Graduate Teacher for the first five years and then as Middle School Headmaster as per G.O. (ID) No.52 Education Department dated 29.03.1994. But, after some time the petitioner came to know that some of the persons who have been appointed as Headmaster without having five years teaching experience are receiving salary in the pay scale of Headmaster, from the date of appointment. Therefore, the petitioner gave a representation to the respondents to extend the same to him. Even as per the proceedings in O.M. No. 272143/INK/B2P/81 dated 28.12.1981 it has been mentioned that five years prior experience was not necessary to those appointed as Headmaster in Middle Schools and that five years experience was necessary only to those who were appointed as Secondary Grade Headmasters. Again the petitioner gave representations to the respondents on number of occasions and on 20.07.2005 along with the relevant papers, but the same were not considered by the respondents. As a result, the Writ Petition No.30535 of 2005 was filed before this Court seeking for Mandamus against the respondents to grant him pay in the scale of Middle School Headmaster from 14.04.1993 i.e., from the date of his appointment. However, this Court by an order dated 20.09.2005 directed the respondents to dispose of the representation of the petitioner on merits, within 12 weeks from the date of receipt of a copy thereof. In the light of the direction given by this Court, the second respondent by his order dated 11.10.2006 rejected his request. The said rejection is untenable and unjustifiable.

3. Adding further it was contended that when the petitioner in his representation has specifically mentioned the names of several other similarly placed persons, who were granted the pay of Middle School Headmaster from the date of their appointment, although they were not having five years teaching experience like the petitioner, not considering the representation for extension of the benefit in favour of the petitioner, is violative of the equality clause of Article 14 and that violation smacks of clear arbitrariness. Therefore, the impugned order is liable to be set aside. It was also brought to the notice of this Court the order

dated 20.09.2005 passed by this Court in W.P. No. 30535/2005, to support her prayer.

4. A detailed counter affidavit has been filed by the District Elementary Educational Officer, Theni stating that the petitioner was permitted to work as Middle School Headmaster in Kammavar Middle School, M.Subbalapuram, Andipatty Taluk, Theni District, without considering the rules as prescribed in the Tamil Nadu Recognised Private Schools (Regulations) Rules 1974 Annexure V Rule 1(2), which clearly says that a person who is appointed as a Headmaster should have worked as a Teacher in recognised schools for a period of not less than five years, after obtaining B.T or its equivalent degree. But, at the time of his appointment the authority wrongly appointed him in the said post. However, when communication was received from the Kammavar Middle School, M.Subbalapuram, the department sought for a clarification from the Government. On receipt of the said letter seeking clarification, Government passed an order in G.O. Ms. No. 52 dated 29.03.1994 stating that the petitioner has been wrongly appointed as Middle School Headmaster without completing 5 years of service and to that effect the pay of the petitioner was reduced to the post of B.T. Assistant but was permitted to continue in the same post. Moreover, it is stated in the counter affidavit that when the petitioner had already suffered an order in G.O. Ms. (1D) 52 Education (B1) Department dated 29.03.1994, he cannot find fault with the order passed by the second respondent in proceedings Na.Ka. No.10235/H4/05 dated 11.10.2006, impugned by the petitioner.

5. At this juncture, learned counsel appearing for the petitioner brought to the notice of this Court the order passed by this court in M.P. No.1 of 2011 seeking amendment of the prayer challenging the order passed by the first respondent in G.O. Ms. (1D) 52 Education (B1) Department dated 29.03.1994. This Court has also allowed the same by order dated 10.10.2011 and consequently the prayer of the petitioner has been amended. Therefore, the stand taken by the respondents in their counter, for not challenging the G.O. Ms. (1D) 52 Education (B1) Department dated 29.03.1994, cannot be considered, as wholly misconceived.

6. It is an admitted claim of the petitioner that he was appointed as Headmaster in the Kammavar Middle School at M.Subbalapuram on 14.04.1993. But, he was paid with the salary of Graduate Teacher for the first five years. A reading of the G.O. (ID) No.52 Education Department dated 29.03.1994 clearly shows that he should be paid with the pay scale of Graduate Teacher for the first five years, till he acquires the requisite qualification. The said Government order also had made clear that on completion of five years in the said post, he would be paid with the salary of Middle School Headmaster in the scale of Rs.1640 - 2900/-. However, that order was subject to the result of W.P. No.3005/1990. When the said

G.O. (ID) No.52 Education Department dated 29.03.1994 was passed in the year 1994, it is not known why the petitioner kept quiet till 2007, when he was not paid with the scale of pay applicable to the post of Middle School Headmaster from 1994 to 2007. Therefore, the contention advanced by learned counsel appearing for the petitioner that similarly placed persons were granted the said benefit, does not impress upon this Court for the simple reason that the question of applying the equality class would apply only to those persons who are discriminated when they possess the requisite qualification. But, in the present case, the petitioner had admitted that he was not having the requisite qualification for the post of Middle School Headmaster on the date he was appointed as Middle School Headmaster on 14.04.1993 in Kammavar Middle School, M. Subbalapuram. Hence, this Court finds no merit in the petition.

7. Therefore, the Writ Petition fails and the same is dismissed. No order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

avr

To

1. The Secretary
Education Department
Fort St. George, Chennai - 600 009.
2. The Director of Elementary Education
D.P.I., Chennai -6.
3. The District Elementary Education Officer
District Elementary Education Office
Theni.

+ 1 cc to Mr.Ms. R. Meenal, Advocate Sr.3934
+ 1 cc to the Government Pleader Sr.3722

W.P.NO. 6132 of 2007

GR(CO)
Eu 20.03.2015

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