

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2015

CORAM

THE HONOURABLE MR. JUSTICE D.HARIPARANTHAMAN

W.P.No.21430 OF 2015

and

M.P.Nos. 1 to 3 OF 2015

V.Vinayaga Moorthy

...PETITIONER

Vs

1. The State of Tamil Nadu represented by its Principal Secretary, Department of School Education, Fort St. George, Chennai - 9.
2. The Director of Elementary Education, Chennai - 6.
3. The District Elementary Educational Officer, Thiruppur, Thiruppur District.
4. The Assistant Elementary Educational Officer, Vellakovil, Thiruppur District.
5. Tmt.S.Malini, Head Mistress, Panchayat Union Elementary School, Akalaraipalayam Puthur, Vellakovil Union, Thiruppur District.
6. Tmt.C.Vasanth, Headmistress, Panchayat Union Elementary School, Nagamanayakkanpatti, Vellakovil Union, Thiruppur District.

7. Tmt.R.Rejunuthangam,  
Headmistress,  
Panchayat Union Elementary School,  
P.Nachipialayam,  
Vellakovil Union,  
Thiruppur District.
8. Mr.S.John Vincent,  
Headmaster,  
Panchayat Union Elementary School,  
Mettuputhur,  
Vellakovil Union,  
Thiruppur District.
9. Tmt.K.Kavitha,  
Headmistress,  
Panchayat Union Elementary School,  
L.N.Patti, Vellakovil Union,  
Thiruppur District.
10. Tmt.N.Selvarasi,  
Headmistress,  
Panchayat Union Elementary School,  
Sathipalayam,  
Vellakovil Union,  
Thiruppur District.
11. Tmt.R.Lilly Pushpam,  
Headmistress,  
Panchayat Union Elementary School,  
Puthuppai,  
Vellakovil Union,  
Thiruppru District.

...RESPONDENTS

PRAYER : Writ petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified mandamus to call for the records pertaining to the impugned G.O.Ms.No.166, School Education, dated 07.06.1999, on the file of the respondent No.1 and the impugned combined panel for promotion to the post of Middle School Headmasters as on 01.01.2015 in Vellakovil Union issued by the respondents Nos.3 and 4 and quash the same as illegal and consequently to direct the respondents No.3 and 4 to place the petitioner in the said penal for promotion to the post of Middle School Headmaster as on 01.01.2015 in Vellaikovil Union within the time stipulated by this Court.

For Petitioner : Mr.K.Thilageswaran

For Respondents : Mr.S.Gunasekaran,  
Govt. Advocate for RR1 to 4

## O R D E R

In this Writ Petition, the petitioner has questioned the validity of G.O.Ms.No.166, School Education Department, dated 07.06.1999.

2. As per G.O.Ms.No.166, the B.T. Assistants, who are getting more pay than the Primary School Headmasters, are treated alike as feeder category for the post of Middle School Headmasters. That is, though B.T. Assistants receive more salary, they are not kept above the Primary School Headmasters in the feeder category for promotion to the post of Middle School Headmasters.

3. The Government exercised its power under Rule 48 of Tamil Nadu State and Subordinate Service Rules and granted exemption to Rule 36(a) of the said Rules that contemplates fixation of a person with higher pay above the person in receipt of lower pay in the feeder category for promotion.

4. Already the same issue came up for consideration before me in W.P.No.9386 of 2007 (M.Raj Mohamed V. State of Tamil Nadu represented by the Secretary to Government, School Education Department, Secretariat, Chennai and others), and by an order dated 29.09.2009, I dismissed the writ petition. Paragraphs 3 to 7 of the order dated 29.09.2009 are relevant in this regard and the same are usefully extracted hereunder :

"3. The petitioner was a Secondary Grade Teacher on and from 01.06.1988. Consequent on his acquiring B.Ed., qualification, he was promoted as B.T. Assistant from 15.10.1998. He seeks to challenge G.O.166, School Education dated 07.06.1999 which permits preparation of panel through combine seniority of B.T. / Tamil Pandit / Primary School Head Master.

4. The respondents filed reply affidavit in the Original Application. It is stated in the reply affidavit that prior to revision of pay, pursuant to the VI Pay Commission recommendations with effect from 01.01.1996, the scale of pay of Primary School Headmaster / B.T. Teachers / Tamil Pandit was one and the same i.e., Rs.1,400 -2,600. However, different scales were fixed for B.T. Teachers and Tamil Pandits, on the one hand and primary School Headmasters on the other hand. The B.T. Teachers / Tamil Pandit were given the scale of pay of Rs.5,500-9,000 and Primary School Headmasters were given the scale of pay of Rs.5,300-8,300.

5. The case of the petitioner is that in view of Rule 36(a) of the General Rules for Tamil Nadu State

and Subordinate Services, Primary School Headmasters should be considered for promotion only after B.T. Assistants, since the B.T. Assistants are admittedly getting higher scale of pay. The Rule 36(a) is extracted here-under:-

"36. (a) Promotion No member of a service or class of a service shall be eligible for promotion from the category in which he was appointed to the service unless he has satisfactorily completed his probation in that category:

Provided that a member of a service or class of a service who, having satisfactorily completed his probation in the category in which he was appointed to the Service, has been promoted to the next higher category shall, notwithstanding that he has not been declared to have satisfactorily completed his probation in such higher category be eligible for promotion from such higher category:

\*Provided further that if scales of pay of posts in the feeder categories are different, the persons holding post carrying a higher scale of pay in the feeder category shall be considered first and that, if no qualified and suitable persons holding post in that feeder category are available, the persons holding post carrying the next higher scale of pay in descending order in other feeder categories shall be considered.

\*Added in.G.O.Ms.No.400.P & AR (Per.P), dated 17.04.1985, w.e.f.13.10.1984."

6. On the other hand, G.O.166 of the first respondent dated 07.06.1999 was issued invoking the power of the Government under Rule 48 of the General Rules for Tamil Nadu State and Subordinate Services. Since the Government exercised its power under Rule 48 to continue to give the benefit, even after different scale is prescribed, by treating Primary School Headmasters also as the feeder category along with B.T. Assistants on equal footing, the petitioner cannot have any grievance. It is not in dispute that the Government has no power under Rule 48 to give necessary relaxation. Furthermore, the power of the Government under Rule 48 is not in challenge.

7. In these circumstances, the writ petition fails and the same is dismissed. No costs."

5. In view of my order dated 29.09.2009 in W.P.No.9386 of 2007, referred to above, the Writ Petition fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rpa/gg

To

1. The Principal Secretary,  
Department of School Education,  
Govt. of Tamil Nadu,  
Fort St. George, Chennai - 9.
2. The Director of Elementary Education,  
Chennai - 6.
3. The District Elementary Educational Officer,  
Thiruppur, Thiruppur District.
4. The Assistant Elementary Educational Officer,  
Vellakovil, Thiruppur District.

1 CC to Mr.K.Thilageswaran, Advocate SR.No. 36346

1 CC to the Government Pleader, SR.No. 36434

RSI (CO)  
PSI (28.09.2015)

W.P.No.21430 OF 2015