

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:27.02.2015

CORAM

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

W.A.No.803 of 2013
and
M.P.No.1 of 2013

1. The Director of Elementary Education
College Road, Chennai 600 006.
 2. The District Educational Officer
Thiruvavur
- ...Appellants

vs

K.Nedumaran

...Respondent

Prayer : Writ Appeal against the order of this Court dated 13.07.2012 passed in W.P.No.17095 of 2012.

Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records relating to the second respondent in proceedings Oo.Mu.No.0043/A1/2012 dated 10.03.2012, quash the same and to consequently direct the respondents 1 and 2 to assign appropriate placement in the panel dated 15.03.2001 on the basis of the qualification in the departmental test held on 27.12.2000 with the following date i.e., 28.12.2000 as the eligibility criteria as per the Fundamental Rules and to extend all benefits, both service and monetary.

For Appellants : Mr.R.Ravichandran
Additional Government Pleader

For Respondent : M/s.Jasmine Padma

J U D G M E N T

(Judgment of the Court was delivered by V.RAMASUBRAMANIAN.J.,)

This appeal is by the Directorate of Elementary Education, questioning the correctness of the order passed by the learned Judge in a writ petition filed by the respondent, seeking inclusion in the panel for promotion to the post of Assistant.

2. Heard Mr.R.Ravichandran, learned Additional Government Pleader appearing for the appellants and M/s.Jasmine Padma, learned counsel for the respondent.

3. The respondent was originally appointed as a Junior Assistant on 23.04.1993. It was an appointment on compassionate grounds. His services were regularised by G.O.Ms.No.174, Department of School Education, dated 28.04.1997, but with effect from 23.04.1993. He was also promoted as Assistant on 18.10.2002.

4. For promotion to the post of Assistant, the respondent was required to pass certain tests. The tests were actually conducted on 27.12.2000 and 28.12.2000. The results of the examination were declared on 16.03.2001. This is why, he was not included in the panel for promotion for the year 2001. He was only included in the panel of the year 2002.

5. Therefore, the petitioner made representations, but the same were rejected on the ground that the crucial date for inclusion in the panel as per the Special Rules for Tamil Nadu Ministerial Service was 15th March of every year and that the respondent passed the test only on 16.03.2001. Therefore, the respondent filed a writ petition in W.P.No.17095 of 2012. The same was allowed by the learned Judge, forcing the Directorate of Elementary Education to come up with the above writ appeal.

6. It is no doubt true that the crucial date for inclusion in the panel is 15th March of every year as per Rule 13A of the Special Rules for Tamil Nadu Ministerial Service, which reads as follows:

"13A. Preparation of annual list of approved candidates:

The crucial date on which the candidates should possess the prescribed qualifications for purposes of inclusion in the annual list of approved candidates for appointment to the posts by promotion and recruitment by transfer shall be

the 15th March of every year."

7. Therefore, the question is whether the respondent was qualified for inclusion as on 15.03.2001 or not? According to the appellants, since the results were declared only on 16.03.2001, the respondent was not qualified on 15.03.2001.

8. But the above argument, as rightly pointed out by the learned Judge is contrary to the Ruling [2] under Fundamental Rule 26 (a), which reads as follows:

"(2) In cases where the passing of an examination or test confers on a Government servant the title to any right, benefit or concession, such title should be deemed to have accrued on the day following the last day of the examination or test which he passed. In cases where the examination or test can be passed in instalments, the title to the right, benefit or concession will be deemed to have accrued on the day following the last day of the examination in the subject or subjects in which he has passed.

[G.O.No.1446, Public (Services), dated 1st May 1934.]"

9. It has been held in a number of decisions of this Court, that the passing of an examination would relate back to the date of examination and not the date of declaration of results. The dates on which the Departmental Tests conducted in this case were 27.12.2000 and 28.12.2000. Therefore, if the Department took three months' time to declare the results, which fell on the next day, to the date of crucial date for promotion, the respondent cannot be asked to take the blame. Therefore, the judgment of the learned Judge is in tune with the Rule position and we see no reason to interfere with the same. Hence, the writ appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vj2

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To

1. The Director of Elementary Education
College Road, Chennai 600 006.
2. The District Educational Officer
Thiruvarur

1 CC to Mr.L.Chandrakumar, Advocate SR.No. 11049

1 CC to the Government Pleader, SR.No. 11156

W.A.No.803 of 2013

TEJ (CO)
PSI (11.03.2015)



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