

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.15352 of 2016
and
W.M.P.No.13386 of 2016

R.Jayarathina Gandhi

... Petitioner

Vs.

1. The Principal Secretary to Government,
School Education Department,
Fort St.George, Chennai 600 009.
2. The Joint Director (Higher Secondary),
Directorate of School Education
DPI Campus, College Road,
Chennai 600 006.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the second respondent herein to include the name of the petitioner in the panel for recruitment by transfer from Ministerial service to PG Assistant (Tamil) for the year 2013 - 2014, in accordance with G.O.Ms.No.21, dated 02.11.2011, by taking into consideration the date of the examination for post graduation in Tamil and not the date of the declaration of the result as per Fundamental Rule 26.

For Petitioner : Ms.Dakshayani Reddy

For Respondents : Mr.S.Gunasekaran
Additional Government Pleader

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O R D E R

By consent, the writ petition is taken up for final disposal.

2.The present writ petition has been filed seeking a Mandamus directing the second respondent herein to include the name of the petitioner in the panel for recruitment by transfer from Ministerial service to PG Assistant (Tamil) for the year

2013 - 2014, in accordance with G.O.Ms.No.21, dated 02.11.2011, by taking into consideration the date of the examination for post graduation in Tamil and not the date of the declaration of the result as per Fundamental Rule 26.

3.The petitioner would state that he is fully qualified for appointment to the post of PG Assistant (Tamil) as he has completed B.A.(Tamil), B.Ed., and M.A.(Tamil). The petitioner would further state that as per G.O.Ms.No.21, School Education Department, dated 02.11.2011, 2% of the vacancies to be filled by promotion (i.e., 2% of 50%) in the post of PG Assistant are set apart for those who are qualified for appointment and working in the Ministerial service. The Government itself issued the said Government Order based upon G.O.Ms.No.175, School Education Department, dated 19.07.2007 whereby 2% in the vacancies to be filled up by promotion in the post of B.T.Assistant is reserved for recruitment by transfer from those who are working in the Ministerial service.

4.The petitioner was originally appointed to the post of Office Assistant on compassionate grounds and his probation was declared vide proceedings dated 11.11.2002 and was subsequently, appointed to the post of Record Clerk vide proceedings dated 12.07.2011 and his probation was also declared in the post of Record Clerk. The petitioner was subsequently appointed to the post of Junior Assistant vide proceedings dated 19.10.2012 and his services were also regularized in the said post vide proceedings dated 08.04.2013. His probation has thus been declared in the post of Office Assistant in the basic service and in the post of Record Clerk in the Tamil Nadu State and Subordinate Service Rule.

5.The petitioner would further state that the second respondent issued proceedings dated 11.05.2013 wherein, 2% of eligible candidates for appointment by transfer from Ministerial Service to the post of PG Assistant (Tamil) for the year 2013-2014 was prepared and vide the said proceedings, only one post of PG Assistant (Tamil) was filled up by recruitment by transfer. Therefore, the petitioner approached the respondents under the Right to Information Act, 2005 and he was informed that he was not included in the said list as his probation was not declared in the post of Junior Assistant.

6.Hence, the petitioner filed W.P.No.7684 of 2014 seeking a Mandamus to appoint the petitioner to the post of PG Assistant (Tamil) without insisting upon the declaration of probation in the post of Junior Assistant for the year 2013-2014 and this Court vide order dated 10.03.2015 allowed the writ petition and without complying with the order of this Court, the respondent vide order dated 12.06.2015, rejected the application of the

petitioner on the ground that as on the date of the issuance of the order i.e., on 26.02.2015, there are a number of individuals who are placed above the petitioner with regard to seniority for recruitment by transfer and hence, the petitioner's claim may not be considered.

7.Hence, the petitioner filed Contempt Petition in Cont.P.No.2007 of 2015 bringing to the notice of this Court the order of the respondent dated 12.06.2015. This Court, during the contempt proceedings directed the respondents to file an affidavit as to how the orders of this Court were complied with and further directed the respondents to file an affidavit with regard to the eligibility of the petitioner as on the date of filing the writ petition i.e., inclusion in the panel as on 01.01.2013 and not as on 01.01.2014 or 01.01.2015.

8.The petitioner would further state that the respondents filed typed set of papers stating that the petitioner was qualified as on December, 2012 but, strangely, filed counter affidavit stating that since the petitioner's results were declared in April, 2013 for the post of P.G.Assistant, the petitioner was not qualified for inclusion as on 01.01.2013. Therefore for the non-inclusion of the petitioner for the year 2013-2014 is concerned, the same was confined only to the fact that the results were published in April, 2013. This Court vide order dated 10.02.2016, recorded the statement of the counsel for the respondents therein and granted liberty to the petitioner to challenge the said stand of the respondents. Hence, this petition.

9.The learned counsel appearing for the petitioner in support of her contentions relied upon the judgment of the Hon'ble Division Bench of this Court dated 27.02.2015 made in W.A.No.803 of 2013 (1.The Director of Elementary Education, College Road, Chennai 600 006 and another Vs. K.Nedumaran) and would submit that the respondents ought to have fixed the seniority based on the date of examination and not based on the date of publication of result and prayed for appropriate orders.

10.Heard the submissions made on either side.

11.It is relevant to extract paragraph no.9 of the judgment of the Hon'ble Division Bench of this Court dated 27.02.2015 made in W.A.No.803 of 2013 (1.The Director of Elementary Education, College Road, Chennai - 600 006 and another Vs. K.Nedumaran) hereunder:

"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, this writ appeal is dismissed. No costs. Consequently the connected miscellaneous petition is closed."

12.Irrespective of the submissions made on either side, since the writ petition has been filed seeking a Mandamus, this Court directs the petitioner to give a fresh representation to the respondents along with a copy of this order, within a period of two weeks from the date of receipt of a copy of this order and the respondents on receipt of the same, shall consider the said representation in the light of the judgment of the Hon'ble Division Bench of this Court dated 27.02.2015 made in W.A.No.803 of 2013 (1.The Director of Elementary Education, College Road, Chennai - 600 006 and another Vs. K.Nedumaran) and pass appropriate orders, on merits and in accordance with law, within a period of six weeks thereafter.

13.The writ petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

1. The Secretary to Government,
State of Tamilnadu
School Education Department,
Secretariat, Chennai-9.
2. The Principal Accountant General,
O/o.The Accountant General (A&E),
Tamilnadu, Chennai.

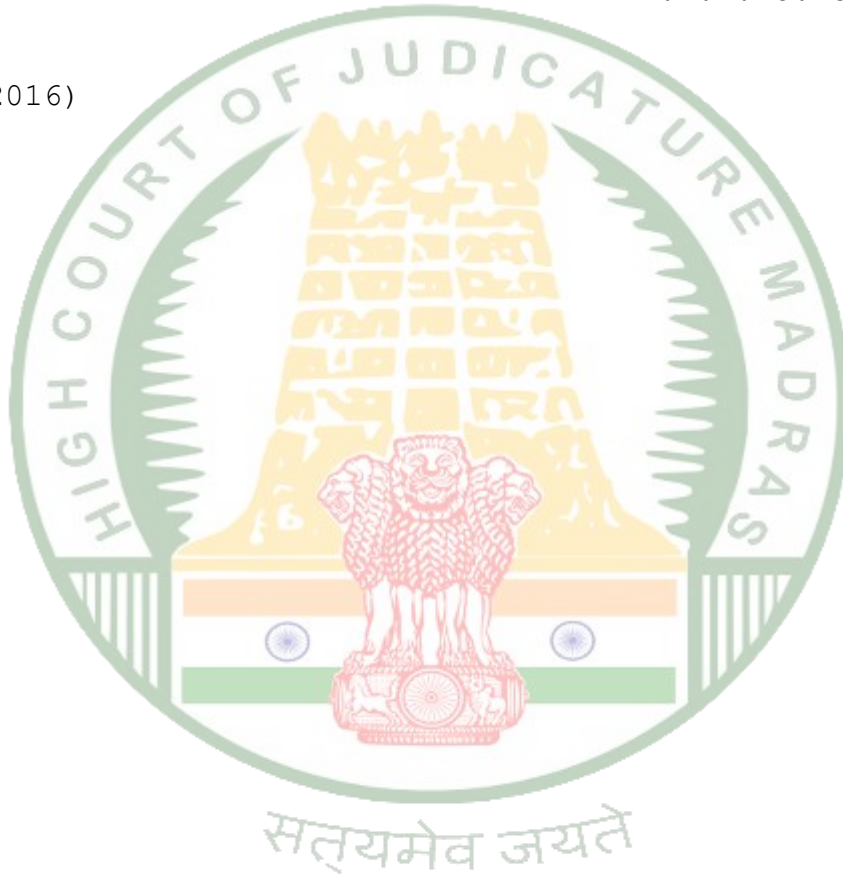
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3. The District Adidraavidar Welfare Officer,
Cuddalore District,
Cuddalore.

+1cc to Ms.Dakshayani Reddy, Advocate, S.R.No.57033
+1cc to the Government Pleader, S.R.No.57184

W.P.No.15352 of 2016
and
W.M.P.No.13386 of 2016

AD(CO)
CA(26/10/2016)



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