

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:17.11.2016

CORAM

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.4691 of 2010

S.Varadarajan

.. Petitioner

/vs/

1.The Secretary to Government,
Education Department,
Fort St.George,
Chennai 600 009.

2.The Director of Elementary Education,
College Road,
Chennai 600 006.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent in his proceedings RC.No.40361/12/2009, dated 01.02.2010 and quash the same and direct the respondents to promote the petitioner as Assistant Elementary Educational Officer with effect from the date of his application.

For Petitioner : Mr.G.Jeremiah
For Respondents : Mr.V.Jayaprakash Narayanan
Special Government Pleader

O R D E R

The prayer in the Writ Petition is for a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent in his proceedings RC.No.40361/12/2009, dated 01.02.2010 and quash the same and direct the respondents to promote the petitioner as Assistant Elementary Educational Officer with effect from the date of his application.

2. The case of the petitioner is that the petitioner was serving as Headmaster in the erstwhile Vivekanandha Aided Primary School, Chinna Allapuram, Vellore from 22.01.1999 till August 2008. When the Management had handed over the School to the Department for converting the School into a Government Institution, by the proceedings of the District Elementary Educational Officer, Vellore, dated 22.08.2008, the petitioner was deputed as Headmaster of the Government Primary School,

Rangapuram, Vellore, on temporary basis. The Government issued G.O.Ms.No.79, Education Department, dated 18.01.1990, whereby 10% of post of Deputy Inspector of Schools was upgraded and re-designated as Assistant Elementary Educational Officer for qualified Secondary Grade Teachers serving in the Aided and Local Body Schools. The petitioner has possessed required qualification and experience for consideration for the post of Assistant Elementary Educational Officer. As he was having qualification of M.Phil Tamil, M.A. Tamil Degree, besides B.Ed., and a Diploma in Teacher Education and he also passed Deputy Inspectors Test Papers 1 and 2, Educational Statistics and Account Tests for Subordinate Officers Part I and also Tamil Nadu Government Officers Manual Test, he claimed consideration for the post of Assistant Elementary Educational Officer. Since the petitioner's name was not considered for the post of Assistant Elementary Educational Officer, he issued a legal notice on 22.06.2008 to the respondents. As there was no response from the respondents, the petitioner had sent a representation on 05.11.2009 to the respondents. On 13.11.2009, the first respondent had informed the petitioner that his request has been forwarded to the second respondent for due consideration. Therefore, the petitioner, on 27.11.2009 had also made a request to the second respondent to process his application at the earliest regarding appointment for the post of Assistant Elementary Educational Officer. Since the said representation was not considered, the petitioner filed a Writ petition in W.P.No.25778 of 2009 before this Court and this Court, by order dated 14.12.2009, directed the respondents to pass orders on his representation. Only pursuant to which, the 2nd respondent, by the impugned order dated 01.02.2010, rejected the request of the petitioner for appointment to the post of Assistant Elementary Educational Officer as not being feasible for compliance and rejected his representation dated 05.11.2009. Since the reasons stated in the impugned order of the second respondent dated 01.02.2010, are unsustainable and unacceptable, the petitioner has come out with the present writ petition challenging the said order for the aforesaid prayer.

3. Heard both sides.

4. The learned counsel appearing for the petitioner, by relying G.O.Ms.No.79, Education Department, dated 18.01.1990 would contend that as per the said amendment, 10% of the post, out of 50% substantive vacancies of Assistant Elementary Educational Officer shall be filled up (or) reserved to be filled up from among the qualified Secondary Grade Teachers and other Teachers with Secondary Grade scale of pay working in the recognized Higher Secondary School and High School as well as Middle School and also in the Elementary School under the Local Body including all Aided Management Schools.

5. Learned counsel appearing for the petitioner would further submit that the petitioner was initially working at Aided Primary School namely, Vivekanandha Aided Primary School till 2008. When the management handed over the School to the Government, the petitioner was deputed as Headmaster to Government Primary School, Rangapuram, by the proceedings of the 2nd respondent dated 22.08.2008. During the pendency of the writ petition, the petitioner was again re-transferred to yet another Aided Management School namely, National Aided School, Vellore, on 12.07.2013, where he is still working.

6. In view of the said facts, since he is fully eligible for considering the appointment of Assistant Elementary Educational Officer, especially under 10% reserved quota as provided under G.O.Ms.No.79, Education Department, dated 18.01.1990, the rejection made by the second respondent in the order impugned cannot be sustained and therefore, he prays the writ petition to be allowed.

7. Per contra, the learned Special Government Pleader appearing for the respondents would contend by relying upon the averments made in the counter affidavit filed on behalf of the respondents that according to the amendment made in the Special Rules for the Tamil Nadu Elementary Education Subordinate Service under G.O.Ms.No.499, Education, Science and Technology Department, Dated 26.06.1995, the appointment to the post of Assistant Elementary Educational Officer shall be by transfer from the Headmaster or Headmistress of Middle School (with B.Ed. Qualification). Since the petitioner was deputed as Headmaster of the Government Primary School, the above said Rule does not contemplate the appointment from the Headmaster of Primary School as Assistant Elementary Educational Officer even by transfer. Moreover, the maximum years for entering into the service as Assistant Elementary Educational Officer was fixed at 40 years for SC/ST and 35 years for others as on 01.07.2009. The petitioner has already crossed the prescribed age limit and even on that ground also, the request of the petitioner cannot be considered. The request of the petitioner for appointment to the post of Assistant Elementary Educational Officer was not feasible of compliance. Hence, it was rejected by the second respondent and therefore, there is no need for any interference of this Court in the said impugned order and in that view of the matter, the learned Government Pleader appearing for the respondents wants this writ petition to be dismissed.

8. This Court has considered the said rival submissions made by the learned respective counsel appearing for both sides and also the materials placed before this Court for perusal.

9. The post of Assistant Elementary Educational Officer is an Administrative post, which was created to look into the

Schools running under the said officer. The School having up to 8th standard comes under the jurisdiction of the officer concerned. Since the Panchayat Union schools were brought under the Government from the 1st June 1981, all Teachers and Basic Servants working in the Panchayat Union Schools had become whole time Government Servants. Therefore, when the Legislature enacted the Tamil Nadu Panchayat Act, 1994 (herein after referred to as "the Act"), the Rule making power was given to the Government under Sub-Section 2 of Section 108 of the Act, to make Rules relating to the conditions of service of the Teachers including Headmaster and basic Servant in the Panchayat School. Pursuant to the said power under Section 62-A of the erstwhile Tamil Nadu Panchayat Act, 1958 (TamilNadu Act XXXV of 1958) vested in the Government, the Government framed Rules in G.O.Ms.No.1383, Education (PUS-I) Department, dated 23.08.1988. By the said Rule, various categories of post, such as, Headmaster, Headmistress of Middle School, Language Pandit etc. had been given their method of recruitment, transfer of service and other service conditions have also been given in the said Rule. Subsequently, by another Government Order in G.O.Ms.No.499, Education, Science and Technology Department, dated 26.6.1995, an amendment was made, by which, the erstwhile post of Deputy Inspector of School is upgraded and re-designated as Assistant Elementary Educational Officer. Such amendment was made under G.O.Ms.No.498, Education, Science and Technology Department, which was carried out on 26.06.1995. According to the said amendment, the post was placed under category No.1 (i.e.) Assistant Elementary Educational Officer, for which the appointment can be made by way of transfer from Headmaster or Headmistress of Middle School with B.Ed., qualification.

10. Merely because such an amendment was made in the said Rule under the power vested with the Government in the Act, it cannot be said that the service of Assistant Elementary Educational Officer is fully governed by the said Rule only and therefore, G.O.Ms.No.79, Education Department, dated 18.01.1990 could not be made applicable to the said service as contended by the learned Special Government Pleader appearing for the respondents and the same is not acceptable. In G.O.Ms.No.79, Education Department, dated 18.01.1990, the amendment was made in Rule 3, Sub-Rule (a) in the table and the proviso made therein was amended by way of following substitution.

"Provided that fifty percent of the substantive vacancies shall be filled by direct recruitment and out of this, ten percent shall be filled or reserved to be filled from among the qualified Secondary Grade teachers and others. Teachers with Secondary Grade scale of pay, working in recognised Higher Secondary Schools, High

Schools, Middle Schools and Elementary Schools under the Local Bodies (Corporation or Municipal) and all Aided Managements."

11. By virtue of this amendment, which was made on 18.01.1990, the said Rule since having been framed under the proviso to Article 309 of the Constitution of India, the same shall have a statutory force. Therefore, the import of said proviso is to fill up 50% of the substantive vacancies by direct recruitment and out of that, 10% shall be filled up (or) reserved to be filled up by the Secondary Grade Teachers, which included the Teachers from Aided Management Schools.

12. Therefore, the said amendment made in the said proviso is enabling the authorities to make appointment in the substantive vacancies to the extent of 50% by direct recruitment and while making such direct recruitment, 10% shall be reserved for the qualified Secondary Grade Teachers working in the recognised Higher Secondary School, High School, Middle School, Elementary School under Local Body and all Aided Management Schools. Therefore, the Elementary Schools under Local Bodies, includes Corporation or Municipality Schools, who are one among the categories for consideration of such appointment of the 10% quota. The teachers working in all Aided Management Schools also could become eligible claiming for appointment under the said 10% quota. Only on that basis, the petitioner had made his claim to be appointed as Assistant Elementary Educational Officer, as he is fully qualified. However, the said request was rejected by the second respondent by the impugned order stating that the amendment made under G.O.Ms.No.79, Education Department, dated 18.01.1990 is only in respect of Tamil Nadu Educational Subordinate Service and Tamil Nadu Higher Secondary Educational Service and that would not apply to Assistant Elementary Educational Officers.

13. Further, reason was given by the 2nd respondent that the post of Assistant Elementary Educational Officer is Administrative in nature, therefore, the teachers cannot be appointed therein. Both the reasons are totally unacceptable for the simple reason that the amendment made under G.O.Ms.No.79, does not specify to which service, either in Tamil Nadu Educational Subordinate Service or in Tamil Nadu Higher Secondary Educational Service alone it would be applicable. The impugned order does not say that 10% of reservation to the post would be applicable only in these two services and the Assistant Elementary Educational Officer post could not come in that service, therefore, the same could be made applicable in respect of Secondary Grade Teachers also.

14. The Assistant Elementary Educational Officer is the post for which, the appointment can be made by way of transfer

from the post of Headmaster or Headmistress of Middle School also. If any teacher is working with the Secondary Grade qualification either in High School or Higher Secondary School or Local Body School and Private Aided School, they can very well be considered for the post of Assistant Elementary Educational Officer in the 10% quota. When the specific reservation of 10% is made for making appointment for the post of Assistant Elementary Educational Officer from any other post from these categories, then there shall be no impediment to accept the candidature of the petitioner for consideration for the appointment in the post of Assistant Elementary Educational Officer. When that being so, the reason given by the second respondent in the impugned order cannot be accepted and therefore, this Court has no hesitation to hold that the impugned order is unsustainable and therefore, it is liable to be quashed. Accordingly, the same is quashed.

15. Yet another objection raised on behalf of the respondents for consideration of the candidature of the petitioner is that he has already crossed the maximum age limit of 35 years. But, the respondents failed to note that had the application, which was made by the petitioner, been considered in proper perspective by applying this Rule i.e. amendment made under G.O.Ms.No.79, Education Department, dated 18.01.1990, the petitioner could have been considered. Because of the rejection by way of impugned order and during the pendency of the writ petition, the petitioner has crossed the age limit. Therefore, the respondents can very well relax the maximum age prescribed for appointment to the said post, insofar as the petitioner is concerned. In view of the long pendency of the litigation before this Court of law, that impediment also cannot be put against the petitioner.

16. In the result, the impugned order is quashed. The issue is remanded back to the respondents for re-consideration. In view of the above discussions made in this order even if one vacancy is available in the post of Assistant Elementary Educational Officer, for the same, the petitioner shall be considered, provided if, he is otherwise eligible on other aspects, than the one indicated in the impugned order. If the petitioner is ultimately considered for the appointment of Assistant Elementary Educational Officer, the same shall be made, without any further delay and in that case, his service benefits without any pay benefits and backwages for all these years, shall also be considered by the respondents. At any rate, the needful shall be done, within a period of three months from the date of receipt of a copy of this order.

17. The writ petition is allowed to the extent indicated above. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

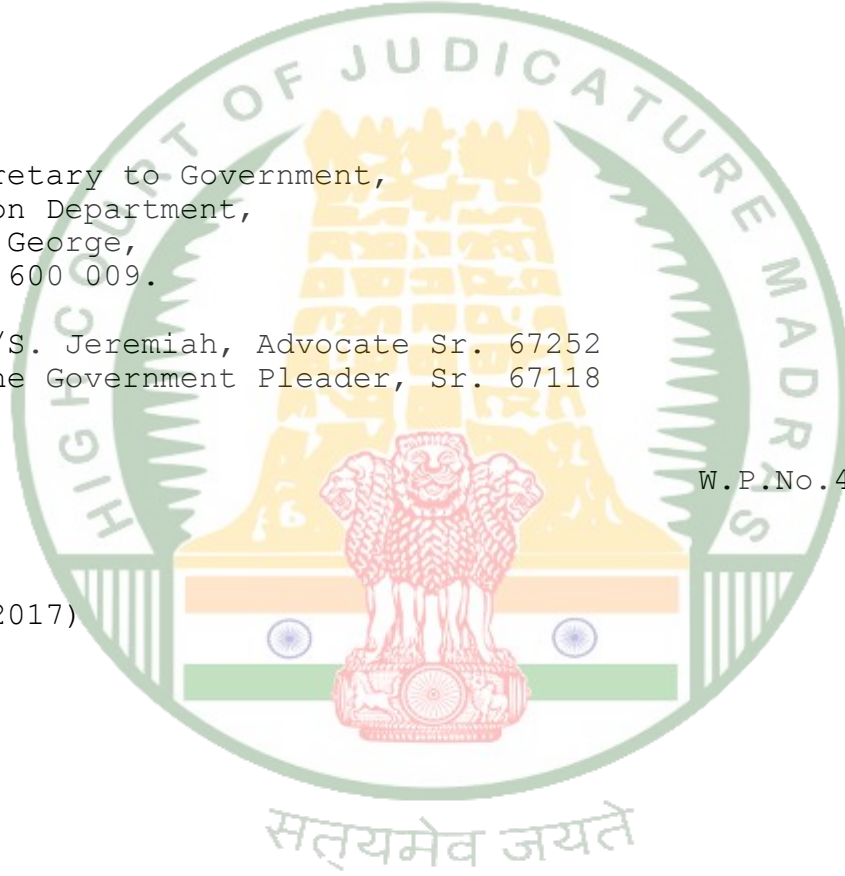
To

1.The Secretary to Government,
Education Department,
Fort St.George,
Chennai 600 009.

+1cc to M/S. Jeremiah, Advocate Sr. 67252
+1cc to the Government Pleader, Sr. 67118

W.P.No.4691 of 2010

MP (CO)
VR (24/03/2017)



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