

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.08.2016

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P. No.26464 of 2015 and M.P.No.1 of 2015

S.Sadhasivam
Physical Director, Grade II,
Government Higher Secondary School,
Guzhiliampari,
Dindigul District ... Petitioner

-vs-

1. The Government of Tamilnadu
Rep. By its Principal Secretary,
School Education Department,
Fort St. George,
Chennai - 600 009
2. The Director
School Education Department,
College Road, Chennai - 600 006
3. The Joint Director (Personnel)
School Education Department,
College Road, Chennai - 600 006
4. The Joint Director (Higher Education)
School Education Department,
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 respondents to promote the petitioner to post of Physical Education Director, Grade-I by including his name in the panel dated 18.08.2015 forthwith.

For Petitioner : Mr.M.R.Jothimanian

For Respondents: Mr.S.Gunasekaran

Additional Government Pleader

O R D E R

The prayer in the Writ Petition is to direct the respondents to promote the petitioner to the post of Physical Education Director, Grade-I by including his name in the panel dated 18.08.2015 forthwith.

2. According to the learned counsel for the petitioner, the petitioner has appeared for the departmental examination before the crucial date for promotion for the year 2014 -2015. According to him, the crucial date is 01.01.2015 and he appeared for the departmental examinations in December, 2014 and the results were published only on March, 2015. However, his request for promotion for the year 2014 -2015 was not considered. Hence, the petitioner has come forward with this Writ Petition.

3. In this connection, the learned counsel for the petitioner would also contend that pursuant to the interim order of this Court dated 24.08.2015, the petitioner was directed to participate in the counselling for promotion to the post of Physical Director, Grade-I and the result was directed to be kept in a sealed cover.

4. The learned counsel for the petitioner further contended that since the petitioner has appeared for the departmental examination and the results were published later, the last date on which the examination was conducted is a crucial date and the same has to be taken into consideration for promotion for the year 2014-2015. He further submits that in this case, the examination was conducted in December, 2014 and the petitioner was eligible for promotion as on 01.01.2015 viz., the cut off date itself.

5. The learned Additional Government Pleader appearing for the respondents would only contend that subsequent to the Order of this Court in the case of K.Nedumaran Vs. The Director of Elementary Education, Chennai and another, in W.P.No.17095 of 2012 dated 13.07.2012, the petitioner herein is eligible for promotion for the year 2015-2016, but, he will not be eligible for the year 2014-2015.

6. Heard the learned counsel on either side and perused the materials placed before this Court.

7. On a careful perusal of the entire proceedings, one thing is clear that the petitioner had acquired all the qualifications by writing the departmental examinations prior to 01.01.2015, but, only the result has been published later on, i.e, in March, 2015. The same position was earlier discussed by this Court in the case of K.Nedumaran Vs. The Director of Elementary Education, Chennai and another, in W.P.No.17095 of 2012 dated 13.07.2012. In that case it is held that "the petitioner appeared for the departmental tests conducted on 27.12.2010 and 28.12.2010, the results of which were published on 16.03.2001; in the meantime a penal was drawn for promotion to the post of Superintendent from among the Assistants for the year 2001-2002

taking the crucial date as 15.03.2001". Therefore, this Court has held in Paragraph Nos. 6 and 7 as follows:-

6. It is not in dispute that the petitioner appeared for the departmental tests conducted on 27.12.2000 and 28.12.2000, the results of which were published on 16.03.2001. In the meantime, a penal was drawn for promotion to the post of Superintendent from among the Assistants for the year 2001-2002 taking the crucial date as 15.03.2001 in which the name of the petitioner was not included. The petitioner having passed the departmental test on 16.03.2001 and the examinations having been held on 27th and 28th December 2000, Fundamental Rules 26 (a) will come into operation and the petitioner is deemed to have passed the tests on 29.12.2000, the date of the last examination. This Court, in identical circumstances, passed an order in WP No. 18573 of 2010 dated 02.09.2010, wherein, in para Nos. 4, 5 and 6, it was held as follows:-

"4. The stand taken by the respondents in the counter affidavit is that to be eligible for consideration for promotion to the post of Graduate Assistant, one must have obtained the requisite qualification as on 01.01.2010. According to the respondents, the petitioner is not eligible for consideration as on 01.01.2010, since, he did not qualify before the said date.

5. But, the above stand of the respondents is actually fallacious. The acquisition of educational qualification would always be with reference to the date on which the last examination was taken by the candidate. In this writ petition, there is no denial of the fact that the petitioner wrote the qualifying examination in December 2009, but the results were published only in May 2010. The moment results are published, they would relate back to the date of the last examination. Therefore, the stand taken by the respondents that the petitioner should have actually obtained the degree before 01.01.2010 is not sustainable.

6. In view of the above, this writ petition is allowed, directing the respondents to consider the petitioner as eligible for recruitment to the post of Graduate Assistant provided all other conditions are satisfied....."

The above said order dated 02.09.2010 in WP No. 18573 of 2010 was also followed by me in WP No. 15060 of 2012 dated 22.06.2012.

7. In view of the above judgment, the impugned order of the second respondent is set aside and the second respondent is directed to consider the claim of the petitioner to include his name in the appropriate place in the panel dated 15.03.2001 for promotion to the post of Superintendent from the cadre of Assistant and pass revised orders expeditiously. It is made clear that if the petitioner is entitled to get promotion to the post of Superintendent, he is entitled to get only service benefits and not monetary benefits out of such promotio. The writ petition is ordered in the above terms. No costs. Consequently, connected miscellaneous petition is closed."

8. Aggrieved against the said order, an appeal was preferred by the Department in W.A.No.803 of 2013 The Hon'ble Division Bench of this Court on 27.02.2015 have not only confirmed the above judgment, but also held that in Paragraph Nos.6,7,8 and 9 as follows:-

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.

9. Therefore, the only point, which arises for consideration before this Court is, whether before the crucial date, the petitioner has appeared for the examination or not. In this case, the petitioner has rightly appeared for the examination. Yet another fact is that the results were kept in the sealed cover, which was directed to be produced before this Court by an order dated 15.06.2016 and the same is duly produced before this Court today.

10. The sealed cover is opened before this Court and it is seen that the petitioner has been selected to the promotional post, but, of course, only for the year 2015-2016 and not for the year 2014-2015. However, it is made clear that this order will not affect the other persons who were promoted earlier. The petitioner's juniors, namely, V.Gowthaman and C.Kannan were promoted to the post of Physical Director, Grade-I, whose date of appointments are 08.02.2012 and 21.11.2011 respectively and their date of regularisation are 08.02.2012 and 21.11.2011 respectively and they were regularised by proceedings in Na.Ka.No.035836/W3/E2/2015 dated 18.08.2015. Therefore, following the above said decisions mentioned supra, this Court

directs the respondents 3 and 4 to place the petitioner, next to C.Kannan and above V.Gowthaman and pass appropriate orders.

With the above observation, the Writ Petition is allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Secretary,
The Government of Tamilnadu,
School Education Department,
Fort St. George,
Chennai - 600 009
2. The Director
School Education Department,
College Road, Chennai - 600 006
3. The Joint Director (Personnel)
School Education Department,
College Road, Chennai - 600 006
4. The Joint Director (Higher Education)
School Education Department,
College Road, Chennai - 600 006.

+1cc to the Government Pleader Sr.49295

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M.P.No.1 of 2015

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srg 30/09/2016

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