

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2016

CORAM

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.16849 of 2010

V.Dhanapal

...Petitioner

Vs.

1. The Director of School Education,
Chennai - 6.

2. The Joint Director of School Education,
(High Seconday)
Chennai - 6.

...Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the first respondent in his proceedings Na.Ka.No.33267/W.1/E.1/2010 dated 30.06.2010 and the order passed by the second respondent in his proceedings Na.Ka.No. 42291/W.3/E.2/96 dated 19.12.2008 and quash the same and direct the respondents to settle all the terminal benefits in the cadre of Headmaster of Higher Secondary School.

For Petitioner : Mr.P.Ganesan for C.S.Associates

For Respondents: Mr.V.Jayaprakash Narayanan,
Special Government Pleader.

सत्यमेव जयते
O R D E R

The prayer in the writ petition is for the Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the first respondent in his proceedings in Na.Ka.No.33267/W.1/E.1/2010, dated 30.06.2010, and the order passed by the second respondent in his proceedings in Na.Ka.No. 42291/W.3/E.2/96, dated 19.12.2008, and to quash the same and direct the respondents to settle all the terminal benefits in the cadre of Headmaster of Higher Secondary School.

2. The case of the petitioner is that he has possessed the qualification of B.A., B.P.Ed, M.P.Ed and registered his name in the employment exchange. He was selected and appointed

as Grade II Physical Director, on 04.09.1974. While he was working so, the government introduced Higher Secondary system of education and issued orders with a specific direction to fill up all the vacancies of P.G. Assistants and Grade I Physical Directors for Higher Secondary section, with the persons who are having necessary qualifications and if there are no qualified hands, the vacancies are directed to be filled by engaging the B.T. Assistants, as Inducted Teachers, with allowance. Subsequently, a Special Rule, governing the Tamil Nadu Higher Secondary service, came on 28.04.1981, in which the unqualified Inducted Teachers were given five years time to acquire the qualifications and as and when, they acquire the qualifications, their services have to be regularized.

3. The petitioner further states that he has already possessed the qualification of M.P.Ed., which is required for appointing as Grade I Physical Director, in Higher Secondary School. Therefore, pursuant to the selection process, initiated by the Tamil Nadu Public Service Commission, the petitioner participated in the selection and he was selected by the Tamil Nadu Public Service Commission as Physical Director, Grade I and he was appointed on 28.11.1978 at the Government Higher Secondary School, Oddanchattram. Thereafter, the petitioner was promoted in the year 1994 as Higher Secondary School Headmaster and he retired on 30.04.2003 on attaining the age of superannuation.

4. The petitioner gave several representations, while he was working as Physical Director Grade I, for incentives and increments. However, the respondent issued show cause notice dated 28.01.1997, stating that the petitioner is entitled to be appointed as Physical Director Grade I, only from the year 1981, when he joined in Sendamangalam Higher Secondary School pursuant to the selection and appointment by the Tamil Nadu Public Service Commission. Challenging the said show cause notice, the petitioner filed an Original Application in O.A.No.1231 of 1997 and the said O.A. was pending for several years and later it was transferred to this Court and renumbered as W.P.No.28796 of 2006.

5. The said W.P.No.28796 of 2006 was disposed of by this Court by order dated 10.06.2008, wherein the learned Judge has observed that there is nothing to be adjudicated in the matter after a lapse of more than 11 years. It was further observed therein, that it is needless to say that the petitioner has to approach the authorities to get his entire retirement benefits and the petitioner was directed to send a representation to the respondents in this regard within a stipulated period and on the petitioner submitting a representation, the respondents were directed to consider the same within a time frame.

6. Thereafter, the petitioner had submitted a representation, on 02.08.2008, seeking service benefits, based on his seniority and appointment as Physical Director, at Higher Secondary School. The aforesaid representation was considered and order has been passed by the first respondent, on 19.12.2008, which is impugned in this writ petition.

7. In the said order, the first respondent has stated that the petitioner was promoted as Physical Director Grade I only in the year 1981 and only based on such promotion, his service record has been maintained, and his seniority would be only on the basis of his appointment or transfer as Physical Director Grade I in the year 1981. Thus, the request of the petitioner was rejected by the first respondent, through the impugned order.

8. Heard both sides.

9. The learned Government Pleader appearing for the respondents relying upon paragraph numbers 2, 3 and 5 of the counter affidavit, would state that though the petitioner was appointed as Physical Education Teacher, in the year 1978, he was posted as Physical Director Grade I, at the Government Higher Secondary School, Senthamangalam, Salem District only on 21.02.1981 and as such, his turn for the post of Headmaster would reach only in the year 2006. Since the petitioner retired in the year 2003, the question of including his name in the panel for promotion, as on 01.01.2006, to the post of Higher Secondary Head Master would not arise.

10. Thereafter, the first respondent issued a show cause notice and that was the subject matter in the first round of litigation. Therefore, the Special Government Pleader would contend that the petitioner's request for service benefits and regularization of service as Physical Director Grade I from 1978 cannot be considered and the impugned order passed by the first respondent is sustainable. Accordingly, the learned Special Government Pleader prays dismissal of the writ petition.

11. In the counter affidavit, at paragraph number 2, filed by the respondents, it is stated that the petitioner was selected by the Tamil Nadu Public Service Commission and appointed as Physical Director Grade II, on 28.11.1978, in Government Higher Secondary School, Oddanchatram. Then Grade I Physical Director post was sanctioned to the Government Higher Secondary School, Sendamangalam, Salem district and the petitioner was transferred to the said school and he joined duty on 21.02.1981. Though the aforesaid facts have been given by the respondents, in their counter affidavit, they failed to note one fact that when the petitioner was appointed on 28.11.1978, through Tamil Nadu Public Service Commission he was appointed in

the Government Higher Secondary School, Oddanchatram, with a qualification of M.P.Ed., and only after having worked there for some years, he was transferred to Sendamangalam Higher Secondary School, on 21.02.1981.

12. The petitioner's joining in the transferred school, on 21.02.1981, cannot be treated as date of promotion as Physical Director Grade I, for the reason that all Government Higher Secondary Schools have the post of Physical Director Grade I. There is no post of Physical Director Grade II in Government Higher Secondary Schools. Since the petitioner having selected and joined in the Government Higher Secondary School, for all purposes, the said post has to be treated only as Physical Director Grade I, and not otherwise. These factors have not been properly understood by the official respondents concerned and therefore their contention at paragraph number 3 of the counter affidavit that the petitioner was mistakenly regularized from 28.11.1978, cannot be accepted and therefore, on the basis of that reasoning, the denial of service benefits to the petitioner, can also not be accepted.

13. Moreover, the Special Rules for the Tamil Nadu Higher Secondary Education Service issued in G.O.No.720, Education Department dated 28th April, 1981, have come into force from 01.07.1978, i.e., retrospectively. However, Clause 11 of the said Rule is relevant for the present issue, which is usefully extracted here under :-

"11.Savings:- Notwithstanding anything contained in the rules 2 and 6 above, the services of these persons who are holding, on the date of issue of these Special Rules, the post of Headmasters and Headmistresses, Teachers in Academic subjects, Teachers in Languages and Physical Directors and Physical Directresses in Higher Secondary School and who possess the qualification prescribed for such category in the Annex shall be regularized after obtaining the concurrence of the Tamil Nadu Public Service Commission under the Tamil Nadu Public Service Commission (anc.) Regulations, 1954 and in respect of those persons who do not possess the qualifications prescribed for such category in the Annex and who are holding such posts on the date of issue of these Special Rules shall be regularized only after they acquire the said qualifications and after obtaining the concurrence of the Tamil Nadu Public Service Commission under the Tamil Nadu Public Service Commission Regulations, 1954

provided they acquire the said qualifications within a period of five years from the 1st July 1978. If they fail to acquire the said qualifications within the specified period they shall be replaced by suitable and qualified candidates."

14. According to clause 11 of the said Rules the Headmasters and Headmistresses, Teachers in Academic subjects, Teachers in Languages and Physical Directors and Physical Directresses in Higher Secondary School who possess the qualifications prescribed for such category in the annexure shall be regularized after obtaining the concurrence of the Tamil Nadu Public Service Commission, and in respect of those persons, who do not possess the said qualifications, who can be regularized only after they acquire such qualifications.

15. In so far as the petitioner is concerned, it is stated that the petitioner did possess the qualifications, even at the time of his entry into the service, through the Tamil Nadu Public Service Commission, and he joined only in the Government Higher Secondary School. Therefore, even now, the saving clause, would apply to the persons who are already working, for the purpose of regularization of Physical Director for Higher Secondary School which the petitioner has already obtained on his entering in service. In such view of the matter, the present impugned order, rejecting the claim of the petitioner for service benefits, based on his regularization and seniority as Physical Director Grade I from 1978, is totally unsustainable and therefore, the impugned order is liable to be set aside.

16. In the result, the writ petition is allowed. The impugned order is set aside. The petitioner is entitled to get all his service benefits and other attended benefits based on his claim and the same shall be disbursed after calculating the same in the light of the Special Rules for the Tamil Nadu Higher Secondary Education Service, within twelve weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

To

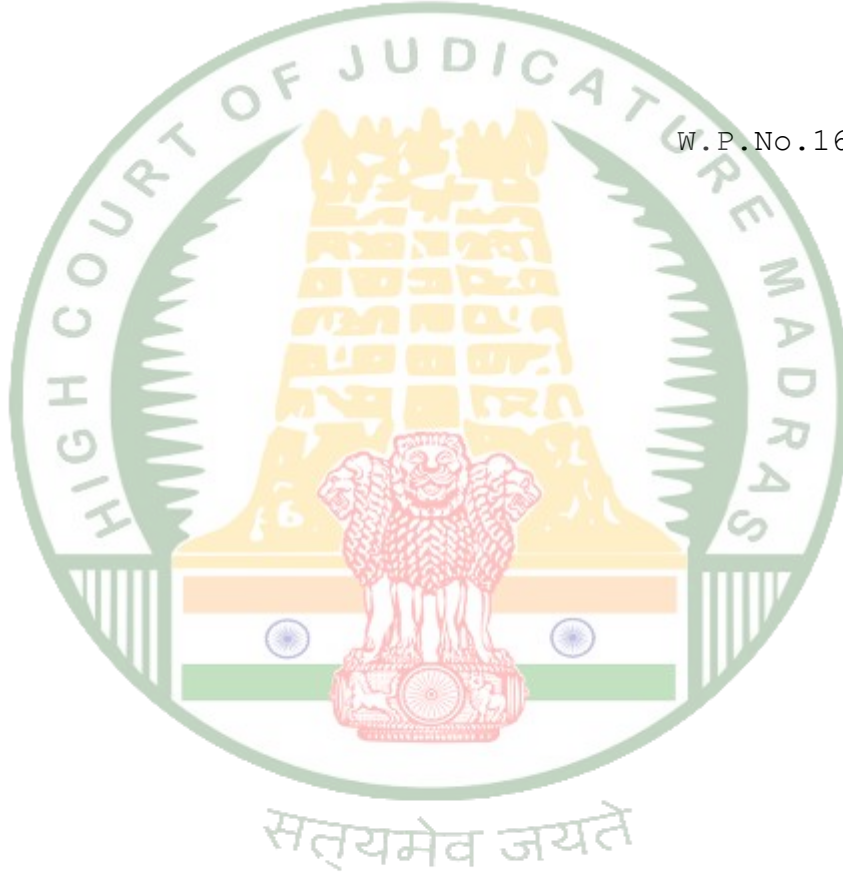
1. The Director of School Education,
Chennai - 6.
2. The Joint Director of School Education,
(High Secondary)
Chennai - 6.

+1 cc to M/s.C.S.Associates,sr.59446

+1 cc to Government pleader,sr.60168.

vgi(co)
krd 22/11

W.P.No.16849 of 2010



WEB COPY