



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED:16.11.2016**

**CORAM:**

**THE HONOURABLE MR.JUSTICE M.GOVINDARAJ**

**Writ Petition(MD)No.6784 of 2011**

Mohan Selvam

... Petitioner

Vs.

1.The Director of School Education,  
Chennai - 600 006.

2.The Member Secretary,  
Teachers Recruitment Board,  
Chennai - 600 006.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents to give letter of appointment to the petitioner retrospectively from 18.12.2002 and confer all consequential benefits including seniority and enrolment in Employees General Provident Fund Scheme.

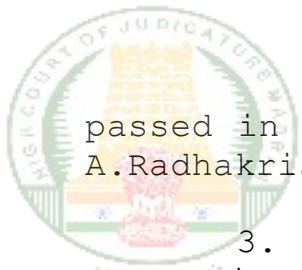
For Petitioner : Mr.V.Paneerselvam for  
M/s.C.S.Associates

For Respondents : Mr.S.Kumar,  
Additional Government Pleader

**ORDER**

The writ petitioner was selected to the Post of Physical Director Grade-I under the selection conducted by the second respondent and the second respondent directed the writ petitioner to appear for counselling for issuing posting orders in proceedings Na.Ka.No.1669/A3/02, dated 10.12.2002.

2. In the meanwhile, the writ petitioner was communicated with the proceeding in Na.Ka.No.1669/A3/AA1/02, dated 26.12.2012, stating that in view of the status quo-order granted by the High Court in W.P.No.43863 of 2002, dated 09.12.2002, the selection was not confirmed by the second respondent. On 28.03.2005, the Division Bench of this Court in W.P.No.21337 of 2004, had set aside the status-quo order and had observed that the appointment given to the writ petitioner is subject to final orders to be



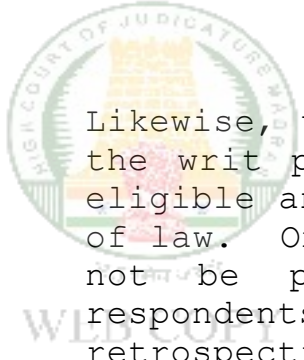
passed in O.A.No.3506 of 2003 filed by the rival claimant by name A.Radhakrishnan.

3. Thereafter, pursuant to the orders passed by the High Court in the above said writ petition, the second respondent issued orders in proceeding Na.ka.No.1381/Aa1/04, dated 12.05.2005. Even though the writ petitioner was selected by the second respondent, it was not implemented. Therefore, the writ petitioner filed another writ petition in W.P.No.7334 of 2006 for implementing the order of the second respondent, dated 12.05.2005. This Court by its order, dated 23.03.2006 has directed the second respondent to implement the same. Pursuant to the order passed in the writ petition mentioned above, the first respondent had issued proceedings in Na.Ka.No.96038/W1(3)/03, dated 19.05.2006 posting him at Government Higher Secondary School, Manalmedu, Nagapattinam District subject to the result of O.A.No.3506 of 2003. Later, on 01.04.2010, the said O.A.No.3506 of 2003 filed by the rival claimant was dismissed as withdrawn by this Court in W.P.No.14371 of 2007(O.A.No.3506 of 2003 was transferred and re-numbered). Thereafter, the writ petitioner made a representation on 15.05.2010 seeking direction to the first respondent to treat his appointment with retrospective effect and to regularize his services between 18.12.2002 and 30.05.2006. Since no action was taken, the writ petitioner has come up with the present writ petition seeking retrospective appointment from 18.12.2002.

4. It is an admitted fact that the writ petitioner was selected by the second respondent among other candidates. All the candidates were appointed and were given posting orders by the first respondent, whereas due to unfortunate circumstances, the writ petitioner could not be given posting order in view of the Court proceedings.

5. The learned counsel appearing for the petitioner would argue that neither the writ petitioner nor the respondents are at fault, but the futile litigation preferred by the said Radhakrishnan had created all these problems. Since the writ petitioner was always ready and willing to join duty and had taken earnest efforts to get the hurdles cleared through Court of law, he should be considered as having joined in the year 2002 itself along with other selected candidates.

6. The learned counsel for the petitioner has also drawn the attention of this Court to the decision rendered in W.P(MD) No.367 of 2013, dated 11.09.2013, wherein a similarly placed person was given favourable relief. In the said writ petition, the writ petitioner's appointment was cancelled by way of Government order and thereafter, the writ petitioner approached the High Court. It was held that she was eligible to hold the Post and the cancellation order was set aside and her appointment was restored with effect from the date of her joining in the Post.



Likewise, the learned counsel for the petitioner would submit that the writ petitioner stands in a better footing and he is always eligible and his eligibility was never questioned before the Court of law. Only because of the interim orders of the Court, he could not be posted. Therefore, it is the submission that the respondents shall be directed to treat his appointment with retrospective effect.

7. I have considered the submissions of the learned counsel for the petitioner and carefully perused the judgments of this Court in W.P(MD)No.367 of 2013, dated 11.09.2013 and it is clear that the writ petitioner is not at fault and he is always ready and willing to join the Post along with other candidates. He was precluded by the interim orders due to the futile writ petition filed by the unscrupulous element. Therefore, I am of the view that it is a fit case to be considered for appointment with retrospective effect ie., from 18.12.2002.

8. In the result, the first respondent is directed to consider the request of the petitioner and appoint him with retrospective effect with effect from the relevant date that may be decided by the respondents, within a period of six weeks from the date of receipt of a copy of this order.

9. The writ petition is disposed of accordingly. No Costs.  
sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

pm

To

1.The Director of School Education, Chennai - 600 006.

2.The Member Secretary, Teachers Recruitment Board,  
Chennai - 600 006.

+1CC to Spl.Government Pleader Sr.No.69772  
Gjm/SS2/28.11.16-3p-4C

**W.P(MD)No.6784 of 2011**  
**16.11.2016**