

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.08.2017

PRONOUNCED ON : 13.12.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.NO.30586 OF 2013

G.Thalamuthu

.. Petitioner

Vs.

1. The Secretary to Government,
School Education Department,
Secretariat,
Chennai - 600 009.
2. The Joint Director (Higher Secondary),
College Road,
Chennai - 600 006.
3. The Chief Educational Officer,
Chennai - 600 015.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records pertaining to the proceedings of the second respondent in Na.Ka.No.31789/W3/E2/2006 dated 06.08.2013 and quash the same and direct the respondents to appoint the petitioner as P.G. Assistant (Economics) by method of recruitment by transfer, with all consequential service, seniority and monetary benefits.

For Petitioner : Mr.C.Johnson

For Respondents : Mr.M.E.Raniselvam
Additional Government Pleader

O R D E R

The writ petition is filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus or direction in nature of writ calling for the records pertaining to the proceedings of the 2nd respondent in ROC.No.31789/W3/E2/2006 dated 06.08.2013 and quash the same and direct the respondents to appoint the petitioner as P.G.

Assistant (Economics) by method of recruitment by transfer, with all consequential service seniority and monetary benefits.

2.The learned counsel for the petitioner submits that the petitioner is fully qualified and originally appointed as a Physical Education Teacher on 28.07.1998, considering his educational qualification, seniority, merit and ability. At the time of his initial appointment he is having the qualifications viz. B.A. (Economics), M.A.(Economics), B.Ed. (Bachelor of Education) and M.Ed. (Master of Education). His services were duly regularized by the respondents on satisfactory completion of probation period with effect from his date of appointment viz. 28.07.1998. The petitioner further submits that he has been continuously working as Physical Education Teacher for more than 19 years and drawing Secondary Grade scale of pay.

3.The petitioner further submitted that he is having all the required educational qualifications and entitled to be considered for promotion as P.G. Assistant in Economics by way of Recruitment by Transfer as contemplated under Special Rules for Tamil Nadu Higher Secondary Educational Service in G.O.Ms.No.720 dated 28.04.1981 and other Government orders and instructions.

4.The 1st respondent had issued G.O.Ms.No.79 Education Department dated 18.01.1990 and G.O.Ms.No.132 EST. Department, dated 21.12.1995 and G.O.Ms.No.223 dated 16.07.1999, amending Tamil Nadu Special Rules for Higher Secondary Service to effect that qualified Secondary Grade Teachers, Physical Education Teachers and other Teachers working with Secondary Grade scale of pay shall be eligible to be appointed as P.G. Assistants in Government Higher Secondary Schools/Aided Schools in the 10% vacancies reserved under Direct Recruitment category as contemplated under Rule 2 Class II and its provisions thereunder. From the reading of the Special Rules for Higher Secondary it has become clear that the said service is distinct and separate service. As such there cannot be any feeder category for being appointed as P.G. Assistants in Higher Secondary Schools. It is also worth to note that High Schools are being governed by separate Educational Service Rules.

5.The petitioner taking advantage of the Government orders, represented before the authorities for his appointment as P.G. Assistant from the 10% quota available for Direct Recruitment by way of Recruitment by Transfer. The claim of the petitioner in and by representation dated 02.06.2006, was rejected by the 2nd respondent/ Joint Director of School Education by its order dated 16.05.2006. In the impugned order, the 2nd respondent stated that there are persons waiting for promotion in non-preferential category in B.T. Assistant cadre and as such the

petitioner cannot be considered for appointment as P.G. Assistant in Economics in preference over the eligible non-preferential persons. Being aggrieved by the proceedings of the 2nd respondent the petitioner herein has originally filed W.P.No.22972 of 2006. Upon hearing respective counsel the writ petition was allowed on 19.10.2010 and impugned order dated 16.05.2006, passed by the 2nd respondent was set aside, directing the 2nd respondent to consider the case with reference to G.O.Ms.No.132 EST. Department, dated 21.12.1995, and consider the candidature of the petitioner for the post of Post Graduate Assistant as and when vacancy arises in P.G. Assistant Economics under 10% reservation as given in the said G.O.

6. Feeling aggrieved, the Government filed Writ Appeal in W.A.No.1783 of 2011, which stands allowed on 12.06.2013, setting aside the order dated 19.10.2010, in W.P.No.22972 of 2006, giving direction to the respondents 2 and 3 to consider petitioner's case as per G.O.Ms.No.720 (Edu.) Special Rules for Tamil Nadu Higher Secondary Educational Service dated 28.04.1981, subject to the availability of other B.T. Assistants in the said category. Consequently, the petitioner submitted a written representation to the 2nd respondent on 26.05.2011 with a request to appoint the petitioner as P.G. Teacher under Recruitment by Transfer as contemplated under Rule 2(a) of Special Rules for Tamil Nadu Higher Secondary Educational Service on par with suitable juniors and confer all his consequential benefits. The said representation was rejected by the 2nd respondent by its order made in Na.Ka.No.31789/W3/E2/2006 dated 06.08.2013, asserting that there are Graduate Teachers (non-preferential) readily and sufficiently available for promotion to the post of Post Graduate Teacher as such no feasibility to promote Physical Education Teachers as Post Graduate Teacher in Economics.

7. The petitioner being aggrieved filed the present writ petition challenging the impugned order dated 06.08.2013 passed by the 2nd respondent. The petitioner contended that there are no candidates preferential or non-preferential in cadre of High School Assistants in Economics. In the absence of feeder category in High School level the petitioner is entitled to be considered for promotion as P.G. Assistant by Recruitment by Transfer as contemplated under Special Rules for Higher Secondary Educational Service as contained in G.O.Ms.No.720 dated 28.04.1981. Under the Special Rules 50% is allotted for Direct Recruits and rest of the 50% is reserved for Recruitment by Transfer. Rule 2(a) of G.O.Ms.No.720 dated 28.04.1981 specifies the method of recruitment of teachers in Academic subjects (including Economics) with regard to Government and aided schools. The said provision is extracted for better clarification:-

The method of recruitment is as under:

"Rule 2(a) Class II of G.O.Ms.No.720 dated 28.04.1981

(i) Direct Recruitment or

(ii) Recruitment by transfer from categories 3 and 5 of Class II of Tamil Nadu Educational Subordinate Service or if no qualified and suitable candidates are available for appointment by method as above, by recruitment by transfer from category 3 of Class V Physical Training Instructors and Instructress of Tamil Nadu Education Subordinate Service or from Category 3 of Class III Physical Education Instructors of Tamil Nadu Educational Subordinate Service B wing or

(iii) If no qualified and suitable candidates are available for appointment by the method (ii) above, appointment shall be made by recruitment by transfer from Category 2 of Class I or from Category 3 of Class III of the Tamil Nadu Educational Subordinate Service."

8. Now it is worth to note that the said Special Rules was amended by passing G.O.s thereby carving out 10% out of 50% reservation available for Direct Recruit category. Emphasizing the said position the learned counsel for the petitioner contended that the petitioner is eligible and entitled to avail the said 10% quota for his appointment as P.G. Teacher in Economics by way of Recruitment by Transfer. The learned counsel appearing for the petitioner further contended that as the petitioner's eligibility comes from the day when he completed his probation, he is entitled to be appointed as P.G. Teacher in Economics on and from 27.07.2000 (The day when the petitioner completed probation). When there is 10% quota available to candidates like petitioner, right from the date of respective G.O.s, such an argument seems to be meaningful as the petitioner is fully qualified.

9. On the contra, the learned Special Government Pleader vehemently contended relying on the counter that the petitioner could not be accommodated by Recruitment by Transfer as he is not in the feeder category. The relevant paragraphs in the counter is extracted as under:-

"It is submitted that in view of the rules in force and already there are sufficient number of B.T. Assistant Teachers under (preferential persons) i.e. persons possessing Bachelor's Degree and Master's Degree in the same subject and under (Non-preferential persons) i.e. persons possessing Bachelor's degree and Master's degree in different subjects are available, the petitioner herein could not be accommodated by recruitment by transfer.

It is further submitted that only in view of the

above facts and circumstance, the claim of the petitioner herein through his representation was rejected and no bias or malafide action was followed in the petitioner's case."

10. On plain reading of G.O.Ms.No.223 School Education Department, dated 16.07.1999 and other G.O.s, one can make it clear that 10% quota is specially reserved for Teachers of Secondary Grade/ Physical Education Teachers and others drawing Secondary Grade scale of pay and thereby petitioner being a Physical Education Teacher very much eligible to be considered for promotion as P.G. Assistant in Economics. It is seen from records that the petitioner is fully qualified and his services were regularized with effect from 27.07.2000. Thus his claim for P.G. Assistant is very much justified as he comes under eligible candidates as prescribed under Special Rules for Higher Secondary Educational Service G.O.Ms.No.720 dated 28.04.1981. Moreover Government Schools and Aided Recognized Schools come within the purview of the above G.O.s and the petitioner being a teacher in Government Higher Secondary School very much satisfies required norms and rules. In view of the above the reasoning given by the respondents in the impugned order cannot be sustained. So also the reasoning given in the counter cannot be accepted. When there are specific Rules the respondents are bound to follow such rules in letter and spirit.

11. From the relevant provisions it is found that 50% is reserved for recruitment by way of transfer from among preferential and non-preferential candidates belonging to B.T. Cadre under the Special Rules. When B.T. Cadre is not the feeder category, such category also stands in equal footing with that of other qualified teachers found in Secondary Grade category. Such be the case in all logical conclusion the Physical Education Teachers are also entitled to be shared with B.T. Cadre in the selection by way of recruitment by Transfer. Therefore, by applying the said analogy the entitlement also comes to Secondary Grade Teachers and eventually the petitioner is also entitled for such benefits.

12. Furthermore, the petitioner admittedly qualified himself to be appointed as Post Graduate Assistant in the year 2000 itself and when the Special Rules for Higher Secondary permits such appointments, the respondents' attitude cannot be appreciated. Moreover deviation cannot be countenanced as the respondents are duty bound to act in the manner set out therein. Furthermore when respondents allowed such claims of similarly placed, the petitioner cannot be discriminated and as such the petitioner is entitled for the relief claimed. In a similar situation the learned Judge had occasion to consider the very same aspect and in categorical and clear judgment in W.P.No.3930

of 2013, allowed the writ petition by setting aside the order passed by the respondent therein.

13.Further, the Hon'ble Supreme Court has time and again deprecated the practice of keeping employees idle even without providing single level promotion in the entire service period. When service jurisprudence contemplates prospect of promotion for its employees, the same cannot be denied to the prejudice of the petitioner especially when the petitioner is fully qualified and having merits to reach the next avenue in terms of Special Rules.

14.In the result:

(a) the writ petition is allowed and the impugned proceedings in Na.Ka.No.31789/W3/E2/2006 dated 06.08.2013 of the 2nd respondent is set aside;

(b) the respondents are directed to consider the name of the petitioner for the post of P.G. Assistant in Economics in terms of the Tamil Nadu Higher Secondary Educational Rules from the day when he qualified and issue appropriate appointment orders with all service and monetary benefits;

(c) the said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Secretary to Government,
School Education Department,
Secretariat, Chennai - 600 009.
2. The Joint Director (Higher Secondary),
College Road, Chennai - 600 006.
3. The Chief Educational Officer,
Chennai - 600 015.

+1cc to Mr.C.Johnson, Advocate, S.R.No.89405

W.P.No.30586 of 2013

SV(CO)

CS/12/01/18