

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2017

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.P.No.27983 of 2015 and
M.P.No.1 of 2015

V.Vengadesan

... Petitioner

-vs-

- 1.Union of India rep.by the
Government of Puducherry through the
Secretary to Government, DP & AR,
Chief Secretariat, Puducherry.
- 2.The Director of School Education,
Directorate of School Education,
Puducherry.
- 3.The Director,
Directorate of Health and Family Welfare,
Puducherry.
- 4.The Registrar,
Central Administrative Tribunal
Madras Bench,
Chennai-600 104.

... Respondents

Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus to call for the records of the fourth respondent in respect of the order in O.A.No.1010 of 2012 dated 22.04.2015 and to quash the same and consequently to direct the second respondent to permit the petitioner to join as Trained Graduate Teacher (Science) on the basis of the appointment order dated 07.12.2010.

For Petitioner : Mr.V.Ajayakumar

For Respondents : Mr.R.Syed Mustafa,
Spl.GP (Puducherry)
for R1 to R3
R4 - Tribunal

ORDER

(Order of the Court was made by HULUVADI G.RAMESH, J.)

The petitioner herein joined as Lower Division Clerk in the third respondent Department on 08.10.2003. On a notification issued by the second respondent in the year 2009 calling for applications to fill up the posts of Trainee Trained Graduate Teacher in different subjects, the petitioner applied for the same and he figured in the waiting list published by the second respondent. Thereafter, an appointment order came to be issued to him on 07.12.2010 appointing him to the said post in Sarva Siksha Abiyan, on contract basis. Since he is a post graduate in Physics and has acquired M.Phil degree and also possessed B.Ed.qualification and belongs to OBC category, he submitted a representation to the third respondent on 10.12.2010 to relieve him by retaining lien in the present post to join the post of Trainee Trained Graduate Teacher. He sought for leave for a period of three years or any other period which is admissible as per rules.

2.On 31.01.2011, a memo was issued to him by the Deputy Director (ESI), Government of Puducherry, wherein the lien sought for by him, was rejected. He approached the authorities to join the said post since the notified vacancy still subsisted. Since there being no response from the respondents 1 and 2, he filed an application before the fourth respondent Tribunal in O.A.No.1010 of 2012 seeking a direction to the respondents 1 to 3 to permit him to join the said post of Trained Graduate Teacher Trainee (Science) on the basis of the appointment order dated 07.12.2010 issued to him, with all other consequential benefits.

3.The Tribunal rejected the original application on the ground that the petitioner did not choose to question the speaking order dated 19.11.2012 issued by the second respondent and that he did not even seek further extension of time after 11.02.2011 to join the said post.

4.Challenging the said order passed by the Tribunal, the present writ petition has been filed by the petitioner.

5.The learned counsel for the petitioner has submitted that even though the petitioner is fully qualified for the post of Graduate Teacher, he was forced to join as a Lower Division Clerk and consequently promoted as Upper Division Clerk. He further submitted that when the petitioner was issued with the appointment order dated 07.12.2010, he filed a representation dated 10.12.2010 to the third respondent to relieve him so as to enable him to join the post of Trainee Trained Graduate Teacher and to retain lien in the post in which he was working, but no

action was taken on the said representation made by the petitioner. Due to repeated representations, a file was sent to the Chief Secretary and the Chief Secretary directed the third respondent to consider him for appointment on deputation basis, but the said decision was not communicated to the petitioner. Finally on 31.01.2011, the petitioner was issued with a memo by the Deputy Director (ESI), Government of Puducherry, stating that lien cannot be granted since the petitioner was going to take up a job which was for a particular period. He further submitted that the subsequent representations made by the petitioner requesting the second respondent to permit him to join duty after resigning the post of Upper Division Clerk, was also not considered by the second respondent and in that regard, no intimation was given to the petitioner. Stating so, the learned counsel prayed for quashing the order passed by the Tribunal and to direct the authorities to second respondent to permit the petitioner to join as Trained Graduate Teacher (Science) on the basis of the appointment order dated 07.12.2010 issued to the petitioner.

6.The learned Special Government Pleader (Puducherry) appearing for the respondents 1 to 3 has submitted that the request of the petitioner could not be considered as per FR.13 and since no provision is available to consider for retention of lien as prayed for by the petitioner, the order dated 31.01.2011 was passed by the Deputy Director (ESI), Government of Puducherry. He also relied upon the order passed by the second respondent dated 19.11.2012 and submitted that the Tribunal has passed a well considered order rejecting the claim of the petitioner and hence the same does not require any interference.

7.Heard the learned counsel on either side and perused the materials available on record.

8.On a perusal of the typed set of papers, we find that the second respondent has passed a detailed order on 19.11.2012. In the said order, it has been observed that the concept of 'deputation' is alien to contractual appointments and hence there was no scope for considering the petitioner alone as a special case for engagement on deputation basis to the post of Trainee Trained Graduate Teacher which was notified to be filled up purely on contractual basis. It is also observed that even though the petitioner was granted time up to 11.02.2011 for joining duty, he did not join and he did not make any further representation till the completion of the entire recruitment process. It is also submitted that the petitioner failed to report for duty even after the extended period and hence the offer of appointment stood lapsed. Thereafter, the petitioner made a request after a lapse of one year to consider his case for engagement as Trainee Trained Graduate Teacher in Sarva

Shiksha Abhiyan, Puducherry on deputation basis as a special case, but since the rules did not provide for permitting a person who was offered engagement on contractual basis to join duty after a lapse of one year and since he failed to report for duty even after extension of time, the second respondent rejected the petitioner's case, as the offer of engagement already stood lapsed and cannot be revived. It is also seen that while arriving at such conclusion, the second respondent has complied with the request made by the Department of Personnel and Administrative Reforms vide their letter dated 10.01.2011, to examine the feasibility of considering the petitioner's request.

9. Further, in the order passed by the Deputy Director (ESI), Government of Puducherry, dated 31.01.2011 rejecting the request of the petitioner to consider for retention of lien, it has been observed that the request of the petitioner could not be considered as per FR.13, since no such provision is made available to consider for retention of lien in respect of the Government servant who proposed to join in any post in other department on contract on a monthly consolidated pay basis.

10. Thus, proper reasons have been adduced by the authorities, while rejecting the prayer of the petitioner to consider him to the post of Trainee Trained Graduate Teacher. The Tribunal has also dealt with the matter in proper perspective and rejected the case of the petitioner. Further, the petitioner ought to have challenged the speaking order passed by the second respondent dated 19.11.2012, but he neither challenged the said order before the Tribunal nor before this Court.

11. In the above stated circumstances, the prayer of the petitioner deserves only to be rejected and accordingly, the writ petition is dismissed. Consequently the connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
DP & AR, Government of Puducherry,
Chief Secretariat, Puducherry.

2.The Director of School Education,
Directorate of School Education,
Puducherry.

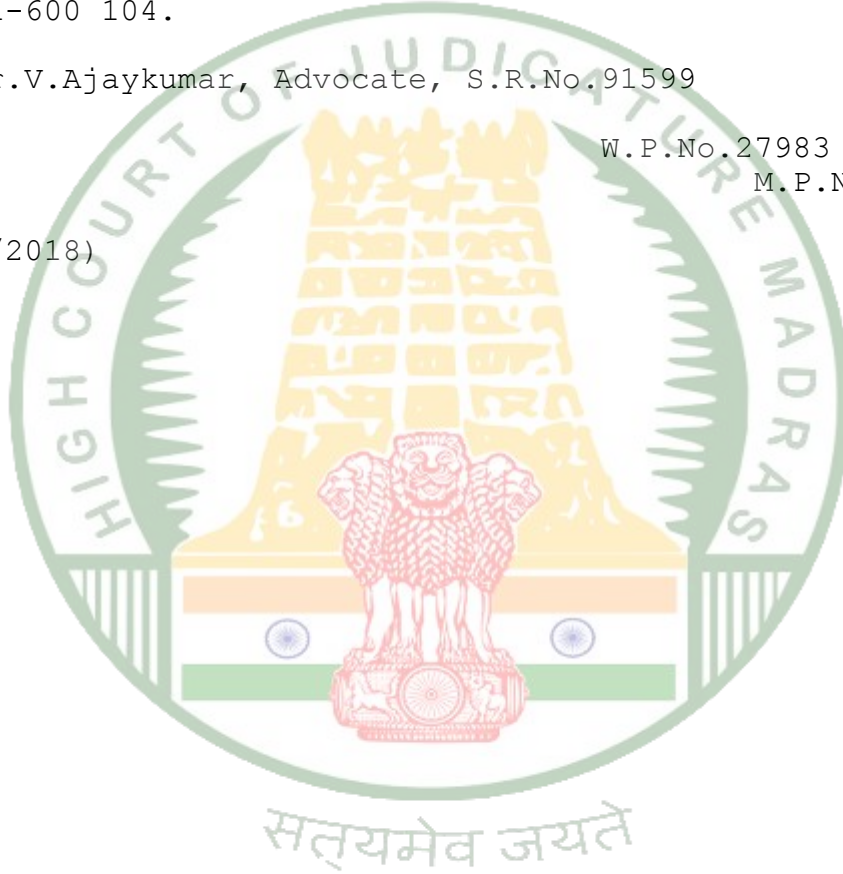
3.The Director,
Directorate of Health and Family Welfare,
Puducherry.

4.The Registrar,
Central Administrative Tribunal
Madras Bench,
Chennai-600 104.

+1cc to Mr.V.Ajaykumar, Advocate, S.R.No.91599

W.P.No.27983 of 2015 and
M.P.No.1 of 2015

MG (CO)
RRK(19/01/2018)



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