

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.12800 of 2010

1.V.Mohandoss (died on 14.08.2016)

2.Jamunarani

3.M.Priya Vaishnavi

4.M.Gopala Krishnan ... Petitioners
(P2 to P4 are substituted as Legal heirs
of deceased V.Mohandoss as per order dated
21.09.2017 made in WMP.No.25993 of 2017
in WP.No.12800 of 2010)

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary,
Education Department,
Fort St. George,
Chennai - 600 009.

2. Director of School Education,
D.P.I. Compound,
College Road,
Chennai - 600 006.

3. The Joint Director,
School of Education,
D.P.I. Compound, College Road,
Chennai - 600 006.

4. The Chief Educational Officer,
South Chennai,
Chennai - 600 015.

5. The District Educational Officer,
Chennai East,
Choolaimedu High Road, Choolaimedu,
Chennai - 600 094.

6.The Secretary and Correspondent,
Muthialpet Higher Secondary School,
No.167, (Old No.83) Thambu Chetty Street,
Chennai - 600 001.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus, directing the Respondents 1 to 3 to consider and dispose of the representation dated 08.05.2010, with reference to representations dated 05.02.2002 and subsequent representations and pass orders on merits therein for upgrading the Petitioner's position as Grade-I Physical Education Director with effect from 06.06.1996, allowing all attendant benefits thereto within a reasonable time.

For Petitioners: Mr.C.Johnson

For Respondents: Mr.R.Govindasamy (for R1 to R5)
Special Government Pleader

No Appearance (for R6)

O R D E R

This writ petition is filed to issue a writ of Mandamus, directing the Respondents 1 to 3 to consider and dispose of the representation dated 08.05.2010, with reference to representations dated 05.02.2002 and subsequent representations and pass orders on merits therein for upgrading the Petitioner's position as Grade-I Physical Education Director with effect from 06.06.1996, allowing all attendant benefits thereto within a reasonable time.

2.It is the case of the petitioner is that he was appointed as a Physical Education Teacher on 16.11.1981 in the 6th respondent school which is an Aided Government Recognized Higher Secondary School. The petitioner school is upgraded as a Higher Secondary School from the academic year 1978-79. The petitioner satisfactorily completed probation and was regularized as a Physical Education Teacher with effect from 16.11.1981.

3.It is further case of the petitioner is that the petitioner improved his educational qualifications and acquired Master of Physical Education (M.P.Ed.) in the year 1993 and thus rendered himself fully qualified and eligible for being appointed as Physical Director Grade-I. The 6th respondent school is having required strength to have minimum 3 Physical Education Teachers. When a school is having 850 students, such a school is entitled to have 3 Physical Education Teachers in terms of G.O.Ms.No.720 dated 28.04.1981, G.O.Ms.No.525 dated 29.12.1997 and other Government Orders and proceedings of the respondents 1

to 3. The 6th respondent school continued to have students' strength more than 1000 at all relevant times.

4.It seems in the meantime one Mr.Swaminathan, who was inducted as Physical Director Grade-I in the 6th respondent school, retired on 31.05.1996, on attaining the age of superannuation. Thereafter, the petitioner, the senior most Physical Education Teacher was handling High School sections and Higher Secondary classes and drawing allowances and special pay for handling Higher Secondary classes.

5.The 6th respondent duly promoted the petitioner and appointed him as Physical Director Grade-I with effect from 06.06.1996 vide appointment order dated 03.05.1996 in the place of Mr.Swaminathan.

6.It is the contention of the petitioner that the respondents approved the petitioner's appointment as Grade-II though he is fully qualified and eligible to hold the post of Physical Director Grade-I in terms of G.O.Ms.No.720 dated 28.04.1981, G.O.Ms.No.525 dated 29.12.1997, G.O.Ms.No.73 dated 19.03.2010 and other Government order and rules.

7.Being aggrieved of the act of respondents, the petitioner gave many representations through the 6th respondent school and in person. The representations were not considered and therefore the petitioner moved this Court for proper and appropriate remedy by filing the above writ petition.

8.The 5th respondent District Educational Officer filed counter for himself and on behalf of the respondents 1 to 4 objecting the relief claimed by the petitioner. The respondents in the said counter admitted the factum of educational qualification, eligibility criteria, merit and ability of the petitioner to be upgraded as Physical Director Grade-I. In the said counter the respondents also did not deny the strength of the students as categorically pleaded in the writ petition. The respondents among others further contended that the claim of the petitioner for upgrading as Physical Director Grade-I cannot be considered when there is no sanctioned post of Physical Director and accordingly, the writ petition is liable to be dismissed.

9.I heard Mr.C.Johnson, learned counsel for the petitioners and Mr.R.Govindasamy, learned Special Government Pleader for the respondents 1 to 5 and perused the entire records. There is no representation on behalf of the 6th respondent.

10.This Court has given its anxious consideration to the arguments advanced on either side. It is an admitted fact that the petitioner was appointed as Physical Education Teacher in the 6th respondent school and there is no quarrel over his

qualification as M.P.Ed. The eligibility criterion to become Physical Director Post is Master Degree and the petitioner has possessed the same in the year 1993. It is evident that every Higher Secondary School is entitled to have at least one Physical Director Grade-I in terms of G.O.Ms.No.720 Education dated 28.04.1981 which is abundantly clear in Rule 1 and the same is extracted for better clarity as under:

Rule 1 of the Tamil Nadu Higher Secondary Educational Service (G.O.Ms.No.720 Edu. Department dated 28.04.1981).

"Rule 1. Constitution- The service shall consist of the following classes and categories of officers, namely:-

Class (1)	Category (2)
I	Headmasters and Headmistress in HSS
II	1. Post-Graduate Assistants in Academic subjects 2. Post-Graduate Assistants Languages 3. P.G.(SCERT P.G.Teacher's Certificate Course Teachers) in Academic subjects
III	1. Physical Directors and Physical Directress in Higher Secondary Schools. 2. Physical Directors and Physical Directress (SCERT P.G.Teachers Certificate Course)"

From the above, Rule 1 of the Tamil Nadu Higher Secondary Educational Service (G.O.Ms.No.720 Edu. Dept. dated 28.04.1981) it is crystal clear that to constitute a Higher Secondary School a post of Physical Director Grade-I is a mandatory requirement. The learned counsel for the petitioners also relied on various judgments to substantiate the relevant points raised in the writ petition.

11. On perusal of relevant materials, it is clear that the 6th respondent school is a Higher Secondary School as defined in sub-clause (ii) of clause (d) of sub-rule (1) of Rule 3 of the Tamil Nadu Private Schools (Regulation) Rules, 1974 framed under the Tamil Nadu Private Schools (Regulation) Act, 1973.

Rule 3(1)(d)(ii) of Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974, defines 'Higher Secondary School'. The said provision is extracted herein for better clarity and easy understanding:-

'The Higher Secondary Schools consists of Standards I to XII, VI to XII, or IX to XII.'

Thus the strength of the 6th respondent is the combined strength upto standard XII and the same is already clarified in

W.P.No.35922 of 2005 by the Hon'ble Mrs.Justice Chitra Venkatraman and the same has already attained finality.

12.Further as per G.O.Ms.No.525 dated 29.12.1997 every Higher Secondary School is entitled to upgrade one of the Physical Education Teachers as Physical Director if such a school is having students' strength of 400 or more. The said portion of the G.O.Ms.No.525 dated 29.12.1997 is extracted as under:-

(IV) (f) 'For Schools with a strength of over 400 one post of Physical Director will be given up-gradation of existing posts of Physical Education Teacher.'

13.As early as 24.08.1979, the Government of Tamil Nadu in G.O.Ms.No.1591, duly authorized the Director of School Education to identify and convert the posts and to upgrade such posts as Physical Directors. Thus up-gradation can be made at Director of School Education level itself. It is also relevant to note that as per G.O.Ms.No.73 dated 19.03.2010 the power of up-gradation is duly delegated to the Director of School Education.

14.In view of the above, reasoning given in the counter that 400 posts sanctioned were already distributed to other schools cannot be sustained. The other reasoning given in the counter is untenable and cannot be accepted as they are against rules relevant materials. The specific allegation that as per G.O.Ms.No.525 dated 29.12.1997, made in paragraph 9 of the counter, "one of the Physical Education Teacher post is upgraded Physical Director Grade-I with B.T. Scale of pay only and not P.G. Scale" is against the very G.O. and other Government instructions. The said G.O. categorically made it clear that one among the 3 teachers is eligible to be upgraded as Physical Director Grade-I.

15.It is also brought to our notice that Government has duly implemented the orders passed by the learned Judges by passing G.O.s and conferred all service benefits to the respective petitioners. The petitioner has given various representations through the 6th respondent Management and personally to the official respondents seeking up-gradation as Physical Director Grade-I with effect from 06.06.1996. One such representation dated 08.05.2010, of the petitioner, addressed to the 2nd respondent was duly received by the 2nd respondent and no action seems to be taken. As the petitioner is entitled to get the benefits conferred under the Government orders the inaction of the respondents cannot be justified. The petitioner is the senior most Physical Director of the 6th respondent school and also granted special pay and allowances for handling Higher Secondary Classes. Being senior most person with full qualification, he is entitled to be upgraded as Physical Director Grade-I from 06.06.1996.

16.The conjoined reading of:

(a) Rule 3(d)(ii) of the Tamil Nadu Private Schools (Regulation) Rules, 1974,

(b) Rule 1 of Special Rules for the Tamil Nadu Higher Secondary Educational Service (G.O.Ms.No.720 dated 28.04.1981) and

(c) Norm IV (f) of G.O.Ms.No.525 dated 29.12.1997 make it clear that every Higher Secondary School is entitled to have one Physical Director Grade-I on compliance of the said rules and norms. In the instant case, the petitioner school and the petitioner satisfied required rules and norms. In view of the facts and circumstances involved in this case and also the discussion made above, this Court has no hesitation to allow the writ petition.

17.In view of the facts and circumstances involved in this case and also the discussion made above, this Court has no hesitation to allow the writ petition.

18.In the result:

(a) the writ petition is allowed;

(b) the respondents 1 to 3 are directed to pass orders on the representation dated 08.05.2010 with reference to other representations of the petitioner and the 6th respondent, by upgrading the post of Physical Director Grade-I held by the petitioner in the 6th respondent school to the post of Physical Director Grade-I with effect from 06.06.1996 with all monetary benefits;

(c) It is also brought to the notice of this Court that the petitioner died on 14.08.2016 and legal heirs of the petitioner are duly impleaded by order dated 21.09.2017 in WMP.No.25993 of 2017. Since the petitioner had already died, the legal heirs of the petitioner are entitled to get monetary benefits due to the petitioner. No costs.

-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The Secretary to Government,
Education Department,
Fort St. George,
Chennai - 600 009.
 2. The Director of School Education,
D.P.I. Compound,
College Road,
Chennai - 600 006.
 3. The Joint Director,
School of Education,
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South Chennai,
Chennai - 600 015.
 5. The District Educational Officer,
Chennai East,
Choolaimedu High Road, Choolaimedu,
Chennai - 600 094.
- +1 CC to Mr.C. Johnson, Advocate sr 70454.

VSN(CO)
SP(02/03/2018)

W.P.No.12800 of 2010

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