

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2017

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THE HON'BLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.26631 of 2013

and

MP.No.1 of 2013

B.Govindarajan

S/o.D.Balakrishnan

... Petitioner

Vs

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

2. The Director
School Education
4th Floor, EVK Sampath Maligai
DPI Compound, College Road,
Chennai-600 006.

3. The Director / Chairman
Teacher's Recruitment Board
DPI Compound, College Road,
Chennai-600 006. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to appoint the petitioner as Graduate Assistant strictly on the basis of statewide employment exchange seniority as per NCTE Regulations 2001 without insisting upon Teacher's Eligibility Test as per Clause 5 of Notification dated 23.08.2010 on par with others / teachers already appointed.

For Petitioner : Mr.A.P.Surya Prakasam

For Respondent : Mr.A.Rajaperumal

Additional Government Pleader

O R D E R

The relief sought for in this writ petition is for a direction to the respondents to appoint him as a Graduate Assistant on the basis of the State wide Employment Exchange Seniority as per NCTE Regulations 2001, without insisting upon Teachers Eligibility Test, as per Clause 5 of the Notification dated 23.08.2010 on par with others / teachers already appointed.

2. The learned counsel appearing on behalf of the writ petitioner made a submission that the writ petitioner is fully

qualified to the post of Graduate Assistant in Government Schools in the State of Tamil Nadu, as per the Employment Exchange Seniority and the petitioner was called for certificate verification. Accordingly, his certificates were verified, however, the name of the petitioner was not found in the final selection list and no order of appointment was issued to the petitioner. Thus, the petitioner was constrained to move this writ petition.

3. Considering the above fact, this Court has to consider that the call letter for certificate verification was sent by the third respondent to the petitioner in proceedings dated 20.10.2009, thereafter, there was no action in respect of the appointment to the petitioner, whether the writ petitioner is justified in filing the writ petition on 23.09.2013, after a lapse of four years from the date of certificate verification. However, the learned counsel for the petitioner states that further notification was issued on 23.08.2010, based on the orders of the Hon'ble Division Bench and therefore, the petitioner has waited and filed the writ petition only in the year 2013.

4. The learned counsel for the writ petitioner advanced an argument by stating that the writ petitioner was called for certificate verification and his certificates were also verified by the competent authorities. This being the factor, the appointment order is consequential and therefore, the relief in this writ petition is required to be considered. The arguments of the learned counsel for the writ petitioner is neither candid nor convincing. The legal principle to be considered in the matter of appointment to public employment is that an appointment is not a legal right. All the appointments to public posts ought to have been undertaken only under the Constitutional schemes and by following the recruitment rules in force. Equal opportunity in public employment is the constitutional mandate and the equality clause cannot be tampered with by the competent authorities by creating many concessional or special schemes, so as to deprive all the eligible citizens of this great nation from getting equal opportunity in public employment. The rule of reservation will also be affected in the event of creating large number of exceptional schemes. Thus, restraint in introducing special schemes is also required under the Constitution. The courts cannot issue any direction in respect of regularization, appointment or permanent absorption in violation of the recruitment rules in force. Any misplaced sympathy or leniency in this regard will certainly cause injustice to the meritorious candidates, who are all aspiring, longing and waiting for an opportunity to participate in the open competitive process in order to get selection. Large number of meritorious youth of this great nation are burning their midnight lamps by putting hard labour and preparing themselves to secure a decent public employment. Thus, the courts must be very cautious and power of discretion in this

regard ought to be exercised cautiously and sparingly and only to the extent of mitigating the injustice, if any, caused to any candidate in the process of selection. Appointments made contrary to the service rules will certainly create inequality and it amounts to tinkering the equality clause enshrined under the Constitution of India.

5. Thus, this Court is of an undoubted opinion that any direction for appointment, promotion or permanent absorption in contravention to the service rules cannot be entertained or encouraged by the constitutional courts. In the case on hand, a mere participation in the certificate verification cannot be construed as an established legal right for the petitioner so as to issue any direction for appointment. The name of the petitioner was not found in the final selection list nor an order of appointment was issued. The mere contention of the learned counsel for the petitioner that a junior to the petitioner was appointed contrary to the employment seniority cannot have any force in the eye of law since there is no such specific averment in this writ petition supported by any evidences. Further, no such junior has been cited as a party in the writ proceedings nor any such order has been submitted along with this writ petition. Unsubstantiated contentions raised during the course of arguments deserve no merit consideration. Parties raising certain allegations in respect of appointments, necessary to implead the relevant parties and documents to establish the same. In the absence of any such documents, this Court cannot consider the same for issuing any direction for appointment. Thus, the claim of the writ petitioner deserves no further consideration.

6. In this view of the matter, no further adjudication is required in this writ petition. Accordingly, this writ petition stands Dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

1. The State of Tamil Nadu
Rep. by its Secretary to Govt.
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+1cc to Mr.A.P.Suryaprakasam, Advocate Sr.No.81141

+1cc to Government Pleader SR.No.87707

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sm:13.12.2017



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