

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
W.P.No.16897 of 2012

D.Pachaimuthu

... Petitioner

Vs

1.The Director of School Education,
Chennai-6.

2.The Director of Elementary Education,
Chennai-6.

3.The Chief Educational Officer,
Ariyalur-621 704.

4.The District Elementary Educational Officer,
Ariyalur-621 704.

...Respondents

Petition is filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus to call for the records in Na.Ka.No.A2/3141/2008, dated 27.04.2011 passed by the fourth respondent and quash the same and directing the respondents to promote the petitioner as Tamil Pandit from 1.8.1995 and with consequential promotion as Middle School Headmaster (B.T. Grade) and accordingly, fix the petitioner's scale of pay in the promotion post and pay arrears from the date of promotions.

For Petitioner : Mr.G.Elanchezhiyan

For Respondents : Mrs.M.E.Raniselvam
Addl. Government Pleader

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O R D E R

This writ petition has been filed by the petitioner seeking a writ of certiorarified mandamus to call for the records of the fourth respondent in Na.Ka.No.A2/3141/2008, dated 27.04.2011 and to quash the same. The petitioner also prayed for direction on the respondents to promote him as Tamil Pandit from 01.08.1995 with consequential promotion as Middle School Headmaster (B.T. Grade) and to fix the his scale of pay in the promotional post and pay arrears from the date of promotions.

2. I heard Mr.G.Elanchezhiyan, learned counsel for the petitioner and Mrs.M.E.Rani Selvam, learned Additional Government Pleader for the respondents and also perused the materials available on record.

3. According to the petitioner, he was working as Higher Grade Tamil Teacher in Panchayat Union School, Senthurai and Nallampalayam, Union from 21.08.1958 to 1975 and subsequently, absorbed as Secondary Grade Teacher in the same school which was upgraded as High School. Thereafter, the petitioner was promoted as B.T. Assistant (Tamil) with effect from 20.09.1995. Stating that without his consent he was absorbed in High School and if he continues to work in Panchayat Union School, he would have promoted as B.T. Middle School Headmaster, the petitioner has filed Original Application being O.A.No.3096 of 1994 before the Tamil Nadu Administrative Tribunal.

3. By an order dated 19.07.1994, the Tamil Nadu Administrative Tribunal reverted the petitioner to the Panchayat Union service and directed to appoint the petitioner with reference to the seniority. Since the respondents did not obey the order, the petitioner had filed Contempt Petition No.1147 of 2007 and later the Contempt Petition was closed as the respondents have complied with the orders.

4. According to the petitioner, pursuant to the direction of the Director of School Education, the petitioner was reverted to Elementary Education service and also instructed to give promotion with all benefits. Thereafter, the District Elementary Educational Officer issued a formal proceedings to absorb the petitioner in the Elementary Education Service and his pay was also fixed in the promotion post and arrears was paid from the date of retirement, but not from the actual date of promotion. Since the respondents have failed to consider the petitioner for promotion as Tamil Pandit and also as Middle School B.T. Headmaster, he made several representations. After receipt of the representation, the District Elementary Educational Officer sent a letter to the Director of School Education with a request to issue clarification whether the petitioner's promotion as Tamil Pandit/B.T. Grade Headmaster can be considered or not.

5. The petitioner had filed W.P.No.2569 of 2011, seeking to consider his representations dated 26.08.2009, 10.03.2010 and 21.06.2010 for promotion as Tamil Pandit and as Middle School B.T. Headmaster and also grant selection grade in the Tamil Pandit Post and fix his scale of pay on par with his juniors and pay arrears from the date of promotion. By an order dated 17.02.2011, the said writ petition was disposed of by directing the fourth respondent to consider and pass orders on the

representation of the petitioner dated 26.08.2009 in accordance with law within a period of twelve weeks from the date of receipt of copy of the order.

6. Pursuant to the direction of this Court in W.P.No.2569 of 2011, the District Elementary Educational Officer, Ariyalur, by the impugned proceedings dated 27.04.2011, rejected the request of the petitioner on the ground that the petitioner has not established his case with a documentary proof that his junior was promoted as Tamil Pandit and as Middle School Headmaster (BT) Grade. Challenging the same, the petitioner has filed the present writ petition.

7. The fourth respondent has not filed the counter-affidavit.

8. The grievance of the petitioner is that though there was a vacancy and he was fully qualified and eligible, the respondents have not promoted the petitioner as Tamil Pandit with consequential promotion. It is the say of the petitioner that while considering the representation of the petitioner, the fourth respondent has not looked into the said aspect and that the impugned order is illegal, arbitrary and against Article 14 and 16 of the Constitution of India.

9. According to the respondents, there was no specific direction by the Tamil Nadu Administrative Tribunal to give promotion as B.T. Middle School Headmaster as alleged by the petitioner. There was no provision in the existing Rules for giving promotion to any individual on a presumptive vacancy without reference to the panel for promotion for such post. In fact, promotion as B.T. Assistant/Primary School Headmaster/BT Middle School Headmaster was being made every year based on the panel for promotion prepared every year as on 1st January. The specific plea of the respondents is that none of the junior to the petitioner was promoted as B.T. Middle School Headmaster as on the date of the retirement of the petitioner i.e., on 31.07.1996.

10. In the earlier writ petition being W.P.No.2569 of 2011 filed by the petitioner, he sought a writ of mandamus directing the fourth respondent to consider his claim and pass orders on the representation of the petitioner dated 26.08.2009, 10.03.2010 and 21.06.2010 for promotion as Tamil Pandit and as Middle School B.T. Headmaster and also grant Selection Grade in the Tamil Pandit post and fix his scale of pay on par with his juniors and pay arrears from the date of promotion. Admittedly, the prayer sought for in the aforesaid writ petition is similar to the consequential prayer sought for in the present writ petition.

11. By the order dated 17.02.2011, W.P.No.2569 of 2011 has been disposed of. The relevant portion of the order reads thus:

"2.Though the prayer in the writ petition is to issue a writ of mandamus to direct the 4th respondent to consider the claims of the petitioner and pass orders on the representations of the petitioner dated 26.8.2009, 10.3.2010 and 21.6.2010 for promotion as Tamil Pandit and as Middle School B.T. Headmaster and also grant Selection Grade in the Tamil Pandit post and fix his scale of pay on par with his juniors and pay arrears from the date of promotion, today, when the matter is taken up, learned counsel for the petitioner submitted that it would be suffice if a direction is given to the 4th respondent to dispose of the representation of the petitioner dated 26.8.2009 within a time frame.

3.In view of the limited prayer now sought for by the learned counsel for the petitioner, this writ petition is disposed of by directing the 4th respondent to consider and pass orders on the petitioner's representation dated 26.8.2009 in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order. No costs."

12. On a perusal of the impugned order, it is seen that the fourth respondent has rejected the claim of the petitioner on the ground that he had not established his case with documentary proof that his junior was promoted as Tamil Pandit and as Middle School Headmaster (BT) Grade. On a further perusal of the impugned order, it is seen that while passing the impugned order, the petitioner was not heard personally. In the impugned order, it has been stated that the petitioner has failed to produce documentary proof along with his representation. The respondent authorities have failed to produce any record to show that before passing the impugned order, notice was given to the petitioner calling upon him to appear and produce documentary proof to establish his case. It is duty of the fourth respondent to issue notice calling upon the petitioner to appear before the fourth respondent and present his case while passing the impugned order. Equally, it is also the duty of the petitioner to submit all relevant records to the respondent authorities so as to enable them to consider his claim.

13.In the result:

(a) the writ petition is allowed and the impugned order in Na.Ka.No.A2/3141/2008, dated 27.04.2011 passed by the fourth respondent is quashed;

(b) the respondents are directed to promote the petitioner

as Tamil Pandit from 01.08.1995 with consequential promotion as Middle School Headmaster (B.T. Grade) by fixing the petitioner's scale of pay in the promotion post and to pay arrears from the date of promotion;

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

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vs

To

- 1.The Director of School Education,
Chennai-6.
- 2.The Director of Elementary Education,
Chennai-6.
- 3.The Chief Educational Officer,
Ariyalur-621 704.
- 4.The District Elementary Educational Officer,
Ariyalur-621 704.

+1cc to Mr.G.Elanchezhiyan, Advocate, S.R.No.62930
+1cc to the Government Pleader, S.R.No.64115.

W.P.No.16897 of 2012

KAN(co)

rrs 14/09/2018.

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