

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.28642 of 2013

and M.P.No.1 of 2013

R.Paul Gunaseakaran .. Petitioner
vs.

- 1.The State of Tamil Nadu,
Rep. by the Secretary,
School Education Department,
Fort St.George,
Chennai-600 009.
- 2.The Joint Director of School Education (Personnel),
D.P.I. Complex,
College Road, Nungambakkam,
Chennai-600 006. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order of the 2nd respondent dated 18.12.2012 in Na.Ka.No.46629/A4/E3/2012 and quash the same and consequently direct the 2nd respondent to forthwith re-fix the seniority of the petitioner in the post of Assistant with effect from the date of passing of the Departmental Tests as per the provisions of the Government Letter (M.S.)No.174, School Education Department, dated 11.11.2002 of the 1st respondent.

For Petitioner : Mr.K.Selvaraj

For Respondents : Mr.K.Dhananjayan,
Special Government Pleader

O R D E R

The petitioner was appointed as Record Clerk on 01.02.1989 in the office of the Deputy Inspector of Schools, Sultanpet, Coimbatore District on compassionate ground and got his promotion as Junior Assistant on 18.11.1999. The petitioner has also completed departmental tests before May 2002 and despite

the said fact, the second respondent did not depute him for training in the Government Servant Training Institute at Bhavanisagar for more than five years and he was deputed for training only during June 2006 and completed the training on 15.07.2006. It is the specific case of the petitioner that he cannot be blamed for the delay in deputing him for training in Government Servant Training Institute at Bhavanisagar. The petitioner would further aver that as per G.O.(1D).No.62, School Education (R2) Department dated 28.02.2008, relaxation for the Rules 23A, 26 and 28 of the Tamil Nadu State and Subordinate Service Rules has been given and it is also an admitted fact that the second respondent, vide order dated 22.05.2009 regularized the services of the petitioner in the post of Assistant with effect from 30.09.2008 and it is also stated by the petitioner that as per the proceedings of the first respondent dated 11.11.2002, the second respondent has refixed the seniority of several Junior Assistants who have completed Bhavani Sagar Training belatedly due to administrative reasons of the respondents.

2. The petitioner, in this regard, has submitted an application/representation dated 03.09.2009 in the prescribed format to the second respondent praying for fixation of seniority in the post of Assistant in the seniority panel of the year 2003 and confer all other consequential benefits and since the said representation has not been disposed of, he filed W.P.No.14595 of 2012 praying for issuance of a Writ of Mandamus directing the second respondent to forthwith refix the seniority of the petitioner in the post of Assistant with effect from the date of passing of the Departmental Tests by considering and disposing of the application of the petitioner dated 03.09.2009 and this Court, vide order 08.06.2012, directed the second respondent to consider the representation of the petitioner dated 03.09.2009 and pass orders on merits and in accordance with law and pursuant to the said order, the second respondent has passed the impugned order dated 18.12.2012 rejecting the claim of the petitioner on the ground that as per G.O.(Ms) No.174, School Education Department dated 11.11.2002, seniority cannot be refixed and challenging the legality of the same, the petitioner has come forward with this writ petition.

3. Mr.K.Selvaraj, learned counsel appearing for the petitioner has drawn the attention of this Court to G.O.Ms.No.174, School Education Department dated 11.11.2002 and would submit that as per the said Government Order, if there is delay in deputing the concerned person for training in Government Servant Training Institute on account of administrative reasons, seniority is to be re-fixed without monetary benefits and admittedly, the petitioner was belatedly

deputed to training due to administrative reasons and G.O.(1D) No.62 of the first respondent dated 28.02.2008 also fortifies the said fact and therefore, there cannot be any impediment on the part of the respondents to refix the seniority as prayed for by the petitioner and would further add that the petitioner do not want any monetary benefits but only service benefits and therefore, prays for appropriate orders.

4. Mr.K.Dhananjayan, learned Special Government Pleader appearing for the respondents would submit that in compliance of the orders passed in W.P.No.14595 of 2012, the second respondent has taken into consideration all the relevant aspects and rightly reached the conclusion to reject the representation of the petitioner and therefore, prays for dismissal of this writ petition.

5. This Court has considered the rival submissions and also perused the entire materials placed before it.

6. A perusal of G.O.(1D) No.62, School Education (R2) Department dated 28.02.2008 would disclose that the delay in deputing the petitioner for training in the Government Servant Training Institute cannot be attributable to him and accordingly, Rules 23A, 26 and 28 of the Tamil Nadu State and Subordinate Service Rules have been relaxed and thereafter, the petitioner has submitted a representation dated 03.09.2009 praying for refixation of seniority and other consequential reliefs and since it was not considered, he also filed W.P.No.14595 of 2012 praying for a direction to the respondents to refix the seniority by taking into consideration the date of passing of the departmental tests and also by considering his representation dated 03.09.2009 and this Court, vide order dated 08.06.2012, directed the second respondent to consider and dispose of the petitioner's representation within a stipulated time frame and in compliance of the same, the second respondent has passed the impugned order.

7. In the considered opinion of the Court, the reasons assigned in the impugned order are unsustainable for the reason that the petitioner cannot be put to fault on account of the delay in deputing him for training and G.O.(1D) No.62 of the first respondent dated 28.02.2008 also reiterate/fortifies the said position. G.O.Ms.No.174 of the first respondent department dated 11.11.2002 would disclose that in the event of delay not attributable to the employee deputed to training, seniority can be refixed without giving any monetary benefits and the said Government Order have not been considered by the second respondent while passing the impugned order and therefore, the impugned order warrants interference.

8. In the result, this Writ Petition is allowed and the impugned order of the second respondent dated 18.12.2012 in Na.Ka.No.46629/A4/E3/2012 is set aside and the second respondent, in the light of the observations made in this writ petition as above and by taking into consideration G.O.(Ms). No.174, School Education Department dated 11.11.2002 and G.O. (1D)No.62, School Education (R2) Department dated 28.02.2008, shall pass orders with regard to refixation of seniority as sought for by the petitioner and before doing so, shall put the concerned persons on notice and thereafter pass orders on merits and in accordance with law within a period of ten weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner as well as the persons concerned. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jvm

To

- 1.The Secretary,
The State of Tamil Nadu,
School Education Department,
Fort St.George, Chennai-600 009.
- 2.The Joint Director of School Education (Personnel),
D.P.I. Complex,
College Road, Nungambakkam,
Chennai-600 006.

+1cc to Mr.K.Selvaraj, Advocate, S.R.No.25727

+1cc to the Government Pleader, S.R.No.26470

PA(CO)
RS(11/05/2017)

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