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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.06.2017

CORAM :

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P (MD) Nos.21316 and 21317 of 2015

and

W.M.P (MD) Nos.2 and 2 of 2015

P.Karthikeyan ... Petitioner in W.P.(MD)No.21316 of 2015
and MP (MD) No.2 of 2015

P.Andichamy ... Petitioner in W.P.(MD)No.21317 of 2015
and MP (MD) No.2 of 2015

Vs.

1. The Commissioner,
Most Backward and Denotified Communities
Welfare Department,
Ezhilagam, Chennai - 600 005.
2. The Joint Director,
Kallar Reclamation,
Madurai,
Madurai District - 625 020. ... Respondents in both
Writ Petitions

PRAYER in W.P (MD).No.21316 of 2015: Writ Petitions filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the second respondent herein in his proceedings in ROC.No.H1/5492/2005, dated 17.08.2015 and consequent proceedings of the first respondent herein in No.B1/1139/2015, dated 20.11.2015 and to quash the same, consequently direct them to declare that the petitioner is eligible for promotion to the post of Headmasters and Headmistresses of Higher Secondary Schools as per Rule.

PRAYER in W.P (MD).No.21317 of 2015: Writ Petitions filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the second respondent herein in his proceedings in ROC.No.H1/5492/2005, dated 17.08.2015 and consequent proceedings of the first respondent herein in No.B1/1139/2015, dated 20.11.2015 and to quash the same, consequently direct them to declare that the petitioner is eligible for promotion to the post of Headmasters and Headmistresses of Higher Secondary Schools as per Rule.



For Petitioners in both W.Ps. : Mr.G.Chandrasekar
For Respondents in both W.Ps. : Mr.N.S.Karthikeyan,
Additional Government Pleader.

COMMON ORDER

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These Writ Petitions have been filed by the petitioners for issuance of a Writ of Certiorarified Mandamus, to call for the records of the second respondent herein in his proceedings dated 17.08.2015 and consequent proceedings of the first respondent herein dated 20.11.2015 and to quash the same and consequently, direct them to declare the petitioners as they are eligible for promotion to the post of Headmasters and Headmistresses of Higher Secondary Schools as per Rule.

2.The brief facts that are necessary for the disposal of the above Writ Petitions are as follows:

2.1.The petitioner in W.P.(MD) No.21316 of 2015 was recruited into service on 02.08.2004, as Junior PG Assistant (History), and the petitioner in W.P.(MD) No.21317 of 2015 was recruited into service on 27.01.2005, as Junior PG Assistant (Tamil). Both the petitioners were received consolidated pay of Rs.4,500/- at the time of appointment.

2.2.It is not in dispute that subsequently, the service of the petitioners were regularized by the first respondent on 01.06.2006, based on G.O (Ms).No.99, School Education Department, dated 27.06.2006. After serving for a period of more than 10 years in the said posts, the petitioners are qualified to be promoted to the post of Headmasters/ Headmistresses of the Higher Secondary Schools. On 01.03.2015, the second respondent prepared a seniority list cum eligible list of PG Teachers/ High School Headmasters to hold the post of Headmasters and Headmistresses of Higher Secondary Schools for the year 2015. It is the case of the petitioners that as on 01.03.2015, they have completed 10 years of service and therefore, they should be included in the said seniority cum eligible list. However, the name of the petitioners were not included in the said list, as they have not completed 10 years of service.

2.3.Thereafter, the petitioners have made a representations on 03.09.2015 and 07.09.2015 respectively, before the respondents. By the impugned order dated 20.11.2015, the representations of the petitioners were rejected, on the ground that the period of services of the petitioners can be taken only from the date on which their services were regularized by granting regular time scale of pay and that they are not eligible for inclusion in the seniority cum eligible list, dated 01.03.2015, for the purpose of promotion. It is not in dispute that the petitioners are eligible to be considered for promotion to the post of Headmasters/



Headmistresses of the Higher Secondary Schools, as per the Special Rules for Tamil Nadu Higher Secondary Backward classes and Most Backward classes service, the relevant portion of which is entrusted below:

"Experience for a period of not less than ten years as Pandits in Tamil or Teacher or both in Secondary Schools with a degree in Teaching or Training School recognised by the Director of School Education, subsequent to the acquiring a teaching degree in any one or all of the schols specified above"

2.4. The question is therefore, as to whether the petitioners are having experience for a period of not less than 10 years as Teachers in the Secondary School with a degree in Teaching or Training School regularized by Directorate of Secondary Education.

3. In these cases, it is not in dispute that the petitioners were appointed as Junior PG Assistant (History) and Junior PG Assistant (Tamil) respectively, with effect from 02.08.2004 and 27.01.2005 respectively. Though the said appointments were regularized by the first respondent with effect from 01.06.2006, based on G.O (Ms).No.99, School Education Department, dated 27.06.2006. The Government Order does not render the appointment invalid till it is regularized. Merely because the petitioners were not granted the regular scale of pay with effect from the date of appointment, it can not be said that their appointments were valid only from the date of regularization. The fact that the petitioners were appointed in sanctioned posts and that their appointment in the year 2004 and 2005 respectively, were following the Recruitment Rules are not in dispute. It is only due to financial constraints, instead of appointing them in regular time scale of pay, the Government made the appointment on consolidated pay. Since the appointments were made in the regular post, merely because the regular time scale of pay was denied to the petitioners for some time, there is no reason to hold that the appointments made earlier on adhoc basis would disable them to claim seniority from the date of entry into service.

4. The learned Additional Government Pleader appearing for the respondents referred to G.O.Ms.No.99 dated 27.06.2006 and submitted that the petitioners' appointment were regularized only after the issue of the said Government Order. It is pertinent to note that the decision in the year 2006 was to make permanent appointments on regular time scale of pay with effect from 2006. As per the said Government Order, it is made clear that earlier the petitioners were appointed on consolidated pay. The intention of the Government was to treat the petitioners as regular appointees for all purposes, except for granting the regular time



5.It is in the said circumstances, the contention of the second respondent that initially the petitioners who were regularized only on 01.06.2006, cannot be treated as regular appointees, from the date of their appointment, so as to promote them for the post of Headmasters/Headmistresses of the Higher Secondary Schools can not be accepted.

6.The learned counsel for the petitioners also relied upon the Judgment of the Honourable Supreme Court in the case of **Direct Recruit Class II Engineering Officers' Association vs. State of Maharashtra and others**, reported in (1990) 2 Supreme Court Cases 715. The Honourable Supreme Court differentiated the status of persons, who were appointed to a post according to the Rule and the status of the persons, who were appointed on adhoc basis and not according to the Rules where the appointment was purely a stop-gap arrangement. It has been categorically held that the persons who were appointed to the post according to Rule, should be given the benefit of seniority and their period of service shall be counted from the date of their appointment and not from the date of their regularization or confirmation.

7.This Court is also of the view that the petitioners are entitled to claim the seniority of teaching experience from the date of their appointments i.e., with effect from 02.08.2004 and 27.01.2005 respectively, for the purpose of calculating their period of rendering service as a teacher, for the purpose of promotion to the post of Headmasters/ Headmistresses of the Higher Secondary Schools. Hence, this Court is inclined to allow these Writ Petitions.

8.Accordingly, these Writ Petitions are allowed and the impugned orders passed by the second respondent dated 17.08.2015 and the consequential proceedings of the first respondent dated 20.11.2015 are quashed. The respondents 1 and 2 are directed to treat the petitioners as eligible for promotion to the post of Headmasters/ Headmistresses of the Higher Secondary Schools, as per Rule. This order shall not disturb the rights of any other third party whose rights have already been crystalised. However, for the purpose of calculating seniority and for granting any other monetary benefits, the respondents are directed to treat the services of the petitioners from the date of their original appointment. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar

/True copy/



To

1. The Commissioner,
Most Backward and Denotified Communities
Welfare Department,
Ezhilagam, Chennai - 600 005.

2. The Joint Director,
Kallar Reclamation,
Madurai, Madurai District - 625 020.

+2 CC to M/s.G.CHANDRASEKAR, Advocate, SR No. 59693, 59694
+1 CC to THE SPECIAL GOVERNMENT PLEADER, SR No. 59880

KM/GSP/MM
PSM/MR-KKR/SAR2/12.07.2017/5P/6C

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