

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2018

CORAM :

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition No.15266 of 2008

M.Mani

... Petitioner

Vs

1. The State of Tamil Nadu represented by its Secretary to Government Education Department, Chennai - 600 009.
 2. The Director of Elementary Education College Road, Chennai - 600 006.
 3. The District Elementary Educational Officer Collector Office Compound Villupuram.
- ... Respondents

Writ Petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration declaring the impugned G.O.Ms.No.166 School Education Department dated 07.06.1999 passed by the first respondent as null and void and illegal and unconstitutional and direct the respondents 1 to 3 to promote the petitioner for the post of Middle School Headmaster.

For Petitioner : Mr.S.N.Ravichandran

For Respondents

1 to 3 : Mr.K.Karthikeyan
Government Advocate

ORDER

This Writ Petition has been filed praying for issuance of a Writ of Declaration declaring the impugned G.O.Ms.No.166 School Education Department dated 07.06.1999 passed by the first respondent as null and void and illegal and unconstitutional and

direct the respondents 1 to 3 to promote the petitioner for the post of Middle School Headmaster.

2. The learned counsel for the petitioners would submit that the petitioner was sponsored by the Employment Exchange and appointed as Secondary Grade Teacher on 29.12.1989 in the Panchayat Union Primary School, A.Puthur, Ulundurpettai Union, Villupuram District and then promoted as B.T. Assistant (Maths) on 03.01.2007 in the Sankarapuram Union, Pavalam Panchayat Union Middle School.

3. The learned counsel for the petitioner would also submit that the appointments and the procedures are prescribed in the Special Rules introduced in G.O.Ms.No.1383 Education (PUS-I) Department dated 23.08.1988. As far as the promotion to the post of Middle School Headmaster (B.Ed., Grade) is concerned, the qualification is Graduate with B.Ed., Degree, apart from taking classes for Standard 6 to 8. Therefore, only B.T. Teacher Grade in Middle School is the feeder category for promotion as Headmaster in Middle School. In other words, the Primary School Headmaster can never be the feeder category for promotion as Headmaster in Middle School. G.O.Ms.No.373 dated 31.03.1989 is clear in this regard.

4. The learned counsel for the petitioner would further submit that the Government, by G.O.Ms.No.166 School Education (S2) Department dated 07.06.1999, has included the post of Primary School Headmaster as feeder category for promotion to the post of Middle School Headmaster (B.Ed.,) Grade by giving exemption to the Tamil Nadu State Subordinate Service Rules 36 (a) and the reasons given for such exemption are pay anomaly and the ratio/number of Headmaster Primary School and B.Ed., teachers in Middle School, which is erroneous and untenable.

5. The learned counsel for the petitioner would further contend that based on the above G.O., three different seniority lists were prepared and hence, the petitioner gave representation to fix their proper seniority in the light of G.O.Ms.No.373 dated 31.03.1989. Since the same was not considered, the petitioner along with four others have filed W.P.Nos.11644 to 11648 of 2008 before this Hon'ble Court and this Court has passed an order dated 30.04.2008 directing the second respondent to consider their claim in the light of G.O.Ms.No.373 Education (D1) Department dated 31.03.1989. However, the second respondent promoted some of the Primary School Headmasters on 19.05.2008 contrary to the directions of this Court. Hence, the learned counsel prays this Court to allow the Writ Petition.

6. The learned Government Advocate appearing for the

respondents 1 to 3 would submit that G.O.Ms.No.166 School Education (S2) Department dated 07.06.1999 was already challenged before this Court in W.P.(MD) Nos.8574 and 8576 of 2011, and this Court by common order dated 03.08.2011 dismissed those Writ Petitions. Apart from that, this Court in W.P.(MD) No.9261 of 2013, after elaborately discussing several G.Os., Rules and Procedures for appointments/promotion, had dismissed the said Writ Petition by order dated 05.07.2013 and hence, prayed for dismissal of this Writ Petition.

7. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents 1 to 3 and perused the materials available on record.

8. On perusal of the order dated 05.07.2013 made in W.P. (MD) No.9261 of 2013, it could be seen that, this Court referred the order dated 03.08.2011 made in W.P.(MD) Nos.8574 and 8576 of 2011, which reads as follows:-

"Though the Writ Petitioners have raised other grounds challenging G.O.Ms.No.166, School Education dated 07.06.1999, this Court is not inclined to entertain the same, as there is inordinate latches on the part of the Writ Petitioners i.e., twelve years. Entertaining the Writ Petitions would unsettled the seniority and the promotions made for more than a decade. Needless to say that settled seniority cannot be permitted to be unsettled, after a long number of years. Accordingly, these Writ Petitions are dismissed. No costs."

9. It could be further seen from the perusal of the order dated 05.07.2013 made in W.P.(MD) No.9261 of 2013 that this Court elaborately discussed G.O.Ms.No.1383, Education (PUS-1) Department dated 23.08.1988 regarding appointments to various classes and categories, promotion to the post of Middle School Headmaster (B.Ed., Grade), Rule 36 (a) and 48 of the Tamil Nadu State and Subordinate Service Rules and G.O.Ms.No.166 School Education Department dated 07.06.1999, which is impugned in these Writ Petitions also. In the above order, this Court while discussing G.O.Ms.No.166, has elaborately discussed the words 'just and equitable' used in rule 48 of the Tamil Nadu State and Subordinate Service Rules, enabling the Governor to relax the applicability of any of the general rules or special rules to any person or class of persons, working in any civil capacity.

10. This Court, while discussing G.O.Ms.No.1383, Education (PUS-1) Department dated 23.08.1998, which has been issued by the Government of Tamil Nadu, framing Special Rules for Tamil Nadu Elementary Educational Subordinate Services, has held that,

as per Rule 2 of the said rules, both the Headmasters/ Headmistresses of Middle School (Secondary Grade) and Headmasters/Headmistresses of Primary Schools are eligible for appointment to the post of Headmasters/ Headmistresses of Middle School (B.Ed., Grade) in Class I Category I and as between the posts in Class I, Class II and Class III no preference is given. In view of the same, Headmasters/ Headmistresses of Primary School are the feeder category for promotion as Headmaster in Middle School.

11. Finally this Court, in the above order dated 05.07.2013 made in W.P.(MD) No.9261 of 2013, came to the conclusion that relaxation of proviso 36(a) has been done properly to overcome the difficulties and on the principle of "just and equitable"; Power of relaxation conferred on the Governor under Rule 48 of the Tamil Nadu State and Subordinate Service Rules is an exceptional power and that the same has been exercised to avoid discrimination in the matter of promotion to the post of Middle School Headmasters/Headmistresses (B.Ed., Grade) and by relaxation of the said rule, all the feeder categories, can get equal opportunities, for promotion and thus, the chances of one group of the feeder category post, taking away all the promotional posts, leaving the rest high and dry is avoided; the exercise of the power under Rule 48 of the Tamil Nadu State and Subordinate Service Rules is in consonance with the principle of "just and equitable" and the impugned G.O.Ms.No.166 satisfies the test of reasonableness, fair and equitable distribution and does not suffer from any arbitrariness on the touchstone of equality enshrined in the Constitution of India.

12. The counsel for the petitioner has not submitted any contention contrary to the above judgment or whether the said judgment was overruled.

13. The G.O.Ms.No.166 was issued in the year 1999 and the same was challenged in this Writ Petition in the year 2008, ie., after a latches of 9 years and the injunction petition filed by the petitioner to restrain the respondents from filling up the post of Middle School Headmaster from the category of Secondary Grade Headmaster with B.Ed., was also dismissed by this Court and now We are in the year 2018. Though the petitioner has contended that he came to know the existence of the G.O recently, they cannot feign ignorance of the procedure followed in Education Department, in the matter of promotion to the post of Middle School Headmasters/Headmistresses (B.Ed., Grade). There is an inordinate delay or laches on the part of petitioners in challenging the above G.O. Since the G.O. Itself in force, the petitioner would get promotion, as per said G.O.Ms.No.166.

14. Hence, in view of the above discussions and in view of the order dated 05.07.2013 made in W.P.(MD) No.9261 of 2013, this Writ Petition is dismissed. No costs.

mra

Sd/-
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government
State of Tamil Nadu
Education Department,
Chennai - 600 009.
2. The Director of Elementary Education
College Road, Chennai - 600 006.
3. The District Elementary Educational Officer
Collector Office Compound
Villupuram.

+1cc to the Government Pleader, S.R.No.89933

W.P.No.15266 of 2008

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