

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.09.2018
PRONOUNCED ON : 23.10.2018

CORAM
THE HONOURABLE MR.JUSTICE C.SARAVANAN
W.P.No.22234 of 2008

S.Yesupatham

.... Petitioner

Vs.

The Director of School Education,
College Road, Nungambakkam,
Chennai 600 006.

.... Respondent

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari Mandamus to call for the records of the respondent's order dated 6.8.2008 in M.M.No.61297W1/E1/2008 and quash the same and consequently to direct the respondent to issue the consequential benefits to the petitioner from the date Headmaster promotion on par with his junior i.e., 1993.

For petitioner : Mr.S.Gunaseelan

For respondent : Mr.P.Raja
Government Advocate (Education)

O R D E R

The petitioner has filed the above writ petition to quash the respondent's order dated 6.8.2008 in M.M.No.61297W1/E1/2008 and to consequently direct the respondent to issue the consequential benefits to the petitioner from the date when his junior was promoted other headmaster in 1993.

2. On the date of the writ petition the petitioner had already retired from services. He was working as a P.G assistant (Chemistry) in the Government Boys Higher Secondary School, Polur-606803 T.S District at the time of his retirement.

3. It is the case of the petitioner that he had joined the service in the year 1969 as a B.T. Assistant. At that time, he had completed B.Sc (Chemistry) and had later completed B.T (Teaching) in 1969, M.A (History) 1975 and M.Ed (Education) in 1977.

4. According to the petitioner, one Mr.S.Kannan younger to him by a year joined services as School Assistant only on 31.08.1977 after completing B.Sc (Maths), M.Sc (Maths) and B.Ed.

5. The petitioner was promoted as P.G. Assistant on 29.10.1985 and retired as P.G Assistant while Mr Kannan was promoted as a Headmaster of Higher Secondary School from 23.7.1993 and retired as a Headmaster.

6. According to the petitioner the anomaly arises in the background narrated hereinafter. Till 1978, there were only High Schools in the State of Tamil Nadu.

7. With effect from 1.7. 1978, Plus Two School came in existence and therefore for filling up the post of teachers in the Higher Secondary Schools Education, a guideline was issued by the government of Tamil Nadu in proceeding bearing reference R.C.No.9640W/2/79.

8. Under the scheme three different avenues came to be recognised for allowing the teachers to be promoted as the teachers in the Higher Secondary School. Those with B.T. Assistants were allowed to undergo diploma training for a period of 10 months referred to as Inducted Teachers for being absorbed as teachers in the Higher Secondary School and those serving as PGT and Headmasters in High Schools were promoted as Headmasters in Higher Secondary School.

9. The Petitioner states that he qualified for the post of Headmaster as per G.O.Ms. 816/1992 and therefore sent a representation for being considered to the post of headmaster.

10. According to the petitioner, as he was more qualified than his junior Mr Kannan who joined services only in the year 1977 and therefore the respondents were not justified in not promoting the petitioner as Headmaster while promoting his junior Mr Kannan.

11. According to the petitioner as per R.C.No.9640W/2/79, priority should be given for inducted teachers as per the seniority and only after the selection process is completed, the remaining post should be filled up by persons holding post-graduation and that no person who has already been inducted during the previous year should be replaced without the specific permission of the Director.

12. According to the petitioner his junior was promoted to the post of P.G Assistant in the year 1978 and thereafter as a Headmaster on 2.7.1993 prior to him. Petitioner submits that he had undergone the required training and therefore became a P.G Assistant in the year 1985 with effect from 29.10.1985.

13. The respondent in the counter has contended that the petitioner's junior became a P.G. Assistant way back in July 1978 whereas the petitioner became a P.G. Assistant only in the year 1985. It is further submitted that even as per the comparison given by the petitioner, the petitioner cannot claim parity with his junior as per G.O.MS.No.816/1992, dated 11.09.1992.

14. It was further contended that the additional qualification in M.A (History) obtained by the petitioner in the year 1975 was of no consequence for the petitioner to claim parity with his junior as the petitioner was not teaching in the discipline of history.

15. Heard Mr S.Guaseelan, learned counsel for the petitioner and Mr.T.Raja, learned Government Advocate (Education) for the respondents. Both the counsels made elaborate submissions.

16. Learned Counsel for the petitioner relied on the following decisions of the court in support of his contention:-

(i) The Saliar Mahajana Higher Secondary School Vs. The Joint Director of Schools, (1995) 1 MLJ 303

(ii) Tamil Nadu P.G.T. Association Vs. State of Tamil Nadu and Ors, AIR 2002 SC 72

(iii) Susila Vs. Kalyani and others in W.A.No.246 of 2009

(iv) The State of Tamil Nadu rep. by its Secretary to Government and 3 others Vs. T.R.Iswaran in W.A.No.662 of 2012

(v) T.R.Iswaran Vs. State of Tamil Nadu, rep. by its Secretary to Government and 4 others in W.P.No.685 of 2004

17. In Tamil Nadu P.G.T. Association Vs. State of Tamil Nadu and Ors, AIR 2002 SC 72, it was held as follows:

"2. Consequent upon the change of the educational pattern when 10 + 2 + 3 system was introduced in the State of Tamil Nadu in the year 1977, with effect from Academic Session 1978, it became necessary to have separate set of teachers for the Higher Secondary Classes, namely, Classes XI and XII. It was stipulated that only those, who possessed the qualification of Post-Graduate Degree in the subject could be eligible to teach the Higher Secondary Classes. Since large number of existing teachers of the Secondary Schools had not acquired that qualification, by Government Order, a time was allowed to those people to acquire the same within the period of 5 years. Within the time permitted, many of them acquired the qualification of Post-Graduate Degree in the subject and therefore were allowed to continue as Teacher in the Higher Secondary Classes. Those who could not qualify themselves were, however, further given a chance by way of a condensed course for 10 months. On completion of their condensed course and acquiring the Diploma thereunder, they also became eligible to be continued as a Teacher in the Higher Secondary Classes. Their eligibility to

continue as Teacher has not been assailed at any point of time.

In 1992, by way of an Executive Order, the State Government provided for a ratio for filling up of post of Principal to those Higher Secondary Schools and Executive Order was substituted by a set of rules under proviso to Article 309 of the Constitution with effect from 29-6-1994. It is this rule providing for a ratio in respect of these inducted teachers, which was the subject matter of challenge before the Administrative Tribunal. The Tribunal by the impugned order came to the conclusion that there has been no discrimination in providing a quota for these inducted teachers to be appointed as Principal of the Higher Secondary Schools and dismissed the application filed by the Post-Graduate Teachers. Against this order of the Tribunal, the present appeals have been preferred. It is contended with vehement that prescribing a quota for the unqualified people like the condensed course teachers is grossly discriminatory and it prejudices the chance of promotion of the regular Post-Graduate Teachers and there is no reasons or rationale to have a separate qualification between the Post-Graduate Teachers having Post-Graduate Degree as their qualification and such Post-Graduate Teachers, who are called inducted teachers, who became eligible only by virtue of having their condensed course qualification. The counsel appearing for the State, on the other hand, took us through the assertions made in the counter-affidavit indicating the reasons, which the employer, the State Government a quota for these group of inducted teachers. Prescribing a quota in the matter of promotion has already been considered in several decisions of this Court and has been upheld in P. Murugesan v. 1993 AIR State of Tamil Nadu and T. R. Kothandaraman v. T. N. Water 1994 AIR] Supply and Drainage B.D. The Rule making authority having permitted the inducted teachers to continue as teacher for the Higher Secondary Classes like other Post Graduate Teachers, it necessarily follows that such inducted teachers could not be debarred from being appointed as Head masters of the Higher Secondary Schools inasmuch as the feeder category for filling up the post of Headmasters, for the Higher Secondary Schools are:

- (i) The Headmasters of the Secondary Schools;
- (ii) The existing Post-Graduate Teachers of the Higher Secondary Schools; and

(iii) The inducted teachers who also re the teachers of the Higher Secondary Schools.

Having regard to the period taken by such inducted teachers to get into the promotional avenue of the Headmasters of the Higher Secondary Schools and having regard to the nature and duties of the Headmasters of such Higher Secondary Schools, if the rule making authority prescribes a quota the ratio of 5:2 between the Post-Graduate Teachers of the Higher Secondary Schools and inducted teachers of the Higher Secondary Schools, the same cannot be struck down as arbitrary or irrational. The considerations which weighed with the rule making authority for prescribing the quota as indicated in the counter affidavit must be held to be germane to the issue and cannot be held to be extraneous consideration. In view of the assertions made in the counter-affidavit filed by the State Government before the Tribunal, which has formed a part of the records of these appeals as well as the counter-affidavit filed in this Court, we see no infraction of any constitutional provisions in prescribing a quota for the inducted teachers, who, we are told, are a dying cadre as on today. In these circumstances, we see no justification to interfere with the impugned order of the Tribunal. These appeals are accordingly dismissed."

18. In *Susila Vs. Kalyani and others* in W.A.No.246 of 2009, the Court held as follows:

"3. The special rules for the Tamil Nadu Higher Secondary Educational Service framed under Article 309 of the Constitution of India governs the matter of promotion to the post of Headmaster in Higher Secondary Schools. The Higher Secondary School Headmaster belongs to Class-I service under the Rules. The Post Graduate Assistant in languages belongs to Category-I of Class II service and the Post Graduate teacher in academic subjects belongs to Category II of Class III service. The inducted teachers at Higher Secondary Schools belong to Category III of Class II service. The vacancies arising in Class-I service, namely, the Headmasters in Higher Secondary Schools, are to be filled in the ratio of 2:5:2, i.e., two Headmasters in High Schools by recruitment by transfer, 5 Post Graduate Assistants by promotion and 2 inducted teachers by promotion. Further, more importantly, while ensuring the proportion of appointment in the service, cycle for such appointment

to the post of Headmaster in the Higher Secondary Schools is also provided in the Special Rules.

4.The relevant rule in this case is extracted hereunder: "i)Vacancies arising in Class I of the service shall be filled up so as to ensure that the proportion of appointment in the service in the said class by recruitment by transfer/by promotion from Categories 1 and 2 of Class II and Class III taken together and by promotion from Category 3 of Class II respectively be in the ratio of 2:5:2 and the cycle for such appointment shall be as follows:

By recruitment by transfer 1-H.M. of High School By promotion from Categories 1 and 2 1-P.G Assistant of Class II and Class III By promotion from Category 3 of Class II 1-Inducted teacher By recruitment by transfer 1-H.M.of High School By promotion from Categories 1 and 2 of 1-P.G. Assistant Class II and Class III By promotion from Category 3 of Class II 1-Inducted teacher By promotion from Categories 1 and 2 of 1-P.G. Assistant Class II and Class III By promotion from Categories 1 and 2 of 1-P.G. Assistant Class II and Class III By promotion from Categories 1 and 2 of 1-P.G. Assistant Class II and Class III Provided that if no sufficient number of qualified and suitable candidates are available for appointment by a particular method, such vacancies shall be filled in by the other method prescribed".

19.In The State of Tamil Nadu rep. by its Secretary to Government and 3 others Vs. T.R.Iswaran in W.A.No.662 of 2012, against the order dated 12.01.2011 in W.P.No.685 of 2004, the Court held as follows:

"17. However the learned counsel for the first respondent argued that G.O.Ms.No.720 Education Department dated 28.04.1981 was made applicable to Government Higher Secondary Schools wherein two ways of appointment to the post of Post-Graduate Headmasters of Higher Secondary Schools came to be prescribed and that the said rules could not be directly applied to the schools run by the private managements, either aided or unaided. It is the further contention of the learned counsel for the first respondent that a Full Bench of this court in The Saliar Mahajana Hr. Sec. School v. The Joint Director reported in 1995 Writ L.R. 277 held that the rules notified under G.O.Ms.No.720 Education Department dated 28.04.1981 regarding the manner of

appointment of Headmasters of Higher Secondary Schools shall not be applicable to aided schools run by private managements. We have also perused the said judgment of the Hon'ble Full Bench of this court. It is true that the Hon'ble Full Bench of this court made an observation that the said rule notified under G.O.Ms.No.720 Education Department dated 28.04.1981 was not a statutory rule framed under Article 309 of the Constitution of India and on the other hand it was only an administrative rule in so far as they relate to aided schools and that the said Government Order would apply with such modifications as were necessary to the aided schools. However, as rightly pointed out by the learned Special Government Pleader, the said judgment shall not be applicable to the case on hand, as the issue in controversy in the case on hand is not one covered by the judgment of the above said Full Bench. The Full Bench considered the method of recruitment to the post of Headmasters and Headmistresses in Higher Secondary Schools. While considering the methods of appointment to the post of Headmasters and Headmistresses of Higher Secondary Schools which fell vacant subsequent to the retirement of inducted Headmasters, the Full Bench held that Government Order would not be applicable to the aided schools as there could be no such classifications of the feeder categories in the aided schools. In that context only the Full Bench chose to hold that the Government Order in its application to the aided schools in the matter of appointment of Headmasters shall be applied with such modifications as are necessary to suit the conditions prevailing in the aided schools.

18. It is an admitted fact that in the said judgment, the Full Bench did not consider the question of entitlement of the inducted Headmasters to pay on parity with the fully qualified Headmasters before their getting fully qualified. Nothing has been mentioned in the said Full Bench judgment as to the pay disparity between inducted headmasters and fully qualified headmasters.

19. In the case on hand, while providing status quo and post protection to them, the inducted teachers and inducted Headmasters were treated as a class different from the fully qualified teachers and Headmaster and a differential treatment was provided to them by permitting them to continue in the post of Headmasters of Higher Secondary Schools drawing the pay scale applicable to the Headmasters of High Schools with a

nominal special pay subject to a condition that they would move to the scale applicable to the Headmasters of Higher Secondary Schools as and when they got fully qualified. Even thereafter, they had been provided with a short term certificate course and on completion of such a short term course they were to be considered to be fully qualified. From the date of such completion of the certificate course, they were made eligible to draw salary in accordance with the pay scale applicable to qualified post graduate headmasters. In short, when an inducted teacher or inducted Headmaster, gets fully qualified by successfully completing the short term training course under the SCERT, for all purposes he is deemed to be a post graduate. However till such acquisition of qualification equivalent to the post graduate degree, they are not entitled to draw their salary in accordance with the pay scale applicable to the qualified post graduate Headmasters of Higher Secondary Schools and they should be content with the drawal of special pay in addition to the pay fixed in the pay scale of High school Headmasters.

20. The first respondent, having become fully qualified on 28.09.1987, shall be entitled to move to the pay scale of the Higher Secondary School Headmaster from that date alone and not from the date on which he was inducted as unqualified Headmaster of Higher Secondary School and allowed to continue. Hence we are of the considered view that the order of the learned single judge is bound to be modified to the above said extent, holding that the first respondent is entitled to re-fixation of salary applying the pay scale applicable to fully qualified Headmasters of Higher Secondary Schools with effect from 28.09.1987, the date on which he became fully qualified and not from 01.07.1978. In all other respects, the order of the learned single judge shall stand confirmed. The appellants shall complete the exercise of re-fixation and pass necessary orders for payment of the arrears of pay (differential pay) and the difference in pension from 01.06.1992, the day following the date of his superannuation, within four weeks from the date of receipt of a copy of this judgment."

20. The Decision of the Supreme Court in Tamil Nadu PGT Association versus State of Tamil Nadu referred to supra is of no relevance in as much as the said judgement merely upholds the Avenue for promotions.

21. The court merely recognised the quota for promotion to the Post of Headmasters in the ratio of 2:5:2 from those who

have been absorbed as teachers after induction, for the post of PG Assistant and those who are already the Headmasters in the High Schools.

22. It was held that having regard to the period taken by such inducted teachers to get into the promotional avenues of the Headmasters of the Higher Secondary Schools and having regard to the nature and duties of the Headmasters of such Higher Secondary School, if the rule making authority prescribes a quota in the ratio of 5:2 between the Post Graduate Teachers and Inducted Teachers of the Higher Secondary School, same cannot be struck down as arbitrary or irrational. The court further held that the rule making authority having permitted the inducted teachers to continue as teachers for the Higher Secondary classes like other postgraduate teachers, it necessarily follows that such inducted teachers could not be barred from being appointed as headmasters of the Higher Secondary School as the feeder category for filling up the post of Headmasters, for the higher secondary schools promotion from the following categories:-

- i. Headmaster of the Secondary Schools;
- ii. The Existing postgraduate teachers of the Higher Secondary School;
- iii. The inducted teachers who were absorbed as teachers in the higher secondary schools.

23. From the facts of the case, it is clear that petitioner became a P.G. Assistant only in 1985 while M.Kannan became a P.G. Assistant way back in 1978 owing to his qualification at the time of recruitment in 1977. Thus, there is no comparison between them. The avenues for promotion for P.G. and an Inducted Teachers is same but in different in ratio. The vacancies arising in class I service namely Headmaster in Higher Secondary School were to be filled in the ratio of 2:5:2 i.e., two Headmaster by recruitment by transfer, 5 Post Graduate Assistants by promotion and 2 from Inducted Teachers by promotion. The petitioner was entitled to be promoted as Headmaster from the third category, Mr.Kannan was entitled to be promoted from the 2nd category and was promoted as a Headmaster on 23.07.1993.

24. Unless, the petitioner is able to show that he was denied promotion from the 3rd category, it is of no consequence if Mr.Kannan was promoted from the 2nd category. Needless to state Mr.Kannan was more qualified and was made a P.G. Assistant way back in 1978. While the petitioner became a P.G. Assistant only in 1985 after undergoing induction programme.

25.In view of the above observations, the present writ petition is liable to be dismissed and is hereby dismissed. No costs.

Sd/-
Assistant Registrar(IX)

//True Copy//

Sub Assistant Registrar

ia

To

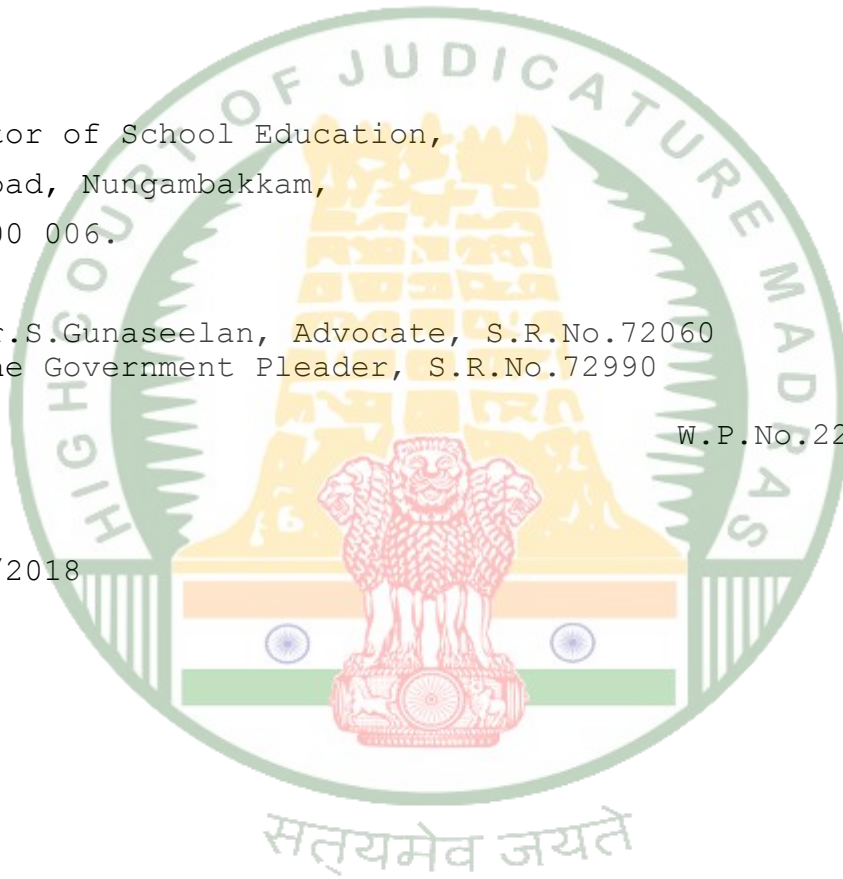
The Director of School Education,
College Road, Nungambakkam,
Chennai 600 006.

+1cc to Mr.S.Gunaseelan, Advocate, S.R.No.72060
+1cc to the Government Pleader, S.R.No.72990

W.P.No.22234 of 2008

VD(CO)

rrs 28/11/2018



WEB COPY