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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P.No.4727 of 2011 &
M.P.No.1 of 2011

K.V.K.Somasundaram

.. Petitioner

Vs.

1.The Secretary,
Tamil Nadu Public Service Commission,
No.1, Greems Road,
Chennai - 600 006.

2.The Commissioner,
Commercial Tax Department,
Chepauk, Chennai - 600 005.

3.The Deputy Commissioner,
(Commercial Tax),
Enforcement (Central),
Chennai - 600 006.

4.The Director, Elementary Education,
College Road, Chennai - 600 006.

5.The Joint Director (Personal),
School Education Department,
College Road, Chennai - 600 006.

6.The District Elementary Education Officer,
District Elementary Educational Office,
Gandhi Nagar, Tiruvannamalai - 606 601.
Tiruvannamalai District.

.. Respondents

(R4 to R6 are impleaded as per order
dated 16.04.2018 in W.M.P.No.10327 of 2018
in W.P.No.4727 of 2011)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to direct the first respondent to withdraw the name of the petitioner from Commercial Taxes Department where he was allotted and to re-allot the petitioner to Elementary Education Department for a posting more particularly in Tiruvannamalai the



present in Tiruvannamalai, wherein the petitioner is still working and continuing and working in the existing post.

For Petitioner : Mr.S.Sivakumar

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For Respondents : Mr.M.Devendran
Standing Counsel for R1

Mr.Master Ganesh
Government Advocate (Taxes) for R2 & R3

Mr.P.Raja
Government Advocate for R4 to R6

O R D E R

Heard Mr.S.Sivakumar, learned counsel for the petitioner; Mr.M.Devendran, learned Standing Counsel for the first respondent; Mr.Master Ganesh, learned Government Advocate (Taxes) for the respondents 2 and 3; Mr.P.Raja, learned Government Advocate for the respondents 4 to 6 and perused the materials available on record.

2. The petitioner has come up with the present Writ Petition for issuance of Writ of Mandamus directing the first respondent to withdraw the name of the petitioner from the Commercial Taxes Department and to re allot the petitioner to Elementary Education Department in Thiruvannamalai.

3. According to the petitioner in the year 2003, there was an en-mass strike by the Government employees and to over come the situation, G.O.Ms.Nos.84 & 85, P & AR Department, dated 04.07.2003 were issued to appoint temporary staff. Pursuant to Government Orders, the petitioner temporarily appointed as Junior Assistant in the Office of the District Educational Officer, Thiruvannamalai on 01.06.2005. The petitioner would further state that the Government, by issuing G.O.Ms.Nos.155, P & AR Department, dated 19.09.2006, decided to absorb all the Junior Assistants, who were temporarily appointed as Junior Assistants in various Departments by conducting a Special Competitive Examinations for all the Departments. Accordingly, the Tamil Nadu Public Service Commission was requested to conduct Special Examination in Group-IV.

4. The grievance expressed by the petitioner is that when he was already working in an Educational Department at Thiruvannamalai, he was selected and posted as Junior Assistant in Commercial Taxes Department at Chennai. Despite his



representations dated 08.11.2010 and 12.11.2010, no orders have been passed, reallotting the petitioner to the Education Department. Hence, the present Writ Petition.

5. The learned Standing Counsel for the first respondent by relying upon the counter submitted that as per the Government Orders, a Special Competitive Examination was conducted by the first respondent and as per the marks secured in the Special Examination, they were appointed in various Departments. It is further stated that a similar Writ Petition in W.P.(MD)No.4461 of 2009 filed before the Madurai Bench of Madras High Court was allowed and on appeal by the Tamil Nadu Public Service Commission, the Division Bench in W.A.(MD)No.242 of 2010, reversed the order of the learned Single Judge. The order was also confirmed by the Hon'ble Supreme Court in SLP(C) No.8403 of 2011.

6. The learned counsel for the petitioner submitted that the petitioner is a native of Thiruvannamalai District and he is having two children and they are studying in local schools and he is the only breadwinner of the family. Immediately, after the appointment in a Commercial Taxes Department, representations sent by the petitioner were not attended by the respondents and he is entitled for the prayer sought for in the Writ Petition.

7. I am not able to agree with the submission of the learned counsel for the petitioner for the reasons that the Division Bench in W.A.(MD)No.242 of 2010, has held as follows:-

"11. Besides, a direction has been issued by the learned Single Judge to accommodate the private respondents / writ petitioners in the Registration Department in the vacancies available on the date of passing the order. As far as this portion of the order of the learned Single Judge is concerned, when the learned counsel for the private respondents / writ petitioners himself admits that as a matter of right, they cannot claim appointment in any particular department and when the allotment is depending upon so many factors, as referred to above, whether they are eligible for this relief as per the rules and when their name has been examined, is the point to be decided. According to the learned Senior Counsel appearing for the Service Commission, even the top rankers could not be accommodated as per the option exercised by them in the particular department and as far as the Registration Department is concerned, no vacancies were notified for Registration Department in the said notification and as far as the subsequent vacancies are concerned, requirement was not done; under such circumstances, the question of



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accommodating the private respondents / writ petitioners in the Registration Department does not arise and that request is also un-sustainable. This argument is prima facie sustainable. One other factor to be noted in this case is that if the selected candidates have to be allotted each of the departments according to their whims and fancies, it will lead to a hazardous situation and while getting appointment also, it will give a right to them or it will give rise to a situation wherein a new recruit, as a matter of right, can claim any department. If this has to be given effect to, then, matters relating to rule of reservation, vacancy position and marks secured by the candidates have to be given a go-by."

8. Taking note of the facts of this case and the decision of the Division Bench of this Court in W.A.(MD)No.242 of 2010, I am of the considered opinion that the petitioner is not entitled for the relief sought for in the Writ Petition. In that view, the writ Petition is dismissed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

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To

- 1.The Secretary,
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District Elementary Educational Office,
Gandhi Nagar, Tiruvannamalai - 606 601.
Tiruvannamalai District.

+1cc to Mr.M.Devendran, Advocate SR.No.70977

+1cc to M/s.S.Suseeladevi, Advocate SR.No.70705

+1cc to Government Pleader SR.No.70658

W.P.No.4727 of 2011 &
M.P.No.1 of 2011

SSD(CO)

GMV(29/11/2018)