

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 12.12.2018

CORAM:
THE HONOURABLE MR. JUSTICE T.RAJA
W.P.No.18995 of 2016

G.Nagesh

... Petitioner

Vs

- 1.The Government of Tamil Nadu
rep. by its Secretary to Government,
School Education Department,
Fort St. George, Chennai-9.
- 2.The Joint Director of School Education
(Personnel), College Road,
Chennai.
- 3.The Chief Educational Officer,
Office of the Chief Educational Officer,
Government Boys Higher Secondary
School Campus, Gandhi Road,
Krishnagiri-635 001.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to quash the order passed by the 3rd respondent dated 06.11.2015 in Na.Ka.No.063599/C5/E5/2015 and to direct the respondents to promote and regularize the petitioner services as Drawing Master from 28.01.2004 as per order in O.A.No.38/2004 passed by the Tamil Nadu Administrative Tribunal for the purpose of promotion, seniority and all other attendant benefits.

For Petitioner : Mr.B.Vijayakumar

For Respondents : Mr.K.Karthikeyan,
Govt. Advocate for R1 to 3

O R D E R

Mr.G.Nagesh, who is now serving as a Drawing Master (Teaching Post), has come to this Court with the present Writ Petition, challenging the impugned order passed by the 3rd respondent, namely, the Chief Educational Officer, Krishnagiri, dated 06.11.2015 in Na.Ka.No.063599/C5/E5/2015, refusing to consider his request for appoint him as Drawing Master from the date of the order passed by the Tamil Nadu Administrative Tribunal in O.A.No.38/2004 dated 28.01.2004.

2. Learned Counsel appearing for the petitioner submitted that the petitioner joined duty as Office Assistant in School Education Department on 27.8.1984 and his probation was completed on 25.8.1985. Since he was qualified to be promoted to the post of Drawing Master, he made several representations to the Chief Educational Officer of the then Dharmapuri District. But his representation for promotion to the post of Drawing Master was not considered by the 3rd respondent herein within reasonable time. Therefore, he moved O.A.No.38/204 before the Tamil Nadu Administrative Tribunal, Chennai to consider his candidature for appointment by transfer of service to the post of Drawing Master. The Tribunal also by an order dated 28.01.2004 gave a direction to the respondents to consider his case for appointment by transfer of service to the post of Drawing Master.

3. The learned Counsel for the petitioner further submitted that the petitioner has passed higher grade in Drawing conducted by the Department of Government Examination and also passed the Technical Teachers Course in the year 2002 and as such, the petitioner has possessed the requisite qualifications prescribed for the post of Drawing Master. Further, as per the Service Rules, appointment to the post of Drawing Master can be done either by direct recruitment or by promotion from a lower category in the same service or by transfer of service from any other category. Therefore, the learned Tribunal after referring to these issues gave a direction to consider the case of the petitioner for appointment by transfer of service to the post of Drawing Master. Finally, a Rejection Order dated 17.6.2004 was passed by the Joint Director of School Education (Personnel), Chennai, the 2nd respondent herein.

4. The learned Counsel for the petitioner also submitted that this Court has also set aside the order of rejection passed by the Joint Director of School Education (Chennai) in the Writ Petition filed by the petitioner in W.P.No.23.2.2004 dated 17.6.2004 on the ground that as per Rule 2 of the Tamil Nadu Educational Subordinate Service Rules, the vacancies in the post of Drawing Masters can be filled up by the following modes:

- (i) Promotion from II Grade for I Grade and III Grade for II Grade
 - (ii) If no qualified and suitable candidate is available for appointment by method
- (i) above
 - (a) Direct Recruitment, or,
 - (b) Transfer from any post in the service of an identical scale of pay; or
 - (c) Promotion from any post in the service on a lower scale of pay;
 - (d) Recruitment by transfer from any other service.

Further, this Court directed the Chief Educational Officer, Dharmapuri to consider the claim of the petitioner in the light of the decision reported in (2016) 4 MLJ 1027 in K.Sampath vs. State of Tamil Nadu and others. The relevant portion is extracted here under:

''9. A similar issue was considered by me in the decision reported in (2016) 4 MLJ 1027 (K.Sampath v. State of Tamil Nadu and Others), wherein I have elaborately considered the validity of the Government Letter in the absence of amendment issued to the Government Order and held that the Government Letter will not over ride the Government Order. In the said judgment, I have followed the judgments of the Honourable Supreme Court reported in (2005) 10 SCC 244 (R.P.Bhardwaj v. Union of India and Others) ; 2014 WLR 805 (P.Jeya v. Union of India and others), in support of my finding.''

5. While so, based on the order passed by this Court dated 23.02.2007 in W.P.No.27046/2004, the petitioner was given appointment to the post of Drawing Master on 26.10.2007 since he was eligible and qualified to the said post of Drawing Master. But, the grievance of the petitioner is that as per the order passed by the learned Tribunal in O.A.No.38/2004 dated 28.01.2004, the respondents should be directed to give the post of Drawing Master w.e.f. the date of the order passed by the Tribunal. Without considering the said request, the respondents have simply rejected the claim of the petitioner.

6. Again relying on the order passed by this Court in W.P.No.19886/2015 dated 7.7.2015, the learned Counsel for the petitioner submitted that when the petitioner made a claim that his service in the Drawing Master has to be regularised with effect from 28.01.2004, the date of the order of the Tribunal, a representation was made to the Chief Educational Officer, Krishnagiri, who in turn, sent a proposal dated 02.01.2014 to the Joint Director of School Education (Personnel), Chennai. Therefore, this Court has also given a direction to consider the said proposal. But without properly considering the said proposal and also the order passed by this Court, the present impugned order has been passed, thereby declining the claim of the petitioner.

7. A detailed counter affidavit has been filed by the 3rd respondent herein.

8. Learned Government Advocate appearing for the respondents submitted that the claim made by the petitioner for appointment to the post of Drawing Master in School Education

Department was considered in the light of the orders passed by this Court in W.P.No.27046/2004 dated 23.2.2007. Explaining further, the learned Government Advocate submitted that the claim of the petitioner that his appointment to the post of Drawing Master should be made w.e.f. 28.1.2004 till 25.10.2007 is far from acceptance. The reason is when the learned Tribunal entertaining O.A.No.38/2004, by order dated 28.1.2004 has given a direction to consider the request of the applicant for appointment to the post of Drawing Master by transfer of service, subsequently, the said direction was considered by the Chief Educational Officer, Krishnagiri by his Order dated 17.06.2004. The petitioner questioning the said order filed W.P.No.27046/2004 and this Court while allowing the said writ petition and quashing the impugned order again gave a direction only to consider the case of the petitioner in the light of G.O.Ms.No. 753 dated 15.7.1985 and as per the direction issued by this court, the petitioner was given promotion to the post of Drawing Master in the regular time scale of pay w.e.f. 26.10.2007 and he has also joined duty on 28.10.2007. Therefore, there is no violation of any order passed by the Tribunal or by this Court in W.P.No.27046/2004 dated 23.2.2007. Hence the petitioner cannot claim benefit with retrospective effect. Moreover after the order passed by this Court on 23.2.2007, he waited for another 8 long years for filing the W.P.No.19886/2015 seeking a direction to the 3rd respondent to regularise his services from 28.1.2004 i.e. from the date of order of the Tamil Nadu Administrative Tribunal passed in O.A.No.38/2004 for the purpose of promotion, seniority and all other attendant benefits, therefore, the present Writ Petition is liable to be dismissed.

9. I find full force on the submission made by the learned Government Advocate appearing for the respondents. Moreover, the prayer made by the petitioner that he should be given appointment to the post of Drawing Master w.e.f. the date of the order passed by the Tribunal till he was appointed in the said post, does not carry any merit. The reason being that there was no positive direction given by the Tribunal while disposing of the Original Application in O.A.No.38/2004 dated 28.01.2004. Besides when the petitioner questions the order dated 17.06.2004 passed by the Joint Director of School Education (Personnel), the 2nd respondent herein in W.P.No.27046/2004, he has not even asked for any benefit for retrospective effect, namely, from the date of the order passed by the learned Tribunal i.e. from 28.1.2004, his service has to be regularised in the post of Drawing Master instead of 26.10.2007, the date on which the petitioner was appointed as Drawing Master. In view of all the above, I find no merit in the Writ Petition.

10. In the result, the Writ Petition fails and the same is accordingly dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government,
Government of Tamil Nadu,
School Education Department,
Fort St. George, Chennai-9.
- 2.The Joint Director of School Education
(Personnel), College Road,
Chennai.
- 3.The Chief Educational Officer,
Office of the Chief Educational Officer,
Government Boys Higher Secondary
School Campus, Gandhi Road,
Krishnagiri-635 001.

+1cc to M/s. B.Vijayakumar, Advocate, S.R.No.86043

+1cc to the Government Pleader, S.R.No.86675

W.P.No.18995 of 2016

SJ(CO)

rrs 08/01/2019

सत्यमेव जयते

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