

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2018

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.15596 of 2011

A.Fazludeen

.. Petitioner

Vs.

1. The Director of Elementary Education,
College Road,
Chennai-6.
 2. The District Elementary Educational Officer,
Cuddalore District,
Cuddalore.
 3. The Assistant Elementary Educational Officer,
Gumathupalli, Parangipettai,
Cuddalore District.
- .. Respondents

Petition filed under Article 226 of The Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records on the file of the second respondent relating to the proceedings issued in Na.Ka.No.5874/Aa5/2009 dated 10.11.2009 and quash the same and direct the respondents to promote the petitioner to the post of Headmaster-Linguistic Minority in Gumathpalli Girls Primary school, at Parangipettai Union, Parangipettai, Cuddalore District.

For Petitioner .. Mr.G.Sankaran

For Respondent .. Ms.P.Kavitha
Government Advocate

ORDER

The petitioner has approached this Court, seeking the following relief:-

"Writ of Writ of Certiorarified Mandamus calling for the records on the file of the second respondent relating to the proceedings issued in Na.Ka.No.5874/Aa5/2009 dated 10.11.2009 and quash the same and direct the respondents to promote the

petitioner to the post of Headmaster-Linguistic Minority in Gumathpalli Girls Primary school, at Parangipettai Union, Parangipettai, Cuddalore District."

2. The petitioner is working as Secondary Grade Teacher (Urudu) in Panchayant Union Muslim Girls' Primary School, Gummathapalli, Parangipettai Union, Parangipettai, Cuddalore District. The petitioner is also eligible for promotion to the post of Headmaster - Linguistic Minority. On 19.11.2007, the petitioner made a representation that if any vacancy arises in the school in which he is working as Secondary Grade Teacher, the petitioner may be considered for appointment to the post of Headmaster on the basis of linguistic qualification in Urudu, on an out of turn basis, because of such appointment is permissible under the Tamil Nadu Elementary Educational Subordinate Service issued by G.O.Ms.No.1383 dated 23.05.1988.

3. According to the petitioner, an out of turn basis, the promotion is effected in other districts, however, he was not considered for the same where he was working as Secondary Grade Teacher. Therefore, he was constrained to file a writ petition in W.P.No.15950 of 2009 and this Court disposed of the writ petition on 10.08.2009, directing the respondents therein to consider the representation of the petitioner, which was made on 19.11.2007, within a period of twelve weeks. Pursuant to the order passed by this Court in the aforesaid writ petition, the second respondent passed an order on 10.11.2009, stating that as per the existing orders and Section 35(a) of Subordinate Service Rule, the post of Headmaster (Linguistic Minority), the general seniority of the Secondary Grade Teachers alone to be followed and therefore, his request for promotion as Headmaster - Linguistic Minority in Gumathpalli Girls Primary School, at Parangipettai Union, Parangipettai, Cuddalore District, cannot be considered favourably. The rejection of the petitioner's request dated 10.11.2009, is put to challenge in the present writ petition.

4. Upon notice, Ms.Kavitha, the learned Government Advocate entered appearance on behalf of the respondents and filed a detailed counter affidavit.

5. In the counter affidavit, it is stated that as the petitioner cannot be considered for posting as Headmaster in the school in which he is working as Urudu Secondary Grade Teacher since 1981, the post of Headmaster was not sanctioned for the said school (linguistic minority). More over, the petitioner prevailing seniority stands in Serial No.45 in the category of Secondary Grade Teachers and only if turn comes to the petitioner, he will be considered to the post of Primary School Headmaster like others. In the counter affidavit, it is further

stated that the so-called out of turn basis, a promotion was granted which was pointed out by the learned counsel for the petitioner that a mistake was committed by the Department and such mistake need not be repeated.

6. During the course of arguments, the learned Government Advocate appearing for the respondents would submit that the petitioner's school is not a minority school and therefore, the petitioner cannot seek for promotion as Headmaster, even assuming an out of turn basis for providing promotion is not possible for linguistic minority schools.

7. At this, the learned counsel appearing for the petitioner would submit that in the same district, there are other schools wherein the post of Headmaster is lying vacant and the petitioner may be considered for promotion in any other linguistic minority schools, if vacancy available. He would draw the attention of this Court to Section 5 of the Special Rules for the Tamil Nadu Elementary Educational Subordinate Services, which is reproduced below:

"5.Appointments in Institutions for minority Languages: A vacancy in the post of Headmaster/Headmistress in a middle or Primary School, especially provided for linguistic minority shall be filled up by transfer of any member of the same grade who is in possession of the respective language qualification and who may be employed at the time of the vacancy in an institution not specially provided for linguistic minority. When such transfer is not possible, member who is in possession of the respective language qualification may be appointed by any method admissible under rule 2 above, but he shall not acquire by reason only for such appointment any right in the matter of seniority or full membership in such grade or transfer to a vacancy in such grade in an institution or establishment, not specially provided for linguistic minority or promotion, to a higher grade or category."

Therefore, as per rules and sections as provided for such appointment, the department may be directed to consider the petitioner's request for promotion as Headmaster on the basis of linguistic qualification in which the petitioner works in the school or in any other linguistic minor schools. This request is made by the learned counsel for the petitioner on the basis of the fact that the petitioner is going to retire on 30.04.2018 and he may be considered for the promotion as Headmaster before

the date of his retirement and the petitioner would be entitled to get the benefits, if such request is favourably considered by the Department.

8. Considering the limited request made on behalf of the petitioner and also considering Section 5 of the Special Rules for the Tamil Nadu Elementary Educational Subordinate Services, the petitioner's claim may be considered for promotion to the post of Primary School Headmaster if there are any vacancies arise in any place at Linguistic Minority Schools in Cuddalore District or any other neighbouring District, if he is entitled to be promoted to the post of Headmaster and the Department shall pass orders with reference to above said special rules and also based on the qualification possessed by the petitioner.

9. The respondents 1 and 2 are therefore directed to consider the request of the petitioner for his promotion as Headmaster on the basis of his linguistic qualification in any one of the linguistic minority schools in the Cuddalore District or in any other neighbouring Districts, if there is any vacancy available on the basis of linguistic seniority and pass orders within a period of two weeks from today.

10. With the above direction, this Writ Petition stands allowed. No costs.

s/d-

Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

To

1. The Director of Elementary Education,
College Road,
Chennai-6.
2. The District Elementary Educational Officer,
Cuddalore District,
Cuddalore.
3. The Assistant Elementary Educational Officer,
Gumathupalli, Parangipettai,
Cuddalore District.

+1 CC to Govt. Pleader sr 24315.

+1 CC to Mr.G. Sankaran, advocate sr 24179.

W.P.No.15596 of 2011

SP(04/04/2018)