

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 22.11.2018

CORAM
THE HONOURABLE MR.JUSTICE T.RAJA

Writ Petition No.26893 of 2016
and W.M.P. No.23121 of 2016

M.R.Balasubramanian

.. Petitioner

Versus

1.The Director of School Education,
Elementary Directorate
DPI-College Road,
Nungambakkam, Chennai-600 006.

2.District Elementary Education Officer,
Krishnagiri Post - 635 001,
Krishnagiri Taluk.

3.Teachers Recruitment Board,
College Road,
Chennai-600 006.

4.Chief Educational Officer,
Tiruvannamalai District,
Tiruvannamalai-606 601.

5.Assistant Elementary Education Officer,
Thali Union,
Denkanikottai Taluk,
Krishnagiri District-635 102.

6.The Headmaster,
Panchayat Union Middle School,
Kodakarai Village-Doddamanchi Post,
Thali Union,
Denkanikottai Taluk,
Krishnagiri District-635 102.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus calling for records relating to the second respondent's letter Na.Ka.No.4574/A3/2015 dated 01.06.2016 and quash the same and to direct the respondents to regulate his appointment with retrospective effect from 24.11.2009 with all consequential benefits as directed by this Court in W.P. Nos.29487 of 2010 and 7860 of 2016.

For Petitioner : Ms.R.Nirmala Devi

For Respondents: Mr.K.Karthikeyan,
Government Advocate

O R D E R

The writ petition has been filed by the petitioner challenging the letter Na.Ka.No.4574/3/2015 dated 01.06.2016 issued by the second respondent and seeking a direction to the respondents to regulate his appointment with retrospective effect from 24.11.2009 with all consequential benefits as directed by this Court in W.P. Nos.29487 of 2010 and 7860 of 2016.

2.The case of the petitioner is that he completed Diploma in Teacher Education during 2005-2007 and registered his name with the Employment Exchange on 26.5.2008. According to him, since he belongs to Scheduled Caste Community and married a girl from other community, he is entitled to seek appointment under Special Priority Category, namely, Scheduled Caste Inter Caste Marriage. While so, the third respondent called for Certificate Verification for appointment to the post of Secondary Grade Assistant for the academic years 2007-2008 and 2008-2009 by way of direct recruitment vide Proceedings dated 14.5.2009. However, he was called to attend the said Certificate Verification on 5.6.2009 on the basis of communal rotation, employment seniority and also on priority basis. He attended the Certificate Verification and during the verification, he could not produce his Evaluation Certificate since he has undergone the Diploma in Teachers Education in Karnataka State. Since the petitioner could not produce the Evaluation Certificate, the third respondent took a decision that he is not eligible to be considered for appointment to the post of Secondary Grade Assistant.

3.Subsequently, the certificate of the petitioner was evaluated by the Director of Elementary Education, Chennai on 5.10.2009 and further the decision on evaluation was communicated to him on 6.10.2009. However, the third respondent vide proceedings dated 18.9.2009 called the petitioner to attend Certificate Verification scheduled to be held on 7.10.2009 and it was informed to him that such a verification is to be held only in respect of persons who had already participated and declared to be ineligible, because of non-production of the Evaluation Certificate. He attended the interview on 7.10.2009 and also the Certificate Verification before the fourth respondent, wherein he has produced all the certificates and he was under the bonafide impression that this time he would be appointed to the post of Secondary Grade Assistant. On 9.12.2009, interview was scheduled to be held at Chennai by the

third respondent. However, the petitioner did not receive any call letter to attend the interview. In this regard, he approached the third respondent and submitted number of representations. Finding no response, he approached this Court by way of filing a Writ Petition in W.P. No.29487 of 2010.

4.This Court, by order dated 08.02.2011 in W.P. No.29487 of 2010, recorded a finding that since the mistake committed on the part of the third respondent, the petitioner was not selected and therefore, in the event of selection and appointment to the post of Secondary Grade Assistant, his seniority has to be reckoned from the year 2009-2010. This Court further held that in respect of the academic years 2010-2011, 1743 vacant posts were available and the concerned Employment Exchanges were directed to sponsor the candidates at the ratio of 1:5 by means of a letter dated 1.11.2010 and as soon as the receipt of the names sponsored by the Employment Exchanges, the name of the petitioner will be considered as a first person under the Special Priority Category, namely, Scheduled Caste Inter Caste Marriage. While disposing of the above writ petition, directed the third respondent to take all necessary steps to consider the claim of the petitioner in terms of the said order dated 13.12.2010 and pass appropriate orders. Paras 9 to 14 of the order read as follows:

'9.The learned Counsel for the petitioner would submit that an information dated 13.12.2010 was obtained from the 2nd respondent and as per the said information, certificate verification was done in respect of the persons who were found to be ineligible on account of non-production of certain certificates and the said certificate verification was done on 6.10.2010, 7.10.2010, 21.10.2010 and 13.11.2010. The petitioner appeared on 7.10.2010 before the 3rd respondent and submitted his certificates and on account of the mistake while entering in the computer, the petitioner was not selected for the said post.

10. Now, it is further stated that in respect of the academic year 2010-2011, 1743 vacant posts are available and the concerned Employment Exchanges were directed to sponsor the candidates at the ratio of 1:5 by means of a letter dated 1.11.2010 and as soon as the receipt of the names sponsored by the Employment Exchanges, the name of the petitioner will be considered as a first person under the Special Priority Category, namely, Scheduled Caste Inter Caste Marriage.

11. Heard the learned Government Advocate on the submissions made by the learned Counsel for the petitioner.

12. In view of the said communication sent by the 2nd respondent, the 2nd respondent is directed to take all necessary steps to consider the claim of the petitioner in terms of the said order dated 13.12.2010 and pass appropriate orders.

13. The learned Counsel for the petitioner would submit that since the mistake committed on the part of the 2nd respondent, he could not be selected and therefore, in the event of selection and appointment to the post of Secondary Grade Assistant, his seniority has to be reckoned from the year 2009-2010.

14. In my considered view, as and when the petitioner is selected as a Secondary Grade Assistant, it is always open to him to make appropriate claim before the concerned respondent regarding seniority.'

5. According to the petitioner, based on the said order, the order of appointment was issued to him only on 06.07.2015. After getting appointed as a Secondary Grade Assistant, he made number of representations seeking regularisation from 24.11.2009. Finding no response, he filed another Writ Petition in W.P. No.7860 of 2016 seeking a writ of mandamus directing the respondents to consider his representations dated 11.10.2015, 11.11.2015 and 26.12.2015 and to regulate the appointment with retrospective effect from the period 24.11.2009, with all consequential benefits. Despite this Court on 03.03.2016, while disposing of the same, directed the fifth respondent to consider the petitioner's representations dated 11.10.2015, 11.11.2015 and 26.12.2015 and forward the same to the second respondent, who in turn, shall consider the same and pass appropriate orders, on merits and in accordance with law, the respondents have not come forward to give seniority to the petitioner with effect from 24.11.2009. Therefore, he is before this Court.

6. Reiterating the averments made in the counter affidavit filed by the second respondent, the learned Government Advocate appearing for the respondents submitted that the petitioner was appointed as Secondary Grade Assistant pursuant to the orders passed by this Court. Having not worked from 2009, he is not entitled to get his seniority and other consequential benefits that would not only affect the seniority of the other candidates who are working from 2009, but also would adversely affect the department for making the payment towards salary for the period for which the petitioner had not worked from 2009 to 2015.

7.It is the admitted case of both parties that while the Teachers Recruitment Board, Chennai entered the names of the selected candidates in the Computer, the name of the petitioner was not sent to the first respondent for appointment. In the meanwhile, the list for the year 2009-10 expired on 25.11.2009 and therefore, fresh list has been called for from the employment exchange. Due to the said mistake committed by the Teachers Recruitment Board in not properly feeding the data in computer, the names of the petitioner and other eligible candidates have been omitted. The same has also been recorded by order dated 03.03.2016 passed in W.P. No.7860 of 2016.

8.When there is no fault on the part of the petitioner, the respondents should not deny the benefit of seniority to the petitioner, while he was subsequently issued with the appointment order, as the names of other candidates were sponsored and the petitioner's name alone was left out. Therefore, this Court is of the view that the petitioner is entitled to get his seniority from 12.11.2009. Accordingly, the respondents are directed to regulate the seniority of the petitioner from 12.11.2009. However, it is made clear that the petitioner is not entitled to get any monetary benefits from 2009 till 2015.

9.With the above observation, this writ petition stands disposed of. Consequently, connected W.M.P. is closed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vga

To

1.The Director of School Education,
Elementary Directorate
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5.Assistant Elementary Education Officer,
Thali Union,
Denkanikottai Taluk,
Krishnagiri District-635 102.

6.The Headmaster,
Panchayat Union Middle School,
Kodakarai Village-Doddamanchi Post,
Thali Union,
Denkanikottai Taluk,
Krishnagiri District-635 102.

+2ccs to Mr.R.Nirmala Devi, Advocate, S.R.No.79831
+1cc to the Government Pleader, S.R.No.80499

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CNR (CO)

rrs 10/01/2019



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