

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.06.2018

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Writ Petition No.5504 of 2009 and
M.P.Nos.2 and 3 of 2009

N.Arputharaj

.. Petitioner

Vs.

1.The Secretary to Government,
School Education Department,
Secretariat,
Fort St. George,
Chennai 600 009.

2.The Director of School Education,
D.P.I. Campus,
College Road,
Chennai - 600 006.

3.K.Avudayappan
Headmaster,
Government Higher Secondary School,
Kovilkuchipakkam,
Cuddalore District.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus calling for the records of the 2nd respondent in his proceedings No.84092/W-1-1/08 dated 27.09.2008 and quash the same and consequently direct the respondents 1 and 2 to include the name of the petitioner in the panel of the year 2009/Special Panel for the post of Headmaster, Higher Secondary School with due date thereon, at the appropriate place, more particularly over and above the 3rd respondent K.Avudayappan, whose services were regularized on 04.01.1982 (Serial No.54 of the Panel of the year 2006) and promote the petitioner as Headmaster Higher Secondary School with all attendant benefits.

For Petitioner : Mr.C.Johnson
For Respondents : Mrs.M.E.Raniselvam (for R1 & R2)
Additional Government Pleader

ORDER

This writ petition has been filed by the petitioner seeking a writ of Certiorari Mandamus calling for the records of the 2nd respondent in his proceedings No.84092/W-1-1/08 dated 27.09.2008 and quash the same and consequently direct the respondents 1 and 2 to include the name of the petitioner in the panel of the year 2009/Special Panel for the post of Headmaster, Higher Secondary School with due date thereon, at the appropriate place, more particularly over and above the 3rd respondent K.Avudayappan, whose services were regularized on 04.01.1982 (Serial No.54 of the Panel of the year 2006) and promote the petitioner as Headmaster Higher Secondary School with all attendant benefits.

2.The case of the petitioner is that originally the petitioner got selected through Tamil Nadu Public Service Commission and joined as a Junior Assistant in Education Department on 01.11.1976. On satisfactory completion of Probation period his services were regularized with effect from the date of joining. Thereafter, he was promoted as Assistant on 13.03.1980, and continued in the said post till 31.10.1981.

3.The petitioner improved his Educational Qualification and passed B.A., M.A., (English) degrees, apart from B.Ed., as early as 1980. Thus the petitioner rendered himself fully qualified to be appointed as a P.G.Teacher in English. While so, the petitioner was appointed as a P.G.Assistant in English on 31.10.1981, by way of appointment by transfer, as contemplated under G.O.Ms.No.720 dated 28.04.1981, following the Rules and Regulations thereunder. Thereafter, the petitioner's services as P.G.Assistant in English was regularized with effect from 01.11.1981 vide proceedings of the Joint Director (HSS) in Na.Ka.No.36889/W19/89 dated 19.09.1989. Ever since the date of joining, the petitioner had been discharging his duties as a P.G.Teacher (English) in a most sincere manner and his services were appreciated by his superiors, colleagues and students.

4.While so, the Director of School Education, the 2nd respondent herein called for the particulars of P.G.Assistants who are to be appointed by transfer of service under method (ii) of clause-II service coupled with Rule 2(b) of the Special Rules for Tamil Nadu Higher Secondary School Headmasters Service for the purpose of seniority-cum-promotion vide its proceedings in Na.Ka.No.31809/W1/W2/06 dated 06.05.2006.

5.It is submitted that in response to the said proceedings of the Director of School Education, the petitioner also submitted his particulars enabling the respondents to include the name of the petitioner in the panel of eligible candidature

and promote the petitioner to the post of Higher Secondary School Headmaster on the basis of seniority. But, the petitioner's candidature and the candidatures of P.G.Assistants of those who were similarly placed like the petitioner i.e., having been appointed by transfer of service, had not been considered for the seniority-cum-promotion panel prepared for the post of the said Higher Secondary School, Headmasters. The candidatures of P.G.Assistants of those who were appointed through TNPSC, after the date of regularization of the petitioner were considered for such seniority-cum-promotion panel, and ultimately they were promoted to the post of Higher Secondary School Headmasters, vide Director of School Education proceedings in Na.Ka.No.995/W1/W2/06, dated 05.01.2007.

6.It is submitted that the concurrence of the TNPSC would not be applicable to the petitioner's service, as the petitioner was not appointed by method (I) of clause-II (P.G.Assistant) service. But, the petitioner's appointment was made by method (ii) of Clause-II service (P.G.Assistant) as per G.O.Ms.No.720 (Education) dated 28.04.1981 coupled with the provisions under Section 2(b) of the Special Rule for Tamil Nadu Higher Secondary Service. Rule 2(b) is the mandatory provision contemplating that when making recruitment to the post of P.G.Assistants, the ratio of 50:50 should be adopted among the direct recruits and the recruits by transfer of service.

7.It is submitted that the Tamil Nadu Higher Secondary Service is a separate service governed by the Rules as formulated under G.O.Ms.No.720 Education dated 28.04.1981. The service was introduced only during the academic year 1978-1979 in the State of Tamil Nadu.

8.As the ministerial service and Higher Secondary Service are two distinct services, promotion cannot be made from subordinate service to that of the superior service. Therefore, to make up the dearth of candidates, Government has chosen to introduce a method of appointment i.e. appointment by transfer as seen in the provision. When there is a specific provision under the statute for making appointments to Higher Secondary Service and specific provision for regularization, Rule 10(a)(i) of General Rule for the State and Subordinate Service Rule has no application. Once services are regularized by the competent authority in the manner known to law, the further concurrence of TNPSC/TRB is not required for regularizing such services. Consequently, G.O.Ms.No.1813 dated 12.12.1980 has no bearing to the P.G.Assistants appointed by transfer of service by method (ii) above. Once services are regularized, their seniority should be reckoned from the date when regularization was given effect to for the purpose of drawing panel and promotion. Therefore, the petitioner's candidature cannot be placed below

the seniority of the TNPSC recruits who joined subsequent to the date of regularization of the petitioner.

9.As the petitioner's name was not included in the appropriate place in the panel of Post Graduate Teachers prepared as on 01.01.2006 for the post of Higher Secondary Headmasters, the petitioner submitted a representation to the 2nd respondent on 16.07.2008, seeking promotion to the post of Headmaster of the Higher Secondary School. As the said representation was not disposed of, the petitioner filed a writ petition in W.P.No.18754 of 2008, for a writ of Mandamus, directing the respondents to dispose of the representation dated 16.07.2008, wherein the petitioner claimed the post of Higher Secondary Headmaster by including the name in the seniority-cum-promotion panel prepared as on 01.01.2006, by reckoning the seniority from the date of original appointment as a P.G.Assistant i.e., 01.11.1981.

10.This Court directed the 2nd respondent to consider and dispose of the representation of the petitioner on merit by applying appropriate provisions of law. The 2nd respondent rejected the claim of the petitioner on the ground that the petitioner's services were regularized based on G.O.Ms.No.1813 dated 12.12.1988. The 2nd respondent failed to note that the services of the petitioner was regularized in terms of G.O.Ms.No.720 Education dated 28.04.1981. Thus in terms of seniority, petitioner is entitled to be considered for his promotion as Headmaster Higher Secondary School by including his name in the panel of the year 2007-2008.

11.Being aggrieved of the order dated 27.09.2008, the present writ petition is filed. In the said order, the 2nd respondent laid emphasis to the order of the Hon'ble Division Bench of this Court passed in W.P.No.21163 of 2003 etc. batch. The order of the Hon'ble Division Bench is as under:

"All the writ petitions are disposed of as follows:

With regard to any teacher, seniority will depend upon his possession of the required qualification.

As regards the first category of teachers those appointed between 01.07.1978 and 28.04.1981 their seniority will be reckoned from the date on which they acquire the required qualification, provided they do so within such time as extended by the Government and subject to the concurrence of Tamil Nadu Public Service Commission.

As regards second category of teachers those appointed after 28.04.1981 and selected by the Tamil Nadu Public Service Commission, their seniority will

be fixed as per the Tamil Nadu Public Service Commission List.

As regards the third category of teachers, those who were appointed after 28.04.1981 and who have not been selected by Tamil Nadu Public Service Commission and whose services have been regularized by G.O.Ms.No.1813 dated 12.12.1988, their seniority will commence immediately after the last person in the list under second category."

12.It is pertinent to point out here that the petitioner's appointment will not come under any of the three categories as stated in the order of the Hon'ble Division Bench for the simple reason that the petitioner's appointment was made in terms of G.O.Ms.No.720 dated 28.04.1981 (Special Rules Governing Higher Secondary School) and services were regularized in terms of the rules as applicable to Higher Secondary Service which is distinct from subordinate service. The 2nd respondent's misquote cannot taken away the legal and statutory right of the petitioner. Hence, the petitioner prayed for grant of relief as prayed for in the writ petition.

13.I heard Mr.C.Johnson, learned counsel for the petitioner and Mrs.M.E.Raniselvam, learned Additional Government Pleader for the respondents 1 and 2 and perused the entire material available on records.

14.In the above case, the 2nd respondent filed counter denying the prayer as prayed for by the petitioner for the facts morefully set out in the counter dated 10.08.2009. In the counter, the 2nd respondent has not denied the Educational qualification of the petitioner or eligibility criteria and on the contra admitted the eligibility requirements of the petitioner. The 2nd respondent simply reiterated that the petitioner's appointment was regularized in terms of G.O.Ms.No.1813 dated 12.12.1988 and as such the petitioner's seniority was placed below the last candidate of TNPSC select candidates. The 2nd respondent failed to note that the said G.O. has no application to the instant case, as the petitioner was appointed in terms of G.O.Ms.No.720 Education dated 28.04.1981 and his services were also regularized applying the relevant provisions of the Service Rule. The mere misquote of G.O.Ms.No.1813 dated 12.12.1988 cannot be a ground to deny the lawful claim of the petitioner.

15.As stated earlier, the petitioner's candidature cannot come within any one of the three categories stated in the writ petition order in (W.P.Nos.21163, 21164, 21347, 21640, 29075 to 29077 of 2003 and 9719 of 2004). It is also pertinent to note here that the TNPSC for the first time started to recruit

candidates after the year 1984 and the petitioner got appointed as a P.G.Teacher even prior to the commencement of recruit procedures contemplated by TNPSC. Accordingly, the candidature of the petitioner cannot be placed below the candidates selected through TNPSC as they are juniors in service.

16.The petitioner's service as a P.G.Teacher has been duly recognized and regularized by the competent authority in terms of Special Rules as early as 1981. Therefore, there is absolutely no justification in placing the candidature of the petitioner below the last candidate selected by TNPSC. Thus the petitioner is entitled to be ranked and placed above the TNPSC selected P.G.Assistants. The contention of the 2nd respondent that the petitioner's name is included in the panel as on 01.01.2009 among other third category teachers cannot be justified view from any angle in the given facts and circumstances.

17.For the forgoing reasons:

(a) this writ petition is allowed and the order of the 2nd respondent made in proceedings No.84092/W-1-1/08 dated 27.09.2008, is hereby set aside;

(b) the respondents 1 and 2 are directed to include the name of the petitioner in the appropriate place, more particularly over and above the 3rd respondent K.Avudayappan, whose services were regularized on 04.01.1982 (Serial No.54 of the panel of the year 2006) by promoting the petitioner as Headmaster, Higher Secondary School with all attendant, seniority and monetary benefits till date of retirement and further all revised pension benefits as available to the pensioner;

(c) As the petitioner has already retired, the entire exercise is to be completed within a period of eight weeks.

(d) No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

VS

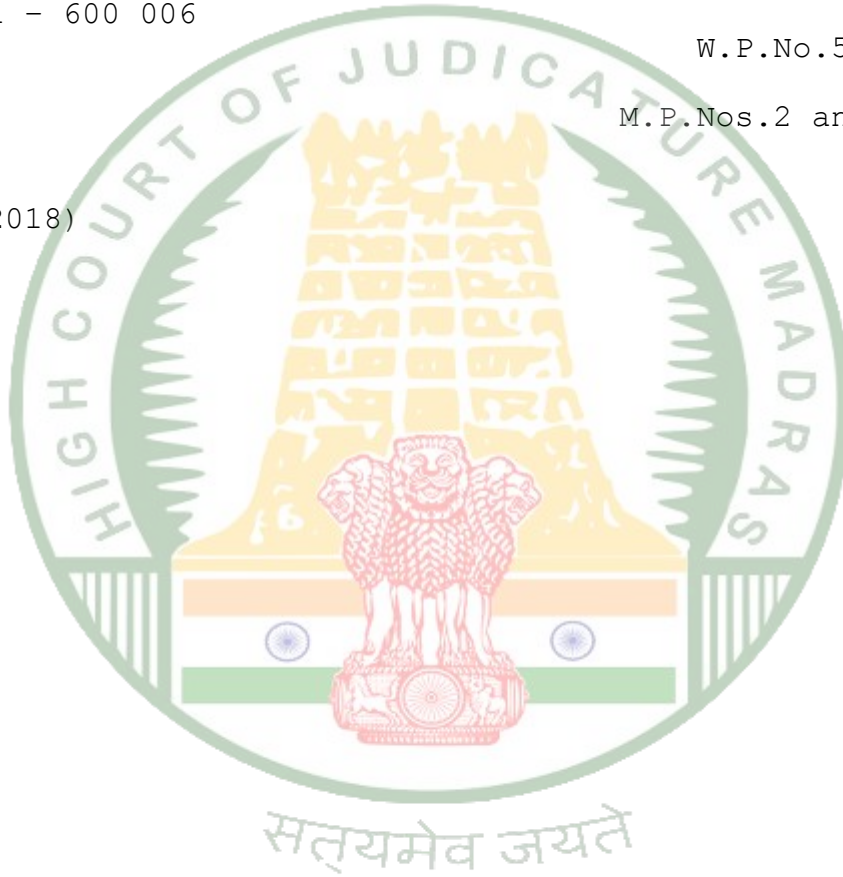
To

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School Education Department,
Secretariat,
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2.The Director of School Education,
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College Road,
Chennai - 600 006

W.P.No.5504 of 2009
and
M.P.Nos.2 and 3 of 2009

(CS-IV)
EU(10/07/2018)



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