

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2018

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THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.29682 of 2014 &
M.P.Nos.1 & 2 of 2014

H.Gokularaman

... Petitioner

Vs

- 1.The Government of Tamil Nadu,
Rep. by its Secretary to Government,
School Education Department,
Fort St. George,
Chennai-600 009.
- 2.The Director of Elementary Education,
College Road,
Chennai-600 006.
- 3.The District Elementary Educational Officer,
Villupuram District,
Villupuram.
- 4.The Additional Assistant Elementary
Educational Officer,
Mylam Panchayat Union,
Kooteripattu,
Villupuram District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus calling for the records relating to the order of 2nd respondent made in proceedings in Na.Ka.No.039391/E1/2013, dated 05.02.2014 and the consequential orders of the 3rd respondent in his proceedings made in Na.Ka.No.6553/A3/2005 and Na.Ka.No.6553/A1/2005 dated 06.06.2014 and 15.10.2014 respectively and the order of 4th respondent made in his proceedings in Na.Ka.No.796/A1/2013 dated 01.09.2014 and quash the same and direct the respondents to regularize the petitioner's service from the date of his appointment i.e. on 21.01.2000 with consequential and monetary benefits.

For Petitioner : Mr. A.S.Kaizer

For Respondents : Mr.C.Munisamy,
Special Government Pleader

O R D E R

Heard Mr. A.S.Raizer, learned counsel for the petitioner as well as Mr.C.Munusamy, learned Special Government Pleader appearing for the respondents.

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

"To issue a writ of Certiorarified Mandamus calling for the records relating to the order of 2nd respondent made in proceedings in Na.Ka.No.039391/E1/2013, dated 05.02.2014 and the consequential orders of the 3rd respondent in his proceedings made in Na.Ka.No.6553/A3/2005 and Na.Ka.No.6553/A1/2005 dated 06.06.2014 and 15.10.2014 respectively and the order of 4th respondent made in his proceedings in Na.Ka.No.796/A1/2013 dated 01.09.2014 and quash the same and direct the respondents to regularize the petitioner's service from the date of his appointment i.e. on 21.01.2000 with consequential and monetary benefits. "

3. The case of the petitioner is as follows:-

The petitioner was appointed as Secondary Grade Assistant Teacher on 21.01.2000 on compassionate ground in regular time scale of pay and posted at Panchayat Union Elementary School, Thazhuthali, Mylam Panchayat Union, Villupuram District. The compassionate appointment was granted to the petitioner on the death of his father, who was working as Secondary Grade Assistant Teacher, died on 04.12.1991, while in service.

4. After the appointment as Secondary Grade Assistant Teacher, the petitioner had been continuing in service in regular time scale of pay and the proposals were also forwarded to the respondents for regularization of his service. In this connection, several communications have been exchanged among the respondents. However, unfortunately no positive orders came to be passed in regularizing the service of the petitioner, despite the fact that the petitioner was fully eligible to be regularized as Secondary Grade Assistant Teacher.

5. The only bone of contention of the respondents against the claim of the petitioner was that on the date when the petitioner had applied seeking compassionate appointment in 1995, he was not qualified and the petitioner became qualified for appointment as Secondary Grade Assistant Teacher in 1997 and the appointment order was issued by the 3rd respondent, dated 21.01.2000.

6. According to the respondents, G.O.Ms.No.560, Labour and Employment Department dated 03.08.1977, the petitioner ought to have obtained necessary qualification at the time of application, seeking appointment and mere acquisition of qualification subsequently by him, cannot give any right of regularization of his service. In these circumstances, it appeared that the proposal for regularization of service of the petitioner was not acceded to by the respondents only on the ground that he was not qualified on the date of filing of the application for compassionate appointment in 1995.

7. Learned counsel for the petitioner would submit that nowhere in the said G.O.Ms.No.560, Labour and Employment Department dated 03.08.1977, it is stated that the employee ought to have obtained necessary qualification at the time of making application for compassionate appointment. In any event, it is an admitted case that the petitioner had possessed necessary qualification in the year 1997 and thereafter, on 21.01.2000, he was appointed on compassionate ground, on such crucial date, the petitioner was fully eligible having required qualification. Therefore, the stand taken by the respondents in not regularizing the petitioner's service as Secondary Grade Assistant Teacher is per se unreasonable and arbitrary and cannot stand the test judicial scrutiny. In this regard, this Court is in agreement with the submission made on behalf of the learned counsel for the petitioner.

8. This Court is unable to appreciate the stand taken by the respondents in the teeth of the fact that at the time the petitioner was appointed as Secondary Grade Assistant Teacher on 21.01.2000, admittedly, the petitioner was fully qualified. That being the case, this Court does not see under what circumstances the respondents are insisting upon the qualification which was not acquired by the petitioner at the time of making his application seeking compassionate appointment.

9. As rightly contended by the learned counsel for the petitioner that nowhere in the said G.O.Ms.No.560, dated 03.08.1977, it is stated that the qualification ought to be obtained at the time of application seeking compassionate

appointment. In fact, the G.O., mainly states that there should not be any relaxation of conditions, particularly, in regard to possession of prescribed qualification.

10. In such view of the matter, this Court does not see any iota of justification for not regularizing the service of the petitioner. In the said circumstances, the impugned order of the 2nd respondent made in proceedings in Na.Ka.No.039391/E1/2013, dated 05.02.2014 and the consequential orders of the 3rd respondent in his proceedings made in Na.Ka.No.6553/A3/2005 and Na.Ka.No.6553/A1/2005 dated 06.06.2014 and 15.10.2014 respectively and the order of the 4th respondent made in his proceedings in Na.Ka.No.796/A1/2013 dated 01.09.2014, refusing to regularize the service of the petitioner as Secondary Grade Assistant Teacher, cannot be sustained both in law and on facts and the same are hereby set aside. The respondents are directed to initiate action for regularizing the service of the petitioner as Secondary Grade Assistant Teacher from the date on which initially the petitioner was appointed i.e., on 21.01.2000, with all attendant and consequential benefits. The respondents are directed to pass orders for regularizing the service of the petitioner as indicated above, within a period of eight weeks from the date of receipt of a copy of this order.

11. With the above direction, this Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1.The Government of Tamil Nadu,
Rep. by its Secretary to Government,
School Education Department,
Fort St. George,
Chennai-600 009.

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

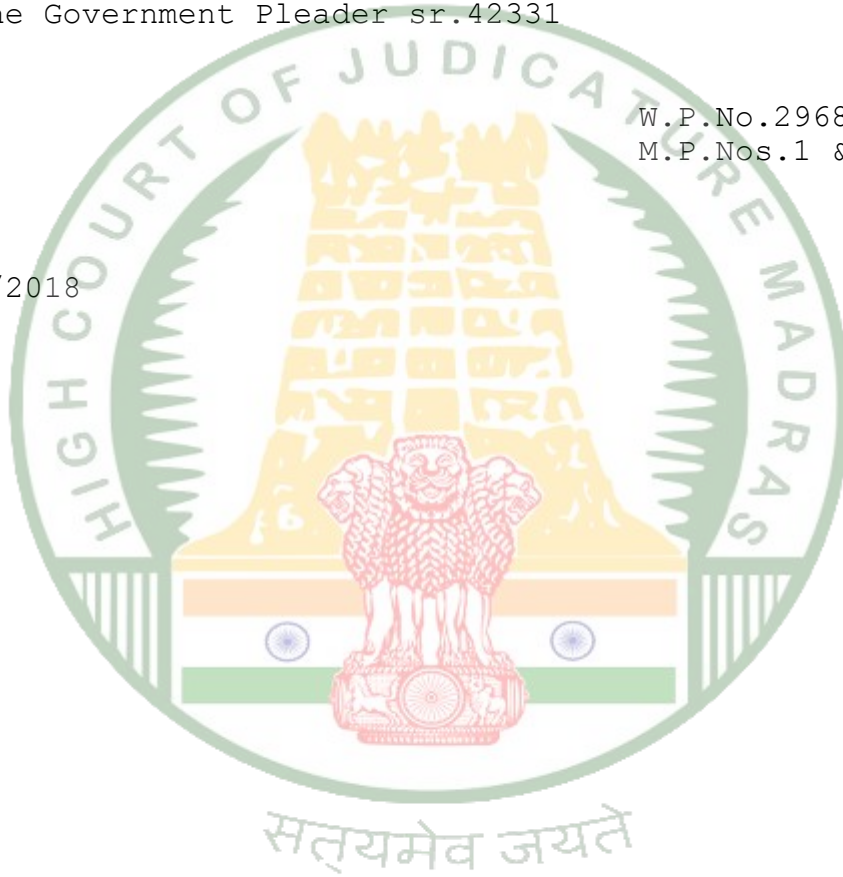
3.The District Elementary Educational Officer,
Villupuram District,
Villupuram.

4.The Additional Assistant Elementary
Educational Officer,
Mylam Panchayat Union,
Kooteripattu,
Villupuram District.

+lcc to M/S.A.S.Kaiser, Advocate Sr.41679
+lcc to the Government Pleader sr.42331

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srg 25/07/2018



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