

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.03.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.2072 of 2013

C.A.Baladandapani

... Appellant

-Vs-

1.The Government of Tamil Nadu

Rep. by Secretary to the Government,
School Education Department,
Fort St.George, Chennai - 600 009.

2.The Director of School Education,

College Road, Chennai - 600 006.

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent against the order passed in W.P No.6248 of 2007 dated 20.10.2011.

Prayer: Petition filed seeking for a writ of Certiorarified Mandamus calling for the records of the 2nd respondent issued in R.C.No.103209/W.2/93, dated 11.9.1995 and quash the same and issue a consequential direction to the respondent to promote the petitioner as Higher Secondary School Headmaster with effect from June, 1981, with service and monetary benefits, when unqualified persons were promoted as Higher Secondary School Headmaster not in accordance with the Tamilnadu Higher Secondar Educational Service Rules issued in G.O.Ms.No.720, dated 28.4.1981, as per the order of the Tamilnadu Administrative Tribunal rendered in T.A.No.343 of 1991, dated 2.7.1992.

(Prayer amended as per order, of this court dated 3.8.2011, in M.P.No.1 of 2011 in W.P.No.6248 of 2007)

For Appellant : Mr.R.Saseetharan

For Respondents: Mr.K.Karthikeyan, Govt. Advocate (Edn)

J U D G M E N T

[Judgment of the Court was delivered by
K.K. SASIDHARAN, J.]

Even though the appellant was eligible for promotion to the post of Higher Secondary School Headmaster, he was not given promotion. The other candidates were promoted notwithstanding the fact that they were not in possession of the required qualification. The writ petition filed by the appellant challenging the promotion was dismissed by the learned single Judge primarily on the ground that the order granting age relaxation to the selected candidates was not challenged by him. Feeling aggrieved, the appellant is before this Court.

2. The learned counsel for the appellant contended that promotions were given on 21 June 1981. The appellant was the only qualified candidate for promotion taking into account the fact that he had acquired the departmental test qualification viz., Accounts Test. The other candidates have not appeared for the Accounts Test and as such, they were ineligible. However, they were given promotion and thereafter, order of relaxation was made in their favour. According to the learned counsel, the learned single Judge was not correct in denying the relief to the appellant solely on the ground that there was no challenge to the order granting relaxation.

3. We have also heard the learned Government Advocate on behalf of the respondent.

4. The appellant was initially appointed as BT Assistant on 10 June 1995. He was thereafter promoted as PG Assistant on 15 July 1978 and appointed in Tamil Nadu Higher Secondary Educational Service.

5. The Government issued an order in G.O.Ms.No.720 dated 28 April 1981 in exercise of the power conferred under Article 309 of the Constitution of India to govern the service conditions of the personnel appointed in the Higher Secondary Educational Service. The post of Higher Secondary School Headmaster was considered as Class I. The post of PG Assistant in academic subject was included under Class II. The Rules provide that the promotion to the post of Higher Secondary School Headmaster should be made by recruitment by transfer from the cadre of Headmaster and Headmistress of High School and by way of promotion from Class II of the said service namely PG Assistant in academic and language subject.

6. The Tamil Nadu Higher Secondary Educational Service Rules and more particularly, Rule 7(a) provides the qualifications for promotion to the post of Higher Secondary School Headmaster. Besides the academic qualification, candidates must also pass in the Accounts Test for Executive Officer or Accounts Test for Subordinate Officer Part I and Part II for making them eligible for promotion.

7. The appellant acquired the required qualification including pass in the Accounts Test. His name was forwarded by the Headmaster for promotion to the post of Higher Secondary School Headmaster.

8. The Director of School Education promoted other ineligible candidates without considering the eligibility of the appellant. The appellant therefore filed a writ petition claiming promotion from the date on which ineligible persons were promoted as Headmaster.

9. The claim made by the appellant was opposed by the Directorate of School Education on the ground that he was junior to the other employees who were promoted as Headmaster.

10. The core question is as to whether the respondents were correct in denying promotion to the appellant and promoting unqualified and ineligible employees and defending illegal promotions given to them by the Education Department on the ground that Government passed orders subsequently relaxing the condition with regard to pass in the Accounts Test.

11. The promotion in question was made in the year 1981. There was no Government Order granting relaxation at that point of time. It was only after giving promotion to the other employees, the Government issued an order of relaxation in G.O.Ms.No.1825 dated 19 September 1983. But for the exemption given as per the said Government Order, the selected candidates were not eligible for promotion. The Government appears to have given relaxation by giving retrospective effect from 1 July 1978. However, the fact remains that as on the date on which promotion was given to the other employees, there was no Government Order granting relaxation. The subsequent order giving relaxation retrospectively cannot take away the right claimed by the appellant, who was fully qualified for appointment to the post of Higher Secondary School Headmaster.

12. The learned single Judge dismissed the writ petition solely on the ground that there was no challenge to the Government Order in G.O.Ms.No.1825 dated 19 September 1983. There is no need for challenging the said Government Order for the simple reason that the illegality committed by the

respondents earlier cannot be legalised by issuing the Government Order retrospectively.

13. The crucial date for promotion to the post of Higher Secondary School Headmaster was 1 March 1981, the date on which the panel was prepared. Admittedly, the appellant was the only candidate who passed the Accounts Test. None of the other selected candidates were in possession of the qualification regarding pass in Accounts Test. The respondents cannot be heard to say that they were expecting a Government Order to be issued in the near future giving relaxation to the candidates and as such, they have promoted the ineligible candidates even before issuance of the order. Such a contention cannot be accepted by Court of Law. The respondents ought to have considered the claim of all the eligible candidates for appointment. The appellant was the only eligible candidate. The other candidates were not in possession of a pass in the Accounts Test. This fundamental aspect was omitted to be considered by the learned single Judge. We are therefore of the view that the impugned order is liable to be set aside.

14. The order dated 20 October 2011 is set aside. The writ petition in W.P.No.6248 of 2007 is allowed. The impugned order dated 11 September 1995 is quashed. We direct the respondents to promote the appellant as Higher Secondary School Headmaster with effect from 21 June 1981, the date on which unqualified and ineligible persons were promoted. The entire period viz., right from 21 June 1981 would be calculated for continuity of service and other benefits. However, we make it clear that the appellant is not entitled to the monetary benefits for the entire period. In short, the period from 21 June 1981 would be calculated only for the purpose of granting benefits, except back wages.

15. The intra court appeal is allowed. No costs.

Sd/-

Assistant Registrar (CS-IV)

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Sub Assistant Registrar

svki

To

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

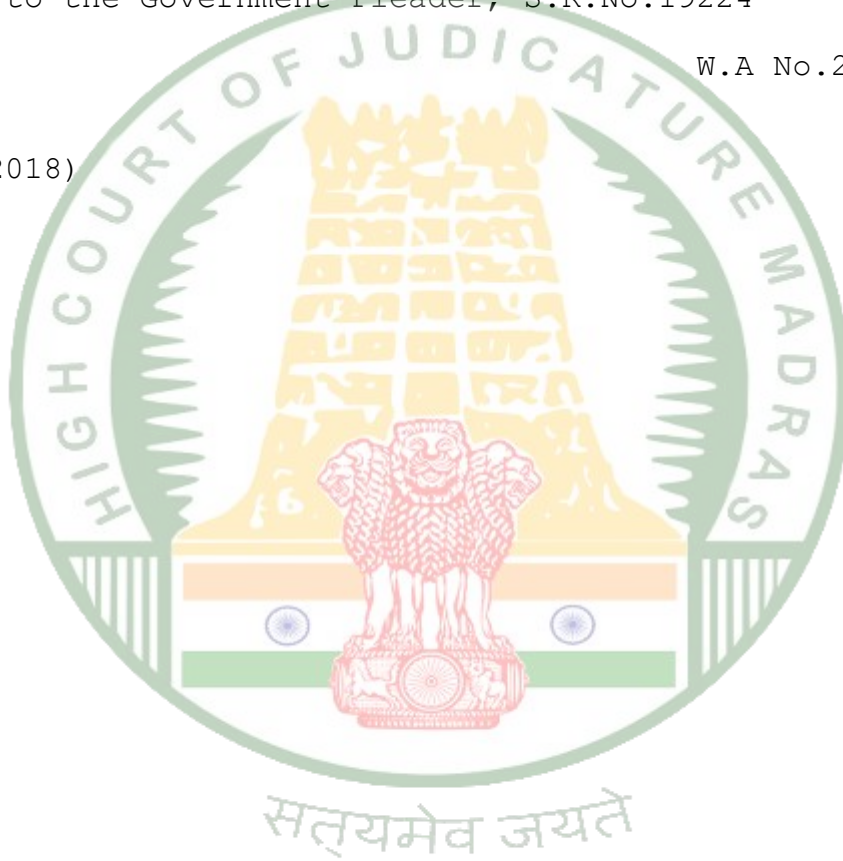
2.The Director of School Education,
College Road, Chennai - 600 006.

+1cc to Mr.R.SASEETHARAN, Advocate, S.R.No.18688

+1cc to the Government Pleader, S.R.No.19224

W.A No.2072 of 2013

MP (CO)
TR(18/04/2018)



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