

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.01.2018
CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.8035 of 2011

J.Nirmala Maria Koratti

.. Petitioner

Vs.

1.State of Tamil Nadu,
Rep. by its Secretary,
Education Department,
Fort St. George, Chennai - 600 009.

2.The Director of School Education (Higher Secondary),
D.P.I. Compound,
College Road, Chennai - 600 006.

3.The Chief Educational Officer,
Panagal Building Complex,
Thanjavur - 613 001.

4.St. Joseph's Girls Higher Secondary School,
Kumbakonam,
Thanjavur District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus, directing the first and second respondents to upgrade the post of Physical Director - Grade-II, held by the Petitioner to the post of Physical Director Grade-I in the fourth Respondent school with effect from January, 1991 with all benefits and emoluments.

For Petitioner : Mr.C.Johnson

For Respondents : Mrs.M.E.Raniselvam (for R1 to R3)
Additional Government Pleader

O R D E R

The Petitioner has filed the writ petition praying to issue a writ of Mandamus, directing the first and second respondents to upgrade the post of Physical Director - Grade-II, held by the Petitioner to the post of Physical Director Grade-I in the fourth Respondent school with effect from January, 1991 with all benefits and emoluments.

2.The learned counsel for the petitioner submitted that the petitioner is B.Sc., B.P.Ed. and accordingly appointed as Physical Directress Grade-II (High School Level) in the 4th respondent Government Aided Higher Secondary School on 31.12.1980 in a sanctioned vacancy. The said school is upgraded as a Higher Secondary School immediately after the introduction of +2 system in the State of Tamil Nadu.

3.At the time of appointment, the petitioner was not fully qualified to be appointed as Physical Directress Higher Secondary Grade-I (HSS) and as such she was drawing salary as applicable to Physical Directress Grade-II (High School Level) in the 4th respondent school. However she was duly inducted from the beginning for teaching +2 and thus she has become an inducted teacher drawing allowance for teaching Physical Education to +2 students. During those initial days there was dearth of teachers for teaching Physical Education like other subject teachers to handle +2 and accordingly induction was legalized and so also P.G. Certificate Course.

4.It is submitted that in and by proceeding dated 03.04.1990, the 2nd respondent directed the petitioner to participate in the 30 days contact programme organized by SCERT for inducted teachers to favour them with Post Graduate Certificate in Physical Education. The petitioner being an inducted teacher to teach +2 students, as directed, participated in the contact programme and obtained Post Graduate certificate course during the year 1990 from the 2nd respondent. Thus petitioner rendered herself fully eligible to be upgraded as Physical Directress Grade-I - Higher Secondary from that of the Physical Directress - High School Level from the date of passing M.P.Ed. Certificate course i.e. from the year 1990.

5.The learned counsel for the petitioner further pointed out that the G.O.Ms.No.720 Education dated 28.04.1981 (Special Rules for Tamil Nadu Higher Secondary Educational Service) made it abundantly clear that every Higher Secondary School is entitled to have at least one Physical Director Grade-I (HSS Level). The relevant rule viz. Rule 1 is extracted for better clarity as under:

Rule 1 of the Tamil Nadu Higher Secondary Educational Service (G.O.Ms.No.720 Edu. Dept. dated 28.04.1981).

"Rule 1. Constitution- The service shall consist of the following classes and categories of officers, namely:-

Class (1)	Category (2)
I	Headmasters and Headmistress in HSS

Class (1)	Category (2)
II	1. Post-Graduate Assistants in Academic subjects 2. Post-Graduate Assistants Languages 3.P.G. (SCERT P.G. Teacher's Certificate Course Teachers in Academic Subjects
III	1.Physical Directors and Physical Directress in Higher Secondary Schools. 2.Physical Directors and Physical Directress (SCERT P.G. Teachers Certificate Course

From the above, Rule 1 Class III of the Tamil Nadu (HSC) Educational Service it is crystal clear that to constitute a Higher Secondary School a post of Physical Director Grade-I is an inevitable and mandatory requirement. It is also clear from the above Rule that no Higher Secondary Service would be recognized without a Physical Director Grade-I as the requirement is very much a mandatory requirement under the said Rule.

6.The petitioner as stated above has passed M.P.Ed., certificate course on completion of the contact programme held from 17.05.1990 to 15.06.1990 as per the proceeding dated 03.04.1990 of the 2nd respondent and thus fully qualified to be upgraded as Physical Directress Grade-I (HSS Level). The petitioner has also pointed out that one Mr.S.Athisayhanathan who was working as Physical Director Grade-II at Hindu Higher Secondary School Ambur was upgraded as Physical Director Grade-I (HSS) consequent to passing of Physical Directors Certificate Course vide proceeding in M.M.No.2474/A3/93 dated 20.08.1993 of District Educational officer, Tirupattur.

7.The petitioner also relied on the proceeding dated 02.12.1990 of the 2nd respondent which permitted the upgradation of Physical Director Grade-II to that of Physical Director Grade-I by revising the pay scale as applicable to (HSS). Thus from the above proceeding and Tamil Nadu Higher Secondary Educational Service Rule-1, it is very clear that SCERT Post Graduate Teachers Certificate Course is fully recognized for upgrading the post of Physical Director Grade-II to Grade-I. Hence, this writ petition has been filed for the aforesaid prayer.

8.I heard Mr.C.Johnson, learned counsel for the petitioner and Mrs.M.E.Raniselvam, learned Additional Government Pleader for the respondents 1 to 3 and perused the entire records.

9.The counter filed by the 3rd respondent on his behalf and on behalf of other official respondents lacks merits for the reason that Government has to meet additional expenditure as the said position was already settled by the Hon'ble Supreme Court holding that Government is duty bound to meet such expenses as education is a fundamental right of every citizen. Only aspect to be considered is whether the petitioner is qualified and eligible to be upgraded as Physical Director Grade-I HSS in view of special rules HSS and other proceedings of official respondents. Now, it is enough to quote ground A as found in the counter affidavit as follows:

"Ground-A - "It is submitted that the petitioner is having required qualification for Physical Director (Grade-I) Post. That alone not enough to upgrade the post held by him."

Having admitted about the requisite qualification for upgrading the petitioner as a Physical Directress Grade-I (HSS) now the respondents cannot turn around and deny to upgrade her on untenable grounds.

10.Even in the preamble portion of the counter affidavit the date of appointment and other factual positions are wrongly drafted. As a matter of fact, the petitioner was appointed as Physical Directress Grade-II on 31.12.1980 and not appointed and promoted on 06.06.2006 as wrongly contended. Even prior to the introduction of G.O.Ms.No.525 dated 29.12.1997 and G.O.Ms.No.73 dated 19.03.2010, the petitioner rendered herself eligible to be upgraded in view of earlier proceedings and Tamil Nadu Higher Secondary Educational Service Rules as contained in G.O.Ms.No.720 dated 28.04.1981.

11.The proceedings of the 2nd respondent in Rc.No.79666/W2/79 dated 02.12.1980 referred various G.O.s viz., G.O.Ms.No.1591, Education, dated 24.08.1979, G.O.Ms.No.1734, Education, dated 30.08.1980 and G.O.Ms.No.2498, Education dated 22.11.1980, and made it categorically clear that Physical Director Grade-II who are possessing required educational qualification, are eligible to be upgraded to Physical Director Grade-I (Higher Secondary). The Special Rules for the Tamil Nadu Higher Secondary Educational Service under its Rule 1 Class III (2) made it clear that Physical Directress (SCERT Post Graduate Teachers Certificate Course) is the eligible educational requirement. The petitioner is handling classes for +2 since 1980 and on the said ground also the petitioner is eligible to be upgraded as Physical Directress Grade-I HSS.

12.From the foregoing submissions of the learned counsel for the petitioner, it is evidently clear that the petitioner satisfied the relevant requirements for being upgraded as Physical Directress Grade-I (HSS) from the day when she acquired

PG qualification. In the instant case, the petitioner has passed M.P.Ed. course during January, 1991 and satisfied all the relevant requirements and accordingly the petitioner is entitled to be upgraded as Physical Directress Grade-I from the month of January, 1991 with all seniority and monetary benefits as prayed for in the writ petition.

13.As the petitioner is already retired all the arrears due to her to be worked out and paid till her date of retirement and thereafter necessary revision to be effected accordingly in the payment of pension and all other retirement benefits. The entire exercise should be completed within eight weeks.

14.In the result:

(a) this writ petition is allowed;

(b) the respondents 1 to 3 are directed to upgrade the petitioner for the post of Physical Director-Grade-II, held by the petitioner as Physical Director-Grade-I with effect from January 1991 as per G.O.Ms.No.525 in the 4th respondent School by granting all attendant benefits;

(c) the said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Secretary,

Education Department,
Fort St. George, Chennai - 600 009.

2.The Director of School Education (Higher Secondary),

D.P.I. Compound,
College Road, Chennai - 600 006.

3.The Chief Educational Officer,

Panagal Building Complex,
Thanjavur - 613 001.

+1cc to Mr.C.Johnson, Advocate, S.R.No.1326

W.P.No.8035 of 2011

RRK(12/03/2018)