

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.08.2017

pronounced: 28.02.2018

CORAM :

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

Writ Petition No.8346 of 2011

D.Radhakrishnan

.. Petitioner

Vs.

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

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

3.The Chief Educational Officer,  
Thanjavur.

4.The Secretary & Correspondent,  
Sri Sivasamy Ayyar Higher Secondary School,  
Thirukattupalli, Thiruvaiyar Taluk,  
Thanjavur District.

.. Respondents

PRAYER: Petition under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the Respondents 1 to 3 to upgrade the post of Physical Director Grade-II, held by the petitioner, to the post of Physical Director Grade-I with effect from 06.06.2006, the date of his promotion in the fourth Respondent School.

For Petitioner : Mr.C.Johnson

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

No Appearance (for R4)

## ORDER

The petitioner has filed this writ petition seeking issuance of a writ of Mandamus, directing the Respondents 1 to 3 to upgrade the post of Physical Director Grade-II, held by the petitioner, to the post of Physical Director Grade-I with effect from 06.06.2006, the date of his promotion in the fourth Respondent School.

2.It is the contention of the petitioner that he was appointed as a Physical Education Teacher on 05.09.1996 in the 4<sup>th</sup> respondent school which is an Aided Government Recognized Higher Secondary School. The petitioner school has become a Higher Secondary School from the academic year 1978-79. The petitioner satisfactorily completed probation and was regularized as a Physical Education Teacher with effect from 05.09.1996.

3.The petitioner acquired Master of Physical Education (M.P.Ed.) during November 1992 and thus rendered himself fully qualified and eligible for being appointed as Physical Director Grade-I. The 4<sup>th</sup> respondent school is having required strength to have minimum 3 Physical Education Teachers. Every Higher Secondary School is entitled to have 3 Physical Education Teachers in terms of G.O.Ms.No.720 dated 28.04.1981 and G.O.Ms.No.525 dated 29.12.1997 and other Government Orders and proceedings of the Respondents 1 to 3. The 4<sup>th</sup> respondent school continued to have students' strength more than 700 in XI and XII Standards alone right from the beginning. The combined strength of the Higher Secondary School is more than 1300.

4.The petitioner, the senior most Physical Education Teacher, was handling High School sections and Higher Secondary Classes and drawing special pay and allowances for handling Higher Secondary classes.

5.The 4<sup>th</sup> respondent duly promoted the petitioner and appointed him as Physical Director with effect from 06.06.2006.

6.It is further contended that the respondents approved the petitioner's appointment as Grade-II, though he is fully qualified and eligible to hold the post of Physical Director Grade-I in terms of G.O.Ms.No.720 dated 28.04.1981, G.O.Ms.No.525 dated 29.12.1997, G.O.Ms.No.73 dated 19.03.2010 and other Government orders and rules.

7.Being aggrieved, the petitioner gave many representations, through the 4<sup>th</sup> respondent school and in person. The fourth respondent also made a recommendation dated 07.05.2010 to the 2<sup>nd</sup> respondent to upgrade the position of the petitioner as Physical

Director Grade-I. As the recommendation of the 4<sup>th</sup> respondent was not considered, therefore the petitioner has approached this Court for proper and appropriate remedy by filing the above writ petition.

8.The 3<sup>rd</sup> respondent Chief Educational Officer filed counter for himself and on behalf of the respondents 1 and 2 objecting the relief claimed by the petitioner. The respondents in the said counter admitted the factum of educational qualification, eligibility criteria, merit and ability of the petitioner to be upgraded as Physical Director Grade-I. The official respondents also admitted that to have a Physical Director Grade-I, the combined students' strength from Standards IX to XII should not be less than 400. The official respondents denied upgradation to the petitioner on the ground that there is no sanctioned post and sanctioning involves financial commitments and accordingly, the respondents 1 to 3 prayed that the writ petition is liable to be dismissed.

9.I heard Mr.C.Johnson, learned counsel for the petitioner and Mrs.M.E.Rani Selvam, learned Additional Government Pleader for the respondents 1 to 3 and perused the entire records. There is no representation on behalf of the 4<sup>th</sup> respondent.

10.This Court has given its anxious consideration to the arguments advanced on either side. It is an admitted fact that the petitioner was appointed as Physical Education Teacher in the 4<sup>th</sup> respondent school and there is no quarrel over his qualification as M.P.Ed. The eligibility criteria to become Physical Director is Master Degree and other requirements as stated above and the petitioner has satisfied all such requirements.

11.Thus it is evident that every Higher Secondary School is entitled to have at least one Physical Director Grade-I in terms of G.O.Ms.No.720 Education dated 28.04.1981 which is abundantly clear in Rule 1 and the same 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                                                                                                                                        |
| II        | 1. Post-Graduate Assistants in Academic subjects<br>2. Post-Graduate Assistants Languages<br>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.<br>2. Physical Directors and Physical Directress (SCERT P.G.Teachers Certificate Course)        |

From the above, Rule 1 of the Tamil Nadu Higher Secondary Educational Service (G.O.Ms.No.720 Edu. Dept. dated 28.04.1981), it is crystal clear that to constitute a Higher Secondary School, a post of Physical Director Grade-I is a mandatory requirement.

12.The learned counsel for the petitioner also relied on various judgments and relevant rules to substantiate the claim of the petitioner for up-gradation.

13.On perusal of relevant materials, it is clear that the 4<sup>th</sup> respondent school is a Higher Secondary School as defined in sub-clause (ii) of clause (d) of sub-rule (1) of Rule 3 of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974 framed under the Tamil Nadu Private Schools (Regulation) Act, 1973.

Rule 3(1)(d)(ii) of Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974 defines 'Higher Secondary School'. The said provision is extracted herein for better clarity and easy understanding:-

'The Higher Secondary Schools consists of Standards I to XII, VI to XII, or IX to XII.'

Thus the strength of the 4<sup>th</sup> respondent is the combined strength up to standard XII and the same is already clarified in W.P.No.35922 of 2005 by the Hon'ble Mrs. Justice Chitra Venkatraman and the same has already attained finality.

14.Further as per G.O.Ms.No.525 dated 29.12.1997 every Higher Secondary School is entitled to upgrade one of the Physical Education Teachers as Physical Director if such a school is having students' strength of 400 or more. The said portion of the G.O.Ms.No.525 dated 29.12.1997 is extracted as under:-

(IV) (f) 'For Schools with a strength of over 400 one post of Physical Director will be given up-gradation of existing posts of Physical Education Teacher.'  
The strength of the school obviously satisfies the norms for up-gradation.

15.As early as 24.08.1979 the Government of Tamil Nadu in G.O.Ms.No.1591 duly authorized, the Director of School Education to identify and convert the posts and to upgrade such posts as Physical Directors. Thus up-gradation can be made at Director of School Education level itself. It is also relevant to note that as per G.O.Ms.No.73 dated 19.03.2010 the power of up-gradation is duly delegated to the Director of School Education and the same is admitted by the official respondents in their counter.

16.Moreover year after year numerous posts are being upgraded in various Higher Secondary Schools and the same were approved by the respondents and in view of the same also the petitioner's claim cannot be rejected. The other reasoning given in the counter are untenable and cannot be accepted as they are without material backing. The said G.O.Ms.No.525 dated 29.12.1997 categorically made it clear that one among the three teachers is eligible to be upgraded as Physical Director Grade-I.

17.It is seen that the Government has duly implemented the orders passed by the learned Judges by passing G.O.s and conferred all service and monetary benefits to the respective petitioners. The petitioner has given various representations through the 4<sup>th</sup> respondent Management and personally to the official respondents seeking up-gradation as Physical Director Grade-I with effect from 06.06.2006. The representation of the petitioner and recommendations of the 4<sup>th</sup> respondent addressed to the 2<sup>nd</sup> respondent were duly received and no action seems to be taken. As the petitioner is entitled to get the benefits conferred under the Government Orders, the inaction of the respondents cannot be justified. The petitioner like other eligible claimants entitled to be upgraded in terms of various G.Os and as per G.O.Ms.No.525 dated 29.12.1997.

18.The conjoined reading of:

(a) Rule 3(d)(ii) of the Tamil Nadu Private Schools (Regulation) Rules, 1974,

(b) Rule 1 of Special Rules for the Tamil Nadu Higher Secondary Educational Service (G.O.Ms.720 dated 28.04.1981) and

(c) Norm IV (f) of G.O.Ms.No.525 dated 29.12.1997 make it clear that every Higher Secondary School is entitled to have one Physical Director Grade-I on compliance of the said rules and norms. Admittedly, the petitioner is the senior most Physical Director and drawing special allowances and pay for taking classes for Higher Secondary. In the instant case, thus the petitioner school and the petitioner satisfied required criteria and norms. In view of the facts and circumstances involved in this case and also the discussion made above, this Court has no hesitation to allow the writ petition.

19.In the result:

(a) the writ petition is allowed;

(b) the respondents 1 to 3 are directed to upgrade the post of petitioner as the post of Physical Director Grade-I with effect from the date of promotion i.e. 06.06.2006 with all attendant and monetary benefits;

(c) the said exercise with reference to upgradation shall be completed within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

Sd/-  
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

vs

To

- 1.The Secretary to Government,  
Education Department,  
Fort St. George,  
Chennai - 600 009.
- 2.The Director of School Education,  
D.P.I. Compound,  
College Road,  
Chennai - 600 006.
- 3.The Chief Educational Officer,  
Thanjavur.

+1cc to Mr.C.JOHNSON, Advocate, S.R.No. 16011  
order in Writ Petition No.8346 of 2011

KS(CO)  
TR(08/03/2018)