

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.08.2017

Pronounced on : 28.02.2018

CORAM :

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

Writ Petition No.8347 of 2011

G.Sivaprakasam

.. Petitioner

Vs.

- 1.State of Tamil Nadu,
Represented 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.The Secretary,
V.S.Boys' Higher Secondary School,
Tiruvarur,
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 18.02.1991, the date of his eligibility or alternately from 29.12.1997, the date of G.O.Ms.No.525, in the fourth respondent School allowing all attendant and monetary benefits thereto within a reasonable time.

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 18.02.1991, the date of his eligibility or alternately from 29.12.1997, the date of G.O.Ms.No.525, in the fourth respondent School allowing all attendant and monetary benefits thereto within a reasonable time.

2.It is the contention of the petitioner that he was appointed as a Physical Education Teacher on 20.07.1987 in the 4th respondent school which is an Aided Government Recognized Higher Secondary School. The petitioner satisfactorily completed probation and was regularized as a Physical Education Teacher with effect from 20.07.1987. The petitioner school is upgraded as a Higher Secondary School from the academic year 1978-79.

3.The petitioner improved his educational qualifications and acquired Master of Physical Education (M.P.Ed.) during February 1991 and thus rendered himself fully qualified and eligible for being appointed as Physical Director Grade-I. The 4th 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 4th respondent school continued to have students' strength more than 600 in XI and XII Standards alone right from the beginning. The combined strength of the Higher Secondary School is more than 2500.

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 4th respondent duly promoted the petitioner and appointed him as Physical Director with effect from 03.06.1993 in the retirement vacancy of one Mr.Jambukeswaran, who retired on 31.05.1993.

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 4th respondent school and in person. The fourth respondent made a recommendation dated 13.04.2007 to the 2nd respondent to upgrade the position of the petitioner as Physical Director Grade-I. Pursuant to the recommendation, the 3rd respondent on due verification of relevant records made a recommendation vide its proceedings dated 25.04.2007 to the Director of School Education to upgrade the petitioner as Physical Director Grade-I. As the recommendations of the 3rd and 4th respondents were not considered, therefore, the petitioner has approached this Court for proper and appropriate remedy by filing the above writ petition.

8.The 2nd respondent Director of School Education, filed counter for himself and on behalf of the respondents 1 and 3 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 respondents also made a statement in the counter saying that the strength of the Higher Secondary classes is below 400 which is contrary to facts. The respondents further contended that the claim of the petitioner for upgrading as Physical Director Grade-I cannot be considered when there is no sanctioned post of Physical Director 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 was no representation on behalf of the 4th 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 4th respondent school and there is no quarrel over his qualification as M.P.Ed. The eligibility criterion to become Physical Director is Master Degree and the petitioner has possessed the same in the year February 1991. 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 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 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. In the counter also the official respondents admitted the collection of various relevant particulars from the 4th respondent school for filling all the vacant post including Physical Director Grade-I.

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

12.On perusal of relevant materials, it is clear that the 4th 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 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 4th 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.

13.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.

14.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.

15.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.

16.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 benefits to the respective petitioners. The petitioner has given various representations through the 4th respondent Management and personally to the official respondents seeking up-gradation as Physical Director Grade-I with effect from 03.06.1993. The representations of the petitioner and recommendations of the 3rd and 4th respondents addressed to the 2nd 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.

17.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. In the instant case, 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.

18.In the result:

(a) the writ petition is allowed;

(b) the respondents 1 to 3 are directed to pass orders on the representation dated 13.04.2007 of the 4th respondent with reference to the recommendation of the 3rd respondent dated 25.04.2007 both addressed to the 2nd respondent by upgrading the post of Physical Director Grade-II held by the petitioner in the 4th respondent school to the post of Physical Director Grade-I with effect from 29.12.1997 being the date of G.O.Ms.No.525 with all monetary benefits;

(c) As the petitioner had already retired on 31.05.2013, the whole exercise shall be completed within a period of eight 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.

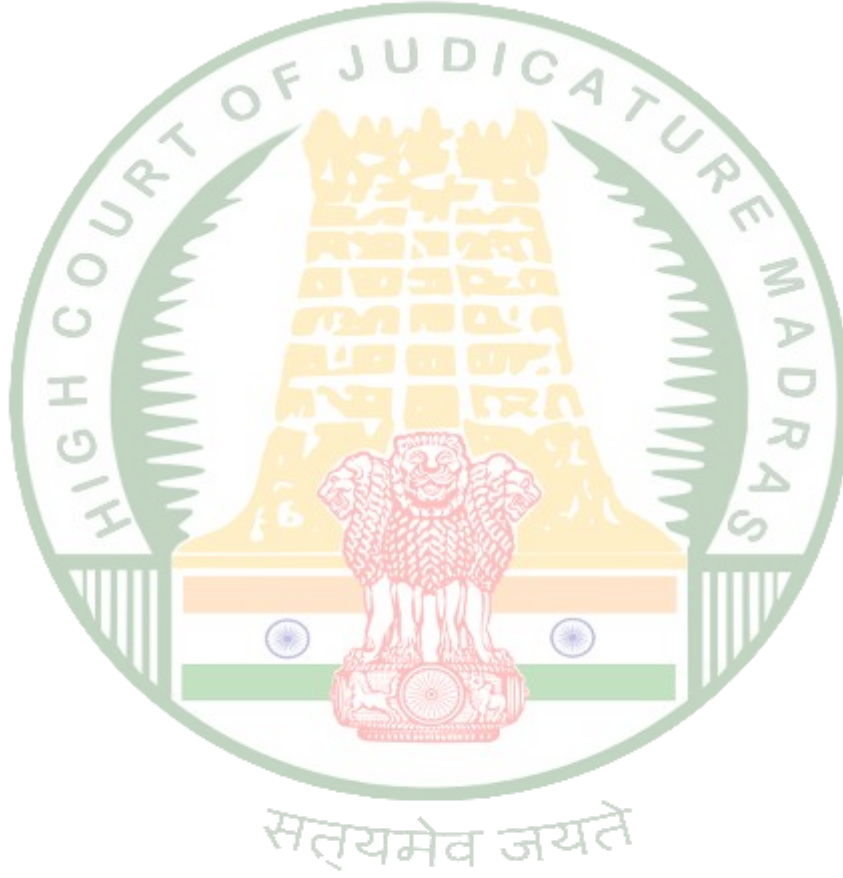
2.The Director of School Education (Higher Secondary),
D.P.I. Compound,
College Road, Chennai - 600 006.

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

+1cc to Mr.C.JOHNSON, Advocate, S.R.No. 16010

order in
Writ Petition No.8347 of 2011

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



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