

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.01.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.8442 of 2011

K.Jayaprakash

.. 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 (Higher Secondary),
D.P.I. Compound,
College Road,
Chennai - 600 006.

3.The Chief Educational Officer,
Thanjavur.

4.The Secretary,
Srinivasa Rao Higher Secondary School,
Thiruvaiyaru - 613 204.

.. Respondents

Prayer: Writ Petition filed 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 as Physical Director Grade-I with effect from 18.06.2001 the date of his eligibility and appointment as Physical Director Higher Secondary Grade-I in the 4th respondent school allowing all attendant benefits thereto within a reasonable time.

For Petitioner : Mr.C.Johnson

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

O R D E R

The Petitioner has filed the writ petition praying 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 as Physical Director Grade-I with effect from 18.06.2001 the date of his eligibility and appointment as Physical Director Higher Secondary Grade-I in the 4th respondent school allowing all attendant benefits thereto within a reasonable time.

2.The learned counsel for the petitioner submitted that the petitioner is fully qualified by possessing B.Sc., M.P.Ed. and M.Phil. (Physical Education) and appointed as Physical Director Grade-II in the 4th respondent school on 18.06.2001 to teach Physical Education to Higher Secondary Level. In terms of the appointment, the petitioner has been taking classes to Higher Secondary apart from High School Level. The same is also approved by all the officials respondents. The 4th respondent school is a Government Recognized Aided Higher Secondary School and a post of Physical Director Grade-I is sanctioned in terms of G.O.Ms.No.720, Education Department, dated 28.04.1981. The 4th respondent school is established long back and functioning for more than 130 years in serving the poor and downtrodden section of the society. The said school was upgraded as a Higher Secondary School from the beginning of the introduction of +2 system. The school is having good strength from the beginning and same steadily improved. The student strength of the school at the relevant point of time was more than 2000 and at no point of time the said strength fell down. The student strength in the Higher Secondary sections is around 500 in number and the said facts are never denied in the counter filed by the 3rd respondent (The Chief Educational Officer, Thanjavur). The 4th respondent school is functioning in an extensive area and the playground earmarked alone measures about 6.5 acres and the school produced number of athletes and sports person.

3.The learned counsel for the petitioner submitted that the 4th respondent school is one of the oldest schools and fulfills each and every norm to get the post of Physical Director Grade-I from the date of upgrade as Higher Secondary School. However, the post of Physical Director Grade-II was not upgraded due to the reason that the incumbents holding the said position were not fully qualified. Finally, it seems, one Mr.G.Sundaramoorthy served as Physical Director Grade-II in the 4th respondent school and he too seems to be not fully qualified to be upgraded as Physical Director Grade-I. Hence, he retired as Physical Director Grade-II. Thereafter, the petitioner is a senior most teacher was appointed in his place based on seniority and merit and he took charge on 18.06.2001 as Physical Director Grade-II. In terms of G.O.Ms.No.720 dated 28.04.1981 every Higher

Secondary School is entitled to have a physical Director Grade-I is sanctioned along with the order of upgrade of the 4th respondent school as a Higher Secondary School. Though the post is sanctioned, the erstwhile teacher could not be upgraded to +2 level as he had not met with Educational Qualification which is a mandatory requirement.

4. Thus the petitioner is fully qualified by possessing Master Degree in Physical Education and thereby entitled for the post of Physical Director Grade-I on the date of appointment itself. The 4th respondent school is having the required students' strength and satisfactorily met with all eligibility norms to possess P.G. Teachers including Physical Director Grade-I and the said fact is not disputed by the official respondents. Thus on the date of appointment as Physical Director Grade-II, the petitioner is fully entitled to hold the post of Physical Director Grade-I in terms of existing rules, regulations and guidelines. As there was no approval for the post of Physical Director Grade-I by the official respondents, the 4th respondent school was to necessarily appoint the petitioner as Grade-II though petitioner is fully qualified for the post of Physical Director Grade-I and the 4th respondent school fulfills all norms and criteria for getting sanctioned post of Physical Director Grade-I 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.

5. As the respondents failed to upgrade the petitioner as Grade-I with effect from 18.06.2001, the petitioner and 4th respondent school submitted representations to the authorities seeking upgrade. Various representations and requests to upgrade the petitioner as Physical Director Grade-I were not considered in the manner to be looked in, though the petitioner is fully qualified to hold the said post on and from 18.06.2001. Finding no other alternative, finally the present writ petition is filed by the petitioner seeking upgrade with effect from 18.06.2001.

6. The learned counsel for the petitioner further pointed out that the G.O.Ms.No.720 Education, dated 28.04.1981 made it abundantly clear that every Higher Secondary School is entitled to have at least one Physical Director Grade-I. 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 Education Department, 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 Education Department dated 28.04.1981) 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. The learned counsel for the petitioner also relied on various judgments as compiled in the additional typed set of papers to substantiate the relevant points raised in the writ petition. Hence, this writ petition has been filed for the aforesaid prayer.

7.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.

8.I have carefully perused all the relevant papers, the counter filed by the 3rd respondent and judgments relied on by the learned counsel for the petitioner. From the above 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 having standards from VI to XII. The various contentions as found in the counter filed on behalf of the respondents for denying the post of Physical Director Grade-I lacks merit and unsustainable in law in view of Rule 1 of the Tamil Nadu Higher Secondary Educational Service (G.O.Ms.No.720 Education Department, dated 28.04.1981) and other Government Rules and proceedings.

9.The learned counsel for the petitioner rightly submitted that according to the G.O.Ms.No.525, Education, dated 29.12.1997 issued by the 1st respondent, the Schools with strength of over 400, one post of Physical Director will be allotted by upgrading the existing post of Physical Education Teachers. As per the G.O.Ms.No.73 School Education (D1) Department, dated 19.03.2010, issued by the 1st respondent, the 2nd respondent is conferred with powers to upgrade the post of the Physical Education Director Grade-II to Physical Education Director Grade-I (Higher

Secondary), if such school satisfies pupils strength and other criteria as given in G.O.Ms.No.525 dated 29.12.1997.

10.It is made very clear that the petitioner is having pre-requisite qualification for the post of Physical Education Director Grade-I and the 4th respondent school has fulfilled the norms laid down in the G.O.Ms.No.525 dated 29.12.1997 and G.O.Ms.No.720 dated 28.04.1981 and still the respondents 1 to 3 have not upgraded the petitioner's post to Grade-I. The act of the official respondents apparently seems to be not in tune with the mandates as mandated under the above said G.Os. The act of the official respondents apparently seems to be not in tune with the mandates as mandated under the above said G.Os. The official respondents cannot act against the said G.O.s and their action cannot be appreciated view from any angle. It is further seen that a dispute had arisen in respect of the strength of the pupils in the school, one of the conditions stipulated in the G.O.Ms.No.525 dated 29.12.1997. Therefore, a writ petition was filed by one Mr.Joseph in W.P.No.35922 of 2005 on the file of this Court and it was held in the order dated 21.12.2009 that "..... it is but necessary that taking the clue from Clause III of Private School Regulation Rules in the case of Higher Secondary Education, the strength has to be read as 400 in total of the Higher Secondary School offering study up to XII Standard and not Classes XI and XII alone". The said reasoning of the learned Judge was accepted and followed by other learned Judges. The appeal preferred by the Government against the said order was also dismissed by the Hon'ble Division Bench of this Court and as such the finding of the learned Judge has attained finality. The said judgment of the learned Judge was followed in a number of cases as seen in the typed set of papers filed by the petitioner. Further the 1st respondent pursuant to orders of the Court granted reliefs to the respective petitioners by passing Government Orders and thus complied with orders of the Court and same is evidenced from various G.O.s. Annexed in the typed set of papers filed by the petitioner.

11.Thus the conjoined reading of G.O.Ms.No.720 dated 28.04.1981, G.O.Ms.No.525 dated 29.12.1997 and G.O.Ms.No.73 School Education (D1) Department, dated 19.03.2010, it is very clear that the petitioner is entitled for the relief claimed in the writ petition by upgrading his position as Physical Director Grade-I on and from 18.06.2001 being his date of appointment as Physical Director Grade-II as the petitioner is fully qualified and the post remained sanctioned on the date of his appointment. Consequently, the writ petition is allowed and the petitioner is entitled for seniority, monetary and all other attendant benefits.

12.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 July 1998 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 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,
Thanjavur.

+1cc to Mr.C.Johnson, Advocate, S.R.No.1327

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RRK(12/03/2018)

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