

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2018

CORAM

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

W.P.No.11785 of 2012

E.Ekambaram

.. Petitioner

Vs.

- 1.The Government of Tamil Nadu,
rep. by the Secretary to the Government,
School Education Department,
Fort St. George,
Chennai - 600 009.
- 2.The Director of School Education,
College Road,
Chennai - 600 006.
- 3.The Joint Director of School Education (Personnel),
College Road,
Chennai - 600 006.
- 4.The Member Secretary,
Teachers Recruitment Board,
College Road,
Chennai - 600 006.

..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records in relation to the proceedings issued by the third respondent in Na.Ka.No.93304/C2/E1/2010 dated 15.11.2011 and quash the same and issue a direction to the respondents to pass an order relieving the petitioner from the post of B.T. Assistant (Science) at Government Girls Higher Secondary School, Perambakkam, Thiruvallur District, so as to enable him to join as B.T. Assistant (Physics) at Government Boys Higher Secondary School, Natrampalli, Vellore District and to protect the past services of the petitioner rendered in the post of B.T. Assistant from 27.1.1999 and to issue a consequential direction to regularise the services of the petitioner in the post of B.T. Assistant from 27.1.1999 with service and monetary benefits.

For Petitioner : Mr.R.Saseetharan

For Respondents : Mr.A.Rajaperumal
Addl. Government Pleader
for R1 to R3

Mr.K.Venkatramani
Addl. Advocate General
assisted by
Mrs.M.E.Raniselvam
Addl. Government Pleader
for respondent No.4

ORDER

This writ petition has been filed by the petitioner seeking a Writ of Certiorarified Mandamus calling for the records of the third respondent in Na.Ka.No.93304/C2/E1/2010 dated 15.11.2011 and to quash the same. The petitioner has also sought a direction on the respondents to pass an order relieving him from the post of B.T. Assistant (Science) at Government Girls Higher Secondary School, Perambakkam, Thiruvallur District, so as to enable him to join as B.T. Assistant (Physics) at Government Boys Higher Secondary School, Natrampalli, Vellore District and to protect the past services of the petitioner rendered in the post of B.T. Assistant from 27.1.1999 and to issue a consequential direction to regularise the services of the petitioner in the post of B.T. Assistant from 27.1.1999 with service and monetary benefits.

2. The petitioner's father was working as a teacher in Narasingapuram Panchayat Union Middle School and he died while in service. Hence, the petitioner applied for a suitable post on compassionate grounds. The petitioner was qualified for the post of B.T. Assistant, but was appointed only as Office Assistant in Kottaiyur Panchayat Union Middle School on compassionate grounds on 28.8.1987. The petitioner joined the said post. Since the petitioner was not given suitable post, he approached the Tamil Nadu Administrative Tribunal by filing O.A.No.4147 of 1993.

3. By an order dated 19.2.1997, the Tamil Nadu Administrative Tribunal directed that the petitioner should be appointed as B.T. Assistant temporarily and he shall apply through the Tamil Nadu Public Service Commission in the normal channel and get selected for regular appointment.

4. Pursuant to the aforesaid order, the petitioner was

temporarily appointed as B.T. Assistant and he also applied for permanent selection to the post of B.T. Assistant to the Teachers Recruitment Board. By the proceedings dated 10.8.2001, the request of the petitioner was rejected by the Teachers Recruitment Board on the ground that it has no power to consider the application for appointment on compassionate grounds.

5. Thereafter, the petitioner approached the Director of School Education for regularisation of his services as B.T. Assistant and proposals were called for by the Director of School Education from the Chief Educational Officer of Tiruvallur District, who also recommended for such regularisation in his proceedings dated 10.5.2005. That proposal was forwarded to the Government by the Director of School Education for consideration.

6. In the meanwhile, the petitioner was called for interview by the Teachers Recruitment Board, but the petitioner could not appear for want of certificates, which were held up in the school. On consideration of the proposal forwarded by the Director of School Education, the Government has passed an order dated 29.9.2008 informing the petitioner that he has to compete with others and the TRB should conduct examination and thereafter the petitioner should get selected for regular appointment.

7. By a memo dated 20.10.2009, the Teachers Recruitment Board, once again, called the petitioner for certificate verification for appointment to the post of B.T. Assistant in Physics as per the seniority in the Employment Exchange and on communal rotation. The petitioner appeared for certificate verification and an appointment order dated 3.9.2010 was issued to the petitioner by the Joint Director of School Education posting him as B.T. Assistant in Physics at Government Boys Higher Secondary School, Natrampalli in Vellore District.

8. According to the petitioner, he is eligible for regularisation of his service in the post of B.T. Assistant from the date of his temporary appointment and the petitioner apprehending that if he joined at Government Boys' Higher Secondary School at Natrampalli, he would be treated as fresh candidate. On 25.10.2010, the petitioner requested the Joint Director of School Education to issue a modified order, so as to enable him to continue in the post of B.T. Assistant at Government Girls' Higher Secondary School, Perambakkam.

9. By proceedings dated 12.8.2011, the Joint Director of School Education issued a notice directing the petitioner to join as B.T. Assistant at Government Boys Higher Secondary School, Natrampalli and if he has not joined, the Directorate

would recommend for cancellation of his selection to the Teachers Recruitment Board.

10. On 26.8.2011, the petitioner submitted a representation to the Joint Director of School Education that he was ready to join at Government Boys Higher Secondary School, Natrampalli and requested to issue a relieving order and also send a proposal to the Director of School Education and to the Government to regularise his service in the post of B.T. Assistant from the date of initial appointment i.e., 27.1.1999. But by the impugned proceedings dated 15.11.2011, the Joint Director of School Education informed that if the petitioner not joined at Government Boys Higher School School, Natrampalli, the Directorate will recommend for cancellation of his selection to the TRB.

11. According to the petitioner, the Joint Director of School Education has not passed any orders on his representation seeking appropriate direction to relieve him from the post of B.T. Assistant from the Government Girls Higher Secondary School, Perambakkam. According to the petitioner, before issuing the impugned proceedings, the Joint Director of School Education has not heard the petitioner and the impugned order was passed arbitrarily. Hence, the petitioner has filed the writ petition praying the relief stated supra.

12. The respondents have not filed any counter affidavit.

13. I have heard the learned counsel for the petitioner and the learned Additional Government Pleader for respondents 1 to 3 and the learned Additional Advocate General for respondent No.4. I have also perused the materials available on record.

14. It appears that earlier the petitioner has challenged the letter dated 29.9.2008 of the first respondent in W.P.No.12820 of 2009, wherein the petitioner has sought direction on the first respondent to regularise his services in the post of B.T. Assistant from the date of appointment with all monetary and consequential benefits.

15. By an order dated 24.2.2010, the learned Single Judge of this Court disposed of the writ petition. The operative portion of the order of the learned Single Judge in W.P.No.12820 of 2009 reads thus:

"5.Nevertheless, the grievance of the petitioner must be attended to on other aspects. The attention of this Court is drawn to the G.O.(3D) No.53, School Education (C2) Department dated 4.9.2000, whereby a similarly appointed teacher on compassionate grounds and temporarily initially,

was made permanent and the services were regularised after relaxing the age. In view of the above, this Court only observes that the petitioner, having crossed the minimum age requirement for consideration for the regular appointment through Teachers Recruitment Board, could be considered by the Government by extending the age relaxation as has been given to the other person and regularise his services. This observation is necessitated in view of the fact that the petitioner, though is qualified to be appointed to the post of B.T. Assistant, was appointed only as Office Assistant, which post he held for quite number of years till he was appointed temporarily as B.T. Assistant and has been serving from the year 1987. With these observations, the writ petition is disposed of. Consequently, M.P.Nos.1 & 2 of 2009 are closed. No costs."

16. It appears that as against the order passed in W.P.No.12820 of 2009, dated 24.2.2010, the respondents therein have not filed any appeal. Thus, the order passed in W.P.No.12820 of 2009 attained finality. When this Court issued a positive direction on the respondent authorities to regularise the services of the petitioner as B.T. Assistant, till date the Government has not regularised the services of the petitioner, which necessitated the petitioner to seek a consequential direction in this writ petition. It is to be noted that the respondent authorities are bound to comply with the direction issued by this Court in W.P.No.12820 of 2009.

17. In fact, in the counselling, the petitioner only opted for Natrampalli, Vellore District for appointment. But the apprehension of the petitioner that if he join in Natrampalli, he would be treated as afresh recruit on appointment has some force.

18. The petitioner is also ready and willing to join as B.T. Assistant at Government Boys Higher Secondary School, Natrampalli provided his services would be regularised from the date of initial appointment. For that, the petitioner has also applied the Joint Director of School Education to issue an appropriate order relieving him from the post of B.T. Assistant in Science from the Government Girls Higher Secondary School, Perambakkam so as to enable him to join as B.T. Assistant in Physics at Government Boys Higher Secondary School, Natrampalli. But without passing any order relieving the petitioner from the Government Girls Higher Secondary School, Perambakkam, by the impugned proceedings dated 15.11.2011, the Joint Director of

School Education, without regularising the services of the petitioner, directed the petitioner to join as B.T. Assistant at Government Boys Higher Secondary School, Natrampalli.

19. It appears that the Joint Director of School Education has not passed orders on the request of the petitioner to relieve him from the post of B.T. Assistant at Government Girls Higher Secondary School, Perambakkam till date. Without passing the relieving order, how the Joint Director of School Education could issue the impugned proceedings stating that if the petitioner has not joined, the Directorate would recommend for cancellation of his selection to the Teachers Recruitment Board.

20. From the above narration, it is necessary to pass an order relieving the petitioner from the post of B.T. Assistant at Government Girls Higher Secondary School, Perambakkam and the respondent authorities are directed to pass such an order within a period of four weeks from the date of receipt of a copy of this order.

21. As far as the request of petitioner to regularise his services is concerned, already, the learned Single Judge of this Court in W.P.No.12820 of 2009, directed the Government to regularise the services of the petitioner as B.T. Assistant, as services of similarly placed persons were regularised by relaxing the age. The respondent authorities are directed to comply with the direction given in W.P.No.12820 of 2009 within the same period as stated supra.

22. With these observations, the writ petition is disposed of. No costs. Consequently, M.P.Nos.1 and 2 of 2012 are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

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

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

3.The Joint Director of School Education (Personnel),
College Road,
Chennai - 600 006.

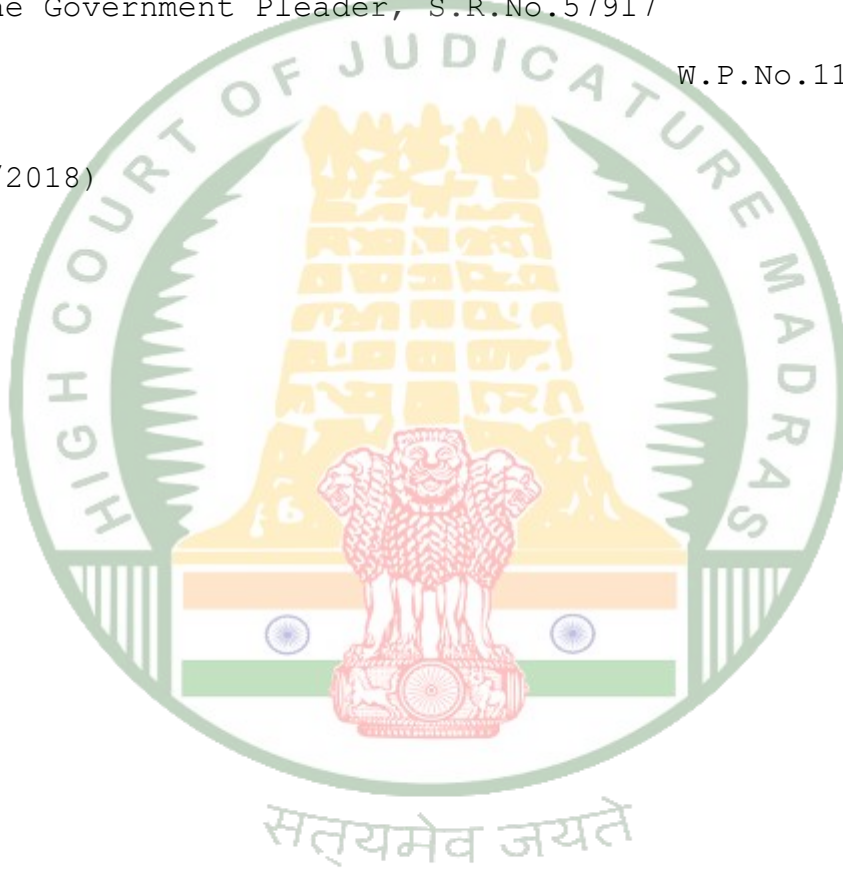
4.The Member Secretary,
Teachers Recruitment Board,
College Road,
Chennai - 600 006.

+1cc to Mr.R.Saseetharan, Advocate, S.R.No.58155

+1cc to the Government Pleader, S.R.No.57917

W.P.No.11785 of 2012

PVS (CO)
GSP (10/09/2018)



WEB COPY