

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.02.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.13884 of 2008
and
M.P.No.1 of 2008

K.Jeyakumar

.. Petitioner

Vs.

1.The State of Tamil Nadu,
rep. by its Secretary to Government,
Education Department,
Fort St. George, Secretariat,
Chennai-600 006.

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

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records on the file of the 2nd Respondent in his proceedings in Na.Ka.No.24482/W3/E1E/07 dated 13.12.2007 and quash the same and consequently directing the Respondents to implement the G.O.Ms.No.79, Education Department, dated 18.01.1990 thereby selecting and appointing the petitioner as Post Graduate Assistant under 10% quota reserved out of 50% direct recruitment as per the G.O.Ms.No.79, Education, dated 18.01.1990.

For Petitioner : Mr.J.Selvarajan

For Respondents: Mrs.M.E.Rani Selvam
Additional Government Pleader

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O R D E R

The writ petition has been filed to issue a writ of Certiorarified Mandamus, calling for the records on the file of the 2nd Respondent in his proceedings in Na.Ka.No.24482/W3/E1E/07 dated 13.12.2007 and quash the same and consequently directing the Respondents to implement the G.O.Ms.No.79, Education Department, dated 18.01.1990 thereby selecting and appointing

the petitioner as Post Graduate Assistant under 10% quota reserved out of 50% direct recruitment as per the G.O.Ms.No.79, Education, dated 18.01.1990.

2.The case of the petitioner is that he is working as a Secondary Grade Assistant at Municipal Girls Higher Secondary School, Tiruvannamalai, he was originally selected through Teachers Recruitment Board for the appointment of a Secondary Grade Assistant on 28.07.1995 and posted initially at Government Higher Secondary School, Thandrapattu during 04.01.1996 and subsequently transferred to the present school during 31.07.2006.

3.The further case of the petitioner is that he had completed his Bachelor Degree in Tamil Literature during October, 1994 and completed his Master Degree in Tamil Literature during May, 1999 and also completed Bachelor Degree in Education during May 1996 and Master Degree in Education during May 1998 and in view of acquisition of the above said Degrees he had become eligible to be appointed as Post Graduate Assistant.

4.It is further case of the petitioner is that the State Government during 1990 issued a G.O.Ms.No.79, School Education Department dated 18.01.1990, wherein orders were issued to amend the special rules for the Tamil Nadu Higher Secondary Educational Service and the Tamil Nadu School Educational Service, providing for ten percent reservation out of fifty percent of substantive vacancies to be filled by direct recruitment from among the qualified secondary grade teachers and other teachers with secondary grade scale of pay and language pandits working in recognised Higher Secondary Schools, High Schools, Middle Schools and Elementary Schools under Local Bodies (Corporation and Municipal) and all Aided Managements. The Teachers or erstwhile Panchayat Union were made Government Servants from 01.06.1981, no provision was made in the above said Government Order for the Secondary Grade Teachers of Panchayat Union Schools who are covered by the Tamil Nadu Elementary Educational Subordinate Service.

5.The further case of the petitioner is that subsequently orders were issued by the Government in G.O.Ms.No.132, Education Department, dated 21.02.1995 to effect that 10% (ten percent) of the vacancies under direct recruitment of the posts of School Assistant in the Tamil Nadu School Educational Subordinate Service and 10% (ten percent) of vacancies under direct recruitment of the posts of Post Graduate Assistants in academic subjects and languages in the Tamil Nadu Higher Secondary Educational Service be reserved for appointment by the qualified and eligible Secondary Grade Teachers under the Tamil Nadu Elementary Education Subordinate Service. The Government having examined and reviewed the need for providing further separate reservation of ten percent of vacancies under direct recruitment

as ordered in G.O.Ms.No.132, Education, dated 21.02.1995, however so far no direct recruitment as per the amendment made in G.O.Ms.No.79, Education, dated 18.01.1990 has been made and therefore, the Government has decided that there is no need to have separate ten percent reservation in direct recruitment for secondary grade teacher in Panchayat Union Schools as ordered in G.O.Ms.No.132, Education, dated 21.02.1995, and these Panchayat Union School Teachers may also be made eligible along with others for direct recruitment quota of ten percent as per the amendment made to the special rules for the Tamil Nadu School Educational Subordinate Service in G.O.Ms.No.79, Education, dated 18.01.1990. Therefore, the State Government in superseding the order in G.O.Ms.No.132, Education, dated 21.02.1995 have issued the order in G.O.Ms.No.223, School Education Department, dated 16.07.1999, where in orders were issued that the Secondary Grade Teachers in Panchayat Union Schools are eligible for appointment as Post Graduate/B.T. Assistant in the reserved each 10% quota out of fifty percent for direct recruitment to be filled from among the qualified secondary grade teachers working in the recognised Higher Secondary Schools, High Schools, Middle Schools and Elementary Schools under Local Bodies (Corporation and Municipal) and all aided Managements.

6.The further case of the petitioner is that he is also fully qualified to be appointed directly as Post Graduate Assistant in the reserved 10% quota out of fifty percent for direct recruitment to be filled among the qualified secondary grade teachers working Higher Secondary School and he had also registered his name with the Professional and Executive Employment Exchange, Chennai during 1999 with registration No.PG/18902/1999 after getting no objection from the Education Department. While being so, the Teachers Recruitment Board, Chennai had conducted Written Recruitment Test for the appointment of Post Graduate Assistants in Tamil Nadu Government Higher Secondary Schools during 2001, the Petitioner had appeared for the said recruitment test under the impression that he would be considered for the appointment as Post Graduate Assistant under 10% quota as per the G.O.Ms.No.79, Education, dated 18.01.1990, however the respondents herein failed to consider the petitioner for the said appointment as Post Graduate Assistant as per the above said Government Orders.

7.It is further case of the petitioner is that since the respondents herein failed to consider the petitioner for the said appointment as Post Graduate Assistant though he is fully qualified for the said appointment with an ulterior motive, they have deliberately failed to implement the said Government Orders. Therefore, he made representation to the respondents to

implement the said Government Orders by considering for direct appointment as Post Graduate assistant under 10% quota reserved out of 50% direct recruitment, however none of his requests were considered. Therefore, another detailed representation made to the respondents on 15.02.2007 requesting them to implement the Government Order in G.O.Ms.No.79, Education, dated 18.01.1990 and G.O.Ms.No.223, School Education Department, dated 16.07.1999, even the said representation was also not considered by the respondents hence, the petitioner earlier approached this Court by filing the writ of Mandamus seeking a direction of this Court, directing the respondents herein to consider and pass orders on the petitioner's representation dated 15.02.2007 in W.P.No.32074 of 2007 and this Court by order dated 05.10.2007 has directed the 2nd respondent herein to consider his grievance as put forth by him in his representation dated 15.02.2007 and pass appropriate orders on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this order. After receipt of the said order of this Court dated 15.10.2007, the 2nd respondent herein by his proceedings dated 05.10.2007 has replied to the directions issued by this Court in W.P.No.32074 of 2007 that there were no provision to appoint the petitioner directly as Post Graduate Assistant, as against the rejection of the representation by the 2nd respondent present writ petitioner has been filed challenging the proceedings of the 2nd respondent dated 05.10.2007.

8.The respondents entered appearance however for the past 9 years, counter has not been filed by the respondent, however when the petition was listed before this Court for final disposal, counter has been filed by the respondents.

9.The case of the respondent is that though order have been issued in G.O.Ms.No.79, Education, dated 18.01.1990, amendments were issued to the special rules for the Tamil Nadu School Education Subordinate Service and Tamil Nadu Higher Secondary Educational Service, providing for 10% reservation out of 50% of substantive vacancies to be filled by the direct recruitment from among the qualified secondary grade teachers and other teacher with secondary grade scale of pay and language pandits working recognised Higher Secondary Schools, High Schools, Middle Schools and Elementary Schools under Local Bodies (Corporation and Municipal) and all aided Managements, necessary amendments were made to the Special Rules for the Tamil Nadu State and Subordinate Educational Service Rules and Tamil Nadu Higher Secondary Educational Service were issued vide G.O.Ms.No.110, School Education SE 2(1) Department, dated 26.05.2017.

10.It is further case of the respondents is that after necessary amendments to the said Special Rules, only the petitioners claim for consideration under 10% quota out of 50% direct recruitment vacancies for the post of Post Graduate Assistant can be considered and without the amendments of Special Rules the claim of the petitioner cannot be considered, however necessary amendments were issued only on 26.05.2017, therefore the petitioner claim cannot be considered and moreover the petitioner has not added the Teacher Recruitment Board as Respondent and therefore, the writ petition is liable to dismissed for non-joinder of necessary parties, moreover after filing of this writ petition, the petitioner has been promoted on 12.07.2008 as B.T. Assistant and at present the petitioner is working as B.T. Assistant at Government Higher Secondary School, Nallavanpalayam, Thiruvannamalai District and therefore, the petitioner is not eligible for P.G. appointment in the 10% reservation quota as specified in the above said Government Order and therefore, the writ petition has to be dismissed.

11.I heard Mr.J.Selvarajan, learned counsel for the petitioner and Mrs.M.E.Rani Selvam, learned Additional Government Pleader for the respondents and perused the relevant documents filed on either side.

12.After careful consideration, this Court it is considered opinion the following order has been passed. The learned counsel for the petitioner vehemently argued that the amendment to the Special Rules of Tamil Nadu Higher Secondary Educational Service Rules and Tamil Nadu Educational Subordinate Service were Education Department, dated 18.01.1990 and without even implementing the said Government Order, the respondents are going on saying necessary amendments has to be brought in the Rules and the respondents are not justified in rejection the claim of the petitioner without even knowing the amendments were made even during 1985 itself by issuance of G.O.Ms.No.79, Education Department, dated 18.01.1990.

13.In my considered opinion that the petitioner is entitled to be appointed as Post Graduate Assistant under 10% reservation quota for existing service candidates in direct recruitment of 50% and when the petitioner appeared for Teacher's Recruitment Board Examination if the 10% would have been served to him as per the above said Government Order he would be given opportunity of getting promotion to the post of P.G. Assistant and therefore, the impugned proceedings of the 2nd respondent is devoid on merits and the same is liable to be set aside and accordingly the writ petition is liable to be allowed.

14.In the result, this writ petition is allowed by setting aside the impugned proceedings of the 2nd respondent in his Na.Ka.No.24482/W3/ETE/07 dated 13.12.2007 and consequently the respondents are directed to promote the petitioner to the post

of P.G. Assistant by implementing the G.O.Ms.No.79, Education Department, dated 18.01.1990 by appointing the petitioner as Post Graduate Assistant under 10% quota reserved out of 50% direct recruitment in accordance with the above said Government Order pursuant to the written recruitment test appeared during 2001 having Roll No.017215 as well as with all attendant service benefits including monetary benefits from the year 2001 and the said exercise shall be done by the respondents within a period of four weeks. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS V)

//True copy//

Sub Assistant Registrar

vs

To

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

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

+1cc to Mr.J.Selvarajan, Advocate SR.No.9631

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W.P.No.13884 of 2008
and

M.P.No.1 of 2008

LRS (CO)
GN (07/03/2018)

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