

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2018

CORAM

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

W.P.No.15023 of 2012

C.M.Anbarasan

.. Petitioner

Vs.

1. Government of Tamil Nadu,
rep. by its Secretary,
School Education Department,
Fort St. George,
Chennai – 600 009.
 2. The Director of School Education,
DPI Campus, College Road,
Chennai – 600 006.
 3. The Joint Director (Vocational Education),
DPI Campus, College Road,
Chennai – 600 006.
 4. The Joint Director (Higher Secondary),
DPI Campus, College Road,
Chennai – 600 006.
- .. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus calling for the
records relating to the impugned order of the first respondent

issued in Letter No.3047/MNK2/2011-2, dated 23.06.2011 and to quash the same and consequently, direct the respondents to promote the petitioner as P.G. Assistant (English).

For Petitioner : Mrs.P.Mahalakshmi

For Respondents : Mr.K.Venkatramani
Addl. Advocate General
assisted by
Mr.A.Rajaperumal

ORDER

This writ petition has been filed by the petitioner seeking a writ of certiorarified mandamus calling for the records relating to the impugned order of the first respondent issued in Letter No.3047/MNK2/2011-2, dated 23.06.2011 and to quash the same and consequently, direct the respondents to promote the petitioner as P.G. Assistant (English).

WEB COPY

2. The petitioner was appointed as a part-time Vocational Instructor on 07.01.1985 and is now working as General Mechanist Vocational Grade-I Instructor in Government Higher Secondary School, Jayankondam. He had Higher Secondary and I.T.I.

Qualification at the time of appointment and subsequently, he acquired B.A. (English) in Annamalai University. He has also passed B.Ed. in Indira Gandhi National University and M.A. (English).

3. According to the petitioner, pursuant to the order of this Court in W.P.Nos.9780 of 1995 and 14027 of 1996, the Government absorbed 1049 Grade II Vocational Instructors, including the petitioner, into Grade-I Vocational Instructor post and granted B.T. Assistant scale of pay from 05.10.1996. The petitioner has completed his probation on 04.10.1998 and received selection grade from 05.10.2006.

4. According to the petitioner, he being fully qualified as B.T. Assistant and having put in 15 years of unblemished service has not obtained any promotion till date. Though the petitioner was similarly placed in the cadre of other B.T. Assistant and Tamil Pandits for promotion to the post of P.G. Assistant, his name was not included in the P.G. Assistant promotion panel.

5. It is alleged that G.O.Ms.No.266, dated 18.10.2000 provides that if qualified persons possessing B.A. (English) and M.A.

(English) are not available, then the remaining vacancies can be filled up by available persons. The petitioner possessed both B.A. (English) and M.A. (English) and, therefore, his candidature should be given preference.

6. Earlier, the petitioner has filed W.P.No.29555 of 2010 before this Court to consider his representation dated 13.04.2010 for promotion as P.G. Assistant (English). The said writ petition was disposed of by this Court by directing the first respondent to consider the representation of the petitioner.

7. By the impugned order dated 23.06.2011, the first respondent rejected the representation of the petitioner on the ground that there is no specific rule for Vocational Instructors and the Vocational Instructors are not a feeder category. Challenging the same, the petitioner has filed the present writ petition.

8. The second respondent has filed counter stating that the Vocational Instructors are not qualified for promotion as P.G. Assistant (English) and also Vocational Instructors were not given promotion as P.G. Assistant so far. Therefore, the petitioner is not

entitled to get the relief as prayed for in the writ petition. As there are no specific rules for Vocational Instructors to be promoted as P.G. Assistant (English), the first respondent had rejected the representation of the petitioner dated 23.06.2011.

9. I heard Mrs.P.Mahalakshmi, learned counsel appearing for the petitioner and Mr.K.Venkatramani, learned Additional Advocate General assisted by Mr.A.Rajaperumal, learned Additional Government Pleader appearing for the respondents and also perused the materials available on record.

10. It appears that earlier some of the Vocational Instructors have filed writ petitions, being W.P.No.9780 of 1995 and 14027 of 1996, seeking to regularise their services and to absorb them into B.T. scale of pay instead of Secondary Grade and also to count their service for reckoning seniority for their initial date of appointment. By an order dated 08.07.2004, a Division Bench of this Court disposed of the writ petitions. The operative portion of the order reads as under:

"17. Having regard to all these aspects, we feel interest of justice would be served by passing the following

directions :-

(i) unqualified vocational instructors who have been subsequently adjusted against secondary grade scale of pay on completion of their training, as envisaged in G.O.Ms.No.834 dated 23.9.1994, shall be deemed to have been regularised in B.T. scale of pay with effect from the dates of their regularisation in the secondary grade scale of pay and their seniority would be counted on the basis of such deemed date of regularisation.

(ii) Inter-se seniority of such persons shall be dependent upon their initial entry as part time vocational instructors, whether single or double.

(iii) Increments shall be calculated notionally from the deemed dates of their regularisation.

(iv) However, arrears on account of difference in the scale of pay and on account of notional increments are not payable and such persons shall be paid salary in B.T. Scale from the date of judgment only by taking into account the notional increments."

11. Pursuant to the order of the Division Bench of this Court, the Government issued G.O.Ms.No.69, dated 20.03.2007 absorbing 1049 Grade-II Vocational Instructors, including the petitioner, into Grade-I Vocational Instructor post and granted B.T. scale of pay from 05.10.1996.

12. The grievance of the petitioner is that inasmuch as the Vocational Instructors are governed by the Tamil Nadu Subordinate Service Rules, as applicable to B.T. Assistant and Tamil Pandit, and are brought under the set of common rule, the respondent authorities cannot discriminate the Vocational Instructors while granting them the benefit of promotions.

13. Opposing the argument of the learned counsel for the petitioner, the learned Additional Advocate General submitted that as per the present rules in force, the Vocational Instructors are not eligible to be considered for promotion. Therefore, the Vocational Instructors are not qualified for the promotion as P.G. Assistant (English).

14. It is to be noted that the petitioner is only a Vocational Instructor. As per the Special Rules for the Tamil Nadu Higher Secondary Educational Service, the P.G. Assistants in Language subjects come under Class II and Category (2) and the method of recruitment is as follows:

<i>Post Graduate Assistant in Languages</i>	<i>(i) Director recruitment</i> <i>(ii) Recruitment by transfer from Categories 3 and 5 of Class II of Tamil Nadu Educational Subordinate Service (Deputy Inspector of School, School Assistants, Block Resource Teacher Educator, Pandits and Munshis Grade 1)</i>
--	--

15. I find that there is no provision made in the Special Rules for the Tamil Nadu Higher Secondary Education Service to give promotion to the Vocational Instructors. Therefore, in the absence of enabling rules, the petitioner, though getting the time scale of pay in the cadre of B.T. Assistant, cannot be promoted as P.G. Assistant as requested by him. Since the petitioner is a Vocational Instructor, he was not qualified for promotion as P.G. Assistant (English).

16. No proof has been produced by the petitioner to show that Vocational Instructors were given promotion to P.G. Assistant. On the other hand, the respondent authorities contended that Vocational Instructors were not qualified for the promotion as P.G. Assistant (English) and so far nobody was promoted to the post of P.G. Assistant (English). When such being the statement of the respondent authorities, how could the petitioner seek relief of

promotion as P.G. Assistant (English).

17. Merely receiving the time scale of pay in the cadre of B.T. Assistant will not entitle the petitioner for being promoted as P.G. Assistant (English). No material was produced by the petitioner to show that Vocational Instructors are feeder category.

18. It is pertinent to note that the Division Bench of this Court in W.P.Ns.9780 of 1995 and 14027 of 1996, has not given any specific direction to promote the Vocational Instructors and only the scale of pay of the Vocational Instructors have been increased based on their service.

19. Finding that there is no specific rule for Vocational Instructors to be promoted as P.G. Assistant (English), the first respondent has passed the impugned order rejecting the request of the petitioner. I find that only after analysing the existing rule position and also considering the relevant Government Orders, the first respondent has rejected the representation of the petitioner dated 30.09.2010.

20. It is seen that by an order dated 23.12.2010 in W.P.No.29555 of 2010, the learned Single Judge of this Court disposed of the writ petition filed by the petitioner directing the first respondent to consider the application/representation dated 30.09.2010 to promote him as P.G. Assistant (English) in the light of G.O.Ms.No.132, Education, Science and Technology Department dated 21.02.1995 subject to the condition that the petitioner is eligible for such post.

21. While considering the representation of the petitioner, the first respondent noted that G.O.Ms.No.132, dated 21.02.1995 will not apply to the case of the petitioner and there is no provision in the Special Rules to give promotion to the Vocational Instructors as P.G. Assistant. Admittedly, the petitioner has not shown any material that G.O.Ms.No.132, dated 21.02.1995 will be applicable to the case of the petitioner as observed by the learned Single Judge in the earlier order in W.P.No.29555 of 2010.

22. As stated supra, since there is no provision made in the Special Rules for the Tamil Nadu Higher Secondary Educational Service, to give promotion to the Vocational Instructors as P.G.

Assistant and since so far no Vocational Instructor was given promotion as P.G. Assistant, the first respondent was right in rejecting the representation of the petitioner. I do not find any infirmity in the impugned order and, I am of the firm view that the same has been passed as per the existing rule position. Moreover, the order impugned is a reasoned one.

23. The writ petition is dismissed. No costs.
Consequently, M.P.No.1 of 2012 is closed.

11.06.2018

vs

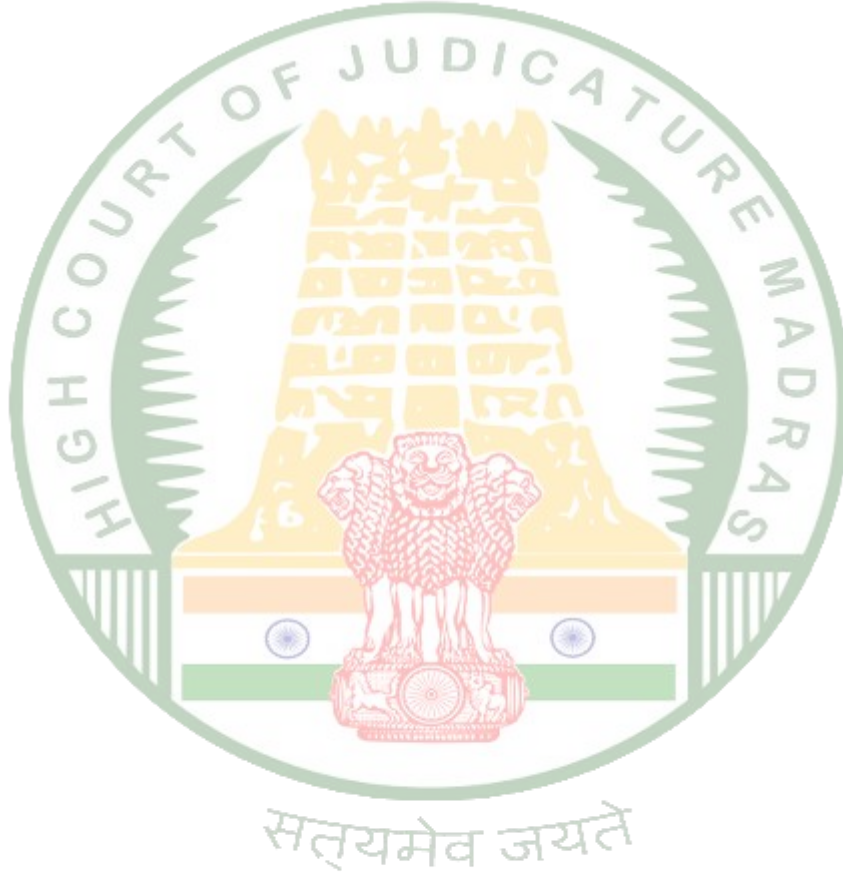
Index : Yes
Internet : Yes
Speaking order

To

1. The Secretary,
School Education Department,
Fort St. George,
Chennai – 600 009.
2. The Director of School Education,
DPI Campus, College Road,
Chennai – 600 006.
3. The Joint Director (Vocational Education),
DPI Campus, College Road,

Chennai – 600 006.

4. The Joint Director (Higher Secondary),
DPI Campus, College Road,
Chennai – 600 006.



WEB COPY

M.V.MURALIDARAN, J.

VS



Pre-delivery order made in
W.P.No.15023 of 2012
and
M.P.No.1 of 2012

WEB COPY

11.06.2018