

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.15295 of 2012

and

M.P.No.2 of 2012

- 1.R.Baskar
- 2.B.Sasikala
- 3.V.Shanmughanathan
- 4.S.Mohammed Ali
- 5.K.Veersekaran
- 6.T.Veerasekaran
- 7.M.Periyasamy
- 8.N.Santhi
- 9.M.Kavitha
- 10.K.Kumarakuruparan
- 11.V.Veerapandi
- 12.R.Chandrasekar
- 13.T.Sivakumar
- 14.G.P.Baskaran
- 15.A.Subramanian
- 16.P.Ramaraj
- 17.M.Sekar
- 18.C.Muthu
- 19.K.Elansuriyan
- 20.V.Rajagopal
- 21.K.Vasu
- 22.S.Murugan
- 23.S.Rajasekaran
- 24.M.Selvam
- 25.A.Yunus
- 26.K.Shankardayalan
- 27.T.V.Ravikumar

... Petitioners

WEB COPY

Vs

- 1.The Government of Tamil Nadu,
rep. by 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,
College Road,
Chennai-600 006.

... Respondents

Petition is filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus calling for the records of the first respondent issued in Letter No.(1D) No.77/M1/2008, dated 15.02.2011 and quash the same and issue a consequential direction to the respondents to consider the case of the petitioners for promotion to the post of Physical Director Grade II and Grade I and include the names of the petitioners in the panel fit for promotion to the post of Physical Director Grade II and Grade I at appropriate places as on 01.01.2011 and promote the petitioners as Physical Director Grade II and Grade I as per their qualification with service and monetary benefits and to grant incentive increments for higher qualifications.

For Petitioners : Mr.R.Saseetharan

For Respondents : Mr.R.Govindasamy
Special Government Pleader

O R D E R

The Petitioners by way of this Writ petition seeks to quash the proceedings of the 1st respondent issued in Letter No.(1d). 77/M1/2008 dated 15.02.2011 and further seeks a direction to consider the case of petitioners for promotion by including their names in the panel fit for promotion to the post of Physical Director and Promote them as Physical Director with monetary benefits and incentive increments towards their higher qualification.

2.The petitioners herein are working as Physical Education teachers in various Government Schools of Tamil Nadu. Originally the petitioners were appointed as Physical Education Teacher having possessed M.P.E.S and M.P.Ed. Qualification (integrated Course) and till date they are discharging their duty as Physical Education teacher.

3. Previously in the Service of Physical Education Teachers in Government schools there were two Grades namely Grade-I and Grade-II. Subsequently the distinction into Grade I and Grade-II was abolished in G.O.Ms.No.1440 dated 14.9.1987 whereby the Government of Tamil Nadu has prescribed qualification for the post of physical education teachers as

1. A pass in pre- university or Higher Secondary or T.S.L.C. Secondary grade teacher or senior basic and government teachers certificate of higher grade in physical education.

2. A pass in S.S.L.C and Teachers Certificate of lower grade in physical education.

4. Subsequently, the Government of Tamil Nadu vide letter No.14878/1/86-2 dated 08.04.1996 prescribed a degree of Bachelor of Education for the post of physical education teacher.

5. In the meantime vide G.O.Ms.No.236 dated 29.06.1993, the Degree of Bachelor of Physical Education and Sports were also recognized as qualification for appointment to the post of physical education teachers. Again through G.O.Ms.No.27 dated 31.1.2000, a degree in Master of Physical Education and Sports without B.P.E.S was also recognized as qualification for the above said post.

6. In the year 2003, the Government of Tamil Nadu by G.O.Ms.No.26 dated 27.02.2003 amended the Tamil Nadu School Educational Subordinate Service Rules prescribing a Master Degree in physical education and sports without degree in Bachelor of Physical education and sports and a master degree in physical education i.e. M.P.Ed. without Bachelor in physical education i.e. B.P.Ed. as one of the qualification for the post of physical education teacher.

7. Whereas in the above said factual backdrop the impugned letter dated 15.2.2011 vide letter [1D] No.77-M1/2008 held that the petitioners who hold Integrated M.P.Ed. without studying B.P.Ed. for one year as such B.P.Ed. is made as one of the qualifications for appointment to the post of Physical Education Teacher, the petitioners are not qualified with B.P.E.S. and B.P.Ed. It was further held that however as the petitioners work for long years and some of their service were also regularized it was stated that in these circumstances the Government decided to continue their services, but holding them not eligible for promotion and incentive increments.

8. With regard to Government letter dated 15.02.2011 it would go to show that the appointment of petitioners with Master Degree qualifications, though not prohibited by the rules, the Government of Tamil Nadu chosen to say that appointment of petitioners are contrary to the then existing rules as the rules are amended only in the year 2000 and 2002 which specifically says that the integrated M.P.E.S., and M.P.Ed. are eligible for appointment to the post of Physical Education Teachers, that therefore, the Government of Tamilnadu decided to allow the petitioners to continue in service but at the same time it says that petitioners are not entitled for further promotion and for incentive increments. The G.O.Ms.No.26 dated 23.2.2003 makes M.P.Ed. and M.P.E.S. qualifications as one of the qualifications for appointment to the post of Physical Education Teacher expressly which does not mean that the integrated M.P.Ed. and M.P.E.S. are previously excluded or the candidates possessing such qualifications are not eligible for appointment to the post of Physical Education Teacher. The integrated Master Degree for two years is inclusive of Bachelor Degree as well.

9. The Respondents have filed counter and the crux of the counter is on four folds, i.e.

- (1) the petitioners appointment are conditional one and as such they are not entitled to seek any further promotion
- (2) the relaxation given to them in respect of the qualification will not inure the benefit for the post of further promotion
- (3) when on the date of promotion their qualification was not eligible for the post the further order recognizing their qualification cannot be applied retrospectively or in other words the qualification prescribed on the date of appointment alone to be considered and
- (4) when their service is protected in the impugned order the mere non-denial of other benefits cannot be held to be unjust when admittedly they were not qualified on the date of appointment.

10. In so far ground No.1 is concerned that there is no bar in the rules to appoint the candidates like petitioners who possessed higher qualification than the one and therefore, the appointment of petitioners to the post of Physical Education Teacher cannot be said to be contrary to the service rules then existing. Therefore the first respondent cannot shut down the

promotional avenues which are available in the service rules. In particular when the respondents have approved the promotion of (1) S. Ravi, S.H.N.V.Higher Secondary School, Sivakasi, Virudhunagar District, (2) Rajan, S.H.N.Edward Higher Secondary School, Sattur, Virudhunagar District, to the post of Physical Director, Grade I and approved the promotion of R.Elavarasan, S.V.V.Higher Secondary School, Vairee Chettipalayam, Trichy and R.Sundaresan, K.A.V.Viswanathan Higher Secondary School to the post of Grade II Physical Director.

11.Therefore in the petitioners' case alone, the respondents cannot take a different yard stick denying promotion. The Hon'ble Supreme Court in State of Tiripura - versus - K.K.Roy case reported in AIR 2004 SCW 1 has held that "merely because the employee has accepted the terms and conditions of offer of appointment knowing full well that there was no promotional avenue it cannot be a ground to leave him without being promoted throughout his carrier. The Hon'ble Apex Court has held that there is no waiver or estoppel to constitutional functionary. Therefore the issue is no more res-integra.

12.The issue No.2 is also no more res-Integra as the Division Bench of this Hon'ble Court in Tamilnadu Tourism Development Corporation Ltd., - versus - S.Purushotham case reported in 2011 WLR 161 has held that the relaxation of qualification once given for a particular post will give the same in his entire carrier of service for further promotion, for which same qualification is prescribed.

13.The ground No.3 taken by the respondents cannot be accepted for two reasons. One is that at the time of appointment there was no bar and the another is now the same qualification is recognized for appointment. There is no dispute that the petitioners possess the qualification now prescribed by the Government and therefore it is not the question of applying the qualification retrospectively. They were appointed earlier and they are allowed to continue their service even in the impugned order recognizing their qualification while so denying the right of promotion amounts to unjust enrichment and discrimination and as such the same is not permissible.

14.The final ground taken by the respondents is unfortunate. The State being a model employer cannot go against the law declared by the Hon'ble Supreme Court and deny the benefits to a particular class of persons treating them unequally when they do possess the qualification and in

particularly their services are being enjoyed by the State. Therefore the state must treat them as equal among others on the basis of their qualification and service.

15. There is no bar for appointment to the post of physical education teacher by the M.P.Ed and M.P.E.S. qualified candidates before 27th October 2003 when rules have been amended incorporating specifically M.P.Ed and M.P.E.S Degree as one of the qualifications for the post of physical education teacher. The degree of M.P.Ed and M.P.E.S are Master degrees and higher than the qualifications of certificate in physical education and degree in physical education which were the prescribed qualifications for the post of physical education teacher. For Physical Director Grade-I, the Master Degree is also a prescribed qualification. Therefore, the petitioners are entitled for further promotion to the post of Physical Director Grade-II and Physical Director Grade I. For the post of Physical Director, Grade-II, Bachelor Degree is also prescribed one of the qualifications.

16. By the impugned letter dated 15.2.2011, the Government of Tamilnadu has decided and ordered to continue the services of the petitioners by saying that though the petitioners are not qualified at the time of appointment which would mean that the Government of Tamil Nadu has relaxed the qualifications. Therefore, the relaxation given for the post of Physical Education Teacher would be available for further promotion to the post of Grade-I and Grade-II - Physical Director. In such a position restricting their right of promotion is totally unjust and unsustainable and therefore the restriction imposed on the promotion avenue of petitioners is quashed and the respondents are directed to ensure their further promotion in the light of the issues answered above within a period of 12 weeks from the date of receipt of the copy of the order.

17. In the result:

(a) the writ petition is allowed and the impugned letter of the first respondent in Letter 1(D) No.77/M1/2008, dated 15.02.2011 is set aside;

(b) the respondents authorities are directed to consider the names of the petitioners for promotion to the post of Physical Director Grade II and Grade I respectively in the next panel for promotion and grant incentive increments;

(c) the said exercise shall be done within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

vs

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,
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M.P.No.2 of 2012

MG (CO)
GMY (07/02/2019)

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