

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2018

CORAM

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

W.P.No.18013 of 2012 and
W.M.P.No.5076 of 2017

S.Suresh Kumar

.. Petitioner

Vs.

1. The District Collector,
Karur District, Karur.
 2. The District Employment Officer,
Karur District, Karur.
 3. The Chief Educational Officer,
Karur District, Karur.
 4. The District Educational Officer,
Karur District, Karur.
 5. The District Elementary Educational Officer,
Karur District, Karur.
 6. The State of Tamil Nadu,
rep. By its Secretary,
Education Department,
Fort St. George,
Chennai - 600 009.
- .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India seeking issuance of a writ of Mandamus to direct the respondents to appoint the petitioner as a Secondary Grade Teacher on regular basis with effect from 03.01.2002, date on which the petitioner's junior, Sheik Allaudin, was appointed on time scale of pay with all consequential benefits, including arrears of pay, continuous seniority.

For Petitioner

: Mrs.Y.Kavitha
for M/s.P.V.S.Giridhar and
Sai Associates

For Respondents

: Mrs.M.E.Raniselvam
Addl. Government Pleader

ORDER

The petitioner has filed this writ petition seeking issuance of a writ of Mandamus to direct the respondents to appoint the petitioner as a Secondary Grade Teacher on regular basis with effect from 03.01.2002, date on which the petitioner's junior, Sheik Allaudin, was appointed on time scale of pay with all consequential benefits, including arrears of pay, continuous seniority.

2.The facts in a nutshell are as under:

The petitioner, who was a resident of Sathankulam District, shifted his residence to Karur District and his name was also removed from the family card at Sathankulam, as is evidenced from the certificate issued by the Tahsildar. The petitioner, after shifting his abode, registered his name with the Karur Employment Exchange seeking employment as Secondary Grade Teacher. The Tahsildar, Karur also issued a residence certificate to the effect that the petitioner is residing in Karur from 29.01.2000 onwards.

3.For the selection process of the year 2000-2001 for the post of Secondary Grade Teacher, names of several candidates were sponsored and petitioner was under the belief that his name would also be sponsored in the order of seniority of registration in the employment exchange. However, on 17.09.2001, a notice was issued by the first respondent qua an enquiry regarding registration of employment in Karur Employment Exchange.

4.Not satisfied with the explanation offered by the petitioner, the first respondent passed an order dated 24.12.2001 cancelling the registration of the petitioner and 80 other similarly placed persons in Karur Employment Exchange.

5.Assailing the said order of cancellation of registration, one Balagangadharan filed W.P.No.9 of 2002 and this Court, by order dated 03.01.2002 granted an order of interim stay of the order passed by the first respondent and it is the say of the petitioner that by virtue of the order of interim stay, there is no impediment for appointing the petitioner consequent to his registration with the Karur Employment Exchange.

6.It is further stated that the respondents sponsored and appointed several juniors of the petitioner as Secondary Grade Teachers and ante-dated all such appointments as 03.01.2002, viz., the date of passing of the interim order by the Court in the above said writ petition.

7.It is averred that on 11.11.2002, the petitioner gave a representation to the first respondent regarding his bonafide residence in Karur and sought consequential relief of endorsing his name in the Karur Employment Exchange. It is stated that the first respondent on 15.11.2002 directed the petitioner to produce migration certificate before the Karur Employment Exchange in order to establish the genuineness of his residence in Karur.

8.It is stated that on 29.11.2002, the petitioner produced a migration certificate issued by the Tahsildar, Santhankulam to the effect that the petitioner migrated from Tuticorin District to Karur District after 1999. Thereafter, on 30.04.2003, a migration certificate is stated to have been issued by the Tahsildar, Karur stating that the petitioner and his family members migrated to Karur District. Pursuant to the same, the petitioner's name was endorsed again in the Karur Employment Exchange and was allotted with enrolment number as No.4112 of 1999.

9.It is the case of the petitioner that even though there was no impediment for appointment of petitioner as Secondary Grade Teacher, the respondents appointed his juniors citing the order dated 24.12.2001 of the District Collector, which was stayed by this Court. It is averred that subsequently, this Court disposed of W.P.No.9 of 2002 by directing the respondents to consider the names of the persons for appointment as Secondary Grade Teachers.

10.It is the specific plea of the petitioner that the above said order was passed by this Court following an earlier order passed in W.P.No.15307 and batch cases, wherein it was held that any appointment made before the verification of residence of the petitioners therein whose residence has been questioned, will be subject to result of the verification of residential certificate of those persons already in the seniority list in the employment exchange register and they would be eventually replaced if the residence was confirmed in favour of the petitioner in the enquiry, if the former are not senior enough to hold the post.

11.It is stated that despite such subsequent developments, the petitioner's name was not sponsored for appointment to the post of Secondary Grade Teacher. However, the petitioner was issued an order on 29.04.2004 appointing him as Junior Grade Secondary Grade Assistant Teacher on consolidated pay. It is the case of the petitioner that he ought to have been appointed to the regular post of Secondary Grade Teacher in a time scale of pay with effect from 03.01.2002, the date on which his junior, Sheik Alludin, was appointed. It is the specific plea of the petitioner that his junior had registered his name with the

employment exchange in 2000, after the registration of the petitioner.

12.It is further stated that on 28.04.2007 an order was passed by the fourth respondent granting time scale of pay to the petitioner with effect from 01.06.2006. Thereafter, by order dated 01.06.2008, the fourth respondent regularized the service with effect from 01.06.2006. However, the petitioner sent a representation dated 15.09.2010 seeking benefits on a par with his junior. The petitioner also sent a reminder on 19.11.2011. However, the same did not evoke any response.

13.Under such circumstances, the present writ petition is filed for the relief stated above.

14.The learned counsel appearing on behalf of the petitioner vehemently contended that when the registration of the petitioner with the employment exchange is of the year 1999, his candidature ought to have been considered prior to his junior who had registered only in the year 2000 with the employment exchange.

15.It is further contended that when this Court granted interim stay of the order of cancellation of the registration with the employment exchange, nothing prevented the authorities from appointing the petitioner prior to his juniors.

16.It is emphatically argued that similarly placed persons, who were not granted appointment due to cancellation of their residence certificates vide order of the Collector dated 24.12.2001, which was stayed, were given appointment as Secondary Grade Teachers (Regular) on time scale basis with all benefits retrospectively.

17.Per contra, the learned Additional Government Pleader appearing on behalf of the respondents submitted that the belated appointment of the petitioner was due to administrative reasons and in any event, the petitioner was granted appointment in the year 2004 and, therefore, the petitioner cannot seek regularization with effect from 03.01.2002, during which period the petitioner had not at all been in service.

18.I heard Mrs.Y.Kavitha learned counsel for M/s.P.V.S.Girudhar and Sai Associates appearing on behalf of the petitioner and Mrs.M.E.Raniselvam, learned Additional Government Pleader appearing on behalf of the respondents and perused the documents available on record.

19. In the case on hand, the petitioner originally was a resident of Sathankulam and the certificate issued by the Tahsildar, Santhankulam categorically shows that the name of the petitioner was removed from the family card on 23.01.1999. Thereafter, the petitioner along with his family members shifted to Karur District, where he registered his name with the employment exchange on 14.10.1999.

20. It is also seen from the records that the petitioner's registration with the Employment Exchange at Karur was cancelled by the order of the first respondent dated 24.12.2001. It is beyond any cavil that the said order dated 24.12.2001 of the first respondent was stayed by this Court, by order dated 03.01.2002 passed in W.P.No.9 of 2002 filed by one Balagangadharan. Therefore, it is explicitly clear that there is no impediment for considering the case of the petitioner for appointment to the post of Secondary Grade Teacher. It is also not in dispute that pursuant to the petitioner producing his migration certificate issued by the Tahsildar, Karur, his name was endorsed again in the Karur Employment Exchange with the same enrolment number, viz., No.4112 of 1999.

21. A perusal of the records shows that the petitioner was appointed as Junior Grade Secondary Grade Assistant Teacher on a consolidated pay on 29.04.2004 and, thereafter, his services were regularized by order dated 01.06.2008.

22. The grievance of the petitioner that while there was no impediment for considering the name of the petitioner for appointment to the post of Secondary Grade Teacher, the respondents considered a junior to him for appointment to the post of Secondary Grade Teacher.

23. Every person seeking employment registers his or her name with the employment exchange with fond hope that they would get employment at the earliest. The authorities of the Employment Exchange are bound to act responsibly, more so when lakhs and lakhs of persons are seeking registration for appointment. Any omission and/or overlooking of qualified and suitable candidates would play havoc in the life of such persons who are waiting with a fond hope that they would get employment as they had already registered with employment exchange. The authorities of the Employment Exchange cannot shirk their responsibility by merely stating that the delay in granting appointment to the petitioner was due to administrative reasons.

24. When similarly placed persons filed contempt petitions before this Court, being Contempt Petition Nos. 1012 to 1020 of 2003, by order dated 27.01.2006, the following directions were issued:

"9. The contempt petitions are disposed of with the observation that such persons would be entitled to the benefit of notional increments from 3.1.2002 till the date of actual appointment and their salary from the date of actual employment would be paid by taking into account the notional increments for the earlier period. Such a direction shall be carried out within a period of four months from the date of receipt of the order. It is clarified that the seniority of the concerned applicants will be in accordance with the seniority in the employment exchange. If any other employee was in fact senior to such applicants, obviously he has to be treated as senior to such applicants."

(emphasis supplied)

25. It is not in dispute that the above said order of this Court had been complied with by the respondent authorities.

26. Considering the above said factor, under identical facts and circumstances, a learned Single Judge of this Court in W.P.No.47929 of 2006, by order dated 16.07.2010, held as under:

"6. Learned counsel for the petitioner submitted that the said order was also implemented by the department by issuing G.O.Ms.No.143 School Education (S-2) Department dated 25.6.2007 giving notional date of appointment as on 03.01.2002 without monetary benefits and the list of 9 persons whose names are also found in the proceedings of the District Elementary Educational Officer, Karur dated 29.01.2008, the petitioner is also similarly placed. The said contention raised by the learned counsel for the petitioner is not disputed by the learned counsel for the respondents either by way of counter affidavit or making submissions. The mistake committed by the District Collector in cancelling employment registration of the petitioner without any reason which was recalled subsequently cannot be put against the petitioner.

7. In the light of the said undisputed facts, the writ petition is ordered with a direction to the respondents to appoint the petitioner on a regular basis with effect from 03.01.2002 notionally with time scale of pay from the date of appointment given to the petitioner and also issue notional increment for the earlier period. By appointing the petitioner on 19.7.2004 the petitioner is deprived in getting pension as the persons appointed from June 2004 are not eligible to get pension as per

the Government policy decision. Hence, the petitioner is seriously prejudiced by the illegal action of the District Collector, Karur. The respondents are directed to implement this order as it has been implemented to 9 other teachers through G.O.Ms.No.143 School Education (S-2) Department dated 25.6.2007, within a period of three (3) months, from the date of receipt of copy of this Order."

(emphasis supplied)

27.It is brought to the notice of this Court that the above said order of this Court has also been complied with by the respondent authorities by passing G.O.(3D)No.128, dated 28.09.2011. That being the factual position, this Court is at a loss to understand the whys and wherefores for not treating the petitioner on par with such other similarly placed persons. The same in my considered view reeks of arbitrariness. The petitioner is certainly prejudiced by the illegal cancellation of the registration with the employment exchange by the District Collector, Karur. That apart, it is not the case of the respondents that the petitioner is not qualified for being appointed to the post of Secondary Grade Teacher, on the date when his immediate junior as per the employment exchange registration seniority had been appointed.

28.For the foregoing reasons:

- (a) this writ petition is allowed;
- (b) the respondents are directed to appoint the petitioner on a regular basis with effect from 03.01.2002 (the date on which his immediate junior in the employment exchange seniority was appointed), notionally with time scale of pay from the date of appointment given to the petitioner and also issue notional increment for the earlier period;
- (c) the respondents are directed to implement this order within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, W.M.P.No.5076 of 2017 is closed.

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Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

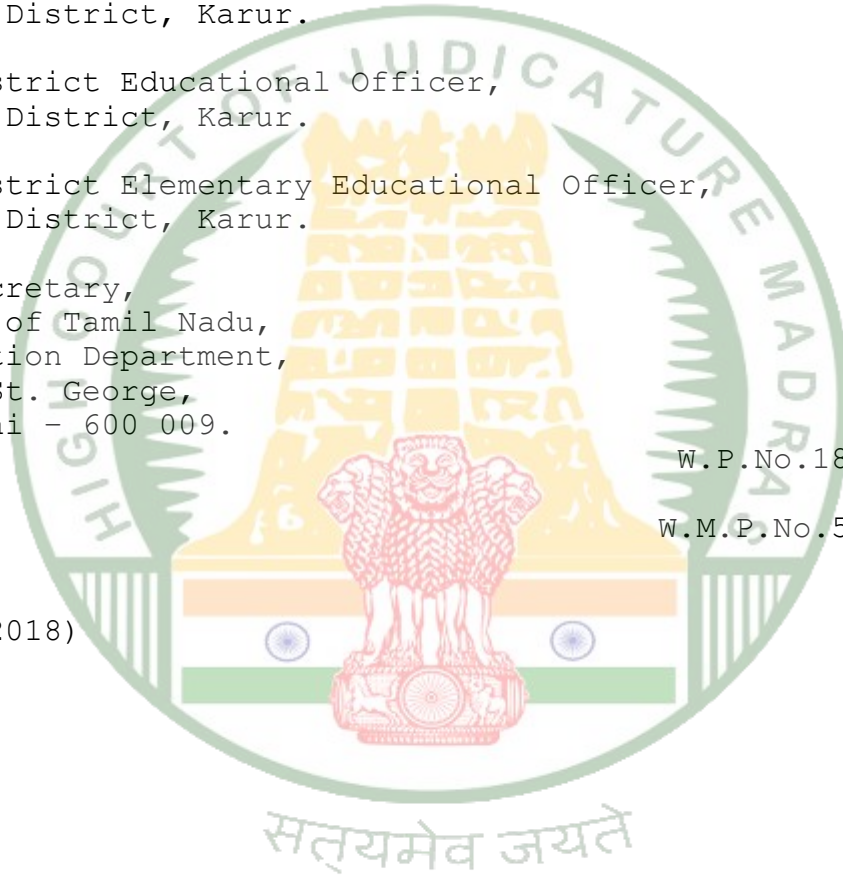
vs

To

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2. The District Employment Officer,
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3. The Chief Educational Officer,
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4. The District Educational Officer,
Karur District, Karur.
5. The District Elementary Educational Officer,
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6. The Secretary,
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Education Department,
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Chennai - 600 009.

W.P.No.18013 of 2012
and
W.M.P.No.5076 of 2017

AD(CO)
EU(03/07/2018)



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