

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.07.2017

DELIVERED ON : 14.08.2018

CORAM

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

W.P.No.18141 of 2012 and
M.P.No.1 of 2012 and
M.P.No.1 of 2013

1.A.Madurai
2.C.A.Mohanarangam
3.G.Jayalakshmi .. Petitioner

Vs.

1.The Secretary to Government,
School Education Department,
Government of Tamil Nadu,
Secretariat, Chennai-600 009.
2.The Director of Public Libraries,
Anna Salai, Chennai-600 002.
3.The District Library Officer,
Anna Salai, Chennai-600 002. .. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus (i) calling for the entire records pertaining to the orders issued in the impugned order Letter No.469/A2/2011 dated 20.04.2012 of the 2nd respondent and quash the same, and (ii) directing the respondents to prepare a panel of Record Clerks fit for promotion as Grade III Librarian as on 01.01.2006 as per the provisions of the ad-hoc rules and promote the petitioners as Grade-III Librarian retrospectively from 01.01.2006 and consequently direct the 2nd respondent to fix the seniority of the petitioners in the category of librarian Grade-III above that of the 38 Junior Inspectors surrendered from the Sericulture Department and of 554 Village Librarians, who were absorbed and appointed as Grade-III Librarian in the year 2006.

For Petitioners : Mr.S.Namasivayam

For Respondents : Mrs.M.E.Raniselvam
Additional Govt. Pleader

ORDER

The petitioners have filed this writ petition seeking issuance of a writ of Certiorarified Mandamus to call for the entire records pertaining to the orders issued in the impugned order Letter No.469/A2/2011 dated 20.04.2012 of the 2nd respondent and quash the same, and to direct the respondents to prepare a panel of Record Clerks fit for promotion as Grade III Librarian as on 01.01.2006 as per the provisions of the adhoc rules and promote the petitioners as Grade III Librarian retrospectively from 01.01.2006 and to consequently direct the 2nd respondent to fix the seniority of the petitioners in the category of librarian Grade III above that of the 38 Junior Inspectors surrendered from the Sericulture Department and of 554 Village Librarians who were absorbed and appointed as Grade III Librarian in the year 2006.

2. The facts in a nutshell are as under: The petitioners herein were appointed regularly through employment exchange and as per the rules governing the above said appointment. They claim that despite being fully eligible for consideration for promotion to the post of Librarian Grade III, no panel of Record Clerks fit for promotion to the post of Librarians Grade III (Trained) was prepared as stipulated in Rule 8 of the Ad-hoc Rules and the names of the petitioners were not considered and they were deprived promotion in the year 2006.

3. It is stated that as the case of the petitioners was not considered for promotion despite specific government orders and the government proposed to absorb and appoint the Village Librarians as Grade III Librarians, without giving promotion to the petitioners as contemplated under the Ad-hoc Rules and G.O.Ms.No.64, School Education Department, dated 12.05.2006, the first and second petitioners filed W.P.No.25509 of 2006 to direct the respondent authorities to promote them as Grade III Librarians.

4. It is stated that in the abovesaid writ petition, by order dated 17.08.2006, this Court directed the District Library Officer to consider the representation and pass appropriate orders within four weeks from the date of receipt of that order.

However, without passing any orders within four weeks, as directed, the respondents, without preparing any panel as on 01.01.2006, promoted the petitioners as Librarian Grade III with effect from 03.09.2007 (first two petitioners) and 06.08.2007 (third petitioner).

5. It is the grievance of the petitioners that even before granting promotion to the petitioners to the post of Librarian Grade III, the Village Librarians, who were working on consolidated pay, were absorbed as Grade III Librarians, as a one time measure, and the petitioners were placed below the Village Librarians in the tentative seniority list. Calling in question the said fixation of seniority, the petitioners made a representation on 29.10.2010. As the said representation did not evoke any response, the petitioners filed W.P.No.29812 of 2010. Pursuant to the directions in the said writ petition, the second respondent passed the impugned order dated 20.04.2012, rejecting the request of the petitioners and holding that since there was no vacancy in the post of Grade III Librarian in the Chennai District Library Authority, the petitioners were not promoted and there is no possibility for giving retrospective promotion and seniority to them.

6. Assailing the said order, the present writ petition is filed for the relief stated supra.

7. The learned counsel appearing on behalf of the petitioners submitted that the stand taken by the second respondent in the impugned order to the effect that was no vacancy in the post of Grade III Librarian is unsustainable inasmuch as the same is contrary to his own report sent to the Government during January - February, 2006 and the information furnished by the Information Officer, Chennai District Library authority vide letter dated 11.06.2012 about the vacancy position in 2005 and 2006.

8. The learned counsel further contended that inasmuch the respondent authorities had appointed 38 Junior Inspectors and 554 Village Librarians, it does not lie in their mouth to take a stand that there was no vacancy.

9. It is further contended that when the government vide G.O.Ms.No.64, dated 12.05.2006 had specifically stated that the interest of the persons awaiting promotions to the post of Librarian Grade II should not be affect in any way while absorbing 38 Junior Inspectors surrendered from the Sericulture Department and 554 Village Librarians in 2006, the respondents failed to prepare the panel as contemplated under the Adhoc

Rules, which had drastically affected the petitioners right of promotion and seniority.

10. Per contra, the learned Additional Government Pleader appearing on behalf of the respondents reiterated the reasons that weighed with the respondents in passing the impugned order and submitted that even though the petitioners were qualified for promotion to Grade III Librarian post, there was no vacancy in the Government Fund Library in the year 2006.

11. He further contended that petitioners are far juniors in the seniority list and by virtue of the order of interim injunction granted by this Court on 16.07.2012 to keep three posts of Grade II Librarians vacant, the seniors to the petitioners are losing their right for promotion.

12. I heard Mr.S.Namasivayam, learned counsel appearing for the petitioner and Mrs.M.E.Raniselvam, learned Additional Government Pleader appearing for the respondents and perused the documents available on record.

13. This Court on 16.07.2012 passed an order of interim injunction and the said order holds good even as on date. Though the respondent authorities filed a petition to vacate the order of interim injunction, no order has been passed till date.

14. It is beyond any cavil that as per the Adhoc Rules, the first method of appointment is "By promotion" and the petitioners are duly qualified and fall under the feeder category eligible for being considered and appointed as Grade III Librarian. The eligibility of the petitioners is not in dispute.

15. As per Rule 8 of the Adhoc Rules, the crucial date of preparation of panel/annual list of approved candidates is 1st January of every year. However, the respondents have not drawn any panel of Record Clerks fit for promotion to the post of Librarian Grade III (Trained) as contemplated under Rule 8 of the Adhoc Rules.

16. The next vital factor which assumes significance and needs a mention at this stage is the operative portion of G.O.Ms.No.64, dated 12.05.2006, which reads as under:

- (i) 38 Junior Inspectors who would be surrendered by the department of Sericulture may be appointed in the vacant posts of Librarian Grade-III in the libraries which are permitted to be paid from Government funds after

obtaining their willingness, about their choice of the District and without any loss to their last pay drawn.

- (ii) 554 Rural Librarians who were appointed prior to 11.5.2003 as per the orders issued in G.O. (Ms) No.66 and continuing till now and whose names are mentioned in the annexure to the order may be absorbed and appointed in the pay scale of 3200-85-4900 applicable to the post of Librarian Grade III according to their seniority in the respective District Library Authority. This absorption is applicable to the above said persons as a one time absorption.

While this is done, the interest of the persons in the Public Library Department awaiting promotions to the post of Librarian Grade III should not be affected in any way"

17. The above said government order emphatically states that the interest of the persons in the Public Library Department awaiting promotions to the post of Librarian Grade III should not be affected in any way. This only fortifies the stand of the petitioners, as the petitioners were fully eligible for promotion and they were awaiting promotion to the post of Librarian Grade III. The petitioners being duly eligible for promotion and being duly protected by the above said government order, the doctrine of legitimate expectation comes to their aid.

18. Qua the reason stated by the respondents for rejecting the plea of the petitioners that there was no vacancy in the post of Grade III Librarian in the Chennai District Library Authority, it would be apposite to refer to the letters dated 18.04.2012 and 11.06.2012 of the Information Officer of Chennai District Library Authority, wherein it is stated as under:

"From 1.1.2005 to 31.12.2007, 79 post of Grade III Librarians which are payable from Library authority funds were vacant and the said posts were filled up in 2009; that in 2005, ten Government funded posts were vacant and in 2006 three Government funded posts were vacant; that the Grade III Librarian posts are filled up at the Stat level as per the order issued in G.O. (Ms.) No.60, School Education department, dated 20.7.2006; that the staff working in the Government funded posts can be promoted only to the Government funded posts; that if they are promoted to the library authority funded posts there is no possibility to recover family benefit fund, New Insurance Premium, Special Provident fund

subscriptions, etc., and it will cause difficulty to the employees apart from creating administrative difficulties; but there is no specific orders to this effect and if the employees express their willingness, it may be given."

19. The said information furnished by the Information Officer of Chennai District Library Authority reveals that there were vacancies in Grade III Librarian and, therefore, it does not lie in the mouth of the respondent authorities to state in the impugned order that there were no vacancies.

20. For the foregoing reasons, the writ petition is allowed and the order dated 20.04.2012 passed by the 2nd respondent is set aside and the respondents are directed to prepare a panel of Record Clerks fit for promotion as Grade III Librarian as on 01.01.2006 as per the provisions of the Adhoc rules and promote the petitioners as Grade III Librarian retrospectively from 01.01.2006 and fix the seniority of the petitioners in the category of Librarian Grade III above that of the 38 Junior Inspectors surrendered from the Sericulture Department and of 554 Village Librarians who were absorbed and appointed as Grade III Librarian in the year 2006. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Secretary to Government,
School Education Department,
Government of Tamil Nadu,
Secretariat, Chennai-600 009.

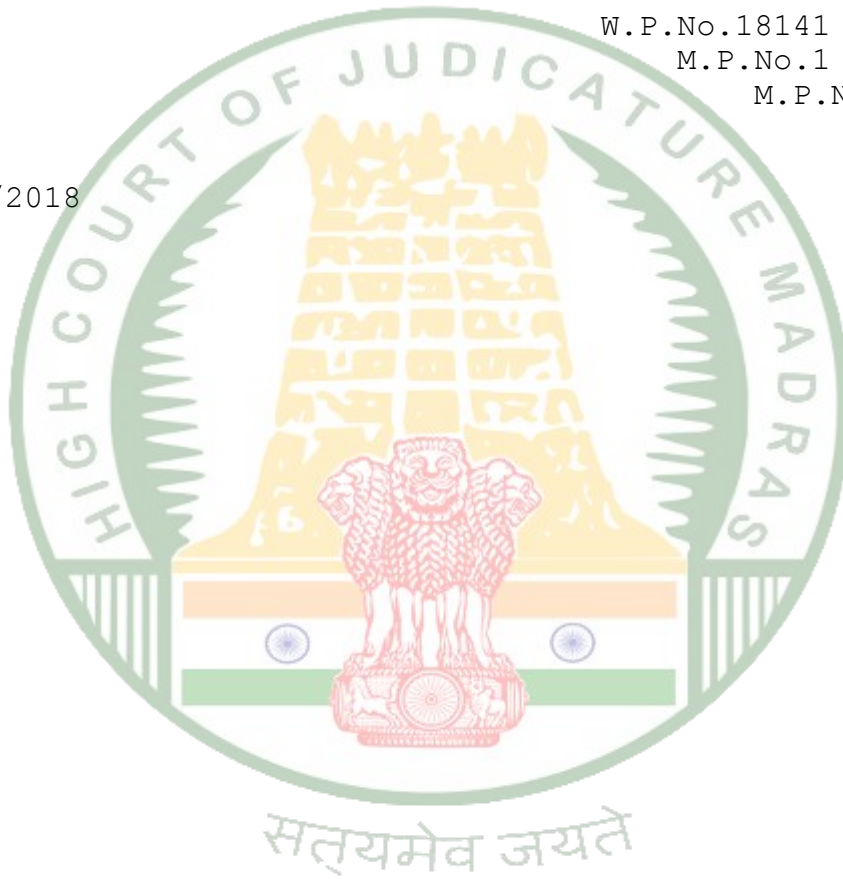
2.The Director of Public Libraries,
Anna Salai, Chennai-600 002.

3.The District Library Officer,
Anna Salai, Chennai-600 002.

+lcc to Mr.S.Namasivayam, Advocate Sr.56187

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