

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.08.2019

Delivered on : 24.09.2019

CORAM :

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.13555 of 2012

S.Nagaraja Murugan
Chief Educational Officer,
Madurai 625 002. ... Petitioner

Vs.

- 1.Secretary to Government,
School Education (A1) Department,
Fort St. George,
Chennai - 9.
- 2.The Director of School Education,
College Road,
Chennai - 600 006.
- 3.Tamil Nadu Public Service Commission,
Rep. by its Chairman,
Greams Road,
Chennai.
- 4.P.Ramaraj
- 5.R.Pandurangan
- 6.V.Balamurugan
- 7.S.Sethuramavarma
- 8.S.Uma
- 9.P.A.Naresh
- 10.S.Chellam
- 11.K.Ramanujam
- 12.K.Sasikala
- 13.C.Selvaraj
- 14.P.Kuppasamy
- 15.S.Suganya

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order made in G.O.(1D)No.65, dated 15.03.2012, passed by the Principal Secretary to Government of Tamil Nadu, School Education Department, the first respondent herein, quash the

same as illegal, ultra vires and further directing promotion of the petitioner as Joint Director of Education as per the third respondent TNPSC Seniority List as published dated 16.01.2002, unconstitutional and arbitrary.

For Petitioner : Mr.Isaac Mohanlal
Senior Counsel
for Mr.P.Godson Swaminath

For R1 and R2 : Mr.P.Raja
Government Advocate

For R3 : Ms.C.N.G.Niraimathi

For R4, R6 to R10 & R13 to R15 : Mr.G.Sankaran

For R5, R11 and R12 : No Appearance

ORDER

This Writ Petition has been filed seeking to quash the impugned order passed by the Principal Secretary to Government of Tamil Nadu, School Education Department, first respondent herein, in G.O.(1D)No.65, dated 15.03.2012 and further directing promotion of the petitioner as Joint Director of Education, as per the third respondent's seniority list as published, dated 16.01.2002.

2. The case of the petitioner is that he obtained M.A. Degree in Economics in the year 1987, M.Phil. in Economics in the year 1988 and P.hd. in Economics from the Madurai Kamaraj University. The petitioner has passed in the NET Examination and also published research and academic articles in Journals published by the Universities and Colleges regarding educational subject matters. During October 1997, the petitioner took up the Government assignment of Small Industries Promotion Officer, Small Industries Service Institute, Guindy, Chennai. Thereafter, in September 1998, the petitioner has joined as a Lecturer in the Government Arts College in Ooty and Ramanathapuram. While so, during August 1998, the third respondent issued a notification, for filling up 22 posts of District Educational Officers, by direct recruitment to the Tamil Nadu School Educational Service in various subjects including Economics. The qualifications prescribed for the said posts are, a Master's Degree in the concerned subject with not less than 50% of marks and B.T. or B.Ed. Degree or its equivalent. In the notification, it has been mentioned that the persons, who did not possess B.T. or B.Ed. Degree could also

apply and in case of selection, the selected candidates should acquire the said qualification before appointment. The petitioner had applied for the said post. After successfully completed all the requisite formalities, he was selected for the post of District Educational Officer by the third respondent/TNPSC and he was asked to undergo the B.Ed., teaching course in the Government College of Education, Orathanadu, Thanjavur District, on or before 30.11.2001.

2(a). The appointment of the petitioner was confirmed by the Government, by G.O.Ms.No.148, School Education (A1) Department, dated 13.09.2001, in the order of preference indicated therein. The first respondent has also approved the Teacher Training [B.Ed.] as well as the Administrative Training required for the said post for a period of 15 months for 5 selected candidates out of 20 selected candidates including the petitioner. For other 15 selected candidates, administrative training for 6 months provided by G.O.Ms.No.148, as all of them have acquired B.Ed., qualification. The third respondent in the said notification fixed Post Graduate Degree in the concerned subject as well as study of Tamil as essential qualification and B.Ed. Degree is not essential for such recruitment. Therefore, all the 20 persons, who were selected, were treated as equal, one class and similarly situated, however, in the order of preference of seniority as published by the third respondent and confirmed by the first respondent, vide G.O.Ms.No.148, School Education (A1) Department, dated 13.09.2001. All the selected candidates are entitled to all the service benefits including promotion etc., in the order of preference and seniority fixed by the third respondent/TNPSC as accepted and reinforced by the Government irrespective of whether they passed B.Ed., or not.

2(b). The petitioner was placed in Serial No.3 i.e., below one R.Bhaskara Sethupathy (No.2) and above one P.Ramaraj (No.4). The petitioner completed B.Ed., Degree course at the cost of the first respondent and he was posted to undergo the requisite administrative training for a period of 6 months. The petitioner was sanctioned with necessary stipends and allowances under the relevant Rules. The petitioner was posted as District Educational Officer at different places and later, as District Educational Officer, District Educational Officer's Office, Dharmapuri, on 11.11.2001. The petitioner completed his probation on 07.05.2004 satisfactorily without any blemishes. The petitioner was promoted as Chief Educational Officer on 28.02.2005 and posted as Chief Educational Officer, Dharmapuri.

2(c). The learned Senior Counsel appearing for the petitioner contended that while drawing the Panel for promotion to the post of Chief Educational Officer/Deputy Director, the first respondent, vide G.O.Ms.No.78, School Education (A1)

Department, dated 21.07.2004, included all the 15 selected candidates with B.Ed. qualification at the time of selection in the Panel for promotion to the post of Chief Educational Officer/Deputy Director. The candidates, including the petitioner without B.Ed. Degree at the time of selection, were not included in the Panel of the year 2004. All the 15 persons were juniors to the petitioner in the seniority list published by the third respondent herein and confirmed by the first respondent. The petitioner's name was included only in the Panel for promotion to the post of Chief Educational Officer and he was posted as Chief Educational Officer, Dhramapuri, vide G.O.Ms.No.21, School Education (A1) Department, dated 25.02.2005, which is contrary to the Rules and violation of the seniority list approved by the third respondent/TNPSC. This resulted in anomaly in promoting the juniors to the petitioner to the post of Chief Educational Officer, which is arbitrary and discriminatory and violation of Articles 14 and 16 of the Constitution of India.

2(d). There are two batches selected in the years 1997 and 1998 respectively. In respect of one Pitchai and Karmegam, who were selected in 1997 batch also, the same issue arose. The petitioner and 4 other candidates selected in 1998 batch along with Pitchai and Karmegam, gave a joint representation to the first respondent. The first respondent referred the claim of the said Pitchai and Karmegam to the third respondent. The third respondent gave an opinion that they are seniors in the list published by them and must be given promotion when their juniors are promoted. The third respondent also gave opinion that seniority of the said persons must be fixed above their juniors. The third respondent has stated that the said Pitchai and Karmegam obtained B.Ed., Degree subsequently and the same is not due to their fault. The first respondent sought objections if any, from the juniors of Pitchai and Karmegam. In spite of objections by some of the juniors, the first respondent accepted the opinion of the third respondent and promoted them when their juniors were promoted and fixed their seniority at appropriate place. In respect of the petitioner also, the first respondent sought opinion from the third respondent. The third respondent gave similar opinion as that of the earlier opinion given with regard to the said Pitchai and Karmegam and stated that the petitioner also must be given promotion when their juniors were promoted. The first respondent sought objections if any, from the juniors of the petitioner, who objected for the promotion of the petitioner and fixing his seniority above them. The first respondent in view of the objection, did not accept the opinion of the third respondent and rejected the representation of the petitioner. In the earlier occasion, in spite of the objections by the juniors, the first respondent has accepted the opinion of the third respondent and gave promotion to the said Pitchai and

Karmegam when the juniors were promoted and fixed in the seniority list. Therefore, not accepting the opinion of the third respondent and not giving promotion to the petitioner is arbitrary and discriminatory.

2(e). The respondents 1 and 2 did not make permanent promotion to the post of Chief Educational Officer and Joint Director, but made ad hoc promotion as per Rule 39 (a) of the Tamil Nadu State and Subordinate Service Rules. The respondents 1 and 2 also did not fix the inter se seniority of the candidates selected by the third respondent. The first respondent in the years 2010 and 2011, prepared a provisional Panel for the post of Joint Director. The petitioner's name was not included in the said list. The provisional list was not circulated. The said list was not prepared as per Rule 14 of the Special Rules for the Tamil Nadu School Educational Service [hereinafter referred to as 'the Rules']. The said list was prepared with extraneous consideration to promote the juniors to the petitioner. The petitioner gave a representation dated 27.05.2011 to the first respondent. The respondents 1 and 2 did not consider the representation of the petitioner. Hence, the petitioner filed W.P.No.4356 of 2012 seeking a direction to the respondents to consider him for promotion to the post of Joint Director of School Education. This Court, considered the said Writ Petition along with W.P.No.3325 of 2012, filed by one K.Sridevi, another similarly placed candidate and by order dated 10.04.2012, directed the Government to consider the representation of the petitioner and the said Sridevi. By the impugned G.O.(1D)No.65, dated 15.03.2012, the first respondent rejected the request of the petitioner. The present Writ Petition is filed challenging the said order.

3. The learned Senior Counsel appearing for the petitioner contended that the impugned order is arbitrary and violative of Articles 14 and 16 of the Constitution of India. The first respondent having accepted the recommendation of the third respondent in respect of Pitchai and Karmegam, who were similarly placed, but were selected in the earlier batch, accepted the recommendation of the third respondent in spite of the objection by the juniors. In the case of the petitioner, the first respondent has not accepted the opinion of the third respondent only on the ground that the juniors to the petitioner objected to the promotion to the petitioner as per the list published by the third respondent. This is discriminatory and when the first respondent has accepted the opinion of the third respondent in respect of Pitchai and Karmegam and gave promotion as per list published by the third respondent, he ought to have accepted the opinion of the third respondent in respect of the petitioner also and accordingly, ought to have given promotion as per the list published by the third respondent and fixed the

seniority of the petitioner above his juniors. The petitioner has obtained B.Ed. qualification within the time limit granted to him. When the petitioner was undergoing B.Ed. Degree, he was paid salary and the cost of the said course was met by the first respondent. The petitioner has completed the course within the time limit granted by the first respondent and therefore, he is deemed to be appointed along with other candidates, who were possessing B.Ed., Degree when they applied for the said post. Only, if the petitioner had not completed B.Ed., Degree, but sought for extension, then only, the appointment of the petitioner can be considered to have come into effect on the date of the petitioner obtaining B.Ed. Degree.

4. The respondents 1 and 2 filed counter affidavit and the third respondent adopted the said counter affidavit.

5. The respondents 4, 6 to 10 and 13 to 15 have also filed counter affidavit.

6. The learned Government Advocate appearing for the respondents 1 and 2 contended that in the notification published by the third respondent, it was made clear that a person, who is not possessing B.Ed. Degree also may apply for the appointment by direct recruitment in open market and on selection, he/she will be appointed as District Educational Officer only on obtaining B.Ed. Degree. Out of 20 selected candidates, 15 candidates possessed the B.Ed. Degree and 5 candidates including the petitioner did not possess B.Ed. Degree. The first respondent, by G.O.Ms.No.148, School Education (A1) Department, dated 13.09.2001, permitted administrative training for 6 months for 15 candidates, who had possessed B.Ed. Degree and 15 months to 5 candidates, for obtaining B.Ed. Degree and completing the administrative training as per Rule 7 of the Rules.

6(a). The petitioner completed B.Ed. Degree on 07.05.2002 and completed administrative training on 07.11.2012 and joined as regular District Educational Officer on 11.11.2002. His probation was completed on 07.05.2004. The feeder category for promotion to the post of Chief Educational Officer/Deputy Director is the District Educational Officer. The 15 candidates, who had possessed B.Ed., Degree at the time of selection, completed their administrative training and joined as District Educational Officer in the year 2001 and completed their probation in the year 2003, much earlier to that of the petitioner. In view of the same, they were included in the Panel for promotion to the post of Chief Educational Officer in the year 2004 itself.

6(b). The first respondent, by G.O.Ms.No.78, School Education (A1) Department, dated 21.07.2004, has relaxed the

General Rules 36 and 39(a)(i) and promoted 15 candidates as Chief Educational Officers and subsequently, based on the said seniority, promoted them as Joint Directors. The petitioner cannot compare himself with Pitchai and Karmegam, who were selected in a different batch and given promotion as per the seniority fixed by the third respondent. The other four persons, who were selected along with the petitioner were not given the same benefit.

6(c).The petitioner and one Sridevi filed W.P.Nos.4356 and 3325 of 2012 respectively, seeking a direction to the respondents to consider their promotion to the post of Joint Director of School Education, by duly recognizing their seniority in the list of selected candidates for appointment of District Educational Officers in the Tamil Nadu Public Service Commission's Bulletin, dated 16.01.2002. As per the direction of this Court, opportunity was given to the petitioner and the said Sridevi and the representation of the petitioner was rejected on the ground that the other selected candidates, who were selected along with the petitioner, had B.Ed., qualification at the time of selection. The relaxation given to one person cannot be the basis for giving relaxation to another person. The order restoring seniority of the said Pitchai and Karmegam were issued based on the views of the TNPSC that individuals should not be responsible for failure to fulfil the conditions for employment/promotion and prayed for dismissal of the Writ Petition.

7. The learned counsel appearing for the respondents 4, 6 to 10 and 13 to 15 contended that the respondents 4, 6 to 10 and 13 to 15 are fully qualified to be appointed as District Educational Officers by direct recruitment, as they possessed all the requisite qualifications prescribed in the notification issued by the third respondent herein. As per Rule 7(a) of the Rules, which relates to training of direct recruits, every person, who has been selected for appointment by direct recruitment to Class IV has to undergo administrative training for a period of not exceeding six months before his appointment. The period of administrative training shall be counted both for probation and for increment. The respondents 4, 6 to 10 and 13 to 15 after being selected for appointment by direct recruitment to the post of District Educational Officer, the first respondent issued G.O.Ms.No.148, School Education (A1) Department, dated 13.09.2001, approving the selection made by the third respondent for 20 candidates, but gave administrative training for 6 months only to 15 candidates, including the respondents 4, 6 to 10 and 13 to 15, who possessed B.Ed., Degree and to other 5 candidates including the petitioner, granted 15 months time for obtaining B.Ed. Degree qualification and completed administrative training. The petitioner along with

four others were directed to undergo B.Ed. Degree Course before appointment. The respondents 4, 6 to 10 and 13 to 15 after joining the post on various dates in the month of October 2001, were sent for administrative training vide the proceedings of the second respondent, dated 26.09.2001. They completed the administrative training in March/April 2002. Accordingly, the respondents 4, 6 to 10 and 13 to 15 were given regular appointment to the post of District Educational Officer in October 2001, as per G.O.Ms.No.42, School Education Department, dated 27.03.2002. The petitioner along with four others were sent for Teacher Training (B.Ed.) before appointment with effect from 30.11.2001 and the petitioner has completed his B.Ed., training on 07.05.2002 and appointed as District Educational Officer on the same day and thereafter, he was sent for administrative training and he completed the same on 07.11.2002 and joined as regular District Educational Officer on 11.11.2002 and completed his probation on 07.05.2004.

7(a). The respondents 4, 6 to 10 and 13 to 15, who have completed the probation, have been included in the Panel for promotion to the post of Joint Director of School Education/Chief Educational Officer in the year 2004 and promoted as Chief Educational Officer (CEO). The petitioner has completed his probation only on 07.05.2004 and therefore, his name was included in the temporary panel of the Chief Educational Officer in the year 2005 and thereafter, he was promoted as Chief Educational Officer on 22.02.2005. The petitioner has not acquired the qualification as per Rule 6(i) of the Rules and therefore, he cannot be posted as District Educational Officer.

7(b). The petitioner without approaching the Court earlier, filed W.P.No.4356 of 2012 seeking a direction to the respondents to consider his representation dated 27.05.2011, for promotion as Joint Director of School Education as per the seniority published by the third respondent and for other reliefs. The petitioner also sought for revision of seniority after 10 years of service. This Court, by order dated 10.04.2012, directed the respondents to consider the representation of the petitioner, on merits and in accordance with law, after giving an opportunity to the petitioner and other petitioner concerned. The respondents 4, 6 to 10 and 13 to 15 after having come to know about the claim of the petitioner and the order of this Court in W.P.No.4356 of 2012, submitted objections for granting relief to the petitioner on the ground that he did not possess B.Ed. Degree qualification when he applied and selected by the third respondent. The petitioner was appointed after completion of B.Ed. Degree Course and administrative training. In the notification issued by the third respondent, it is stated that the persons selected without B.Ed. Degree qualification, must

acquire the said qualification before appointment. In view of the same, the petitioner cannot be placed above the respondents 4, 6 to 10 and 13 to 15 in the seniority list, as he was appointed after completion of B.Ed. Training on 07.05.2012 and his probation was declared only on that day. The essential qualification of possessing B.Ed. Degree cannot be relaxed adverse to the interest of the other regularly appointed District Educational Officers with requisite qualification as per the Special Rules. The first respondent issued an order dated 06.09.2012, rejecting the claim of the petitioner and the petitioner is not entitled for the relief sought for.

7(c). As per the Rules, B.Ed. or B.T. Degree is essential for appointment to the post of District Educational Officer and the period of administrative training shall be counted for probation and increment. The petitioner obtained B.Ed. Degree much later and his probation commenced only when he was sent for administrative training. The petitioner is not entitled to rely on relaxation given to one Pitchai and Karmegam by the first respondent, vide G.O.(Ms)No.212, School Education (A1) Department, dated 14.08.2009. The orders issued to the said Pitchai and Karmegam is not applicable to the petitioner, as the said order was issued based on the opinion given by the third respondent. The first respondent has considered the claim of the petitioner in accordance with the Rules and the objections submitted by the respondents 4, 6 to 10 and 13 to 15 and others, who are regularly appointed with B.Ed. qualification and the petitioner cannot claim seniority against the Special Rules and the conditions of requirement.

7(d). The learned counsel appearing for the respondents 4, 6 to 10 and 13 to 15 further contended that relaxation is not a matter of right. The relaxation can be granted in certain circumstances and conditions. The petitioner cannot equate himself with seniors viz., Pitcahi and Karmegam in 2000 batch and they were completed probation in the year 2000. The first respondent is not bound to accept the opinion of the TNPSC as such in toto and can reject the same when others are objecting to relaxation being given.

7(e). In support of his contentions, the learned counsel appearing for the respondents 4, 6 to 10 and 13 to 15 relied on the following judgments:-

(i) By relying upon Paragraphs 13 and 23 in the judgment reported in 2011 (9) SCC 438 [Alka Ojha Vs. Rajasthan Public Service Commission and another], the learned counsel appearing for the respondents 4, 6 to 10 and 13 to 15 submitted that the word "shall" in Rule 11 makes it clear that qualifications specified in schedule are mandatory and a candidate aspiring for

appointment by direct recruitment must possess those qualifications. If appointment of the persons without having requisite qualification is regularised, those who are eligible will be deprived of their constitutional right.

(ii) By relying upon Paragraphs 16 and 17 in the judgment reported in 2011 (14) SCC 243 [State of Jammu and Kashmir and others Vs. Ajay Dogra], the learned counsel appearing for the respondents 4, 6 to 10 and 13 to 15 submitted that the qualification prescribed in the Rules and also in the advertisement are for the reason that some of them may be posted at high altitude. The Rule and stipulations prescribing physical conditions were not challenged. The High Court also did not specifically declared the Rule as ultra vires and the direction issued by the High Court was set aside.

(iii) By relying upon Paragraph 7 of the judgment reported in 1996 (11) SCC 242 [Ramesh Kumar Choudha and others Vs. State of M.P. and others], the learned counsel appearing for the respondents 4, 6 to 10 and 13 to 15 submitted that the cut-off date for eligibility is first January of the year and the persons, who acquired the qualifications later, viz., in October is not eligible for consideration, even though the Departmental Promotion Committee [DPC] should identify the vacancies that has arisen in each year and consider the cases of eligible candidates.

(iv) By relying upon Paragraphs 16 and 18 of the judgment of the Hon'ble Apex Court reported in 2008 (7) SCC 153 [Pramod Kumar Vs. U.P. Secondary Education Services Commission and others], the learned counsel appearing for the respondents 4, 6 to 10 and 13 to 15 submitted that any appointment in violation of the qualification for holding a post would be nullity. If the essential educational qualification for recruitment to a post is not satisfied, ordinarily, the same cannot be condoned. An appointment which is contrary to the statute/statutory rules would be void in law. The minimum qualification prescribed under Rule should be fulfilled on the date of recruitment.

(v) By relying upon Paragraph 8 of the judgment of the Hon'ble Apex Court reported in 1993 (2) SCC 486 [State of Orissa and others Vs. Sukanti Mohapatra and others], the learned counsel appearing for the respondents 4, 6 to 10 and 13 to 15 submitted that if the appointment itself is in violation of the Rules or provisions of the Constitution of India, illegality cannot be regularised. Ratification or regularisation of an act is possible within the power and province of the authority, but when there has been non-compliance of the procedure or manner it does not go to the root of the appointment. The regularisation cannot be said to be a mode of recruitment.

(vi) By relying upon Paragraphs 15 and 16 of the judgment of the Hon'ble Apex Court reported in 1996 (8) SCC 448 [State of Punjab and others Vs. Tara Singh Shahi], the learned counsel appearing for the respondents 4, 6 to 10 and 13 to 15 submitted that the Rule of Equality do not envisage that a person, who is not qualified for appointment can still claim such appointment merely on the basis of Fundamental Rights available under Articles 14 and 16. He cannot, in fact, invoke the provisions of those Articles, as he has to first possess the essential qualification before invoking Rule of Equality.

(vii) By relying upon Paragraph 3 of the judgment of the Hon'ble Apex Court reported in 1997 AIR SC 2700 [P.Sadagopan Vs. Food Corporation of India (South Zone), Rep. by its Zonal Manager], the learned counsel appearing for the respondents 4, 6 to 10 and 13 to 15 submitted that Regulation provides for three years experience as Assistant Category - I for consideration of promotion to the post of Assistant Managers in Category - II. Executive instructions cannot be issued in derogation of the statutory Regulations. In view of the fact that the statutory Regulations require that experience of three years is a pre-condition for consideration for promotion to Category - II post from Category - I post, it would be obvious that any relaxation was in defeasance of the Regulations.

(viii) By relying upon Paragraph 43 of the judgment of the Hon'ble Apex Court reported in 2013 (2) SCC 516 [Bhupendra Nath Hazarika and another Vs. State of Assam and others], the learned counsel appearing for the respondents 4, 6 to 10 and 13 to 15 submitted that when appointment is made without following the procedure prescribed under the Rules, the appointees are not entitled to have the seniority fixed on the basis of the total length of service. When the appointment is made dehors the Rules, the appointee cannot claim seniority even if his appointment is later on regularised.

(ix) By relying upon Paragraph 7 of the judgment of the Hon'ble Apex Court reported in 1986 AIR SC 1859 [Shitla Prasad Shukla Vs. The State of U.P. and others], the learned counsel appearing for the respondents 4, 6 to 10 and 13 to 15 submitted that terms provide that the exemption may be granted by the Board only after considering the report of the Director having regard to the experience, education and other attainments of the person sought to be appointed. The Section enables the Board to exercise the power to grant exemption prospectively after considering the report. Till the exemption is granted, the person is not entitled to be appointed. Deficiency cannot be made good with retroactive exemption unless the provision itself expressly or by necessary implication contemplates such a course of action. He further relied on Paragraph 9 of the said

judgment and contended that an employee must belong to the same stream before he can claim seniority vis-a-vis others. Those who have been irregularly appointed belong to a different stream, cannot claim seniority vis-a-vis the persons who have been regularly and properly appointed.

(x) By relying upon Paragraph 20 of the order of this Court in A.Babu Vs. The State of Tamil Nadu, Rep. by its Secretary to Government, Municipal Administration and Water Supply Department, Secretariat, Chennai and others [W.P.No.27612 of 2015 etc. batch, dated 11.09.2018], the learned counsel appearing for the respondents 4, 6 to 10 and 13 to 15 submitted that if the power of relaxation is invoked in a routine manner, it will amount to neutralizing and degrading the Recruitment Rules in force. The Rule of relaxation is an exception and such an exception is to be exercised cautiously and sparingly in order to rectify the injustice caused to a particular case. Granting relaxation in one case by the Government cannot be cited as a precedent in other cases. He further relied on Paragraph 27 of the said order and contended that in the event of granting relaxation, it must be granted uniformly considering the facts and circumstances and the rules in force.

8. The learned Senior Counsel appearing for the petitioner, in reply, submitted that as per Rule 35 (a) of the Tamil Nadu State and Subordinate Service Rules, the rank published by the third respondent herein/TNPSC must be taken as seniority of a person in the service. The seniority fixed by the third respondent is not mandatory, but it is only directory. If the Government is not accepting the seniority fixed by the third respondent in the selected list, the Government must give reasons for the same. The Government must apply its mind and give reasons for not accepting the same and cannot reject the seniority in the list published by the third respondent on the ground that juniors are objecting to it.

8(a). The Government has accorded sanction of salary to the petitioner at the minimum of time scale of pay applicable to the post of District Educational Officer with allowances under Rules and orders in force in accordance with Rule 7(a) of the Rules. Once salary is paid to the petitioner to the post of District Educational Officer, he is appointed to the said post. Therefore, the seniority has to be taken into consideration from 13.09.2001, the date of Government Order. The petitioner cannot seek relaxation as a matter of right, but once the first respondent has relaxed the condition in respect of Pitchai and Karmegam, similarly placed persons, like the petitioner, based on the opinion of the third respondent in spite of objection by their juniors, the first respondent cannot reject the request of the petitioner for relaxation when the third respondent has

given opinion for relaxation. But, the first respondent rejected the claim of the petitioner for relaxation even though the third respondent gave similar opinion recommending relaxation. When the first respondent accepted the opinion of the third respondent in respect of Pitchai and Karmegam, in spite of objections by their juniors and restored their seniority, not accepting the opinion of the third respondent in respect of the petitioner on the ground that juniors to the petitioner objected to the same, is invalid and discriminatory and violative of Articles 14 and 16 of the Constitution of India. The petitioner was waiting for relaxation and when the promotion granted to the respondents 4 to 15 were only ad hoc promotion and inter se seniority had not been fixed, the petitioner had not given any representation at that time and had not approached this Court. When his rights were affected by promoting his juniors, the petitioner has given representation and when it was rejected, he approached this Court by way of filing the present Writ Petition.

8(b). There is no delay on the part of the petitioner. As per Sub-Rule 11 of Rule 8-A of the Rules, the seniority of a person, who has been selected for appointment, but, who obtains the degree mentioned in Rule 7(a)(i) of the Rules after extension of time, his/her seniority will be fixed from the date of his/her passing the examination, qualifying him/her for the said degree. But, the Government has power to fix the seniority even before the said person obtains qualifying degree. In the present case, the petitioner obtained qualifying degree within the time limit granted to him and therefore, the first respondent ought to have granted relaxation to him as granted to the said Pitchai and Karmegam.

8(c). The learned Senior Counsel appearing for the petitioner relied on the order of this Court, dated 28.01.2011, made in W.P.No.17647 of 2004 [P.Kuppusamy Vs. The State of Tamil Nadu, Rep. by the Secretary to Government, Education Department, Chennai and others], wherein, this Court directed the respondents 1 to 3 to re-fix seniority of the 14th respondent herein over and above the respondents 5 and 11. The first respondent implemented the said order.

8(d). The learned Senior Counsel appearing for the petitioner relied on a judgment of the Hon'ble Apex Court reported in 1985 (1) SCC 122 [Jatinder Kumar and others Vs. State of Punjab and others] and submitted that the petitioner is entitled to promotion as Chief Educational Officer as well as the Joint Director and Director as per merit selection list published by the third respondent and prayed for allowing the Writ Petition.

9. I have heard the learned counsel appearing for the parties and perused the materials available on record.

10. From the above rival contentions, the following emerge as admitted facts:-

(i) The third respondent issued notification for appointment by direct recruitment of 20 District Educational Officers.

(ii) Apart from fixing 50 marks in M.Sc. Degree in the subject mentioned therein, the third respondent also fixed B.T. or B.Ed. Degree for appointment of District Educational Officers.

(iii) In the same notification, the third respondent has stated that the person not possessing B.T. or B.Ed. Degree can also apply and their appointment will be subject to obtaining B.T. or B.Ed. Degree within the stipulated time.

(iv) In the selection process, the petitioner and 19 others including the respondents 4 to 15 were selected.

(v) The petitioner was in Serial No.3, above the fourth respondent and others in the list published by the third respondent.

(vi) The 15 persons including the respondents 4 to 15 possessed B.Ed. Degree and they were permitted to undergo administrative training.

(vii) The petitioner and four others did not possess B.Ed. Degree and they were granted 15 months to complete the B.Ed. Degree as well as the administrative training.

(viii) The petitioner and four others were paid salary in time scale of pay and allowances as per the Rules, by G.O.Ms.No.148, School Education (A1) Department, dated 13.09.2001.

(ix) The petitioner obtained B.Ed. Degree on 07.05.2002 and his probation was declared on the day in which he was permitted to undergo administrative training.

(x) The petitioner completed probation on 07.05.2004.

(xi) Respondents 4 to 15 were promoted on 21.07.2004 as Chief Educational Officers on ad hoc basis as per Rule 39(a)(i) Tamil Nadu State and Subordinate Service Rules, by G.O.Ms.No.78, School Education (A1) Department, dated 21.07.2004.

(xii) Again, they were promoted on ad hoc basis as Joint Director of School Education.

(xiii) No permanent promotion was given to respondents 4 to 15 and inter se seniority was not fixed.

(xiv) The petitioner along with his seniors viz., Pitchai and Karmegam and four others, who were selected along with the petitioner, but did not possess B.Ed. Degree, made representation to the first respondent to relax the Rule and restore their seniority. The first respondent rejected the said representation.

(xv) Subsequently, the said Pitchai and Karmegam again sought for seniority based on the selection list of the third respondent.

(xvi) The first respondent after obtaining opinion from the third respondent, restored their seniority even though their juniors objected to the same.

(xvii) The petitioner gave a representation dated 27.05.2011, requesting to promote him as Joint Director of School Education. (xviii) The first respondent did not pass any order. Hence, the petitioner filed W.P.No.4356 of 2012 before this Court seeking a direction to the respondents 1 to 3 to consider his representation and also for other reliefs.

(xix) This Court, by order dated 10.04.2012, directed the first respondent to pass orders on the representation of the petitioner.

(xx) Before the order passed by this Court in the said Writ Petition, the first respondent, vide his impugned order dated 15.03.2012, rejected the representation of the petitioner.

11.The contention of the learned Senior Counsel appearing for the petitioner as well as the learned counsel appearing for the respondents 4, 6 to 10 and 13 to 15 have to be considered on the background of these facts.

12.The first contention of the respondents 4, 6 to 10 and 13 to 15 is that the Writ Petition is not maintainable due to delay and laches. According to the learned counsel for the respondents 4, 6 to 10 and 13 to 15, a joint representation given by the petitioner and others including Pitchai and Karmegam, was rejected in the year 2006 itself. The petitioner did not pursue the issue any further, but after a delay of five years, the petitioner gave representation on 27.05.2011. The first respondent considered the said representation and rejected

the same, by the impugned order dated 15.03.2012. The said contention is without merits. The first respondent did not make any promotion to the respondents 4 to 15 on permanent basis and did not fix the inter se seniority between the promotees to the post of Chief Educational Officer and Joint Director. All the promotions were made on ad hoc basis. When the petitioner's seniority was not restored and the first respondent was making promotions on ad hoc basis, the petitioner has given a representation on 27.05.2011. All the promotions made in respect of respondents 4 to 15 are only on ad hoc basis and it was made clear in the promotion order that the promotees are not entitled to claim seniority based on the said promotion. Therefore, the present Writ Petition challenging the impugned order passed by the first respondent, rejecting the claim of the petitioner, is maintainable. Further, the Writ Petition is pending in this Court from the year 2012 and therefore, the same cannot be thrown out of the Court, after being pending for seven years.

13.The petitioner at the time of applying for direct recruitment to the post of District Educational Officer did not possess B.Ed. Degree. The third respondent permitted the persons, who did not possess B.Ed. Degree to apply for the said post, but if they are selected, they must obtain B.Ed. Degree within the time limit granted to them. In the present case, the petitioner was selected and was in Serial No.3 in the selection list issued by the third respondent. The selection list was prepared and published by the third respondent based on the merits of the selected candidates.

14.The learned Senior Counsel appearing for the petitioner contended that the Government must follow the seniority fixed by the third respondent even though the same is not mandatory, but only directory. The contention of the learned Senior Counsel appearing for the petitioner is that if the Government is not following the seniority in the selection list published by the third respondent, then, valid reasons must be given by the first respondent. The said contention is acceptable in the view of the judgment of the Hon'ble Apex Court reported in 1985 (1) SCC 122 [supra].

15.In the present case, the first respondent has not followed the seniority in the selection list published by the third respondent only on the ground that the juniors to the petitioner were objecting to grant seniority to the petitioner as per the list published by the third respondent. It is pertinent to note that, on earlier occasion, one Pitchai and Karmegam, who were similarly placed like the petitioner, selected in the earlier batch, made representation for restoration of seniority as per selection list published by the

third respondent. Originally, the said request was rejected by the first respondent in the year 2006. Subsequently, when the said persons made another representation for restoration of seniority, the first respondent referred the matter to the third respondent. The third respondent has given opinion that their seniority can be restored even though they also did not possess B.Ed. Degree when they applied for the post of District Educational Officer by direct recruitment. The first respondent sought for objection from the juniors of Pitchai and Karmegam and some of the juniors objected for granting seniority to Pitchai and Karmegam based on the selection list published by the third respondent. The first respondent did not accept the objection raised by the juniors and promoted the said Pitchai and Karmegam as per the seniority in the selection list and fixed their seniority immediately above their juniors in the selection list.

16. In the case of the petitioner also, the first respondent referred the issue to the third respondent. The third respondent gave similar opinion stating that the petitioner is entitled to be promoted as per the seniority in the selection list. The said opinion is identical to the opinion given by the third respondent in the case of Pitchai and Karmegam. The first respondent sought for objection from the respondents 4 to 15. On their objections, the first respondent did not accept the opinion of the third respondent and rejected the claim of the petitioner. The only reason given by the first respondent for rejecting the representation of the petitioner is that the same is objected by his juniors i.e., respondents 4 to 15.

17. The first respondent has not considered the date on which the petitioner obtained B.Ed. Degree and when he completed his probation. In view of the failure on the part of the first respondent not considering the above relevant facts relating to the claim of the petitioner for restoring the seniority as per the selection list published by the third respondent, the reason given by the first respondent is not valid. The action of the first respondent in not accepting the opinion of the third respondent and rejecting the claim of the petitioner for relaxation even though the third respondent gave similar opinion recommending relaxation, is discriminatory, since the first respondent accepted the opinion of the third respondent and representation of Pitchai and Karmegam on the very same set of facts in spite of the objections raised by the juniors to Pitchai and Karmegam. The order of the first respondent is liable to be set aside for the followings, in addition to the reasons stated above.

(i) The petitioner was directed to undergo B.Ed. Degree in the Government Teacher Training Institute and the cost of the

course was paid by the respondents 1 and 2.

(ii) The petitioner was paid with salary on time scale with allowances as per the Rules from the date of selection.

(iii) The petitioner completed and obtained B.Ed. Degree within the time limit granted to him and completed the probation period on 07.05.2004.

(iv) Respondents 4 to 15 were promoted on ad hoc basis to the post of Chief Educational Officer only on 21.07.2004, when the petitioner had completed his probation on 07.05.2004 itself. The first respondent has not given any reason for not including the petitioner in the Panel for promotion to the post of Chief Educational Officer along with respondents 4 to 15.

(v) The promotions given to respondents 4 to 15 to the post of Chief Educational Officer as well as further promotion are only on ad hoc basis based on Rule 39(a)(i) of the Tamil Nadu State and Subordinate Service Rules.

(vi) Inter se seniority was not fixed among the promotees.

(vii) The first respondent made it clear in the Government Order, promoting the respondents 4 to 15 on ad hoc basis that they are not entitled to claim seniority based on such ad hoc promotion.

(viii) The first respondent has power to fix the seniority to an earlier date than the date on which the person acquires the requisite qualification. The first respondent has such power as per Rule 35(a) of the Tamil Nadu State and Subordinate Service Rules. The first respondent has not exercised the said power in the case of the petitioner and has not given any reason for not fixing the seniority from 13.09.2001, i.e., the date of issuance of the Government Order appointing all 20 persons including the petitioner and respondents 4 to 15.

(ix) As per the judgment of the Hon'ble Apex Court reported in 1985 (1) SCC 122 [supra], the seniority of the selected candidates as published by the third respondent/TNPSC, has to be followed. If the first respondent deviates from the said selection list, it can be done only for valid reasons.

(x) The reasons given by the first respondent for not following the selection list published by the third respondent are not valid. The first respondent, without considering the above relevant facts relating to the petitioner for restoring the seniority as per the selection list published by the third respondent, has rejected the representation of the petitioner on

the sole ground that the juniors are objecting to allow the request of the petitioner.

18.The first 9 judgments relied on by the learned counsel appearing for the respondents 4, 6 to 10 and 13 to 15 are not applicable to the facts of the present case. Those judgments relate to appointment of a person, who did not possess the requisite qualification as prescribed and relate to regularisation of irregular appointment. The issue in the present case is not regularisation of irregular appointment or that the petitioner did not have required qualification for appointment as District Educational Officer by direct recruitment. Even as per the notification, a person without B.Ed. Degree can apply and if selected, must obtain the said degree within the time prescribed by the authority. The petitioner acquired B.Ed. Degree within the time granted. In the 10th judgment relied on by the learned counsel appearing for the respondents 4, 6 to 10 and 13 to 15, this Court held that granting relaxation or refusing to grant relaxation must be uniform. The said judgment in fact advances the case of the petitioner. The first respondent granted relaxation in respect of Pitchai and Karmegam, who were similarly placed like the petitioner. Refusing to grant relaxation for the petitioner is discriminatory.

19.For the above reasons, the impugned order of the first respondent, in G.O.(1D)No.65, School Education (A1) Department, dated 15.03.2012, is quashed and this Writ Petition is allowed as prayed for. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government,
School Education (A1) Department,
Fort St. George, Chennai - 9.
- 2.The Director of School Education,
College Road,
Chennai - 600 006.

3.The Chairman,
Tamil Nadu Public Service Commission,
Greams Road, Chennai.

+1cc to Mr.Issac Chambers, Advocate, S.R.No. 82151
+1cc to Mr.G.Sankaran, Advocate, S.R.No. 82620

W.P.No.13555 of 2012

EV(CO)
GN(10/10/2019)