

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2019

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.13436 of 2009

D.Thiruthakkadevar

.. Petitioner

-vs-

1. District Forest Officer
Thirupathur Division
Thirupathur, Vellore District

2. Forest Ranger
Thirupathur, Vellore District

3. R.Balasubramanian

.. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the respondents to cancel the promotion given to the third respondent as PG Assistant-Tamil and direct the respondents to promote the petitioner as PG Assistant-Tamil, from the date on which the third respondent was promoted, with all consequential benefits.

For Petitioner ::Mr.P.Ganesan

For Respondents::Ms.Thanga Vadhana Balakrishnan
Additional Government Pleader
for R1 & 2

No appearance for R3

ORDER

The petitioner has come to this Court seeking issuance of a writ of mandamus directing the respondents to cancel the promotion given to the third respondent as PG Assistant-Tamil with a further direction to the respondents to promote him as PG Assistant-Tamil from the date on which Mr.R.Balasubramanian, the third respondent was promoted as PG Assistant-Tamil with all consequential benefits.

2. Learned counsel for the petitioner submitted that the petitioner was appointed as a Secondary Grade Teacher in the Forest Elementary School, Pudur Nadu, Thirupathur Taluk, Vellore District on 2.2.88. Under the control of the Forest Department, the respondents 1 & 2 are running schools in the hill areas and the appointing authorities are the forest officers forming separate divisions by themselves. Since the Forest Department is running Elementary School, Middle School, High School and Higher Secondary School in Thirupathur Division, they are all coming under one unit viz., Thirupathur Division Unit. While so, when the petitioner was promoted as Middle School Headmaster on 22.10.2007, one post of PG Assistant-Tamil became vacant in the Forest Higher Secondary School, Pudur Nadu. When the petitioner has got the requisite qualification, he gave a representation to the first respondent on 16.4.2009 requesting the respondent to promote him as PG Assistant-Tamil, citing a reason that he was having the qualification viz., M.A.(Tamil) and M.Ed. When the requisite qualification for the post is also M.A.(Tamil) and B.Ed., it is stated that instead of considering the petitioner, the respondents have promoted Mr.R.Balasubramanian, the third respondent herein, who was junior to the petitioner, since he was appointed only on 7.3.89, whereas the petitioner was appointed on 2.2.88 as Secondary Grade Teacher. Overlooking the senior, the petitioner herein, the third respondent-junior cannot be given promotion, it is argued. It is also further argued that the petitioner is the only person having M.A., M.Ed., qualification, which is the requisite qualification for the post of PG Assistant-Tamil and only in the event of non-availability of candidates in the feeder category, they can go for other teachers working in the lower posts i.e., Elementary School Headmaster and Secondary Grade Teacher. In the instant case, ignoring the seniority, qualification, higher scale of pay, higher post, they have wrongly given promotion to the third respondent, who is only a Secondary Grade teacher working in the scale of pay of Rs.4500/-. Even as per Rule 36 of the General Service Rules, whenever there are more than one feeder post for promotion, the post which is having higher scale of pay and holder thereon alone has to be preferred. That was also ignored while promoting the third respondent, who is junior to the petitioner. When the petitioner is serving as Middle School Headmaster with the scale of pay of Rs.5900/-, the third respondent, who is serving as Secondary Grade Teacher and receiving the scale of pay of Rs.4500/- cannot be promoted. Secondly, the petitioner's name was shown in Serial No.23 of the seniority list, whereas the third respondent was shown in Serial No.50. That shows that the respondents cannot by any level of imagination ignore the seniority of the petitioner and promote his junior. As this has been wrongly done, the impugned order giving promotion to the petitioner's junior is liable to be set aside.

3. A detailed counter affidavit has been filed by the District Forest Officer, Thirupathur, the first respondent herein. The learned Additional Government Pleader for the respondents 1 & 2 submitted that the recruitment of teachers made in the Forest Department is as per the Tamil Nadu Forest Subordinate Service Rules, therefore, the contention of the petitioner citing Rule 36 of the General Service Rules is not correct and it is unacceptable. The post of PG Assistant in the Forest Schools is generated by the Forest Subordinate Service Rules and the method of appointment to the post of PG Assistant shall be (i) by direct recruitment, (ii) by promotion from any category in class IV, (iii) by transfer from any other class or (iv) by recruitment by transfer from any other service in the Forest Department if no qualified and suitable candidate is available in item 1 and 2 above. The various categories in Class IV of the rules are (i) School Assistant, (ii) Tamil Pandit, (iii) Secondary Grade Teacher, (iv) Drawing Master, (v) Physical Training Instructor, (vi) Higher Elementary Grade Teacher, (vii) Laboratory Assistant. As per the above rules, only there were three candidates belonging to the above categories with the requisite qualification for the post of PG Assistant-Tamil and the third respondent was the senior most amongst the three persons, he was promoted as per rules on 11.6.2009. When the petitioner was holding the post of Middle School Headmaster and this post does not find place in Class IV of the Forest Subordinate Service Rules, he was not considered for promotion to the post of PG Assistant.

4. Replying to the said contention, the learned counsel for the petitioner submitted that even the Middle School Headmaster is not even described as promotional post in any of the service rules. Therefore, accommodating the petitioner in the post of Middle School Headmaster cannot be a justification to overlook his seniority in comparison with the petitioner's qualification and his ranking in the seniority list prepared on 17.12.90.

5. I also agree with the submission made by the learned counsel for the petitioner. The reason being that the seniority list dated 17.12.90 prepared by the respondent-Department clearly shows that the petitioner is senior to the third respondent, because he has been shown in Serial No.23 and his date of appointment is 2.2.88 in the post of Secondary Grade Teacher, whereas the third respondent-Mr.R.Balasubramanian was admittedly appointed only on 7.3.89, which is much later to the petitioner's appointment. Secondly, the third respondent has been shown in Serial No.50 in the seniority list. Therefore, looking at the seniority list of the respondents, it is not known on what basis they have overlooked the petitioner who is senior to the third respondent in service, as per the ranking given in the seniority list dated 17.12.90. Hence, the

respondents 1 & 2 are directed to give promotion to the petitioner in the post of PG Assistant-Tamil on and from the date the third respondent was given promotion to the said post. Needless to mention that the petitioner is also entitled to get the monetary benefits for the said period. The said exercise shall be done within a period of four weeks from the date of receipt of a copy of this order. With this direction, the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

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Sub Assistant Registrar

To

1. The District Forest Officer
Thirupathur Division
Thirupathur, Vellore District
2. The Forest Ranger
Thirupathur, Vellore District

+1 cc to M/s.C.S.Associates, Advocate, S.R.No.21713

+1 cc to the Special Government Pleader, S.R.No.21695

SSM(04/04/2019).

W.P.No.13436 of 2009

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