

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.6679 of 2007

K.Venkateswaran M.Com., B.Ed.,
Vocational Teacher
E.R. Higher Secondary School,
Chinthamani, Trichy 2.

.. Petitioner

Vs.

1. State of Tamilnadu Rep. By its
Secretary to Government
School Education Department,
Fort St. George, Chennai 9.
2. The Director of School Education,
College Road, Chennai 6.
3. The Joint Director of School Education (Higher Secondary)
College Road, Chennai 6.
4. The Chief Educational Officer,
Trichy 8.
5. The District Educational Officer,
Trichy 8.
6. The Secretary and Correspondent,
E.R. Higher Secondary School,
Chinthamani,
Trichy 2.
7. A.Charles Prabakar,
Vocational Teacher,
Sacred Heart Girls Higher Secondary School,
Ponmalaipatti, Trichy.

.. Respondents

Prayer:

Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records relating to the selection list dated 13.02.2007, issued by the 2nd respondent, quash the same in so far as it fails to follow the seniority in regularizing the

Vocational Teachers and consequently for a direction, directing the respondents to regularize the service of the petitioner in accordance with G.O.35 dated 09.02.2007 based on seniority.

For Petitioner : Mr.R.Suresh Kumar
for M/s.K.M.Vijayan Associates

For R1 to R5 : Mr.P.Raja,
Government Advocate

For RR6 & 7 : No appearance

O R D E R

The petitioner is a M.Com., M.B.A., M.Phil., B.Ed., degree holder. He was appointed as a Vocational Instructor in the 6th respondent School on 31.08.1996. The petitioner has been handling the subjects namely Banking Assistant and Accountancy and Auditing and Vocational Statistics for the vocational stream of Higher Secondary course. The petitioner was appointed as a full time Teacher and was working permanently without any break in the vacancy caused due to the retirement of one full time Vocational Teacher on attaining his superannuation. The petitioner has been handling 28 periods per week as prescribed for all category of Teachers. The petitioner further submitted that Vocational Teachers were given only consolidated pay and they were brought on time scale of pay only in phases vide G.O.Ms.No.680, Education, Science and Technology (Vocational Education) Department, dated 20.09.1996 (235 teachers) and G.O.Ms.No.74, School Education (Vocational Education) Department dated 10.06.2002 (126 teachers). The petitioner's name was forwarded by the 6th respondent to the 4th respondent, who in turn forwarded the name of the petitioner to the 2nd respondent for bringing the petitioner on time scale of pay.

2.The petitioner is possessing necessary qualification and as such he was entitled to be brought on time scale of pay. The petitioner was included in the list containing 213 Vocational Teachers. By G.O.Ms.No.35, School Education Department dated 09.02.2007, the 1st respondent issued orders for bringing only 201 Vocational Teachers on time scale of pay and petitioner's name was not included in the list dated 13.02.2007. According to the petitioner, many of his juniors were included in the list while his name was not included. The petitioner is working as Vocational Teacher from 31.08.1996 in a sanctioned post permanently and non-inclusion of his name in the impugned list dated 13.02.2007 issued pursuant to G.O.Ms.No.35, School Education Department dated 09.02.2007 is clearly violation of Article 14 of the Constitution of India and is liable to be

quashed. The petitioner fulfilled the eligibility criteria on par with other Teachers who were regularized and hence, has come out with the present Writ Petition seeking regularization.

2(i) Though the petitioner originally filed the present Writ Petition challenging the seniority list dated 13.02.2007, the learned counsel appearing for the petitioner filed reply affidavit stating that the petitioner is not pressing the relief to quash the selection list dated 13.02.2007 and seeks only for a direction to the 1st respondent to regularize the petitioner as per G.O.Ms.No.35, School Education Department dated 09.02.2007.

3.The 4th respondent filed counter affidavit on his behalf and on behalf of other respondents. The petitioner was appointed by the 6th respondent School on a consolidated pay paid by the 6th respondent. Hence, the petitioner is not entitled to get regular time scale of pay. The respondents submitted that the petitioner was appointed on 31.08.1996, two years after the retirement of one V.Subramanian on 31.08.1994 on attaining his superannuation and contended that the appointment of the petitioner on the said date was illegal and illogical. The respondents contended that petitioner failed to claim his seniority vide G.O.Ms.No.35 School Education (VE) Department dated 09.02.2007. The 7th respondent was appointed in the other school in a sanctioned post. Therefore, the petitioner cannot compare the seniority with the 7th respondent and prayed for dismissal of the Writ Petition.

4.Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondents 1 to 5 and perused the materials available on record.

5.From the averments in the affidavit and counter affidavit, it is seen that the petitioner was appointed in permanent vacancy as Vocational Teacher to teach the subjects "Banking Assistant and Accountancy and Auditing and Vocational Statistics". According to the petitioner, he is fully qualified to hold the post when the 1st respondent decided to bring 213 Vocational Teachers on time scale of pay. The petitioner's name was included in the list dated 20.09.1996, however he was not brought on regular time scale of pay. The 1st respondent has not given any reason for not bringing the petitioner on time scale of pay. The respondents in the counter affidavit also have not given any reason for not bringing the petitioner in the time scale of pay. For the reasons that petitioner is fully qualified to be appointed in a permanent post and respondents have not given any reason for not bringing the petitioner in time scale of pay, the respondents are directed to bring the petitioner on time scale of pay as per G.O.Ms.No.35 School Education

Department dated 09.02.2007. Selection list containing 201 Vocational Teachers is dated 13.02.2007 and 213 Teachers are not made as parties in the Writ Petition, except the 7th respondent and therefore, the said list is not quashed, except directing the respondents to bring the petitioner into time scale of pay based on G.O.Ms.No.35 School Education Department dated 09.02.2007. The petitioner is entitled to all monetary benefits as per G.O.Ms.No.35 School Education Department dated 09.02.2007.

6.In the result, this Writ Petition is partly allowed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Secretary to Government
State of Tamil Nadu,
School Education Department,
Fort St. George, Chennai 9.
2. The Director of School Education,
College Road, Chennai 6.
3. The Joint Director of School Education
(Higher Secondary) College Road, Chennai 6.
4. The Chief Educational Officer, Trichy 8.
5. The District Educational Officer, Trichy 8.
6. The Secretary and Correspondent,
E.R. Higher Secondary School,
Chinthamani, Trichy 2.

+1cc to M/s.K.M.Vijayan Associates, Advocate, S.R.No.67731
+1cc to the Government Pleader, S.R.No.67120

W.P.No.6679 of 2007

VBA(CO)
CS/24/10/2019