

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.7724 of 2007
and M.P.No.2 of 2007

S.Sivakumar,
Vocational Teacher,
The Higher Secondary School for Boys,
Srirangam,
Trichy 620 006.

.. 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,
The Higher Secondary School for Boys,
Srirangam,
Trichy 620 006.
7. Thiru A.Charles Prabakar,
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 2nd respondent to regularize the service of the petitioner in accordance with G.O.35 dated 09.02.2007 based on seniority.

For Petitioner : Mr.R.Saravanakumar

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

For RR6 & 7 : No appearance

O R D E R

The petitioner is possessing M.Com, M.Ed. and M.Phil. qualification. He was appointed as Vocational Instructor in the 6th respondent School on 30.07.1995. The petitioner has been handling subjects namely Office Management, Commerce, Accountancy for the vocational stream of Higher Secondary course. The petitioner has been handling 28 periods per week as prescribed for all category of Teachers. The petitioner was appointed in a sanctioned post permanently and is working without any break in service ever since his initial appointment. The management of 6th respondent in addition to running Higher Secondary School for Boys, is running a Higher Secondary School for Girls also. The management is conducting five vocational course in the two Schools and the number of vocational teachers is ten. If combined strength of both the Schools are taken into account, there is no legal impediment for the appointment of the petitioner.

2.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. The petitioner is possessing necessary qualification and as such he was entitled to be brought on time scale of pay. By G.O.Ms.No.35, School Education Department dated 09.02.2007, the 2nd 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 including 7th respondent who were appointed much later were included in the list while his name was not included. The petitioner further submits that the impugned list of 201

teachers is full of discrepancies and the list has to be revised by selecting the teachers based on the seniority. The petitioner is working as Vocational Teacher from 30.07.1995 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 to quash the selection list dated 13.02.2007 and for a direction to the 2nd respondent to regularize the services of the petitioner in accordance with G.O.Ms.No.35, School Education Department dated 09.02.2007 based on seniority.

3.The 5th respondent filed counter affidavit and stated that the post of Vocational Teacher was not sanctioned for the 6th respondent School. The Management appointed the petitioner temporarily on a consolidated pay and paid salary. The petitioner is not working in the sanctioned post and therefore, he is not entitled to be regularized as per 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), as he is not eligible for being brought on time scale of pay. As far as the 7th respondent is concerned, he is working in a different School. The petitioner cannot compare himself with the 7th respondent with respect to seniority. The order issued by the Government in G.O.Ms.No.35, School Education Department dated 09.02.2007 and impugned list of the 2nd respondent are proper and legal 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.It is the case of the respondents 1 to 5 that the Government did not sanction any post of Vocational Instructors in 6th respondent School. The petitioner was appointed by the 6th respondent temporarily on a consolidated pay in a post which was not sanctioned by the Government. The salary was paid by the Management out of its own funds. Therefore, the petitioner is not eligible to be brought on time scale of pay. The said contention is contrary to G.O.Ms.No.35, School Education Department dated 09.02.2007. In Clause 3 of G.O.Ms.No.35, School Education Department dated 09.02.2007, it is stated that as stated in Clause 2(ii), the persons who were appointed by Parents Teachers Association and paid consolidated salary by

them in the post which were not sanctioned can be brought on second category of teachers and are also eligible for being brought on time scale of pay of Rs.4,500-125-6000 and they can be given permanent post. The averments in the counter affidavit do not dispute that the petitioner is working in a permanent post from 30.07.1995 and he is fully qualified to hold the post. This Court directed the respondents to keep one post vacant by the order dated 01.03.2007. According to the respondents, one post is still kept vacant. For the reasons that petitioner is fully qualified and 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 as his name was not included in the list containing 213 names. The 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, the Writ Petition is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gsa

To

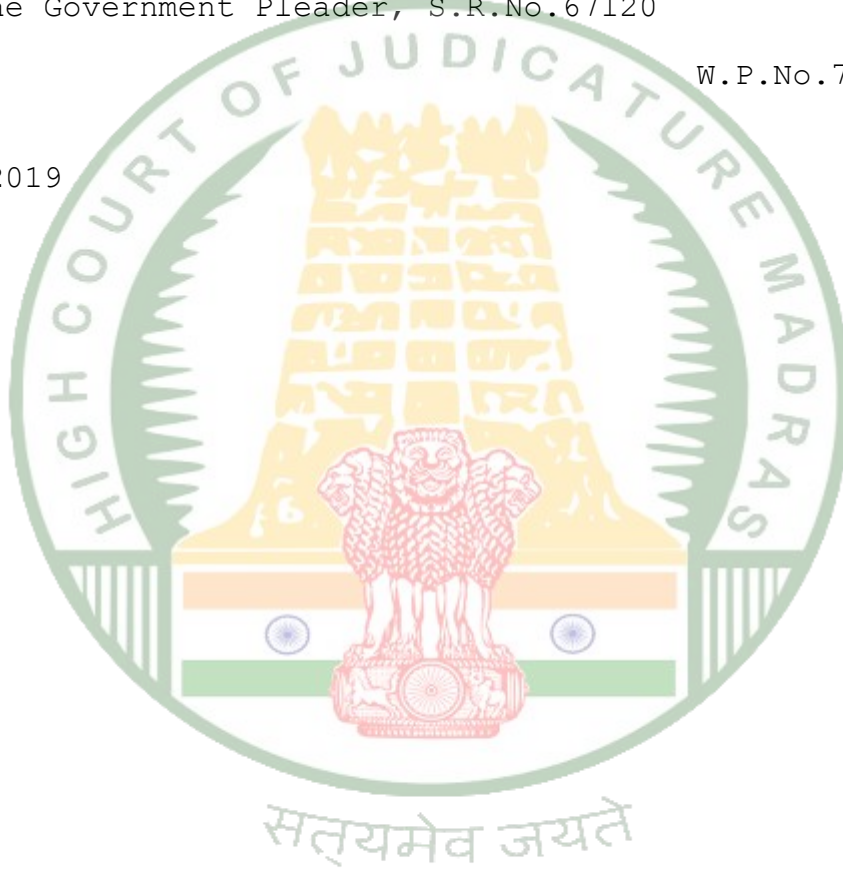
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+1cc to Mr.E.Veda Bagath Singh, Advocate, S.R.No.67728
+1cc to the Government Pleader, S.R.No.67120

W.P.No.7724 of 2007

VBA(CO)
CS/24/10/2019



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