

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31.10.2019

C O R A M

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.8763 of 2013

V.K.Saji

... Petitioner

Vs.

1.The Director of Elementary Education,
College Road, Chennai - 600006.

2.The District Elementary Educational Officer,
Coonoor, The Nilgiris District.

3.Mr.S.Murugesan
Headmaster,
Panchayat Union Primary School,
Mudumalai, Gudalur Block,
The Nilgiris District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the second respondent in Na.Ka.No.852/AA-2/2012 dated 29-06-2012 and quash the same and direct the second respondent to follow the judgment of the Division Bench of this Hon'ble Court in W.P.No.19856/2004 and W.P.No.21732/2005 dated 3-2-2009 in the matter of promotion to the post of Primary School Headmaster in Tamil Medium Schools and promote the petitioner to the post of Primary School Headmaster with effect from the date of the impugned order and grant him all consequential benefits.

For petitioner : Mr.P.Mohanraj

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

For R3 : No Appearance

ORDER

The present writ petition is filed for a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the second respondent in Na.Ka.No.852/AA-2/2012, dated 29-29-2012 and to quash the same and to direct the second respondent, to follow the judgment of the Division Bench of this Court in W.P.Nos.19856 of 2004 and 21732 of 2005, dated 03.02.2009 in the matter of promotion to the post of Primary School Headmaster in Tamil Medium Schools and promote the petitioner to the post of Primary School Headmaster with effect from the date of the impugned order and grant him all consequential benefits.

2. Mr.P.Raja, learned Government Advocate appearing for the respondents 1 and 2, has very fairly conceded that the petitioner is similarly placed to the petitioners in W.P.Nos.19856 of 2004 and 21732 of 2005, dated 03.02.2009 and therefore they are entitled to get the very same benefit granted to the petitioners in W.P.No.19856 of 2004 and 21732 of 2005.

3. The brief facts are as under:-

The petitioner was initially appointed as Secondary Grade Teacher in the Panchayat Union Primary School, Gudalur Block, on 13.08.1997. His probation was declared on 13.08.1999 and he is entitled to be promoted to the post of Primary School Headmaster in Tamil Medium Schools. The seniority list was prepared for the purpose of promotion to the post of Primary School Headmaster, for the petitioner. In the seniority list he was placed at Sl.No.35. He has not been considered for the post of Primary School Headmaster, on the ground that he is a Malayalam Teacher and therefore he is not entitled for such promotion.

4. On notice, second respondent has filed a counter affidavit. In the counter affidavit, it is not denied that the petitioners are not similarly placed in W.P.Nos.19856 of 2004 and 21732 of 2005.

5. As stated earlier, in an identical case, this Court has held that Malayalam Teachers, are also entitled to be considered for the post of Primary School Headmaster and they cannot grant promotion only on that ground. The relevant portion of the above mentioned writ petitions, reads as under:-

"2. Mr. Rajasekar, learned Additional Government Pleader appearing for the respondents fairly stated that no appeal was filed against the said order but on the contrary, the Director's instruction is more pragmatic and has been given in the interest of students. A counter affidavit has also been filed to

that effect justifying the issuance of the circular by the Director. It is also stated that subsequent to the circular, the very same Tribunal dismissed the O.A.No.4190 of 1992 on 18.11.2003 agreeing with the reasoning given by the Director. The order of the said Tribunal is the subject matter of challenge in W.P.No.21732 of 2005. Since it is related to the earlier case, both the writ petitions were heard and a common order is being passed.

3. In O.A.No.1953 of 1989, dated 9.10.1990, the Tribunal examined the applicability of the Special Rule vis-a-vis, the desirability of appointing the language pandits in any school as Headmaster without the discrimination on the basis of the medium in which they are teaching. The Tribunal also held that such of those Malayalam teachers, who have passed Tamil alone have been provided the Headmaster Post and therefore, there is no difficulty in maintaining a common seniority list in respect of Gudalur District, wherein substantial number of malayalis are residing. In the absence of any challenge to the Tribunal's order, the respondent-State is bound to implement the said order unless the Rules are amended by the State in terms of introducing amendment by exercising the power under Article 309 of the Constitution of India. In the present case, such a rule has not been brought in. Therefore, the respondent-State is bound to implement the orders of the Tribunal. Hence, W.P.No.19856 of 2004 stands allowed as prayed for.

4. Writ Petition No.21732 of 2005 is directed against the consequential order of the Tribunal in O.A.No.4190 of 1992, dated 18.11.2003.

5. A perusal of the said order shows that the matter was heard by the Vice Chairman of the Tribunal and there is no reference to the earlier Tribunal's order. The respondents have not brought to the notice of the earlier order passed by the Tribunal, that too by a two Bench and because of this reason, the Tribunal went on its own and was convinced with the reasoning given by the Director vide his communication dated 20.5.2003. Since this Court has already allowed the other writ petition and directed the previous order of the Tribunal to be implemented, the reasoning found in O.A.No.4190 of 1992, dated 18.11.2003 cannot be countenanced by this Court. Hence, the order of the Tribunal stands set aside and the writ petition stands allowed."

6. The case of the petitioner is completely covered by the above mentioned judgment of this Court. Writ petition is allowed. The respondents are directed to pass orders on the prayer sought for, within in a period of twelve weeks from the date of receipt of a copy of this order. No Costs.

Sd/-
Assistant Registrar(J)

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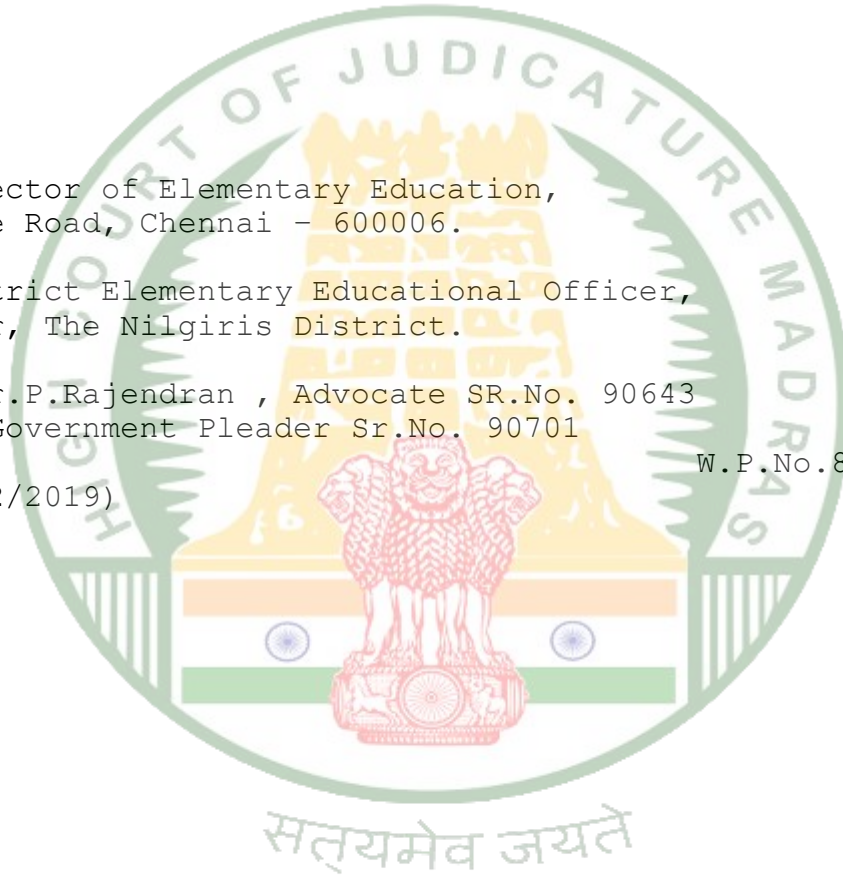
Sub Assistant Registrar

dm
To

- 1.The Director of Elementary Education,
College Road, Chennai - 600006.
 - 2.The District Elementary Educational Officer,
Coonoor, The Nilgiris District.
- +1cc to Mr.P.Rajendran , Advocate SR.No. 90643
+1 cc to Government Pleader Sr.No. 90701

W.P.No.8763 of 2013

A.SK(05/12/2019)



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