

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 02.07.2019

CORAM

THE HON'BLE MR. JUSTICE V.PARTHIBAN

Writ Petition No.9550 of 2019
&
W.M.P.Nos.10170 & 10172 of 2019

C.Ezhilan

...Petitioner

Vs.

1.The District Educational Officer,
Maduranthagam,
Kancheepuram District.

2.The Block Educational Officer,
Achrapakkam Union,
Kancheepuram District.

...Respondents

Writ Petition filed under Article 226 of Constitution of India, for issuance of writ of mandamus directing the respondents to consider the representation submitted by the petitioner 31.01.2019 for promotion to the post of Middle School Headmaster in the vacancy arose in the panel year 2018 in operation of the 2018 panel approved by the District Elementary Educational Officer, Kancheepuram in Na.Ka.No. 1188/A5/2018 dated 27.04.2018, within a time frame to be fixed by this Court.

For Petitioner : Mr.G.Sankaran

For Respondent : Mr.K.Karthikeyan, GA

ORDER

The petitioner was initially appointed as Secondary Grade Teacher on 06.12.1990 in Elementary Education. His services have been regularized and his probation was declared after completion of two years of service on 15.12.1992. Thereafter, he was promoted to the post of Primary School Headmaster on 26.03.2007. The petitioner has B.A.,(History), M.A.,(History) and B.Ed qualification. Based on his eligibility and seniority, he was promoted to the post of BT Assistant on 26.06.2008.

2. According to the petitioner, the next avenue of promotion is to the post of Middle School Headmaster. Every Panchayat Union is a separate unit for promotion, as per the Special Rules for Tamil Nadu Elementary Education Subordinate Service, notified in G.O.Ms.No.1383 Education Department dated 23.08.1988. Accordingly, a panel will be prepared for the promotion to the post of Middle School Headmaster in every Panchayat Union approved by the District Elementary Education Officer, presently District Education Officer.

3. In view of the fact that the petitioner was already promoted as Primary School Headmaster from 26.03.2007, his name was included in the panel for promotion to the post of Middle School Headmaster, for the year 2008 in Achirapakkam Union approved by the then District Elementary Educational Officer. The panel was approved by the District Elementary Educational Officer, Kancheepuram, vide proceedings in Na.Ka.No.1188/A5/2018, dated 27.04.2018. According to the petitioner, there were two vacancies for the post of Middle School Headmaster in Achirapakkam Union for the panel year 2018-19 and one vacancy was filled up by promoting one Thiru.R.Arumugam, as Serial No.1 in the panel. The next person is Tmt.Indira Deva Kirubai who has subsequently relinquished her promotion. Therefore, the next person in the panel, to be promoted, is the petitioner. In the circumstances, the petitioner was hoping that he would be promoted as Middle School Headmaster, but the same was not forthcoming.

4. According to the petitioner, the second vacancy became available to the post of Middle School Headmaster in Achirapakkam Unit on retirement of incumbent one Tmt.M.Tamilselvi who has originally retired on 30.06.2018, but allowed to continue on re-employment till the close of the next academic year i.e., 2018-19. However, on 02.01.2019 the said Tmt.M.Tamilselvi expressed her unwillingness to continue and requested the Authorities to relieve her from services and hence relieved. Therefore, the petitioner was hoping that he would be accommodated in the vacancy created as on 02.01.2019, when the panel of the year 2018 which was approved only on 27.04.2018 was still in force. Since, his right to be promoted as Middle School Headmaster was ought to be negated, particularly when the vacancy was available during the operation of the panel of the year 2018-19, the petitioner is before this Court seeking for issuance of writ of mandamus.

5. Mr.G.Sankaran, learned counsel appearing for the petitioner would submit that as per Section 7 of the Tamil Nadu Government Servants (Condition of Service) Act, 2016, the validity period of the panel is one year from the date of approval of the panel by the competent authority. In this case,

the panel was approved only on 27.04.2018 and the validity period, therefore, would only expire in April, 2019. During the panel year, the person who was placed at Sl.No.2 position i.e., Indira Devi Kirubai had relinquished her right to promotion and the third person is the petitioner and therefore, he ought to have been promoted automatically to the other vacant post as Middle School Headmaster.

6. On notice, Mr.K.Karthikeyan, learned Government Advocate entered appearance and would stoutly resist the claim of the petitioner for grant of any relief in the writ petition. According to the Government Advocate appearing for the respondent, the panel will be prepared in January of that year and in this case, as on January 2019 there was no vacancy at all and if at all there is any vacancy, the same will arise after the re-employed Headmistress Mrs.Tamil Selvi's tenure comes to an end i.e., at the end of the academic year 2019. Moreover, the learned Government Advocate would submit that as far as promotion is concerned, no one has right to be promoted and they have only right to be considered for promotion and therefore, a mandamus cannot be issued to compel the authorities to promote the petitioner. A counter affidavit has been filed in support of the above contention by the learned Government Advocate for the respondent.

7. At this, Mr.G.Sankaran, learned counsel for the petitioner would submit that the objection regarding no one has right to be promoted cannot be countenanced either in law or on facts. As far as the present case on hand is concerned for the simple reason that in this case, the petitioner has been included in the panel for 2 vacancies identified during the panel year 2018-19. The first person in the panel has been accommodated and the second person has relinquished her right and therefore, automatically the petitioner ought to have been accommodated during the operation of the panel, which was alive till April, 2019. Moreover, the other objection regarding the continuance of the incumbent Mrs.Tamilselvi till the close of the academic year 2019 is also factually incorrect since, she was originally superannuated in June, 2018 and was further continued on re-employment basis and she expressed her disinclination to continue any further. In February, 2019, the person who was in the second rank has relinquished her right to consider for promotion, which means that the panel was alive for all purposes.

8. Considered the rival submissions of the counsels and perused the materials and pleadings placed on record.

9. The facts as narrated by the petitioner are not in dispute except that the dispute is relating to the validity of the panel, which contained the name of the petitioner for the

year 2018. Although, much emphasize has been insisted by the learned Government Advocate appearing for the respondents that the panel will prepared every January of that year, but as far as the present case on hand is concerned, the learned counsel for the petitioner would submit that as per Section 7 of the Tamil Nadu Government Servants (Conditions of Service) Rules, the validity of the panel is for a period of one year from the date when the same is approved by the competent authority. In this case, the panel has been approved on 27.04.2018 and therefore the contention put-forth on behalf of the respondent cannot stand the test of judicial scrutiny.

10. Once, the panel is alive for a period of one year and 2 vacancies were identified to be filled up in the panel for the year 2018 and when a clear vacancy arisen in February 2019, after the incumbent therein expressed her unwillingness not to continue and the person who was second in the panel relinquished her right, the respondents ought to have accommodated the petitioner in that vacancy. The contention that the panel expires in January, 2019 does not appear to be correct submission because nothing in support of such contention has been stated in the counter affidavit. Moreover, the very fact that the person who was second in the panel has relinquished her right in February, 2019 would itself show that the panel was alive and only when the panel was alive such relinquishment will have any meaning. Once such relinquishment is accepted by the respondents, it clearly points out the fact that the panel was alive and the vacancy was yet to be filled up. Therefore, the petitioner has every right to be promoted in the said vacancy.

11. The other contention regarding that the petitioner has no right to be considered for promotion is not a serious objection which could hardly carry any conviction with this Court. Such contention appears to be extraneous and irrelevant in regard to the issues raised in the present writ petition. In any event, this Court is of the view that the panel for the year 2018 is very much in operation and the vacancy which is available in the said panel has to be filled up only by appointing petitioner as Headmaster of Middle School and denial of such appointment to the petitioner in the circumstances of the case cannot be countenanced either in law or on facts.

12. For the above such reasons, this Court is of the considered view that the petitioner has made out a case for grant of relief and therefore writ petition is allowed and respondents are directed to grant promotion to the petitioner to the post of Middle School Headmaster in the vacancy arose in the panel year 2018 which was approved by the District Educational Officer, Kancheepuram in his proceedings dated 27.04.2018 with all attendant benefits.

13. The respondents are directed to pass appropriate directions in this regard within a period of four weeks from the date of receipt of copy of this order.

14. In the result, the writ petition is allowed. No costs. Consequently, the connected writ miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mrm

To

1.The District Educational Officer,
Maduranthagam,
Kancheepuram District.

2.The Block Educational Officer,
Achrapakkam Union,
Kancheepuram District.

+1cc to Mr.G.Sankaran, Advocate, S.R.No.55335

+1cc to the Government Pleader, S.R.No.55476

Writ Petition No.9550 of 2019
&
W.M.P.Nos.10171 & 10172 of 2019

SV(CO)

RRS(08/07/2019)

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