



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on
02.12.2019

Delivered on
04.12.2019

WEB COPY

CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.18996 of 2019

and

WMP Nos.18339,18342,18343 & 26620 of 2019

Mr.Yessagnanam Arketi

.. Petitioner

.Vs.

- 1.The Director of Elementary Education,
DPI Campus, College Road,
Chennai 600 006.
- 2.The District Educational Officer, Hosur,
Krishnagiri District.
- 3.The Block Educational Officer,
Soolagiri,
Krishnagiri District.
- 4.Ms.T.Jayashree
Elementary School Head Master
Panchayat Union Primary School
Sanamavu
Soolagiri Block
- 5.Savithramma
Elementary School Head Master
Panchayat Union Primary School
Perandapalli
Soolagiri Block.
- 6.V.Munusamy
Elementary School Head Master
Panchayat Union Primary School
Bukkasagaram
Soolagiri Block.
- 7.A.Munirathna
Elementary School Head Master
Panchayat Union Primary School
Berigai
Soolagiri Block.

.. Respondents



PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the third respondent dated Nil with respect to the impugned panel for promotion to the post of Middle School Head Master, Soolagiri Block as on 1.1.2019, quash the same and consequently direct the respondents to include the name of the petitioner in the panel for promotion in the first place by applying Section 41 (1) of the Tamil Nadu Government Servants (Conditions of Service) Act 2016.

For Petitioner : Mrs.Dakshayani Reddy

For Respondents: Mr.A.Rajaperumal for R 1 to R 3
Additional Government Pleader

For Respondents : Mr.L.Chandrakumar for R 4 to R 7

O R D E R

The present writ petition has been filed challenging the panel for promotion drawn up by the 3rd respondent with respect to the promotion to the post of Middle School Headmaster and for a consequential direction to include the name of the petitioner in the panel.

2.The petitioner was originally appointed as a Secondary Grade Teacher on 26.02.2001 and was subsequently promoted to the post of B.T Assistant [Mathematics], with effect from 02.06.2008. According to the petitioner, the next avenue for promotion is to the post of Middle School Headmaster. The respondents are considering both B.T Assistants and Elementary School Headmasters as feeder category to the post of Middle School Headmaster. The petitioner claims to be the senior most B.T Assistant in Soolagiri Panchayat Union.

3.The further case of the petitioner is that the 3rd respondent issued the promotion panel to the post of Middle School Headmaster by including the names of those who are holding the post of Elementary School Headmasters. According to the petitioner, the Elementary School Headmasters pay scale is lower than that of a B.T Assistant and the post of B.T Assistant itself is a feeder category to the post of Elementary School Headmaster.

4.One post of Middle School Headmaster fell vacant in the Panchayat Union Middle School, Narasipuram. It was only for filling up this post, the impugned panel was drawn by the 3rd respondent and the names of respondents 4 to 7 alone



are been considered by leaving out the petitioner.

5.Mrs.Dakshayani Reddy, learned counsel appearing on behalf of the petitioner submitted that the selection process is governed by Section 41 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (for brevity "the Act"). As per this provision, if the scales of pay or pay band of posts in the feeder categories are different, the persons holding the post carrying a higher scale of pay or pay band in the feeder category shall be considered first. According to the learned counsel for the petitioner, the pay scale of the petitioner is higher than the pay scale of respondents 4 to 7 and therefore the petitioner ought to have been considered and placed at Serial No.1 in the panel. The learned counsel further submitted that the respondents 4 to 7 did not pass the second language Tamil test, which is mandatory under Section 21 of the Act and without fulfilling this minimum requirement, they ought not to have been considered for promotion.

6.The learned counsel for the petitioner further submitted that earlier a Government order was issued in G.O.Ms.No.166, dated 07.06.1999 in exercise of its powers under Rule 48 of the Tamil Nadu State and Subordinate Service rules and relaxed the second proviso to Rule 36(a) in favour of Elementary School Headmasters/ Headmistresses. The learned counsel submitted that after the present Act came into force in the year 2016, no such exemption was granted and the second proviso to Section 41 remains intact. Therefore, the previous relaxation granted by the Government will not apply as on today.

7.The learned counsel for the petitioner further submitted that the petitioner made a representation to the concerned authority bringing to his notice that the private respondents have not completed the second language Tamil test within the period stipulated under Section 21 of the Act and the concerned authority by his proceedings dated 01.07.2019 has directed the concerned School to take action against the persons who did not comply with Section 21 of the Act. Therefore, the learned counsel concluded her arguments by submitting that the private respondents ought not to have been considered for promotion overlooking the petitioner and the impugned panel that has been drawn up by the 3rd respondent requires interference.

8.The 2nd respondent has filed a counter affidavit in this case. Mr.A.Rajaperumal, learned Additional Government Pleader appearing on behalf of the official respondents submitted that the petitioner is junior to respondents 4 to 7 both in the secondary post and in the feeder category post and therefore the name of the petitioner cannot be placed above



respondents 4 to 7. The learned Additional Government Pleader further submitted that the 6th and 7th respondents have already been removed from the panel as per the new panel that was published on 15.03.2019 and only the 4th and 5th respondents are now under consideration. The learned Additional Government Pleader submitted that the earlier relaxation that was made through G.O.Ms.No.166, dated 07.06.1999, will equally apply in the present case also and therefore, the petitioner cannot place reliance on the 2nd proviso to Section 41 of the Act. The learned Additional Government Pleader concluded his arguments by submitting that respondents 4 and 5 are eligible to be considered for the promotion to

the post of Middle School Headmaster and there are absolutely no grounds to interfere with the impugned panel.

9.Mr.L.Chandrakumar, learned counsel appearing on behalf of the respondents 4 to 7 submitted that the promotion to the post of Middle School Headmaster is governed by seniority by drawing up of panel and it is not a Selection grade post. The learned counsel submitted that even as per the admission of the petitioner, the private respondents are senior both in the secondary grade post and in the feeder category post and therefore, the petitioner can never be placed above the private respondents. The learned counsel further submitted that as on the date on which the names of the private respondents was considered for promotion, they had completed the second language Tamil test and therefore, the bar under Section 21 of the Act will not apply to the private respondents. The learned counsel submitted that the petitioner as well as the private respondents are in identical scale of pay and looking at the eligibility from any angle, respondents 4 and 5 are more qualified than the petitioner to be considered for the promotion to the post of Middle School Headmaster.

10.This Court has carefully considered the submissions made on either side and the materials available on record.

11.The present writ petition will be a contest between the petitioner and respondents 4 and 5, to be considered for promotion to the post of Middle School Headmaster. Insofar as the 6th and 7th respondents are considered, they have been removed from the panel and the new panel has been published on 15.03.2019.

12.In order to consider the inter se claim made by the rival parties, it will be useful to extract Section 41 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.

41.Promotion.- (1) No member of a service or



WEB COPY

class of a service shall be eligible for promotion from the category in which he was appointed to the service unless he has satisfactorily completed his probation in that category.

Provided that a member of a service or class of a service who, having satisfactorily completed his probation in the category in which he was appointed to the service, has been promoted to the next higher category shall, notwithstanding that he has not been declared to have satisfactorily completed his probation in such higher category be eligible for promotion from such higher category.

Provided further that if scales of pay or pay band of posts in the feeder categories are different, the persons holding post carrying a higher scale of pay or pay band in the feeder category shall be considered first and that, if no qualified and suitable persons holding post in that feeder category are available, the persons holding post carrying the next higher scale of pay or pay band in descending order in other feeder categories shall be considered.

(2) Promotions in a service or class to a selection category or to a selection grade shall be made on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal. The inter se seniority among the persons found suitable for such promotion shall be with reference to the inter se seniority of such persons in the lower post.

13. With respect to Elementary School Education, each Panchayat Union is considered as a unit of appointment. The petitioner was appointed as a Secondary Grade Teacher (in Telugu medium of instruction) by the DEEO by his proceedings dated 26.02.2001. The petitioner has passed the second language test conducted by TNPSC on 16.03.2003. The petitioner was promoted to the post of B.T Assistant in Mathematics (Telugu medium) with effect from 02.06.2008. The next avenue of promotion to the writ petitioner is to the post of Middle School Headmaster.

14. One post of Middle School Headmaster fell vacant and a combined panel for promotion was prepared. The 3rd respondent had taken into consideration two feeder categories for promotion viz. Elementary School Headmasters and B.T Assistants.



15. It is the contention of the learned counsel for the petitioner that B.T Assistant alone is a feeder category for promotion to the post of Middle School Headmaster.

WEB COPY

16. It is relevant to take note of rule 2 of the Tamil Nadu Elementary Educational Subordinate Service Rules which deals with appointments to various classes and categories and the same is extracted hereunder:

2. Appointment

Appointments to the various classes and categories shall be made as follows: -

Class-I Category-1 : Headmaster/Headmistress of Middle School (B.Ed Grade)

Method of appointment : Promotion from Class II; or Class III of the service

ii. Transfer from category 2 Language Pandit Grade-I of Class-I of the said service provided that if no B.Ed. or Language Pandit Grade-I Teacher is available for appointment to the category within the unit such vacancy shall be filled by B.Ed. Teacher or language Pandits Grade I by transfer from other units.

Iii. When no qualified and suitable candidate is available by any of the methods specified in item (i) and (ii) above, by direct recruitment

Class-I Category 2: Language Pandits Grade-I (Tamil) & Language Pandit I (other than Tamil)

Method of appointment:

(i) By promotion from Headmasters/Headmistresses of class I or class III of the service.

(ii) By transfer of qualified personnel from any other unit;

(iii) By Direct recruitment provided that for appointment to substantive vacancies in the post of Language Pandit 1/3 shall be filled by promotion.

Class II - Category-I: Headmasters/Headmistresses of Middle Schools (Secondary Grade)

Method of appointment: By promotion from class II of the service.

Class III Category I : Headmasters/Headmistresses of Primary Schools

Method of appointment: By transfer from category 2

Category 2 Secondary Grade Teacher

(i) By direct recruitment; or

(ii) By promotion from any post in the service on a lower scale of pay provided that fifty



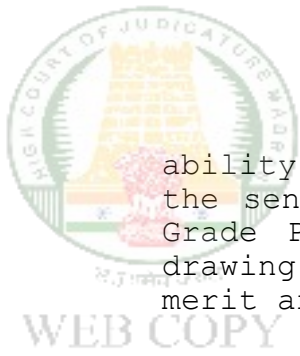
percent of the substantive vacancies arising in the category shall be filled by direct recruitment.

17. It is clear from the above rule that Headmasters/Headmistresses of Elementary Schools falling in Category I of Class III are eligible for promotion to the post of Headmasters/Headmistresses of Middle Schools. Therefore, this Court does not find any illegality in the 3rd respondent drawing the panel by taking into consideration the Headmasters/Headmistresses of the Elementary School [Primary School] also as a feeder category, apart from the B.T Assistant in Category II of Class I of the service rules. Therefore, the submissions made by the learned counsel for the petitioner to the effect that respondents 4 and 5 should not have been considered, while drawing up the panel, cannot be countenanced.

18. The next issue that has to be taken into consideration is as to the effect of the second proviso to Section 41 of the Act. This proviso makes it very clear that if the scales of pay or pay band of posts in the feeder categories are different, the persons holding the post carrying a higher scale of pay or pay band in the feeder category should be given priority. It is seen from records that the pay scale of B.T Assistant is higher than the pay scale of an Elementary School Headmaster. For the purpose of countering this ground, it was submitted both by the learned Additional Government Pleader as well as Mr. L. Chandrakumar, learned counsel appearing for the private respondents that the second proviso has been relaxed by G.O. Ms. No. 166 dated 07.06.1999, since it was found that the difference in pay was very meager.

19. This Government Order was passed when Rule 36(a) of the Tamil Nadu State and Subordinate Service Rules was in force and by this Government Order, the second proviso to the said section was relaxed. However, after the coming into the force of Tamil Nadu Government Servants (Conditions of Service) Act, 2016 the same proviso has been added to Section 41 of the Act and the earlier relaxation cannot be extended to the second proviso to Section 41 of the Act. As on today, the second proviso is in force.

20. The issue with regard to the seniority that was claimed by the 4th and 5th respondents in relation to their appointment to the Secondary Grade Post and feeder category post, to be considered above the petitioner, also cannot be countenanced. Section 41(2) of the Act specifically provides that promotion in a service or class to a selection category or to a selection grade shall be made on grounds of merit and ability and seniority will be considered only, where merit and



ability are approximately equal. In view of this provision, the seniority of the 4th and 5th respondents in the Secondary Grade Post and feeder category cannot come into play while drawing the panel. It comes into operation only, where the merit and ability are approximately equal.

21.The other ground that has been raised by the learned counsel for the petitioner is with regard to the passing of the Tamil language test which has been made as a mandatory requirement under Section 21 of the Act. On the representation submitted by the petitioner, the 2nd respondent has issued proceedings dated 01.07.2019, directing the 3rd respondent to include only those individuals who have completed the second language test within the period of two years from the date of appointment. It is the case of the petitioner that both the 4th and 5th respondents have passed the Tamil test much later and their names should not have been included in the panel. The petitioner has satisfied this requirement also since he has passed the second language Tamil test on 16.03.2003. This issue also gains significance and ought to have been considered by the 3rd respondent before drawing up the panel.

22.In view of the above discussion, the impugned panel drawn by the 3rd respondent for promotion to the post of Middle School Headmaster, Soolagiri Block, requires interference. Accordingly, the same is quashed. The 3rd respondent is directed to include the name of the petitioner in the panel for promotion and consider the promotion to the post of Middle School Headmaster strictly in accordance with the provisions of Section 41 of the Act and complete the whole process within a period of four (4) weeks from the date of receipt copy of this order.

This Writ Petition is allowed with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

KP

To

1.The Director of Elementary Education,
DPI Campus, College Road,
Chennai 600 006.



2.The District Educational Officer, Hosur,
Krishnagiri District.

3.The Block Educational Officer,
Soolagiri,
Krishnagiri District.

4.Ms.T.Jayashree
Elementary School Head Master
Panchayat Union Primary School
Sanamavu
Soolagiri Block

5.Savithramma
Elementary School Head Master
Panchayat Union Primary School
Perandapalli
Soolagiri Block.

6.V.Munusamy
Elementary School Head Master
Panchayat Union Primary School
Bukkasagaram
Soolagiri Block.

7.A.Munirathna
Elementary School Head Master
Panchayat Union Primary School
Berigai
Soolagiri Block.

+lcc to M/s.Dakshayani Reddy, Advocate SR.101708

+lcc to Mr.L.Chandrakumar, Advocate SR.101005

+lcc to the Government Pleader SR.102214

W.P.No.18996 of 2019

(CO)
CB(13/12/2019)