

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.33428 of 2019

and

W.M.P.Nos.33891, 33893 & 33894 of 2019

M.Muniappan

... Petitioner

Vs.

1.State of Tamilnadu

Rep. by its Secretary
School Education Department
Fort St.George,
Chennai - 600 009.

2.The Director of School Education

DPI Campus,
College Road,
Chennai - 600 006.

3.The Joint Director (Higher Secondary)

DPI Campus
College Road
Chennai 600 009

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the second respondent in Na.Ka.No.21319/W1/E1/2019 dated 03.09.2019 and quash the same and consequently direct the respondents to include the name of the petitioner in the panel for the promotion to the post of Higher Secondary Head Master pursuant to the proceedings of the Second Respondent herein in Na.Ka.No.3720/W1/E1/2019 dated 16.11.2019 by reckoning the initial date of appointment and rank assigned by Teacher's Recruitment Board for the recruitment year 2003-2004 by following G.O.Ms.No.120 dated 18.07.2006 and the Judgment of this Court in W.P.No.4991 of 2015.

For Petitioner : Mr.Dakshayani Reddy

For Respondents : Mr.P.Raja
Government Advocate

O R D E R

The petitioner has filed this writ petition seeking issuance of Certiorarified Mandamus to call for the records of the second respondent in Na.Ka.No.21319/W1/E1/2019 dated 03.09.2019 and quash the same and consequently direct the respondents to include the name of the petitioner in the panel for the promotion to the post of Higher Secondary Head Master pursuant to the proceedings of the Second Respondent herein in Na.Ka.No.3720/W1/E1/2019 dated 16.11.2019 by reckoning the initial date of appointment and rank assigned by Teacher's Recruitment Board for the recruitment year 2003-2004 by following G.O.Ms.No.120 dated 18.07.2006 and the Judgment of this Court in W.P.No.4991 of 2015.

2.Heard the arguments advanced on either side.

3.The case of the petitioner is that the petitioner was selected and appointed as Post Graduate Assistant by following the rule of reservation and through a competitive examination conducted by the Teachers Recruitment Board. The appointment on consolidated pay was by virtue of G.O.Ms.No.100 dated 27.06.2003 due to the financial constraints on the Government. The Government issued G.O.Ms.No.120 directing the Regularization of the services of all the teachers with effect from 01.06.2006. But the purposes of the Seniority, the government order directed the Rank assigned by the TRB alone to be taken into consideration. The second respondent published seniority list in the post of PG Assistants whereby the petitioners were correctly shown as per their date of joining and rank assigned by the TRB. Though the initial appointment order issued to the petitioner stipulated that they were not entitled to regularization for five years, by G.O.Ms.No.99, School Education (Income and Expenditure 2) Department, dated 27.06.2006, the Government reconsidered the issue and decided to regularize the services of all the Teachers who were appointed on consolidated pay by G.O.Ms.No.100, School Education (Budget) Department, dated 27.06.2003 and accordingly, the petitioner services was regularized with effect from 01.06.2006.

4.The grievance of the petitioner is that the petitioner services has to be regularized with effect from the initial date of his appointment instead, his services was regularized only with effect from 01.06.2006. Hence, this writ petition.

5.The learned counsel appearing for the petitioner would submit that the issue is squarely covered by the decision of this Court made in W.P.No.4991 of 2015 (1.T.Kunju Krishnan and others Vs. 1.Government of Tamil Nadu, rep. by its Secretary and others) dated 30.07.2019.

6.The learned Government Advocate appearing for the respondents would submit that as against the order passed by the learned Single Judge, the respondents therein preferred writ appeal and the same is pending.

7.Per contra, the learned counsel appearing for the petitioner would submit that already the petitioner therein filed caveat and no notice was issued as on date and would further submit that no interim order has been passed in the said writ appeal and the order passed by the learned Single Judge also has not been set aside.

8.It is useful to extract hereunder the relevant portions of the order dated 30.07.2019 made in W.P.No.4991 of 2015 (1.T.Kunju Krishnan and others Vs. 1.Government of Tamil Nadu, rep. by its Secretary and others):

"4. It is not in dispute that the petitioners joined the services prior to issuance of G.O.Ms.100 dated 27.06.2006, however, their services have been regularized in terms of the said Government Order only with effect from 01.06.2006, a perusal of which, would go to show that though the regularization will take place from 01.06.2006, the seniority and roster would be maintained as per the date of appointment. This Government Order has been accepted and has not been questioned, thereby it was left to attain finality and it was the contention of the Government Advocate that having accepted the regularization, claiming retrospective benefits is not permissible, when the Government Order is not challenged.

5.Though the contention of the Respondents appears to be sound at the first blush, when seen in depth, there is no justification on the part of the Respondents in placing senior persons to juniors,

thereby depriving their rights of seniority. It is no doubt true that the regularization can take place with effect 01.06.2006, but at the same time, the date of entry of petitioners will have to be taken into account for the purpose of drawing seniority list, which is already fixed by the Teachers Recruitment Board in this case, as it is impermissible to combine all the persons recruited on various periods together and draw a consolidated list for drawing seniority, which will definitely create confusion and affect the seniority of senior most persons.

6.While dealing with the similar issue with respect to G.O.Ms.No.99 School Education Department dated 27.07.2006, the Madurai Bench of Madras High Court in the case of P.Karthikeyan and another vs. the Commissioner, Most Backward and Denotified Communities Welfare Department, Chennai and another [W.P.(MD) No.21316 of 2015 and 21317 of 2015] decided on 12.06.2017, had held upon relying on a judgment of the Hon'ble Supreme Court, as follows:

"4.The learned Additional Government Pleader appearing for the respondents referred to G.O.Ms.No.99 dated 27.06.2006 and submitted that the petitioners' appointment were regularized only after the issue of the said Government Order. It is pertinent to note that the decision in the year 2006 was to make permanent appointments on regular time scale of pay with effect from 2006. As per the said Government Order, it is made clear that earlier the petitioners were appointed on consolidated pay. The intention of the Government was to treat the petitioners as regular appointees for all purposes, except for granting the regular time scale of pay to them.

5.It is in the said circumstances, the contention of the second respondent that initially the petitioners who were regularized only on 01.06.2006, cannot be

treated as regular appointees, from the date of their appointment, so as to promote them for the post of Headmasters/Headmistresses of the Higher Secondary Schools can not be accepted.

6.The learned counsel for the petitioners also relied upon the Judgment of the Honourable Supreme Court in the case of Direct Recruit Class II Engineering Officers' Association vs. State of Maharashtra and others, reported in (1990) 2 Supreme Court Cases 715. The Honourable Supreme Court differentiated the status of persons, who were appointed to a post according to the Rule and the status of the persons, who were appointed on adhoc basis and not according to the Rules where the appointment was purely a stop-gap arrangement. It has been categorically held that the persons who were appointed to the post according to Rule, should be given the benefit of seniority and their period of service shall be counted from the date of their appointment and not from the date of their regularization or confirmation.

7.This Court is also of the view that the petitioners are entitled to claim the seniority of teaching experience from the date of their appointments i.e., with effect from 02.08.2004 and 27.01.2005 respectively, for the purpose of calculating their period of rendering service as a teacher, for the purpose of promotion to the post of Headmasters/ Headmistresses of the Higher Secondary Schools. Hence, this Court is inclined to allow these Writ Petitions.

8.Accordingly, these Writ Petitions are allowed and the impugned orders passed by the second respondent dated 17.04.2015 and the consequential proceedings of the first respondent dated 20.05.2015 are quashed. The respondents 1 and 2 are directed to treat the

petitioners as eligible for promotion to the post of Headmasters/ Headmistresses of the Higher Secondary Schools, as per Rule. This order shall not disturb the rights of any other third party whose rights have already been crystalised. However, for the purpose of calculating seniority and for granting any other monetary benefits, the respondents are directed to treat the services of the petitioners from the date of their original appointment. Consequently, connected Miscellaneous Petitions are closed. No costs."

7. In view of the above, this Court finds force in the contention raised by the petitioners and they are entitled for relief / direction sought for in this writ petition. Accordingly, the Writ Petition is disposed of, with a direction to the 1st respondent herein to regularize the services of the petitioners from the date of entry into service for the purpose of seniority and extend all the monetary benefits flowing thereof, if any, within a period of two months from the date of receipt of a copy of this order. No costs."

9. The writ petition is disposed on the same lines of the decision cited supra. The first respondent is directed to regularize the services of the petitioners from the date of entry into service for the purpose of seniority and extend all the monetary benefits flowing thereof, if any, within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

kas

6/7

To.

1.State of Tamilnadu
Rep. by its Secretary
School Education Department
Fort St.George,
Chennai - 600 009.

2.The Director of School Education
DPI Campus,
College Road,
Chennai - 600 006.

3.The Joint Director (Higher Secondary)
DPI Campus
College Road
Chennai 600 009

+1cc to Government Pleader SR.NO. 100747
+1cc to Mr.Dakshayani Reddy, Advocate sr.99797

W.P.No.33428 of 2019

spd(co)
nr 27/01/2020



WEB COPY