

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2019

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Appeal No.2638 of 2018
a n d
C.M.P.No.21436 of 2018

1. The Secretary to Government
School Education Department
Secretariat
Chennai 600 009.
 2. The Joint Director
(Higher Secondary)
College road
Chennai 600 006.
 3. The Chief Educational Officer
Chennai 15. Appellants
- Vs
- G. Thalamuthu Respondent

Prayer:- Appeal filed under Clause 15 of Letters Patent against the order dated 13/12/2017, made in W.P.No.30586 of 2013.

Prayer in W.P.No.30586 of 2013:

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the proceedings of the 2nd respondent in Na Ka No. 31789/W3/E2/2006 dt 6.8.2013 and quash the same and direct the respondents to appoint the petitioner as P.G Assistant (Economics) by method of recruitment by transfer with all consequential service seniority and monetary benefits.

For appellants ... Mr.C.Munusamy
Special Government Pleader
(Education)
For respondent ... Mr.C.Johnson

J U D G M E N T

(Judgment of the Court was made by S.Manikumar,J)

Secretary to the Government, School Education Department, Chennai; Joint Director (Higher Secondary), College Road, Chennai, and the Chief Educational Officer, Chennai, have challenged an order, dated 13/12/2017 in W.P.No.30586 of 2013, by which, the Writ Court set aside the proceedings, in Na.Ka.No.31789/W3/E2/2006, dated 6/8/2013 of the Joint Director (Higher Secondary), College Road, Chennai, and allowed the writ petition.

2. Brief facts leading to the appeal are as under:-

Petitioner was appointed as a Physical Education Teacher through Employment Exchange, on 28.07.1998. At the time of initial appointment, petitioner had passed B.A. (Eco.), M.A. (Eco.), B.Ed. and M.P.Ed. Thereafter, he passed M.Ed. in the year 1999. According to him, he was eligible to be appointed as P.G.Assistant in Economics. In the High School level, there are no High School Assistants (B.T.Assistants), for the subject of Economics, as Economics degree holders are not eligible to study or qualify themselves in Bachelor of Education Degree (B.Ed). B.Com and Geography degree holders are also not permitted to join B.Ed degree. When there is a total ban for qualifying B.Ed degree for Economics graduates, there is absolutely no possibility of having High School Assistants (B.T.Assistants), in the subject of Economics in any government High Schools/Aided Schools. The normal practice is to engage teachers, who are having ancillary subjects attached to the main subject, like history etc., to impart education in Economics. Claim of the appellants 2 and 3 is that there are enough Economics High School Assistants (BT Assistants) in the subject of Economics, available as feeder category is virtually against the true state of affairs. When there are no economic graduate school Assistants, there cannot be any feeder category, under the said head, to be promoted as PG Assistants for the subject, Economics. According to the respondent, in such situation, the only option available for the respondents to fill up the vacancies of Post Graduate Assistants in Economics, is by way of recruitment by transfer, as contemplated under G.O.Ms.No.720, Education Department, dated 28/4/1981 and other G.Os, Government instructions and the proceedings of the Director of School Education, Chennai issued pursuant to the said special G.O. writ petitioner has contended that Rule 2 (a) of G.O.Ms.No.720, dated 28/4/1981, specifies the

method of recruitment of teachers in academic subject, with regard to government Schools.

3. Writ petitioner has contended that post of P.G. Assistants is governed by the Special Rules for Tamil Nadu Higher Secondary Educational Service issued in G.O.Ms.No.720, Education Department, dated 28.4.1981. Rule 2 (a) specifies the method of recruitment for Teachers in Academic subjects. Method of recruitment contemplates.

- (i). Direct Recruitment or
- (ii). Recruitment by transfer from Tamil Nadu Educational Subordinate Service or
- (iii). If no qualified and suitable candidates are available for appointment by method as above, by recruitment by transfer from Category 3 of Class V (Physical-Training Instructors and Instructress of Tamil Nadu Educational Subordinate Service or from category 3 of class III (Physical Education- Instructors of Tamil Nadu Educational Subordinate service B wing or as per the above said rule, petitioner therein is entitled to be considered for appointment as P.G. Assistant in the subject of Economics.

4. Petitioner has contended that with regard to qualification in respect of direct recruitment and recruitment by transfer, in respect of Teachers in academic subjects, the rule states as follows:

Name of Category Teachers in Academic Subjects	Method of recruitment of Direct Recruitment & Recruitment by transfer	Qualification.
		A Master's degree of a University in the State or a Master's degree of equivalent standard in the subject in respect of which recruitment is made. Provided that things beings equal preference shall be given to those who have studied the same subject in which he/she has obtained the Post Graduate degree, as main subject under part III in the Bachelor's degree level.

5. No amendment has been made, in respect of the qualification for direct recruitment. Therefore, it was thought fit by the government that directly recruited persons, must have, both Bachelor & Master's degree in the same subject. Intention was to impart quality education, to

the students, and there should not be any difficulty, for the Teachers as well as to the students, to understand the subject. According to the appellant, it was a sound decision of the government not to make any amendment to the qualification prescribed for direct recruitment. Whereas, it was diluted, in respect of recruitment by transfer, by categorizing the persons, as preferential and non preferential.

6. Government have issued orders in G.O.Ms.No. 132, (Education, Science and Technology Department) dated 21.02.1995 wherein 10% of the vacancies of P.G. Assistant reserved for appointment by the qualified and eligible secondary Grade Teachers coming under the Tamil Nadu Elementary Education Subordinate Service. Physical Education Teachers are also coming under Tamil Nadu Elementary Education Subordinate Service. Their pay scale is the same, as that of the secondary grade teachers. In spite of this fact they have been discriminated in promotion without fixing any ratio for promotion.

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7. Petitioner has been continuing in the post of Physical Education Teacher for the past 15 years without any level promotion. Whereas, his counter parts working as Secondary Grade Teachers are being promoted as B.T.Assistants. His chance of getting promotion as B.T.Assistants is not possible for the reason that there is no subject of Economics in B.T.cadre. Therefore, the petitioner has no other option except to get promotion only as P.G.Assistants (Economics). Hence, the petitioner made a representation to the Joint Director (Higher Secondary), Chennai, the second appellant herein, on 1/2/2006, to promote him as P.G.Assistant. By an order, dated 16/5/2006, his claim has been rejected by the second appellant stating that there are persons awaiting for promotion in non-preferential category, B.T.Assistant cadre.

8. Being aggrieved, petitioner has filed W.P.No.22972 of 2006, for issuance of a writ of certiorarified mandamus, to call for the records pertaining to the order of the second appellant in R.O.C.No.31789/W3/E2/2006, dated 6/8/2013, quash the same and to direct the appellants to fix a ratio, in the Special Rules for Tamil Nadu Higher Secondary Education Service for Physical Education Teacher (preferential qualification) for promotion to the post of PG Assistant (Economics) and to promote the petitioner on par with juniors and confer all consequential benefits.

9. On 19.10.2010, writ petition was allowed, setting aside the order of the 2nd respondent, dated 16.5.2006, directing the 2nd respondent to consider the case with reference to G.O. Ms. No. 132 (Education, Science and Technology Department) dated 21.2.1995 and consider the petitioner for the post of Post Graduate Assistant, as and when vacancy arises in the post of P.G. Assistant in Economics.

10. Being aggrieved by the order dated 19.10.2010, appellants have filed an appeal in W.A.No. 1783/2011, which was allowed on 12.6.2013, setting aside the order dated 19.10.2010 in W.P.No.22972 of 2006, giving directions to the appellants 2 and 3 herein, to consider the case of the petitioner, as per G.O.Ms. No. 720 (Education) Special Rules for the Tamil Nadu Higher Secondary Educational Service, dated 28.4.1981, subject to the availability of other B.T. Assistants in the said category.

11. Pursuant to which, petitioner therein, submitted a representation to the second respondent on 26/5/2011, requesting to appoint the petitioner as P.G. Teacher by recruitment by transfer as contemplated under 2 (a) of Special Rules for Tamil Nadu Higher Secondary Educational Service. Vide proceeding No.31789/W3/E2/2006, dated 6/8/2013, second appellant has rejected the representation of the petitioner, on the ground that since there are graduate teachers (non preferential) sufficiently available for promotion to the post of Post Graduate Teacher, there is no feasibility to promote Physical Education Teacher, as Post Graduate Teacher in Economics.

12. Aggrieved against the said order, petitioner has filed W.P.No.30586 of 2013, praying for the issuance of a writ of certiorarified mandamus to call for the records pertaining to the proceedings of the second respondent in R.O.C.No.31789/W3/E2/2006, dated 6/8/2013, quash the same and to direct the appellants to appoint the petitioner as P.G.Assistant (Economics) by the method of recruitment by transfer, with all consequential service, seniority and monetary benefits.

13. After hearing the learned counsel for the parties, Writ Court, vide order, dated 13/12/2017, passed the following order:-

"14. In the result,

(a). the writ petition is allowed and the impugned proceedings in Na.Ka.No.31789/W3/E2/2006 dated 6/8/2013 of the second respondent is set aside.

(b). the respondents are directed to consider the name of the petitioner for the post of P.G.Assistant in Economics in terms of the Tamil Nadu Higher Secondary Educational Rules from the day when he qualified and

issue appropriate appointment orders with all service and monetary benefits;

(c). the said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. No costs."

14. Being aggrieved, Secretary to the Government, School Education Department, Chennai; Joint Director (Higher Secondary), College Road, Chennai and Chief Educational Officer, Chennai, have filed the instant writ appeal, on the following grounds:-

(i). Writ Court ought to have appreciated the fact that as per G.O.Ms.No.720, School Education, dated 29/4/1981, Post Graduate Assistants in academic subjects comes under Class II and method of recruitment shall be made as follows:-

Recruitment by transfer from categories 3 and 5 of Class II of Tamil Nadu Educational Subordinate Service (Deputy Inspectors of School, School Assistants, Block Resource Teachers Educators, Pandits and Munshis Grade - I

or

If no qualified and suitable candidates are available for appointment by the method suggested above, appointment shall be made by recruitment by transfer from category 3 of Class V (Physical Training Instructors and Instructresses of Tamil Nadu Educational Subordinate Service or from category 3 of Class III (Physical Training Instructors of Tamil Nadu Educational Subordinates 'B' Wing

or

If no qualified and suitable candidates are available for appointment by the method (ii) above, appointment shall be made by recruitment by transfer from category 2 of Class I or from category 3 of Class III of the Tamil Nadu Educational Subordinate Service.

(ii). Writ Court, ought to have appreciated the fact that as per the above method of recruitment by transfer to the post of Post Graduate Assistants in academic subjects, shall be made as follows:

A Master's degree of a University in the State or a Master's degree of equivalent standard in the subject in respect of which recruitment is made.

Provided that the ratio for appointment by recruitment by transfer from among the qualified persons possessing Bachelor's Degree and Master's Degree in the same subjects (preferential persons) and from among the qualified persons possessing Bachelor's degree and Master's degree in different subjects, (Non- Preferential persons) respectively shall be 1:3.

Provided that in any of the classification (i.e.)

Preferential or non-preferential) no person is available or the list is exhausted, then the remaining vacancies relating to the particular panel year may filled up by available persons from other classification (i.e) preferential or non-preferential as the case may be) as defined in item (i) above.

Provided that other things being equal preference shall be given to those who have studied the same subject in which he / she has obtained the post graduate degree as main subject under Part III in the Bachelor's degree level.

Provided also that the inducted Post Graduate (State Council of Educational Research and Training Post Graduate Teachers Certificate Course) Teachers in Academic subjects who have successfully undergone the 10 months state council of Educational Research and Training Post Graduate Teachers Certificate Course and who acquired the Post Graduate degree in the subject for which they have been inducted shall also be considered.

Provided also that persons holding the certificate issued by the University of Madras of having undergone the certificate course in Science and Humanities for graduate teachers in High Schools shall be considered for appointment as teachers in the subject relating to Science and Humanities.

Provided also that the Post Graduate Degree holders in the Special Branch of a subject shall be eligible to be appointed in the Higher Secondary Schools to teach the relevant subject in the General Branch.

B.T or B.ed degree of a University in the State or a teaching degree of equivalent standard.

(iii). Writ Court, ought to have appreciated the fact that in view of the rules in force, and when there are sufficient number of B.T.Assistant Teachers under (Preferential persons) i.e., persons possessing Bachelor's degree and Master's Degree in the same subject and under (Non-preferential persons i.e., persons possessing Bachelor's degree and Master's Degree in different subjects are available, the respondent herein cannot be accommodated by recruitment by transfer in the post of Post Graduate Assistant (Economics).

(iv). Writ Court, ought to have appreciated the fact that only because of the reason that writ petitioner claims to have possessed the qualification for the post of P.G.Assistant (Economics), ignoring hundreds of qualified B.T.Assistants already waiting, will set a bad precedent and will lead to thousands of claim from similarly placed persons and cause administrative inconvenience.

(v). Unless the order dated 13.12.2017, made in writ petition 30586 of 2013 is set aside, appellants will be put into irreparable loss and injustice and the Department of the

appellants will face undue hardship which will cause heavy financial loss to the Government.

15. Heard Mr.C.Munusamy, learned Special Government Pleader (Education) for the appellants and Mr.C.Johnson learned counsel for the respondent.

16. Government have issued G.O.Ms.720, School Education Department, dated 28.04.1981, regarding Graduate Assistants in Academic Subjects - Class II Method of Recruitment, reads thus:-

Class II	
1) Graduate Assisat in Academic Subjects	(i) Direct recruitment or (ii) Recruitment by transfer from categories 3 and 5 of class II of Tamil Nadu Educational Subordinate Service (Deputy Inspectors of School, School Assistants, Block Resource Teachers Educators, Pandits and Munshis Grade - I) or If no qualified and suitable candidates are available for appointment by the method suggested above, appointment shall be made by recruitment by transfer from category 3 of Class V (Physical Training Instructors and Instructresses) of Tamil Nadu Educational Subordinate Service or from category 3 of class III (Physical Training instructors of Tamil Nadu Educational Subordinate 'B' wing) or (iii) If no qualified and suitable candidates are available for appointment by the method (ii) above, appointment shall be made by recruitment by transfer from category 2 of Class I or from category 3 of Class III of the Tamil Nadu Educational Subordinate Service.

Class II	
2) Post Graduate Assistants in Languages	(i) Direct recruitment or (ii) Recruitment by transfer from categories 3 and 5 of class II of Tamil Nadu Educational Subordinate Service (Deputy Inspectors of School, School Assistants, Block Resource Teachers Educator, Pandits and Munshis Grade I) or If no Qualified and suitable candidates are available for appointment by the method suggested above, appointment shall be made by recruitment by transfer from category 3 of Class V (Physical Training Instructors and Instructresses) of Tamil Nadu Educational Subordinate Service or from category 3 of class III (Physical Training instructors of Tamil Nadu Educational Subordinate ('B' wing) or (iii) If no qualified and suitable candidates are available for appointment by the method (ii) above appointment shall be made by recruitment by transfer from category 2 of Class I or from category 3 of Class III of the Tamil Nadu Educational Subordinate Service.

17. Pursuant to a decision of the Administrative Tribunal in O.A.Nos.646 of 1994 etc. batch dated 11.11.1994, G.O.Ms.720, School Education Department, dated 28.04.1981, has been amended.

18. Amended G.O.Ms.No.266, School Education Department, dated 18.10.2000, reads thus:-

Government of Tamil Nadu

ABSTRACT

Tamil Nadu Higher Secondary Educational Service -
Special Rules -Amendments - issued.

School Education Department

G.O.Ms.No.266

Dated 18.10.2000

1. G.O.Ms.No.720, Education, Dated 28.4.81

2. G.O.Ms.No.424, Education Science & Technology,
Dated:5.6.95

3. From the Director of School Education,
Lr.No.38276/W1/94, Dated : 17.5.99 & 7.8.2000.

ORDER:

The Tamil Nadu Administrative Tribunal in its order dated 11.11.94 in O.A.Nos.646 to 648/94, 663, 1507, 2665, 2666, 2669/94, 2717 to 2719/94, 2748/94 etc., filed by A.Mani and 13 others questioning the panel of Post Graduate Assistants based on the list of seniority and preferential qualification in the Tamil Nadu Higher Secondary Educational Service has ordered as follows:-

"A Comprehensive review may be made by the Government, of the rules, (Tamil Nadu Higher Secondary Educational Service) to ensure fair and equitable consideration of seniority and the preferential qualifications. without other operating to the total exclusion of the other".

2. The Government in order to implement the above order of the Tamil Nadu Administrative Tribunal undertook a comprehensive review of all the issues relevant to the subject matter dealt in the Tamil Nadu Administrative Tribunal Order, referred to in para 1 above and after detailed discussions with the Director of School Education and the Senior Standing Counsel, Tamil Nadu Administrative Tribunal, issue the following amendments to the Special Rules for the Tamil Nadu Higher Secondary Educational Service.

3. The following Notification will be published in the Tamil Nadu Government Gazette.

NOTIFICATION

In exercise of the powers conferred by the proviso to article 309 of the Constitution of India, the Governor of Tamil Nadu hereby makes the following amendments to the Special Rules for the Tamil Nadu Higher Secondary Educational Service (Section 37 in Volume II of the Tamil Nadu Services Manual 1969.)

The amendments hereby made shall come into force on the 18th day of October, 2000.

AMENDMENTS

In the said Special Rules, in the Annexure,

(1) against the entry Post Graduate Assistants in Academic Subjects" In Column(1)–

(a) In item (i) - for the first proviso the following provisos shall be substituted namely:-

"Provided that the ratio for appointment by recruitment by transfer from among the qualified persons possessing Bachelor's Degree and Master's Degree in the same subjects (Preferential Persons) and from among the qualified persons possessing Bachelor's degree and Master's degree in different subjects, (non-preferential persons) respectively shall be 1:3"

"Provided that if in any of the classification ((i.e) preferential or non-preferential) no person is available or the list is exhausted, then the remaining vacancies totaling to the particular panel year may be filled up by the available persons from other classification ((i.e) preferential or non preferential as the case may be) as defined in item (i) above"

(b) In the third proviso for the words "Provided further that" the words "Provided also that" shall be substituted:

(c) after clause (c), in item (i) In column (3), against the entry "Post Graduate Assistants in Languages (other than Tamil)" in column (1) the following proviso shall be added, namely:-

"Provided that the provisions prescribed in the first and second proviso to item (i) In column (3), against the entry "Post Graduate Assistants in Academic subjects" in column (1), shall be followed while filling up of the post of Post Graduate Assistants in English Language only"

(d) after clause (c), in item II, in column (3), against the entry 'Post Graduate Assistants in Languages (other than Tamil)' in column (1), the following proviso shall be added, namely:-

"Provided that the provisions prescribed in the first and second proviso to item (i) In column (3), against the entry "Post Graduate Assistants in Academic subjects" in column (1), shall be followed while filling up of the post of Post Graduate Assistants in English Language only"

(e) after the first proviso as so added, in the second proviso, for the words "Provided that" the words "Provided further that" shall be substituted.

(f) In the third proviso, for the words "Provided further that", words "Provided also that" shall be substituted.

(g) after the third proviso to item II.

(a) In column (3), against the entry Post Graduate Assistants in Language (other than Tamil) in column (1) the following proviso shall be added; namely:-

"Provided also that if qualified person possessing Bachelor's Degree and Master's Degree in English is not available the remaining vacancies relating to the particular panel year shall be filled up by the available persons as provided in item I (a), (b) and (c), and item II (a), (b) and (c), while filling the post of Post Graduate Assistants in English Language only;

(b) after the above proviso as so added the following proviso and the explanation shall be added namely;

"Provided also that the third proviso to item II shall not applicable for the post of Post Graduate Assistant in English Language"
Explanation:

In these rules, "Preferential persons" means "qualified persons possessing Bachelor's degree and Master's degree in the same subject" and "Non-Preferential persons" means "qualified persons possessing Bachelor's degree and Master's degree in different subjects".

(By Order of the Governor)

M.A.Gowrishankar,
Secretary to Government.

To

The Director of School Education, Chennai-6.

The Works Manager, Government Central Press, Chennai-79 (for Publication in the Tamil Nadu Government Gazette)

(He is requested to send 10 copies to Government for reference)

The Secretary, Tamil Nadu Public Service Commission, Chennai-2.

The Director of Adi Dravidar and Tribal Welfare, Chennai-5.

The Director of Backward Classes, Chennai-5.

The Commissioner of Municipal Administration, Chennai-5.

The Commissioner, Corporation of Chennai/

Madurai / Coimbatore / Salem / Tirunelveli / Trichy
The P & AR Chennai-9.

The Law/MAWS/BC& MBC/SW/AD & TW DEPARTMENT, CHENNAI-9.

/Forwarded / By Order/

Section Officer.

19. Order of rejection dated 06.08.2013 of the Joint Director (Higher Secondary) of School Education, is as follows:-

"Proceedings of Tamil Nadu School Education Joint Director (Higher Secondary), Chennai-6.

R.C.No.No.31789/W3/E2/2006 Dated 06.08.2013.

Sub: Tamilnadu Higher Secondary Education -
W.A.No.1783/2011 filed Thiru.G.Thalamuthu - orders
passed by the Hon'ble High Court of Madras Dated
12.06.2013 - Implementation of - Reg.

Ref: Judgement dated 12.06.2013 in W.A.No.1783/2011 of
the Hon'ble High Court of Madras.

The Hon'ble High Court of Madras has passed order
on 12.06.2013 in W.A.No.1783/2011 filed by
Thiru.G.Thalamuthu working as Physical Education
Teacher in Egmore, Presidency Higher Secondary School

seeking promotion as Post Graduate Assistant (Economics) as follows:-

"The Communication of the second appellant dated 12.05.2011 left no room for doubt taht the respondent is at least entitled to be considered as per the said Government Order for the psot of P.G. Assistant. However, the said entitlement is subject to the right of the order qualified persons in the category of B.T.Assistants. Even though the said communication states that there are available B.T. Assistants to be considered to the posts of P.G. Assistants, we deem it fit to direct the appellant Nos.2 and 3 to consider the case of the respondent herein as per G.O.Ms.No.720 Education for Special Rules for the Tamil Nadu Higher Secondary Educational Service, dated 28.04.1981 subject to the availability of other B.T. Assistants in the said category. The said consideration will have to be made within a period of eight weeks from the date of receipt of a copy of this order. The order of the learned single judge dated 19.10.2010, in W.P.No.22972 of 2006, is set aside and the writ appeal is disposed of accordingly. Consequently M.P.No.1 of 2011 is closed. No Costs."

In G.O.Ms.No.720 orders have been issued for promotion to the post of P.G.Assistant from the feeder post of B.T. Assistant. If eligible candidates are not available in the post of B.T. Assistants, Physical Education Teachers can be promoted as P.G.Assistants.

At present sufficient number of persons in B.t. Cadre Possessing P.G. Qualification are available. Hence promotion to the post of P.G. Assistant (Economics) from the post of Physical Education Teacher does not arise.

Hence for the reasons stated above, the petitioner is informed that his representation is unable to be considered.

Sd/-...

Joint Director (Higher Secondary)

To
Thiru.G.Thalamuthu,
Physical Education Teacher,
Presidency Higher Secondary School,
Egmore, Chennai. (Through Headmaster)

Copy to
The Headmaster,
Presidency Higher Secondary School,
Egmore, Chennai."

20. Based on the above, Mr.C.Munusamy, learned Special Government Pleader (Education), made submissions.

21. Per Contra, Mr.C.Johnson, learned counsel for the respondent submitted that there is no B.T. Assistant for Economics subject in Tamil Nadu Educational Subordinate Service and therefore, contention that there are qualified candidates available is not correct. According to the learned counsel for the respondent is fully qualified as per the existing rules for appointment by transfer to the post of P.G. Assistant in Economic Subject. He further submitted that the well considered order of the writ court does not call for interference and for the above reasons prayed for dismissal.

22. Heard the learned counsel for the parties.

23. Reading of the above, shows that recruitment by transfer is made from categories 3 and 5 of Class II of Tamil Nadu Educational Subordinate Service (Deputy Inspectors of School, School Assistants, Block Resource Teachers Educators, Pandits and Munshis Grade - I) and in the event of non-availability of qualified and suitable candidates available from appointment by the method suggested above, appointment shall be made by recruitment by transfer, from category 3 of Class V (Physical-Training Instructors and Instructress) of Tamil Nadu Educational Subordinate Service or from category 3 of class III (Physical Education - Instructors of Tamil Nadu Educational Subordinate Service B wing).

24. Vide order dated 12.06.2013 in W.A.No.1783 of 2011, a Hon'ble Division Bench of this Court, has passed the following directions:- सत्यमेव जयते

"The Communication of the second appellant dated 12.05.2011 left no room for doubt taht the respondent is at least entitled to be considered as per the said Government Order for the psot of P.G. Assistant. However, the said entitlement is subject to the right of the order qualified persons in the category of B.T.Assistants. Even though the said communication states that there are available B.T. Assistants to be considered to the posts of P.G. Assistants, we deem it fit to direct the appellant Nos.2 and 3 to consider the case of the respondent herein as per G.O.Ms.No.720 Education for Special Rules for the Tamil Nadu Higher Secondary

Educational Service, dated 28.04.1981 subject to the availability of other B.T. Assistants in the said category. The said consideration will have to be made within a period of eight weeks from the date of receipt of a copy of this order. The order of the learned single judge dated 19.10.2010, in W.P.No.22972 of 2006, is set aside and the writ appeal is disposed of accordingly. Consequently M.P.No.1 of 2011 is closed. No Costs."

25. Direction of the Hon'ble Division Bench is to consider the case of the respondent, as per G.O. Ms. No.720, School Education Department, dated 28.4.1981, special rules for Tamil Nadu Higher Secondary Educational Service, subject to the availability of other B.T. Assistants in the said category. After considering the availability of teachers in the said category, the Joint Director (Higher Secondary) by order dated 6.8.2013, has rejected the representation of the respondent on the grounds that as per G.O. MS. No.720, School Education Department dated 28.4.1981, for promotion to the post of Post Graduate Assistants, the feeder category is B.T. Assistant. If eligible candidates are not available in the post of B.T. Assistants, then physical education teachers can be promoted as P.G. Assistants. Joint Director (Higher Secondary) has further added that there are sufficient number of persons in B.T. cadre possessing post graduation qualification, are available. Citing the above reasons, he has rejected the request of the respondent. Issue to be considered is whether the Joint Director (Higher Secondary) has considered the directions issued by the Hon'ble Division Bench in W.A. No.1783/2011 dated 12.6.2013. Contention of the respondent that there is no B.T. Assistant (Economics) in High Schools may be accepted. But the issue to be considered for promotion to the posts of P.G. Assistant in Higher Secondary Schools is, whether there are other B.T. Assistants, Deputy Inspector of Schools, Block Resource Teachers Educators etc, available in the department for appointment by recruitment, by transfer. Contention of the respondent, that there are no promotional opportunities to physical educational teachers to become a post graduate teacher, cannot be accepted for the reason that Higher Educational Service Rules provide for recruitment by transfer from categories 3 and 5 of class II of Tamil Nadu Educational Subordinate Service (Deputy Inspectors of School, School Assistants, Block Resource Teachers Educators, Pandits and Munshis Grade-I) or if no qualified and suitable candidates are available for appointment by the method suggested above, appointment shall be made by recruitment by transfer from category 3 of Class V (Physical Training Instructors and Instructresses) of Tamil Nadu

Educational Subordinate Service or from category 3 of Class III (physical Training instructors of Tamil Nadu Educational Subordinate 'B' wing).

26. Rule contemplates if only that there are no candidates, such as B.T. Assistants, Deputy Inspector of Schools, Block Resource Persons, etc. posts in categories 3 and 5 of Tamil Nadu Educational Subordinate Service, then recruitment by transfer has to be made from among the Physical Education Teachers (Instructors), who are in category 3 of class V (Physical Training Instructors and Instructresses) of Tamil Nadu Educational Subordinate Service or from category 3 of Class III. Filling up the vacancies in the ratio between preferential and non-preferential candidates arises, firstly, within the first category of persons to be considered for recruitment, by transfer, from category 3 and 5 of the class II of the Tamil Nadu Subordinate Service Rules and if no candidate is available, then recruitment by transfer has to be made from among the Physical Education Teachers (Instructors), who are in category 3 of class V (Physical Training Instructors and Instructresses) of Tamil Nadu Educational Subordinate Service or from category 3 of Class III (Physical Training instructors of Tamil Nadu Educational Subordinate 'B' wing). Thus priority among the various categories in the Tamil Nadu Educational Subordinate Service is from 3 and 5 of Class II, and if no qualified and suitable candidates are available from the first category, then recruitment by transfer should be done from the second category of candidates. Rule position is clear. Post of Physical Education Teachers cannot be equated with B.T. Assistants, as both are in different categories and class, of the Tamil Nadu Educational Subordinate Service Rules. Mere possession of educational qualifications alone cannot be a matter for recruitment by transfer.

27. In the light of the above discussion, we are not in agreement with the decision of the writ court. Hence, order made in W.P.No.30586 of 2013 dated 13.12.2017, is set aside. Writ Appeal is allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government
School Education Department
Secretariat
Chennai 600 009.

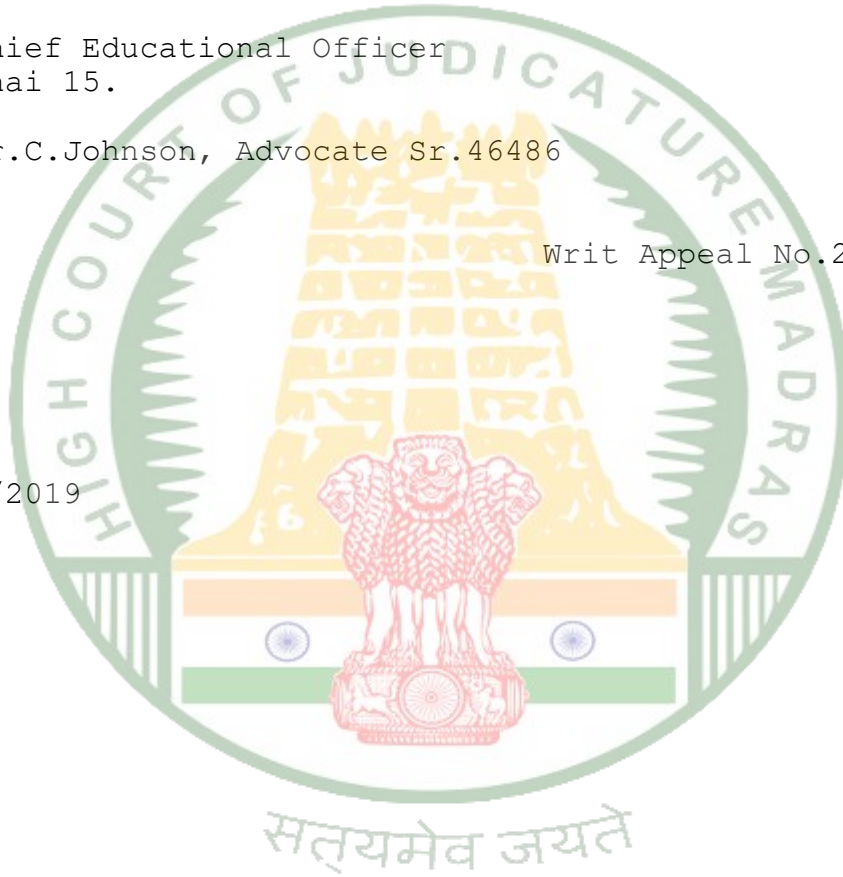
2. The Joint Director
(Higher Secondary)
College road
Chennai 600 006.

3. The Chief Educational Officer
Chennai 15.

+1cc to Mr.C.Johnson, Advocate Sr.46486

Writ Appeal No.2638 of 2018

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srg 01/07/2019



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