



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.07.2019

CORAM:

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.13981 of 2015

and

M.P. (MD) No.1 of 2015

M.Muthukkaruppanan

... Petitioner

-Vs-

1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Higher Education Department,
Secretariat, Chennai.

2.The Director of Elementary Education,
DPI Compound, College Road,
Chennai.

3.The Chief Educational Officer,
O/o. The Chief Educational Office,
Thallakulam, Madurai, Madurai District.

4.The District Educational Officer,
O/o. The District Educational Office,
Thallakulam, Madurai, Madurai 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, calling for the records relating to the impugned order by the fourth respondent in his proceedings in mjpK.vz;248/m1/2015, dated 12.02.2015 and quash the same as illegal and consequently, to direct the respondents to grant selection grade in the cadre of Headmaster of High School taking into consideration of 10 years of service rendered by the petitioner in the cadre of Headmaster of High School and P.G. Assistant within the time that may be stipulated by this Court.

For Petitioner

: Mr.H.Mohamed Imran,

For M/s.Ajmal Associates.

For Respondents

: Mrs.S.Srimathy,

Special Government Pleader.

ORDER

The impugned order dated 12.02.2015, rejecting the claim of the writ petitioner for grant of selection grade, is under challenge in the present Writ Petition.

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2.The impugned order states that there is no Government Order in force for grant of selection grade in respect of the employees worked in different cadres.

3.The facts in nutshell to be considered for the purpose of considering the present Writ Petition are that the writ petitioner was appointed as B.T. Assistant (Mathematics) in Government High School, Munaivendry, and he was promoted to the post of P.G. Assistant (Mathematics) in Government Higher Secondary School, Mallaanginar, Virudhunagar District on 14.08.2001. Thereafter, the writ petitioner was posted as Headmaster in High School on 03.07.2009 by way of transfer.

4.The learned counsel appearing on behalf of the writ petitioner states that the posts of P.G. Assistant and Headmasters in High School are carrying equivalent scale of pay. The posts are interchangeable and therefore, by counting services rendered in the post of High School Headmaster, selection grade should be granted to the writ petitioner in the post of P.G. Assistant (Mathematics).

5.The learned counsel appearing on behalf of the writ petitioner states that when the posts are carrying same scale of pay, benefit of selection grade is to be granted by counting the services rendered in the post of Headmaster in High School.

6.The learned Special Government Pleader appearing on behalf of the respondents disputed the contentions by stating that the post of High School Headmaster as well as the post of P.G. Assistant are governed by separate service rules. The writ petitioner was not promoted and he was appointed by way of transfer of service to the post of P.G. Assistant. When the writ petitioner was appointed by way of transfer of service based on the service rules applicable to the post of P.G. Assistant, the question of considering the earlier service for the purpose of granting selection grade would not arise at all.

7.Counter affidavit filed by the fourth respondent states as under:-

"3.It is submitted that the petitioner was initially appointed as B.T. Assistant on 06.12.1989 in the Tamil Nadu School Educational Subordinate Service. He was promoted as P.G. Assistant on 14.08.2001 in the Tamil Nadu Higher Secondary School Subordinate Service in view of the higher qualifications obtained by him. The



petitioner accepted for promotion as an appointment on transfer from other service. It is pertinent to state that the elevation of the petitioner from the post of School Assistant to that of P.G. Assistant was an appointment by transfer by virtue of the qualification possessed by him.

4.It is submitted that taking into the seniority of B.T. Assistants, the petitioner was promoted as Headmaster Government High School on 03.07.2009 in the same service which he was holding in the cadre of B.T. Assistant ie., School Educational Service. Thus, the petitioner was again brought to the service he held before the appointment of P.G. Assistant (Higher Secondary Service).

5.It is submitted that although the two posts carried identical scale of pay, they are in different service having no connection to each other. As admitted by the petitioner himself, the post of P.G. Assistant is governed by the Tamil Nadu Higher Secondary Service where as the post of High School Headmaster is governed by the provisions of Tamil Nadu School Educational Service.

6.It is submitted that the petitioner was promoted to the post of P.G. Assistant on 14.08.2001 and hence he would have completed the period of 10 years in the year 2011. it is also submitted the procedure counting services in identical scales of pay does not exist in the revised scales of pay with effect from 01.01.2006 ie., in the revised scales of pay. In as much as the petitioner was promoted on 14.08.2001 and was posted as Headmaster of High School on 03.07.2009, the concept of counting services in the posts of P.G. Assistant and Headmaster High School although on identical scales of pay does not arise in the revised scales of pay from 01.01.2006.

7.It is submitted that the clarifications issued by the Government in this regard. The operative portion of the clarifications is produced below:

"1.In the Government Order first, second and third cited, orders have been issued to the effect that the services rendered in the Selection Grade / Special Grade of the lower post shall be counted for awarding Selection Grade in the higher post and that of the higher post are identical / higher.

2.In the revised pay scales implemented with effect from 1.1.2006, no separate scales of pay have been provided for Selection Grade / Special Grade posts. Only one increment equal to three Percent of the basic pay including grade pay of same pay band is allowed to the employees of award of Selection Grade / Special Grade. Therefore, the question of counting the services



rendered in the Selection Grade / Special Grade of the lower post for awarding Selection Grade / Special Grade in the promotion post does not arise. Hence the orders issued in the Government Order / Letter first to third cited cannot be made applicable in the revised scales of pay implemented with effect from 1.1.2006.""

8.This Court is of the considered opinion that the very concept of selection grade was created, pursuant to the recommendations of the Pay Commission and selection grade was granted, more specifically, when there is a stagnation in one post. If there is no proper opportunity for a particular post or cadre and the employees in that particular cadre are serving for more than 10 years, then benefit of selection grade is granted by fixing the scale of pay in the post as applicable to the next higher post. Thus, for grant of selection grade, a person must be holding the same post for more than 10 years. The question of granting selection grade, after appointing a person by way of transfer of service in a different service rules, would not constitute a ground to claim selection grade.

9.When the policy of the selection grade is well enumerated in the Pay Commission that only in the event of stagnation in a particular post, benefit is to be extended, the case of the writ petitioner falls in different footing. The writ petitioner was appointed as B.T. Assistant and subsequently, appointed to the post of P.G. Assistant by virtue of his qualification by way of transfer of service. The post of P.G. Assistant is governed by another set of rules and therefore, the writ petitioner is not entitled to get selection grade and accordingly, the impugned order is in consonance with the principles enumerated for grant of selection grade and special grade.

10.Accordingly, this Writ Petition is devoid of merits and the same stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

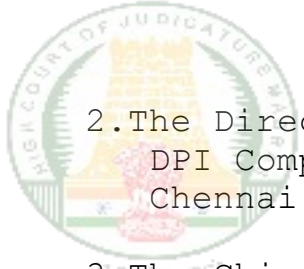
Assistant Registrar (A.E)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Secretary to Government,
State of Tamil Nadu,
Higher Education Department,
Secretariat, Chennai.



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+1 CC to M/s.AJMAL ASSOCIATES, Advocate SR-74582.
+1 CC to SPL GP SR-74749.

W.P. (MD) No.13981 of 2015
09.07.2019

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