



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

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W.P. (MD) Nos.21467 & 24640 of 2019

and

W.M.P. (MD) Nos.21271 & 21272 of 2017

- 1) V.Nallusamy
- 2) A.Jamal Mohammed
- 3) S.Uthayakumar
- 4) V.Murugesan
- 5) M.Therese Jesintha
- 6) T.Jayachitra
- 7) **(*)E.Sundararajan**
- 8) N.Tamilselvan
- 9) K.Thillaikarasi
- 10) V.Ananthalakshmi
- 11) R.Subramanian
- 12) G.Botheswari
- 13) P.Thirumurugan
- 14) R.Backiyalakshmi
- 15) M.Dhandapani
- 16) **(**)A. Ignaciyammal**
- 17) A.Thirunavukkarasu
- 18) S.Suresh

... Petitioners in W.P(MD)No.21467 of 2019

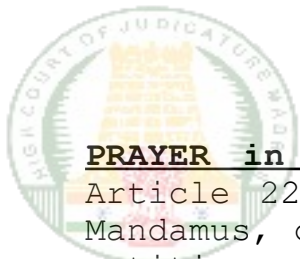
A.Jamal Mohamed

... Petitioner in W.P.(MD)No.24640 of 2019

vs.

- 1) The Government of Tamil Nadu,
Rep. by its Secretary,
School Education Department,
Fort St.George,
Chennai 600 009
- 2) The Director of School Education,
DPI Campus, College Road,
Chennai - 600 009
- 3) The Joint Director of School Education,
DPI Campus, College road,
Chennai 600 006
- 4) The Chief Educational Officer,
O/o the Chief Educational Officer,
Tiruchirappalli, Tiruchirappalli District 620 008

... Respondents in both Writ Petitions



PRAYER in W.P.(MD) Nos.21467 of 2019: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents to regularise the service of the petitioners with effect from the date of their initial appointments and to pay the monetary benefits arising thereof and consequently directing the respondents to provide seniority and include petitioners in the panel of Post Graduate Assistant Teachers to be promoted to the post of Headmaster/ Headmistress of Government Higher Secondary School by taking into account the date of initial appointment.

PRAYER in W.P.(MD) Nos.24640 of 2019: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned panel list issued by the 2nd respondent vide Na.Ka.No.3720/W.1/E1/2019 dated 16.11.2019 and quash the same and consequently directing the respondents to regularise the service of the petitioner with effect from 25.06.2004 and include him in the panel of Post Graduate Assistant Teachers to be promoted to the post of Headmaster/Headmistress of Government Higher Secondary School.

For Petitioners : Mr.D.Shanmugaraja Sethupathi(Both WP)

For Respondents : Mrs.S.Srimathy,
Special Government Pleader (Both WP)

C O M M O N O R D E R

Aggrieved against the non-inclusion of petitioners' name in the promotion panel list for the post of Head Masters in the Higher Secondary School, in which, the names of the petitioners' juniors have been included in the said panel, the present writ petitions have been filed challenging the panel list.

2. The case of the petitioners herein is that the petitioners were selected to the post of P.G. Assistant by the Teachers Recruitment Board and according to them, their services ought to have been regularised with effect from the date of initial appointment. The second respondent herein, through his proceedings dated 01.02.2019, had instructed the Chief Educational Officers and District Educational Officers for the preparation of panel of P.G.Assistants for the purpose of promotion to the post of Head Masters in Higher Secondary School. Since the seniority was not given effect from the date of appointment of the petitioners, they have filed the present writ petition in W.P.(MD)No.21467 of 2019 seeking for regularisation of their services from such date of their initial appointment and also for consequential inclusion of their names in the panel.



3. Pending this writ petition, an additional panel list was issued by the second respondent on 16.11.2019, in which, one of the teacher's name was not found in the list and therefore, the additional panel list as well as the proceedings therein dated 16.11.2019 are under challenge in W.P.(MD) No.24640 of 2019.

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4. The learned counsel for the petitioners would submit that the issue involved in the present writ petitions have already been settled in various writ petitions filed before this Court and in one of the orders dated 12.06.2017 passed by this Court in W.P(MD) No.21316 and 21317 of 2015, this Court had directed the petitioners therein, who are similarly placed like the petitioners in the present writ petition, to be treated as eligible for promotion to the post of Head Masters/Head Mistresses of the Higher Secondary schools.

5. The learned Special Government Pleader appearing on behalf of the respondents would submit that all these petitioners are under consolidated pay and therefore, they cannot be equalled and kept in par with regular Post Graduate Assistants and as such, their non-inclusion in the panel does not suffer from any infirmity.

6. This Court is unable to accept the objections raised by the learned Special Government Pleader for the reason that, similarly placed Post Graduate Assistants had earlier approached this Court and after consideration of the objections of the Government, this Court had held that the petitioners therein were liable to be regularised and merely because the petitioners were not granted with the regular scale of pay with effect from the date of appointment, it cannot be said that their appointments were valid only from the date of regularisation and thereby, had held that the petitioners were eligible for promotion to the post of Head Masters. The relevant portion of the order reads as under:

"3. In these cases, it is not in dispute that the petitioners were appointed as Junior PG Assistant (History) and Junior PG Assistant (Tamil) respectively, with effect from 02.08.2004 and 27.01.2005 respectively. Though the said appointments were regularized by the first respondent with effect from 01.06.2006, based on G.O (Ms).No.99, School Education Department, dated 27.06.2006. The Government Order does not render the appointment invalid till it is regularized. Merely because the petitioners were not granted the regular scale of pay with effect from the date of appointment, it can not be said that their appointments were valid only from the date of regularization. The fact that the petitioners were appointed in sanctioned posts and that their appointment in the year 2004 and 2005 respectively, were following the Recruitment Rules are not in dispute.

It is only due to financial constraints, instead of appointing them in regular time scale of pay, the



Government made the appointment on consolidated pay. Since the appointments were made in the regular post, merely because the regular time scale of pay was denied to the petitioners for some time, there is no reason to hold that the appointments made earlier on adhoc basis would disable them to claim seniority from the date of entry into service.

....

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 consideration of this Court in identical cases as that of the petitioners herein, I am unable to give any credence to the objections raised by the learned Special Government Pleader. In the light of the above observations made therein and following the decision taken in the aforesaid Writ Petitions, the petitioners herein would be entitled to succeed.

8. Consequently, the prayer sought for by the petitioner in W.P.(MD) Nos.21467 of 2019 seeking for a direction to the respondents to regularise the service of the petitioners with effect from the date of their initial appointments and to pay the monetary benefits arising thereof and consequently directing the respondents to provide seniority and include petitioners in the panel of **(***) Graduate Assistant**/Post Graduate Assistant Teachers to be promoted to the post of Headmaster/ Headmistress of **(****) Government High**/Higher Secondary School by taking into account the date of initial appointment stands allowed.

9. The prayer sought for by the petitioners in W.P.(MD) No.24640 of 2019 seeking to call for the records relating to the impugned panel list issued by the 2nd respondent vide Na.Ka.No.3720/W.1/E1/2019 dated 16.11.2019 and quash the same, stands allowed. Consequently the respondents are directed to regularise the service of the petitioner with effect from 25.06.2004 and include him in the panel of Post Graduate Assistant Teachers to be promoted to the post of Headmaster/Headmistress of Government Higher Secondary School stands allowed.



10. Accordingly, the Writ Petitions are allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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(*) to (**) Amended as per order of
this Hon'ble Court dated 05.02.2020**

Sd/-
Assistant Registrar(crl.side)

Sd/-
Assistant Registrar(crl.side)

/True Copy/

Sub Assistant Registrar(CS-II)

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To

To be substituted the order already despatched on 21.01.2020

- 1) The Secretary,
Government of Tamil Nadu,
School Education Department,
Fort St.George,
Chennai 600 009
- 2) The Director of School Education,
DPI Campus, College Road,
Chennai - 600 009
- 3) The Joint Director of School Education,
DPI Campus, College road,
Chennai 600 006
- 4) The Chief Educational Officer,
O/o the Chief Educational Officer,
Tiruchirappalli,
Tiruchirappalli District 620 008

+1.CC. To Mr.D.Shanmugaraja Sethupathi, Advocate in SR No.104057

Common Order made in
**W.P. (MD) Nos.21467 &
24640 of 2019**

Dated:09.12.2019

MK (20.01.2020) 5P 6C
KM (20.02.2020) 5P 6C