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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.11.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)No.22276 of 2018

and

W.M.P(MD)No.20190 & 20191 of 2018

and

W.P(MD)No.22277 of 2018

and

W.M.P(MD)No.20192 & 20193 of 2018

W.P(MD)No.22276 of 2018

M.Radhakrishnan

... Petitioner

vs.

1.The Director,
Adi Dravidar Welfare Department,
Chepauk,
Chennai.

2.The District Adi Dravidar and Tribal Welfare Officer,
Tirunelveli District,
Tirunelveli.

3.K.Saravanan

4.G.Ignacy

5.M.Rani

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the entire records pertaining to the order passed by the second respondent vide her proceedings in Na.Ka.No.A3/30588/2017 dated 24.11.2017 and quash the same and consequently direct the second respondent to promote the petitioner to the post of B.T.Assistant (Tutor cum Warden) with effect from the date of said order and further direct the second respondent to accord the petitioner all sort of benefits to be attached on account of such promotion.

W.P(MD)No.22277 of 2018

P.Kamalapushpam

... Petitioner

vs.

1.The Director,
Adi Dravidar Welfare Department,
Chepauk,
Chennai.

<https://hcservices.ecourts.gov.in/hcservices/> 2.The District Adi Dravidar and Tribal Welfare Officer,



Tirunelveli District,
Tirunelveli.

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PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the entire records pertaining to the order passed by the second respondent vide her proceedings in Na.Ka.No.A3/30588/2017 dated 24.11.2017 and quash the same and consequently direct the second respondent to promote the petitioner to the post of B.T.Assistant (Tutor cum Matron) with effect from the date of said order and further direct the second respondent to accord all sort of benefits to be attached on account of such promotion.

(in both cases)

For Petitioners : Mr.P.Gunasekaran

For R1 & R2 : Mr.VR.Shanmuganathan,
Special Government Pleader

For R3 to R5 : Mr.Ajmal Khan,
Senior Counsel
for Mr.S.Louis

COMMON ORDER

Since the issues involved in both Writ Petitions are one and the same and therefore, both the Writ Petitions are heard together and disposed of by way of this common order.

2. The petitioners were appointed as Secondary Grade Teachers on 13.01.2010 and 03.09.1998 respectively. The petitioner in W.P. (MD)No.22276 of 2018 has completed B.Lit., course in May 2008 and B.Ed., course in November 2012 and the petitioner in W.P.(MD) No.22277 of 2018 has completed B.Lit., course and B.Ed., course on 04.06.2012 and they were working as Secondary Grade Teachers in Government Adi Dravidar Boys Hostel, Kadayanallur, Tirunelveli District and Government Tribal Primary Residential School, Thalayanai, Sankarankovil Taluk, Tirunelveli District respectively. In the Adi Dravidar Welfare Department, for the Secondary Grade Teachers, who are having B.Ed., qualification, the next avenue of promotion is to the post of B.T. Assistant. In the Adi Dravidar Department, the post of B.T.Teacher and Tutor-cum-Warden are interchangeable. For streamlining the service matter, the Government has separately notified a Rule called, Tamil Nadu Adi Dravidar Welfare Subordinate Service Rules and mentioned that in Category No.1 in Class 2, that the teachers who have got the qualification of B.Ed., degree alone can be promoted to the post of Tutor-cum-Warden. The third respondent acquired B.Ed., degree on 30.12.2013 and the fifth respondent acquired B.Ed., degree on



13.02.2015. The fourth respondent till date has not acquired the B.Ed., degree. Even before acquiring the B.Ed., degree, they were promoted to the post of Tutor-cum-Warden, by the second respondent on 27.02.2009. The said promotion was challenged by one T.Ravikumar, by filing a writ petition in W.P(MD)No.5475 of 2010. This Court, by order dated 04.01.2013 allowed the writ petition and directed the second respondent to revert the respondents 3 to 5 to the post of Secondary Grade Teachers. Challenging the said order, the respondents 3 to 5 and two other persons filed a writ appeal in W.A.(MD)No.71 of 2014 and the same was dismissed, by order dated 07.07.2017. The respondents 3 to 5 and one Manoharan reverted to the post of Secondary Grade Teachers. Challenging the said order of reversion, the respondents 3 to 5 and one Manoharan filed writ petitions in W.P(MD)Nos.19900 to 19903 of 2017. This Court, by order dated 27.10.2017 permitted the respondents 3 to 5 and Manoharan to withdraw the writ petitions with liberty to give representations on or before 03.11.2017 and directed the respondents 1 & 2 to consider the representations of the respondents 3 to 5 and Manoharan for promotion, by fixing their seniority from the date on which they actually acquired B.Ed., qualifications. The second respondent, by the impugned order dated 24.11.2017, promoted the respondents 3 to 5 without maintaining the seniority list fit for promotion and fixing the seniority as per the order of this Court, dated 27.10.2017, made in W.P(MD)Nos.19900 to 19903 of 2017. The second respondent, failed to consider that the petitioners have acquired B.Ed., qualification much prior to the respondents 3 and 5 in November, 2012 and on 04.06.2012 respectively and the fourth respondent even now, has not completed B.Ed., qualification and wrongly interpreted the order of this Court, dated 27.10.2017, as though this Court has given positive direction to promote the respondents 3 to 5. As per the order of this Court, dated 27.10.2017, the second respondent has to prepare the seniority list and consider the promotions of the respondents 3 to 5, by fixing their seniority with effect from the date on which they acquired B.Ed., qualification. The petitioners are entitled to be promoted as B.T.Assistant and or Tutor-cum-Warden. The respondents 3 and 5 have acquired necessary qualifications subsequent to the petitioners and therefore, prayed for allowing the writ petitions and for promotion to the petitioners.

3. The learned Senior Counsel appearing for the respondents 3 to 5 submitted that the petitioners' request for promotion was rejected by the respondents 1 & 2. The petitioners have not challenged the said order. The petitioners are not entitled to challenge the promotion order. In view of the same, the writ petitions are not maintainable. Subsequently, the Government issued Government Order to adopt the Tamil Nadu Educational Subordinate Service Rules for Adi-Thiravidar that the B.Lit., also is equal to B.Ed. Therefore, the respondents 3 to 5 are entitled to be appointed from the date of completion of B.Lit., qualification. The present



dated 27.10.2017, made in W.P(MD)Nos.19900, 19901, 19902 and 19903 of 2017 and the respondents 3 to 5 are the seniors to the petitioners. Considering the fact that the respondents 3 to 5 were completed B.Lit., degree, they were promoted earlier to the petitioners and prayed for dismissal of the writ petitions.

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4. The learned Special Government Pleader appearing for the respondents 1 & 2 submitted that originally, the respondents 3 to 5 were promoted on 27.02.2009. The respondents 3 to 5 possessed B.Lit., qualification on the date of promotion. As per the orders of this Court, dated 04.01.2013 in W.P(MD)No.5475 of 2010, they were reverted to the post of Secondary Grade Teachers and in the writ petitions filed by the respondents 3 to 5, this Court, by order dated 27.10.2017 permitted the respondents 3 to 5 to make representation to the respondents 1 & 2 and directed the respondents 1 & 2 to fix the seniority list and pass orders on the representation of the respondents 3 to 5 and one Manoharan.

5. Heard the learned counsel appearing for the petitioners and the learned Special Government Pleader appearing for the respondents 1 & 2 and the learned Senior Counsel appearing for the respondents 3 to 5 and perused the materials available on record.

6. From the materials on record, it is seen that the respondents 3 & 5 have acquired B.Ed., qualification on 30.12.2013 and 13.02.2015 respectively. The fourth respondent even today has not acquired the B.Ed., qualification. On the other hand, the petitioner in W.P.(MD)No.22276 of 2018 acquired B.Ed., qualification in November 2012 and the petitioner in W.P.(MD)No.22277 of 2018 acquired B.Ed., qualification on 04.06.2012 prior to the respondents 3 and 5 have acquired the B.Ed., Degree qualification. In view of the said admitted fact, the petitioners are entitled to be promoted as B.T.Assistant or Tutor-cum-Warden. The second respondent has not prepared the seniority list as per the order of this Court, dated 27.10.2017, in W.P(MD)Nos.19900 to 19903 of 2017 and has not fixed the seniority of the petitioners as well as the respondents 3 to 5. Without fixing the seniority and without taking into consideration the date on which, they have acquired B.Ed., Degree qualification, the respondents 1 & 2 erroneously promoted the respondents 3 to 5 as Tutor-cum-Warden.

7. For the above reasons, the impugned order of the second respondent dated 24.11.2017 in Na.Ka.No.A3/30588/2017 is set aside and the second respondent is directed to prepare the seniority list as per the earlier order of this Court, dated 27.10.2017, made in W.P(MD)Nos.19900, 19901, 19902 and 19903 of 2017 and pass orders in accordance with law.



8. In view of the above, both the writ petitions are allowed.
No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar

Sub Assistant Registrar(CS)

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To

1.The Director,
Adi Dravidar Welfare Department,
Chepauk,
Chennai.

2.The District Adi Dravidar and Tribal Welfare Officer,
Tirunelveli District,
Tirunelveli.

+1 CC to M/s.P. GUNASEKARAN, Advocate (SR-101011[F] dated
25/11/2019)

+1 CC to M/s.SPL GP (SR-101523[F] dated 26/11/2019)

W.P (MD) No.22276 of 2018

and

W.P (MD) No.22277 of 2018

25.11.2019

KK/SAR/29.11.2019/5P-5C/