

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.02.2020

Coram

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.15794 of 2013

S.Ramadass

Vs.

... Petitioner

1. The Government of Tamilnadu,
rep. by its Secretary,
Education Department,
Fort St. George, Chennai 600 009.
2. The Director of Elementary Education,
College Road, Chennai 600 006.
3. The Assistant Elementary Educational Officer,
Bodinaickanur,
Theni District.
4. R.Jeyabarathi,
Elementary School Headmaster,
Panchayat Union Elementary School,
Athipatti,
Podinaickanur Panchayat Union,
Theni District.
5. S.Dhanalakshmi,
Elementary School Headmaster,
Panchayat Union Elementary School,
Salimarathupatti,
Podinaickanur Panchayat Union,
Theni District.
6. M.Parvathy,
Elementary School Headmaster,
Panchayat Union Elementary School,
Kodangipatti, Podinaickanur Panchayat Union,
Theni District.
7. S.Selvi,
Elementary School Headmaster,
Panchayat Union Elementary School,
Kottakudi, Podinaickanur Panchayat Union,
Theni District.

8. S.Malliga,
Elementary School Headmaster,
Panchayat Union Elementary School,
Uthakaadu, Podinaickanur Panchayat Union,
Theni District.
9. N.Valarmathi,
Elementary School Headmaster,
Panchayat Union Elementary School,
Sannasipuram, Podinaickanur Panchayat Union,
Theni District.
10. Sagayapushparani,
Elementary School Headmaster,
Panchayat Union Elementary School,
Sadayalpatti, Podinaickanur Panchayat Union,
Theni District.
11. V.Sivaraj,
Elementary School Headmaster,
Panchayat Union Elementary School,
Uppukottai, Podinaickanur Panchayat Union,
Theni District.
12. S.Lathamaheswari,
Elementary School Headmaster,
Panchayat Union Elementary School,
Pottalkalam, Podinaickanur Panchayat Union,
Theni District.
13. Senthamarai,
Elementary School Headmaster,
Panchayat Union Elementary School,
Keezhachockanathapuram,
Podinaickanur Panchayat Union,
Theni District.
14. P.Nagarathinam,
Elementary School Headmaster,
Panchayat Union Elementary School,
Poothipuram, Podinaickanur Panchayat Union,
Theni District.
15. A.P.Selvi,
Elementary School Headmaster,
Panchayat Union Elementary School,
Kozhukumalai, Podinaickanur Panchayat Union,
Theni District.

16. S.Ramathilagam,
Elementary School Headmaster,
Panchayat Union Elementary School,
Podinaickanur Panchayat Union,
Theni District.
17. C.Lakshmi, Elementary School Headmaster,
Panchayat Union Elementary School,
Mudhuvaarkudi, Podinaickanur Panchayat Union,
Theni District. ... Respondents

Prayer : This Writ petition has been filed under Article 226 of the Constitution of India to issue a Writ, direction or order in the nature of Writ of Certiorarified mandamus calling for the entire records pertaining to the order in G.O.Ms.No.166, School Education Department dated 07.06.1999 on the file of the first respondent and the consequential proceedings issued by the second respondent in Na.Ka.No.02898/D1/2013 dated 11.05.2013, quash both the orders and consequently direct the respondents to draw the panel for promotion only in the category of B.T. Assistant/Tamil Pandit and to give promotion to the petitioner as per Rule 36(a) of General Rules for Tamil nadu State & Subordinate Services to the post of Headmaster of Middle School and confer all consequential service and monetary benefits.

For Petitioner : Mr.P.Ganesan
for Mr.S.Mani

For Respondents : Mrs.P.Kavitha, Gov. Advocate
(for R1 to R3)
No appearance for R4 to R17

O R D E R

This writ petition has been filed to quash order passed by the first respondent in G.O.Ms.No.166, School Education Department dated 07.06.1999 and to quash the consequential proceedings issued by the second respondent in Na.Ka.No.02898/D1/2013 dated 11.05.2013 and also direct the respondents to draw the panel for promotion only in the category of B.T. Assistant/Tamil Pandit and to give promotion to the petitioner as per Rule 36(a) of General Rules for Tamil nadu State & Subordinate Services to the post of Headmaster of Middle School and confer all consequential service and monetary benefits.

2. The learned counsel appearing for the petitioner submitted that in view of Rule 36(a) of the General Rules for Tamil Nadu State and Subordinate Services, Primary School

Headmasters should be considered for promotion only after giving promotion to the B.T. Assistant, since the B.T. Assistants are admittedly getting higher scale of pay. He therefore prayed to allow the petition.

3. The learned Government Advocate appearing for the respondents 1 to 3 submitted that the issue involved in this writ petition is covered by the decision of this court in W.P.No.9386 of 2007 (M.Raj Mohamed V. State of Tamil Nadu represented by the Secretary to Government, School Education Department, Secretariat, Chennai and others) by an order dated 29.09.2009 and hence, he prayed for dismissal of the writ petition.

4. In the decision of the above said writ petition in W.P.No.9386 of 2007, in paragraph No.3 to 7, it is held as follows:-

3. The petitioner was a Secondary Grade Teacher on and from 01.06.1988. Consequent on his acquiring B.Ed., qualification, he was promoted as B.T. Assistant from 15.10.1998. He seeks to challenge G.O.166, School Education dated 07.06.1999 which permits preparation of panel through combine seniority of B.T./ Tamil Pandit/ Primary School Head Master.

4. The respondents filed reply affidavit in the Original Application. It is stated in the reply affidavit that prior to revision of pay, pursuant to the VI Pay Commission recommendations with effect from 01.01.1996, the scale of pay of Primary School Headmaster/B.T. Teachers/Tamil Pandit was one and the same i.e. R.1,400-2,600. However, different scales were fixed for B.T. Teachers and Tamil Pandits, on the one hand and primary school Headmasters on the other hand. The B.T. Teachers/Tamil pandit were given the scale of pay of Rs.5,500-9,000 and Primary School Headmasters were given the scale of pay of Rs.5300-8300.

5. The case of the petitioner is that in view of Rule 36(a) of the General Rules for Tamil Nadu State and Subordinate Services, Primary School Headmasters should be considered for promotion only after giving promotion to the B.T. Assistant, since the B.T. Assistants are admittedly getting higher scale of pay. Provided that a member of a service or class of a service who, having satisfactorily completed his probation in the category in which he was appointed to the Service, has been promoted to

the next higher category shall, notwithstanding that he has not been declared to have satisfactorily completed his probation in such higher category be eligible for promotion from such higher category.

Provided further that if scales of pay of posts in the feeder categories are different, the persons holding post carrying a higher scale of pay in the feeder category shall be considered first and that, if no qualified and suitable persons holding post in that feeder category are available, the persons holding post carrying the next higher scale of pay in descending order in other feeder categories shall be considered.

" Added in G.O.Ms.No.400 P & AR (Per.P) dated 17.04.1985 w.e.f. 13.10.1984.

6. On the other hand, G.O.166 of the first respondent dated 07.06.1999 was issued invoking the power of the Government under Rule 48 of the General Rules for Tamil nadu State and Subordinate Services. Since the Government exercised its power under Rule 48 to continue to give the benefit, even after different scale is prescribed, by treating Primary School Headmasters also as th feeder category along with B.T. Assistants on equal footing, the petitioner cannot have any grievance. It is not in dispute that the Government has no power under Rule 48 to give necessary relaxation. Furthermore, the power of the government under Rule 48 is not in challenge.

7. In these circumstances, the writ petition fails and the same is dismissed. No costs."

Subsequently, following the above said judgment, this court dismissed another writ petition in W.P.No.21430 of 2015 on 16.07.2015.

5. Accordingly, in the light of the decisions rendered by this court in the above said writ petitions, this Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Government of Tamilnadu,
rep. by its Secretary, Education Department,
Fort St. George, Chennai 600 009.
2. The Director of Elementary Education,
College Road, Chennai 600 006.
3. The Assistant Elementary Educational Officer,
Bodinaickanur, Theni District.

+1cc to Mr.S.Mani, Advocate, S.R.No. 9279

+1cc to the Government Pleader, S.R.No. 10010

W.P.No.15794 of 2013

CA(CO)
GN(04/03/2020)