

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.25952 of 2009  
and M.P.No.1 of 2009

R.Bhaskara Sethupathi

... Petitioner

vs.

1. The Secretary to Government,  
School Education Department,  
Fort St. George, Chennai - 9.
2. The Director of School Education,  
College Road, Chennai - 6.
3. P.Ramaraj,  
Joint Director of School Education,  
Teachers Recruitment Board,  
Chennai - 6.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus direct the Respondents 1 and 2 to promote the Petitioner to the post of Joint Director of School Education retrospectively, with effect from the date on which the 3<sup>rd</sup> Respondent was promoted as Joint Director of School Education with all monetary and other consequential service benefits.

For Petitioner : Mr.L.Chandrakumar

For Respondents 1 & 2 : Mrs.P.Kavitha,  
Government Advocate

For 3<sup>rd</sup> Respondent : No appearance  
(Name printed)

O R D E R

Petitioner has come up with this Writ Petition seeking a direction to the Respondents 1 and 2 to promote him to the post of Joint Director of School Education retrospectively, with effect from the date on which the 3<sup>rd</sup> Respondent was promoted as Joint Director of School Education with all monetary and other consequential service benefits.

2. Today, when the matter is taken up for hearing, it is represented by the learned counsel on either side that, the issue is covered by an order dated 24.09.2019 passed by this

Court in W.P.No.13555 of 2012, and that, the said order has been implemented.

3. For better appreciation, relevant portion of the order dated 24.09.2019 passed by this Court in W.P.No.13555 of 2012, is extracted hereunder:

"17.The first respondent has not considered the date on which the petitioner obtained B.Ed. Degree and when he completed his probation. In view of the failure on the part of the first respondent not considering the above relevant facts relating to the claim of the petitioner for restoring the seniority as per the selection list published by the third respondent, the reason given by the first respondent is not valid. The action of the first respondent in not accepting the opinion of the third respondent and rejecting the claim of the petitioner for relaxation even though the third respondent gave similar opinion recommending relaxation, is discriminatory, since the first respondent accepted the opinion of the third respondent and representation of Pitchai and Karmegam on the very same set of facts in spite of the objections raised by the juniors to Pitchai and Karmegam. The order of the first respondent is liable to be set aside for the followings, in addition to the reasons stated above.

(i) The petitioner was directed to undergo B.Ed. Degree in the Government Teacher Training Institute and the cost of the course was paid by the respondents 1 and 2.

(ii) The petitioner was paid with salary on time scale with allowances as per the Rules from the date of selection.

(iii) The petitioner completed and obtained B.Ed. Degree within the time limit granted to him and completed the probation period on 07.05.2004.

(iv) Respondents 4 to 15 were promoted on ad hoc basis to the post of Chief Educational Officer only on 21.07.2004, when the petitioner had completed his probation on 07.05.2004 itself. The first respondent has not given any reason for not including the petitioner in the Panel for promotion to the post of Chief Educational Officer along

with respondents 4 to 15.

(v) The promotions given to respondents 4 to 15 to the post of Chief Educational Officer as well as further promotion are only on ad hoc basis based on Rule 39(a) (i) of the Tamil Nadu State and Subordinate Service Rules.

(vi) Inter se seniority was not fixed among the promotees.

(vii) The first respondent made it clear in the Government Order, promoting the respondents 4 to 15 on ad hoc basis that they are not entitled to claim seniority based on such ad hoc promotion.

(viii) The first respondent has power to fix the seniority to an earlier date than the date on which the person acquires the requisite qualification. The first respondent has such power as per Rule 35(a) of the Tamil Nadu State and Subordinate Service Rules. The first respondent has not exercised the said power in the case of the petitioner and has not given any reason for not fixing the seniority from 13.09.2001, i.e., the date of issuance of the Government Order appointing all 20 persons including the petitioner and respondents 4 to 15.

(ix) As per the judgment of the Hon'ble Apex Court reported in 1985 (1) SCC 122 [supra], the seniority of the selected candidates as published by the third respondent/TNPSC, has to be followed. If the first respondent deviates from the said selection list, it can be done only for valid reasons.

(x) The reasons given by the first respondent for not following the selection list published by the third respondent are not valid. The first respondent, without considering the above relevant facts relating to the petitioner for restoring the seniority as per the selection list published by the third respondent, has rejected the representation of the petitioner on the sole ground that the juniors are objecting to allow the request of the petitioner.

18. The first 9 judgments relied on by the learned counsel appearing for the respondents 4, 6 to 10 and 13 to 15 are not applicable to the facts of the present case. Those judgments relate to appointment of a person, who did not possess the requisite qualification as prescribed and relate to regularisation of irregular appointment. The issue in the present case is not regularisation of irregular appointment or that the petitioner did not have required qualification for appointment as District Educational Officer by direct recruitment. Even as per the notification, a person without B.Ed. Degree can apply and if selected, must obtain the said degree within the time prescribed by the authority. The petitioner acquired B.Ed. Degree within the time granted. In the 10th judgment relied on by the learned counsel appearing for the respondents 4, 6 to 10 and 13 to 15, this Court held that granting relaxation or refusing to grant relaxation must be uniform. The said judgment in fact advances the case of the petitioner. The first respondent granted relaxation in respect of Pitchai and Karmegam, who were similarly placed like the petitioner. Refusing to grant relaxation for the petitioner is discriminatory.

19. For the above reasons, the impugned order of the first respondent, in G.O.(1D) No.65, School Education (A1) Department, dated 15.03.2012, is quashed and this Writ Petition is allowed as prayed for. ..."

4. In the light of the said decision, this Court holds that, the case of the Petitioner herein shall also be considered on the basis of the said decision and an order shall be passed and communicated to the Petitioner herein, on or before 01.11.2020.

The Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar

To:

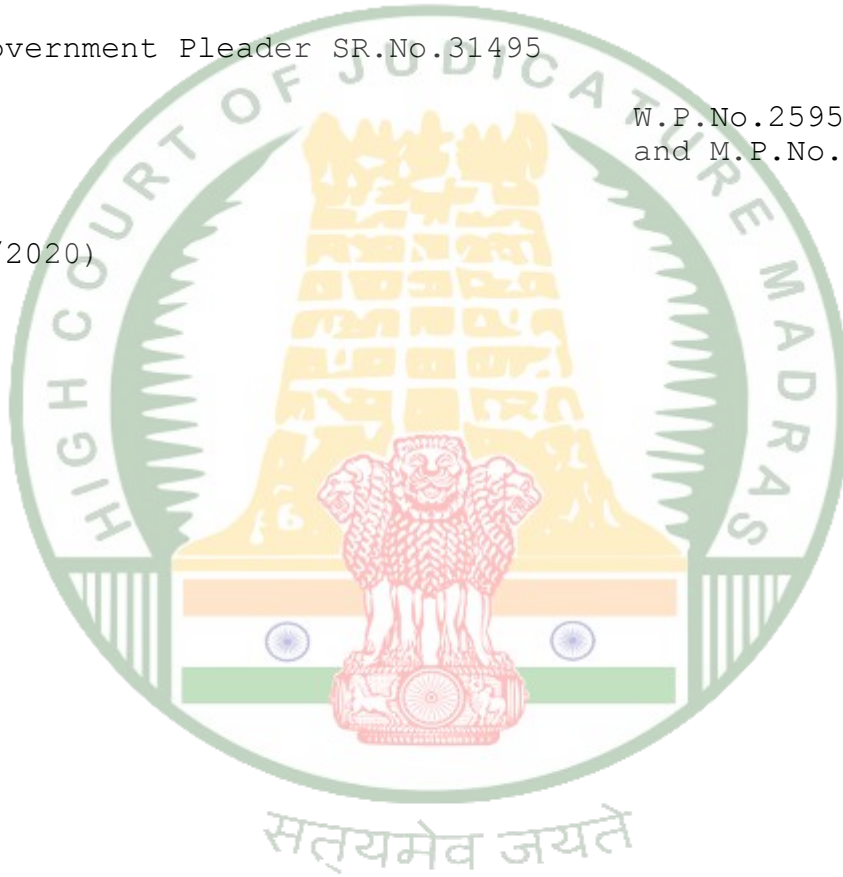
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+1cc to Mr.L.Chandrakumar, Advocate SR.No.31482

+1cc to Government Pleader SR.No.31495

W.P.No.25952 of 2009  
and M.P.No.1 of 2009

MG (CO)  
GMY (01/10/2020)



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