

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 15.09.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.18615 OF 2013

AND

M.P. NO. 1 OF 2013

C.Azhagarasan

..Petitioner

- Vs -

1. The Director of School Education,
(Joint Director Personnel),
Directorate of School Education,
Chennai - 600 006.
2. The Chief Educational Officer,
Dharmapuri.
3. The Headmaster,
Government Higher Secondary School,
Menasi (P.O.),
Dharmapuri District - 636 904.
4. P.Prabhakar .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus directing the 1st and 2nd respondents to fix the seniority of the petitioner in the post of B.T. Assistant with effect from 1.1.2002 and disburse all monetary and other benefits.

For Petitioner : No Appearance

For Respondents: Mr. S.Suresh Kumar, GA for RR-1 to 3

ORDER

It is the case of the petitioner that he was appointed as Secondary Grade Assistant by the District Elementary Education Officer, Dhamapuri in September, 1999. Though the declaration of probation ought to have been made in two years, however, a delay of one year and two months was envisioned in the declaration of his probation, which was done on 6.11.02, which resulted in unduly delaying the promotion of the petitioner. It is the further case of the petitioner that the 4th respondent,

who was appointed much after the petitioner on 17.11.1999, his probation was declared on time and was given temporary promotion on 18.6.02 and regular promotion was also given to him. However, the promotion of the petitioner was delayed unduly for no fault of his, for which the petitioner submitted representation to which vide communication dated 30.11.12, the petitioner was informed that if any of his juniors are promoted the case of the petitioner would be considered. Since the 4th respondent, who is junior to him, was promoted, the petitioner submitted a representation on 21.11.2012, which did not evoke any response, which has prompted the petitioner to file the present petition.

2. Though the matter has been repeatedly adjourned, there is no representation for the petitioner. Considering the fact that the matter pertains to the year 2013 and relating to promotion and counter has also been filed by the respondents way back, this Court is proceeding to decide the case on merits.

3. A perusal of the counter reveals that there were many backlog vacancies in the scheduled caste category for want of persons with Diploma in Teacher Education and, therefore, a policy decision was taken by the Government which resulted in issuance of G.O. Ms. No.423/Education dated 3.10.1997, which permitted that the said backlog vacancies could be filled up with scheduled caste candidates, who have qualified themselves in B.Ed., on condition that they should not claim incentive increments for higher educational qualifications and they also should not claim any preference for further promotion. In pursuance to the said Government Order, after obtaining declarations from persons, who were holding B.Ed. Degree, they were appointed as Secondary Grade Teacher. In essence, the petitioner was not in possession of the requisite qualifications, but only was given appointment by relaxation of the rule provisions with conditions attached thereto. It is also further averred that a writ petition in W.P. No.16967/97 pending in the High Court as also his appointment on relaxation of conditions, resulted in the delay in regularising his services and declaring his probation.

4. It is further averment of the respondents that proposal for regularisation of the petitioner's service as Secondary Grade Teacher emanated from the 3rd respondent/Headmaster but the same was returned by the 2nd respondent on the ground of the pending W.P. No.16967/97 before this Court and further directions were given that as and when decision is taken in the above writ petition, proposal to be submitted forthwith. Subsequent to the orders passed in W.P. No.16967/97, proposal was forwarded for regularising the services of the petitioner, which culminated in the regularisation of the petitioner and

declaration of probation vide order dated 6.11.02 w.e.f 30.9.01. It is therefore the submission of the respondent that the delay had occasioned on account of the pendency of the petition and, therefore, it is not on their fault. Further, immediately on orders being passed in the writ petition, the proposal has not been forwarded, but once the same was received by the respondents, it was immediately processed and the probation was declared.

5. It is the further averment of the petitioner that promotion, as sought for by the petitioner on his probation being declared, is not automatic as the mere declaration of probation would not be sufficient to make the petitioner be eligible for promotion with effect from 1.2.02. It is the case of the respondents that the appointment of the petitioner as Secondary Grade Assistant is not as per the rules, but relaxation was granted, as the petitioner was not having the requisite qualification and, therefore, he cannot equate himself with such of those candidates, who have been appointed as per rules, viz., the 4th respondent. It is the further averment of the respondents that the 4th respondent was appointed in terms of the rules and he was possessed of all the qualifications as prescribed under the relevant rules and, therefore, his probation was declared on his completion of the probation term. Therefore, equating the petitioner with the 4th respondent is impermissible as they are two unequals and cannot be equated for the purpose of declaration of probation as also promotion. It is the further averment of the respondents that even at the time of appointment, the petitioner has given an undertaking that he will not claim incentive increments for higher educational qualifications and also preference for further promotion. Submitting the undertaking for getting the appointment and, thereafter, coming before this Court and saying that he has not been granted the promotion on par with equally situated person, is wholly against the facts of the present case. Once the petitioner has submitted his undertaking, he is bound by the undertaking and he cannot turn around and claim a right, which was not vested in him. Therefore, it is prayed that this Court may dismiss the writ petition as devoid of merits.

6. This Court bestowed its undivided attention to the contentions put forth in the grounds as raised by the petitioner as also the contentions advanced by the respondents in their counter and also adverted to the materials placed before this Court.

7. A perusal of the records reveal that the petitioner is possessed with B.Ed. Qualification, which is not the prescription as per rules for appointment as Secondary Grade Teacher. The qualification prescribed in the rules for

appointment of Secondary Grade Teacher is a Diploma in Teacher Education. In furtherance to G.O. Ms. No.423, Education dated 3.10.97, on the Government relaxing the rules providing for B.Ed., qualification to be considered for appointment, the petitioner was selected and appointed. A perusal of the said Government Order, the basis on which the petitioner was appointed, categorically reveals that persons appointed on the basis of the above Government Order, which has relaxed the rules, shall not claim incentive increments for higher educational qualifications and also not claim any preference for further promotion. The petitioner, having given an undertaking and obtained his appointment, cannot turn around and claim that he is entitled to preference in further promotion over the candidates, who were appointed after following the prescribed rules and who are in possession of the requisite qualification.

8. It is no where the case of the petitioner that the 4th respondent, who, according to the petitioner, is junior to him, is equivalently placed as the petitioner. May be the 4th respondent was appointed sometime later to the petitioner, but the said appointment of the 4th respondent is as per rules, as contended by the respondents, which is not refuted by the petitioner. Therefore, equating the petitioner with the 4th respondent, who are two unequals, cannot be countenanced. Once the petitioner has accepted the conditions laid by the Government in G.O. Ms. No.423 and given an undertaking to the effect that he will not claim incentive increments for higher educational qualifications and also not claim any preference for further promotion, it is not open to the petitioner to come before this Court and plead that he is entitled to be considered equally with the 4th respondent and by virtue of his appointment earlier in point of time, he should have a march over and above the 4th respondent. If such a plea, as raised by the petitioner, is acceded to, it will not only defeat the very purpose of G.O. Ms. No.423, but will also be in detriment to the person, viz., the 4th respondent herein, who is an appointee, through the regular process and in terms of the rules. Further, acceptance of such a plea would also make two unequals as equals, and would also pave the way for multiplicity of litigations by persons, who are equally placed like the petitioners.

9. Further, it is the categorical stand of the respondents that the petitioner is not a qualified candidate for getting appointment as a Secondary Grade Teacher as per the service rules of the Tamil Nadu Educational Subordinate Service and he is only qualified for getting appointment to the post of B.T. Assistant. The said stand of the respondents is not countered by the petitioner by placing any material, which disproves the said contention. The counter of the respondents further reveal that pursuant to the representation of the petitioner seeking

for promotion with effect from 1.2.02 over and above the 4th respondent, proper reply was given to the petitioner citing the reasons stated supra. In such a back drop, once the respondents have negated the contention of the petitioner for promotion over and above the 4th respondent, it is not open to the petitioner to file the present writ petition for a mandamus to fix the seniority of the petitioner in the post of B.T. Assistant, without challenging the rejection order passed by the respondents. In the considered view of this Court, the present petition filed by the petitioner is wholly devoid of merits and no relief could be granted to the petitioner.

10. For the reasons aforesaid, this writ petition fails and, accordingly, the same is dismissed. Consequently, connected miscellaneous petition is also dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Director of School Education,
(Joint Director Personnel),
Directorate of School Education,
Chennai - 600 006.
2. The Chief Educational Officer,
Dharmapuri.
3. The Headmaster,
Government Higher Secondary School,
Menasi (P.O.),
Dharmapuri District - 636 904.

+1cc to the Government Pleader in SR.NO..30253

WEB COPY

W.P. NO. 18615 OF 2013

MR(CO)
RV(13/10/2020)