

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2020

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.3680 of 2020
and W.M.P No.4357 of 2020

M.Alagesan

Petitioner

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 - 600 006.

3. The Chief Educational Officer.
Coimbatore District,
Coimbatore District.

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent herein in his proceedings in Na.Ka.No.3720/W.1/E1/2019 dated 16.11.2019 and to quash the same insofar as the petitioner is concerned and to direct the 2nd respondent to fix the seniority of the petitioner taking into account of his original date appointment of 09.07.2004 for the purpose of promotion to the post of Head Master and Headmistresses of Higher Secondary Schools under the control of the respondents.

For Petitioner : Mr.G.Chandrasekar

For Respondents: Mrs.V.Annalakshmi
Government Advocate

O R D E R

By consent of both sides, this writ petition is taken up for final disposal.

2.This writ petition has been filed challenging the proceedings of the 2nd respondent dated 16.11.2019 and for a consequential direction to the 2nd respondent to fix the seniority of the petitioner by taking into consideration his original date of appointment for the purpose of promotion to the post of Headmaster.

3.The case of the petitioner is that he was working as a Post Graduate Assistant (Mathematics). The 2nd respondent prepared State wide seniority list from the eligible candidates for consideration to the post of Headmaster and Headmistresses of Higher Secondary Schools. The grievance of the petitioner is that his name did not find place in the seniority list, since his seniority was reckoned from the date of confirmation and not from the date of his actual appointment. Therefore, the petitioner has approached this Court questioning the seniority list.

4.Heard Mr.G.Chandrasekar, learned counsel appearing on behalf of the petitioner and Mrs.V.Annalakshmi, learned Government Advocate appearing on behalf of the respondents.

5.The issue that is involved in the present writ petition is covered by the earlier judgment of this Court in W.P.(MD)No.1055 of 2020 dated 21.01.2020. The relevant portions in the judgment are extracted hereunder:

3.The issue as to whether the petitioner's seniority could be taken from the date of his original appointment in the year 2004 for the purpose of promotion to the post of Headmaster/Headmistresses of the Higher Secondary School had already come up for consideration before this Court in W.P.(MD) No.21316 & 21317 of 2015, wherein, this Court had held that the services of the petitioners therein were entitled to be taken into account with effect from the date of their original appointments of Post Graduate Assistant. Following the said order, this Court in W.P.(MD) No.21467 & 24640 of 2019 on 09.12.2019 had also passed the similar orders. Relevant paragraphs of the order dated 09.12.2019 read as follows:

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 noninclusion 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 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 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.

4.The aforesaid extract is self explanatory. In view of the stand taken by this Court, confirming that the petitioners therein are entitled for promotion to the post of Headmaster / Headmistresses, by taking into account their original date of appointments, this Court is not in a position to take any contrary view. Following the said decision, the petitioners herein will also be entitled to succeed.

5.In the light of the above observations, the impugned order dated 16.11.2019 passed by the second respondent in Na.Ka.No.3720/W. 1/E1/2019 is hereby quashed. Consequently, the second respondent is directed to fix the seniority of the petitioner by taking into account of his original date of appointment in the year 2004 for the purpose of promotion to the post of Headmaster/Headmistresses in the Higher Secondary Schools. Such an exercise shall be completed atleast within a period of six weeks from the date of receipt of a copy of this order.

6.In view of the above, the impugned proceedings of the 2nd respondent dated 16.11.2019 is hereby interfered insofar as the petitioner is concerned and the 2nd respondent is directed to fix the seniority of the petitioner by taking into account his original date of appointment viz., 09.07.2004 for the purpose of promotion to the post of Headmaster in the Higher Secondary School. Appropriate orders shall be passed, within a period of four weeks from the date of receipt of copy of this order.

7.In the result, this writ petition stands allowed with the above directions. Consequently, connected miscellaneous petition is closed. No Costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary,
School Education Department,
Fort St. George,
Chennai - 600 009.

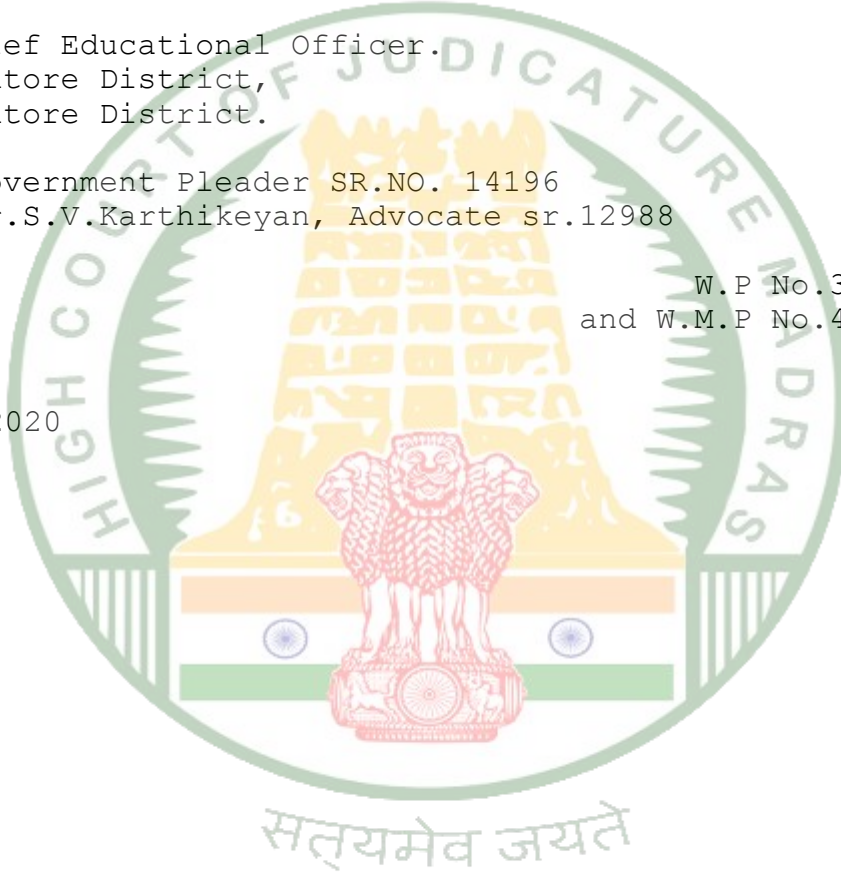
2. The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.

3. The Chief Educational Officer.
Coimbatore District,
Coimbatore District.

+lcc to Government Pleader SR.NO. 14196
+lcc to Mr.S.V.Karthikeyan, Advocate sr.12988

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