

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2020

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

WP NO.2634 OF 2012

A.Soundararajan (Deceased)

2.S.Caroline

3.S.Rexida Banumathi

4.S.Prakash Raj (Minor)

5.Ananda Raj

(Petitioners 3 and 4 are rep. by their mother and natural Guardianship S.Caroline)

(P2 to P5 are substituted as LRs' of deceased P1-A.Soundararajan as per order dated 26.07.2017 in WMP No. 20689 of 2017 in WP No.2634/2012)

...Petitioners

Vs.

1. The Government of Tamil Nadu
Rep. by its Secretary
Education Department
Secretariat, Chennai - 600 009.

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

3. The District Educational Officer
District Educational Office
Tiruchirapalli - 8.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India with a prayer to call for the records on the file of the 2nd respondent in Proceedings O.Mu.No.16887/A5/E2/2010 dated -03-2010 and quash the same and direct the respondents to re-designate post of the petitioner as Office Assistant from the post of Games Marker in any of the Government School in the light of the Government Letter (Nilai) No.235, dated 23.11.2006 with all monetary and service benefits by issuing a Writ of Certiorarified Mandamus.

For Petitioners	:	Mr.M.Vijayakumar
For Respondents	:	Mr.P.Raja
		Government Advocate

O R D E R

Challenging the order of rejection passed by the second respondent dated Nil March 2010 for re-designation on the basis of Games Marker into one of Office Assistant, in the light of the Government Order in G.O.Ms.No.235 dated 23.11.2006, the petitioner has approached this Court.

2. The petitioner was initially appointed as Games Marker in St.Philomena's Girls Higher Secondary School, Tiruchirapalli. The said school, vide its letter No.400/97-98 dated 23.03.1998 has forwarded the appointment of the petitioner as Games Marker for approval. In the meanwhile, vide Na.Ka.No.2584/A4/98 dated 27.04.1998, the Chief Educational Officer, Tiruchirapalli, has directed the School viz., St.Philomena's Girls Higher Secondary School, Tiruchirapalli, to send the particulars with regard to the post of temporary Games Marker for approval. On 28.07.1998, the Chief Educational Officer, Tiruchirapalli after considering the representation of the school, regularised the appointment of the petitioner with effect from 01.02.1998 in the time scale of pay of Rs.2550 - 55 - 2660 - 60 - 3200 @ Rs.2550 plus allowances. Thereafter, the Government in its letter Ms.No.235 dated 23.11.2006 had taken a decision to re-designate the post of Games Marker as Office Assistant as per G.O.Ms.No.527, School Education Department, dated 30.12.1997. In the said letter, it was stated that while collecting the details of Games Markers for re-designation, 219 vacancies of Games Markers were left out. Therefore, it was decided that they can be accommodated as Office Assistants lying vacant in Government Schools, where the vacancy available are over 500. Therefore, by Government Letter Ms.No.235 dated 23.11.2006, a direction was issued to appoint the persons in the 524 vacancies available in Government Schools. Accordingly, vide Proceedings of the Chief Educational Officer, Tiruchirapalli, in Na.Ka.No.1844/A4/2007, dated 08.03.2007, several persons, similarly placed to the writ petitioner, were appointed. The employer of the petitioner, namely, St.Philomena's Girls Higher Secondary School, Tiruchirapalli, Tiruchirapalli addressed the third respondent in D.No.126/2007-2008 dated 24.08.2007 to post the petitioner also in anyone of the Government Schools as Office Assistant. This representation was followed by reminder dated 04.10.2007. The petitioner also made a representation dated 14.12.2008.

3. Since no action was taken, the petitioner filed a writ petition in W.P.No.3618 of 2009 and this Court, by its order dated 09.03.2009, directed the respondents to pass orders on the representation submitted. On 15.09.2009, the second respondent vide Proceedings in Na.Ka.No.22832/E2/A5/09 dated 15.09.2009 rejected the request of the petitioner for re-

designation. The reason stated therein was that the appointments made to the vacant posts arising out of persons retiring without the permission of the Government as per Government Letter No.13900/E1/2007-1 dated 21.05.2007 are not entitled for re-designation. This order of the second respondent was communicated to the petitioner during March 2010 which is under challenge in this writ petition.

4. From a perusal of the materials placed before this Court, it is seen that the appointment of the petitioner was regularised by the respondents and time scale of pay was also fixed. For all purposes, he was treated as a regular employee. The Government has taken a decision to re-designate all the posts of Games Markers as Office Assistants. The fact that one Karupiah, the predecessor of the petitioner had submitted his resignation on 25.01.1998 and after considering the same, the Chief Educational Officer, Tiruchirapalli, in his Proceedings Na.Ka.No.2584/A4/98 dated 23.09.1998 has regularised the services of the petitioner. The resignation letter of the said Karupiah was also referred at Sl.No.4 in the said proceedings. In that event, it cannot be said that the resignation was not brought to the knowledge and the predecessor of the petitioner retired from service without permission from the Government. Once the resignation is forwarded to the authorities, it is for the authorities to take a decision either to accept or reject it. Once it is accepted, the respondents cannot go back on their statement that permission was not obtained before resignation. Secondly, the petitioner was working in the post of Games Marker. He was given regular time scale of pay with effect from 01.02.1998. There were more than 529 posts of Office Assistants lying vacant even in Government Schools. The respondents have taken repeated efforts to find out the missing names to accommodate them in the vacant posts. This process was continuing from 1998, 2000 and thereafter also. At the relevant point of time, the petitioner was very well available to be accommodated as Office Assistant. Therefore, not re-designating the post and appointing the petitioner to the post of Office Assistant is not justified. The impugned order stating that prior permission was not obtained before appointing the petitioner also falsified in view of the letter of the Chief Educational Officer, dated 28.07.1998. In such circumstances, the impugned order does not stand to any scrutiny of law and is liable to be set aside and accordingly, stands set aside.

5. It is submitted that in the meanwhile, the petitioner had died on 27.11.2012 and his legal-heirs are substituted in his place. Since the original petitioner is entitled for re-designation, as per Government Order in G.O.Ms.No.235 dated 23.11.2006 and Government Letter No.39584/N2/97 dated 14.08.2000, he is entitled to all monetary

benefits and the same shall be paid to the legal-heirs viz., petitioners herein within a period of six months from the date of receipt of a copy of this order.

6. The writ petition is ordered in the above terms. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary
Government of Tamil Nadu
Education Department
Secretariat, Chennai - 600 009.

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

3. The District Educational Officer
District Educational Office
Tiruchirapalli - 8.

+1cc to the Government Pleader in SR.NO..15673

+1cc to Mr.M.Vijayakumar, Advocate in SR.NO..15061

WP NO.2634 OF 2012

KK(CO)
RV(28/10/2020)

सत्यमेव जयते

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