

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 29.07.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

WP.No.28515 of 2013
and
M.P.No.1 of 2013

P. Kumudam

.. Petitioner

- Vs -

1.The Secretary to Government
Education Department,
Secretariat, Fort Saint George,
Chennai 600009.

2.The Directorate of School Education,
College Road,
Chennai 600006

3.The Chief Educational Officer,
Cuddalore District.

4.The Headmaster,
The Government Boys Higher Secondary School
Vriddhachalam, Cuddalore District

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorarified Mandamus, calling for the records on the file of the second respondent in connection with the order passed by him in proceedings No. Na.Ka.No.972000/W1/E1 2010 dated 25.01.2012 and 21.05.2012 and quash the same so far as to the extent of to include the name of the petitioner for the panel of January 2012 and direct the respondents to give notional promotion to the petitioner for the post of Head mistress by including her name in the panel for the year 2011 issued by the second respondent in proceedings No. Na.Ka.No.972000/W1/E1 2010 dated.11.08.2011 as per G.O.Ms.No.1120 dated 30.10.1984 and G.O.(ID)No.30, School Education (Higher Secondary) dated 24.01.2012 and grant all benefits.

For Petitioner : M/S.J.Shanmugasundarababu

For Respondents: Mr.S.Sureshkumar, GA

ORDER

The present writ petition has been filed to call for the records on the file of the second respondent in connection with the order passed by him in proceedings No. Na.Ka.No.972000/W1/E1 2010 dated 25.01.2012 and 21.05.2012 and quash the same so far as to the extent of to include the name of the petitioner for the panel of January 2012 and direct the respondents to give notional promotion to the petitioner for the post of Head mistress by including her name in the panel for the year 2011 issued by the second respondent in proceedings No. Na.Ka.No.972000/W1/E1 2010 dated.11.08.2011 as per G.O.Ms.No.1120 dated 30.10.1984 and G.O.(ID)No.30, School Education (Higher Secondary) dated 24.01.2012 and grant all benefits.

2.It is the case of the petitioner is that the petitioner has completed M.A. in Tamil in the year 1978 and after completed B.Ed (Tamil) in the year 1979 and thereafter the petitioner was appointed as PG Assistant Tamil in the Management School namely P.A.C.R. Ammani Ammal Higher Secondary School, Rajapalayam in the year 1979 and she was working there till 01.02.1985. It is the further case of the petitioner is that she was appointed as PG Assistant Tamil through Employment Exchange, by an Order dated 09.01.1985, accordingly the petitioner joined the Government Girls Higher Secondary School, Kothamangalam, Pudukkottai District on 04.02.1985. Subsequently she was transferred to Government Girls Higher Secondary School, Thiruvallur District in the year 1985 and worked there as PG Assistant till the month of August-1989 and thereafter her services were regularized by the second respondent by an order dated 24.02.1989 with effect from the date of initial appointment i.e. 04.02.1985. After regularization of her services, again she was transferred to Government Girls Higher Secondary School, Vriddhachalam and joined the above said school on 05.08.1989 and in that school the petitioner served as PG Assistant Tamil till 13.08.2002. Subsequently she was transferred to Government Boys Higher Secondary School, Vriddhachalam and worked as PG Assistant in that school.

2.1. It is the further case of the petitioner that she is the senior most candidate eligible for promotion as Headmistress. The Government had issued G.O.Ms.No.1120, dated 30.10.1984, prescribing that the PG Assistants, who are feeder category would be eligible for promotion subject to the condition that they had passed two departmental test, viz., Executive Officer Test and the District Office Manual Test. The said G.O. further prescribes that such of the candidate who have attained 55 years of age, if they have not passed the departmental test, they should have atleast appeared 5 times before the cut off date. According to the petitioner she has

passed the Executive Officer Test in the month of December-2010, however she was not able to pass the other test as on cut off date for the panel to the promotion of Headmistress, in the year 2011, though she appeared for more than five times as on cut off date, i.e., May 2004, May- 2007, May-2009, May-2010 and December-2010 and subsequently passed in the another test in the month of May-2011. In such circumstances, the petitioner's name was not included in the above said promotion panel, which deprived her of her promotion in the year 2011. In order to get the the benefit of G.O.Ms.No.1120, dated 3.10.1984, the petitioner made a representation to the Government, but no order has been passed. Hence, the petitioner was constrained to file a writ petition before this Court and this Court by its order dated 22.12.2011, directed the respondents to consider the petitioner's representation dated 12.12.2011 in accordance with law.

2.2. In compliance of the above said order the first respondent, by an order dated 24.01.2012 in G.O.No.30, had given relaxation to the petitioner from passing the Departmental test for the promotion to the post of Headmistress. In the meanwhile the petitioner attained the age of superannuation on 31.01.2012, however her services were extended upto 31.05.2012. The above Government Order was not implemented retrospectively from the year 2011 for the post of Headmistress. Since the petitioner was not granted promotion retrospectively from 2011, inspite of the above said Government Order, the present petition has been filed.

3. Learned counsel for the petitioner submitted that relaxation has been granted by the Government in view of G.O.Ms.No.1120, thereby, the petitioner became fully fit for promotion as Headmistress, however, the promotion having not been given to her inspite of G.O. Ms. No.30, issued in favour of the petitioner, the present petition has been filed for a direction to the respondents to effect the notional promotion to the petitioner.

4 Learned Government Advocate appearing for the respondents submitted that the said G.O. was passed in the year 2012, at the time of passing the relaxation G.O. there was no vacancy available to accommodate the petitioner in the said post and the petitioner retired on 31.1.2012. Though she had superannuated on 31.01.2012, however, her services were only extended till the end of the academic year in the interests of the students and, therefore, it is not open to the petitioner to claim promotion for the extended period of service. Further the Government Order could only operate prospectively and cannot operate retrospectively and the petitioner is entitled to promotion only on and from the date of issuance of the Government Order. In

such circumstances, the petition is devoid of merits and liable to be dismissed.

5.This Court heard the submissions advanced by the learned counsel appearing on either side and also perused the materials available on record.

6. The facts are not in dispute so also the petitioner superannuating on 31.01.2012. It is also evident from the records that as in the year 2011, the petitioner had not passed the mandatory departmental tests, which are a necessity for being considered for promotion as Headmistress. Only subsequently, on the representation of the petitioner quoting G.O. Ms. No.1120, the Government passed G.O. Ms. No.30 dated 26.01.2012 granting relaxation to the petitioner. Just a week from the issuance of the Government Order, the petitioner superannuated from service, only to have her service extended in the interests of the students till the end of the academic year. Thereby, the petitioner demitted office on 31.05.2012.

7.It is not the case of the petitioner that on the date of issuance of the Government Order, i.e., 26.01.2012, there existed a vacancy of Headmistress, in which vacancy the petitioner could be considered and promoted in view of G.O. Ms. No.30. It is not in dispute that as on the said date, no vacancy was in existence, which would entail promotion of the petitioner. In the absence of any vacancy on the crucial date, the petitioner having superannuated on 31.01.2012, no promotion could be granted to the petitioner. Further, it is to be pointed out that any Government Order would only have a prospective operation and it cannot be applied retrospectively, more so in service matters, as settled matters would get unsettled if such a view is taken by the Courts. Therefore, prospective operation of the Government Order from 26.01.2012 would only be in the interest of one and all, though in the present case, the said Government Order was of no consequence to the petitioner, in the absence of any vacancy which would enure to the benefit of the petitioner. Therefore, the prayer sought for by the petitioner cannot be acceded to.

8.For the reasons aforesaid, this writ petition is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

9.Before parting with the case, this Court is of the considered view that G.O. Ms. No.1120, which grants relaxation for PG Assistants, who have not completed Departmental Tests, as mandated, to be promoted on fulfilling certain conditions. In this backdrop, it is to be pointed out that persons like the petitioner, who are in the imparting education to the younger

generation are supposed to be the role model for the students. If the teaching fraternity are not able to clear the departmental tests, this Court is at a loss to understand as to the level of such of those teachers, who are at their prime and imparting education to high and higher secondary school students. G.O. Ms. No.1120 prescribes that persons, who are not able to clear the departmental tests in five attempts would be entitled for relaxation. If a person is not able to clear the tests in five attempts, this Court can only sympathize with those students, who are being trained by such of those teachers. It is high time the Government introspect and take a decision of amending/recalling the said Government Order/the detrimental clauses, as pointed above in the Government Order which alone would pave the way for teachers of standard imparting education to the younger generations, who are the future pillars of our country. It is to be pointed out here that the quality of the students reflects in the quality of the teachers and the teachers should act as the ladder for the students to climb up in life. However, granting such relaxation to the teachers only reveals the weakness in the ladder, which would be of no use to the students, as climbing up on such a ladder would only bring down the students rather than rising them up. The Government, in its wisdom, would think wise and take action on the above said G.O. Ms. No.1120, which otherwise left as it is would not only lead to sub-standard teaching staff, thereby jeopardizing the life of the generations to come.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

jrs

सत्यमेव जयते

To

1. The Secretary to Government
Education Department,
Secretariat, Fort Saint George,
Chennai 600009.
2. The Directorate of School Education,
College Road,
Chennai 600006

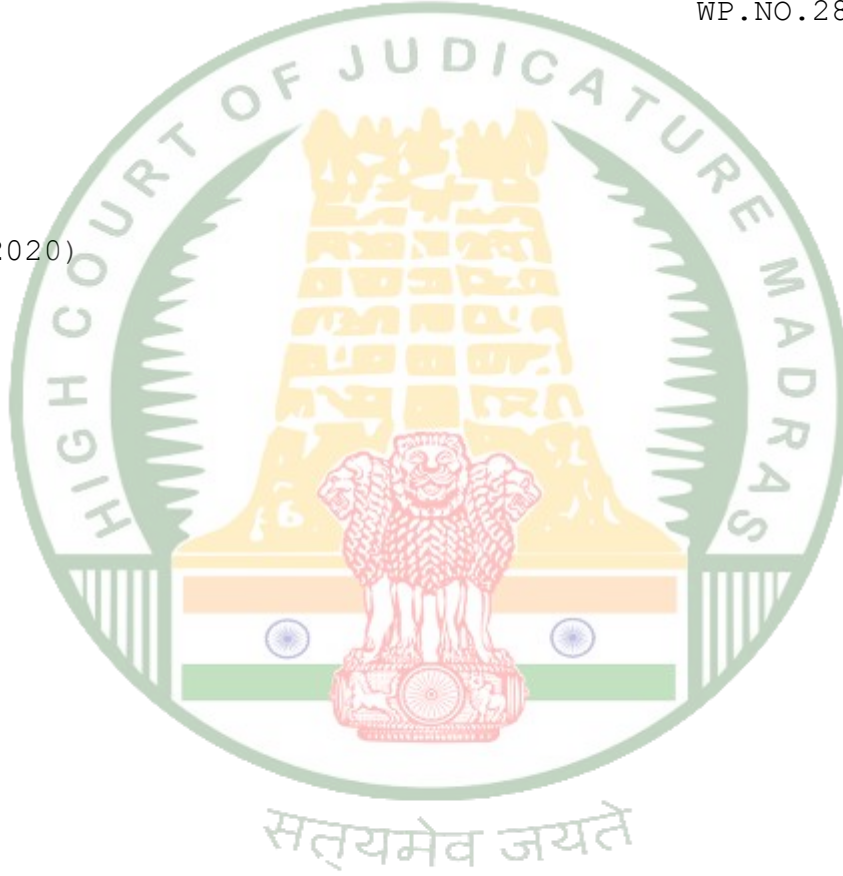
3. The Chief Educational Officer,
Cuddalore District.

4. The Headmaster,
The Government Boys Higher Secondary School
Vriddhachalam, Cuddalore District

+1cc to Government Pleader, Sr.No.25775

WP.NO.28515 of 2013

SKS (CO)
GS (28/08/2020)



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