

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.A.No.4187 of 2019
and
C.M.P.Nos. 5320, 6097 & 26048 of 2019

(Through Video Conferencing)

H.Gopinathan ... Appellant

Vs.

1.The State of Tamil Nadu,
Rep. by its Principal Department of
School Education,
Fort St. George, Chennai - 600 009.

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

3.Chief Educational Officer,
Vellore District,
Vellore - 632 009. ... Respondents

Writ Appeal filed under Clause 15 of Letters Patent Act,
to set aside the order passed by this Court in W.P.No.32807 of
2019 dated 22.11.2019.

Prayer in W.P.No.32807 of 2019 : Calling for the records in
connection with proceedings of the 2nd respondent in Na. Ka.
No. 3720/ W.1/ E1/ 2019 dated 16.11.2019 and quash the same
insofar as it does not include the name of the petitioner in
the list of seniority cum eligibility prepared by him for the
purpose of promotion as Head Master in Government Higher
Secondary Schools against the additional vacancies in the
year 2019 and direct the respondents to consider the
petitioner for promotion by counseling as Head Master in
Government Higher Secondary Schools against the additional
vacancies in the year 2019 and in future

For Appellant : Mr.P.Ulaganathan

For Respondents: Mr.A.Raja Perumal, AGP.

J U D G M E N T

(Judgment of the Court was delivered by C.SARAVANAN, J.)

The appellant was the writ petitioner and has filed the present Writ Appeal against the impugned order dated 22.11.2019 of the learned Single Judge in W.P.No.32807 of 2019.

2. By the impugned order, the learned Single Judge has directed the respondents to consider the representation dated 18.11.2019 of the appellant and to dispose the same in accordance with law on merits within a period of six weeks from the date of receipt of the aforesaid order. While passing the impugned order, the learned Single Judge has directed the respondents to bear in mind the order dated 12.06.2017 passed in W.P.(MD).Nos.21316 and 21317 of 2015.

3. The above writ petition was filed by the appellant for the following relief:-

To call for the records pertaining to the proceedings of the 2nd respondent in Na.Ka.No.3720/W.1/E1/2019 dated 16.11.2019 and quash the same insofar as it does not include the name of the petitioner in the list of seniority cum eligibility prepared by him for the purpose of promotion as Head Master in Government Higher Secondary Schools, against the additional vacancies in the year 2019.

4. The case of the appellant is that his name was wrongly left out from the list of candidates for promotion to the post of the Head Master in the Government High Secondary Schools from the additional vacancies announced for the year 2019.

5. It is submitted that the learned Single Judge committed an error in directing the respondents to pass a fresh order while in the case of persons who were similarly placed like the appellant, this Court has granted relief in W.P.No.30740 2019 vide order dated 27.11.2019. It is submitted that a similar order was passed by the Madurai Bench of this High Court in W.P.(MD).No.1055 of 2020 vide order dated 21.01.2020.

6. It is submitted that the learned Single Judge ought to have passed the same order in the case of the appellant as in the case of the petitioner(s) in W.P.No.30740 2019 and in W.P.(MD).No.1055 of 2020 which followed an earlier order dated 12.06.2017 of the Madurai Bench of this Court in W.P.(MD).Nos.21316 and 21317 of 2015.

7. It is submitted that the decision of the Madurai Bench of this Court in W.P.(MD).Nos.21316 and 21317 of 2015 was also followed in W.P(MD).Nos.21457 and 24640 of 2019 vide order dated 09.12.2019.

8. It is submitted by an order dated 13.01.2020 in W.A.No.3904 of 2019, the First Bench of the this Court has re-affirmed the position that for the purpose of promotion, it is the initial date appointment that is necessary and not the date of regularization to the post. In the said Writ Appeal, orders passed by the learned Single Judge under similar circumstances in W.P.No.4991 of 2015 vide order dated 30.07.2019 was under challenge.

9. Meanwhile, the 2nd respondent has passed a consequential order dated 14.02.2020 during the pendency of the present Writ Appeal pursuant to the direction of the learned Single Judge and has thereby denied the benefit to the appellant.

10. We have considered the submission of the learned counsel for the appellant and the learned Additional Government Pleader for the respondents.

11. The appellant was selected and appointed as a Junior Post Graduate Teacher (Chemistry) vide proceeding dated 25.06.2004 and 14.07.2004 of the Joint Director (HS). Though the appellant was appointed on a consolidated pay, later his services were regularized to the post of Postgraduate Teacher from 01.06.2006.

12. However, the name of the appellant was not mentioned in the seniority list for promotion circulated by the 2nd respondent on 11.09.2019 vide proceedings dated 11.11.2019 in Na.Ka.No. 3720/W.1/E1/2019.

13. Therefore, the appellant made a representation for inclusion of his name in the promotion list. Later vide impugned proceeding dated 16.11.2019, the 2nd respondent circulated a seniority Cum eligibility list of candidates for promotion to the post of Headmasters. However, the name of the appellant was not included for promotion in the impugned proceeding.

14. It is the contention of the appellant that many of his juniors' names have been included in the aforesaid promotion list while his name was left out. The appellant therefore approached this Court for the above relief. Like the appellant, several others also approached this Court, i.e., before the Principal Seat and Madurai Bench.

15. It is submitted that the learned Single Judge has erred in directing the respondents to consider the appellant's

representation instead directing the respondents to include the name of the appellant in list.

16. It is noticed that the learned Single Judge has granted relief to the petitioner in W.P.No.30740 of 2019 vide order dated 27.11.2019 to persons who are similar to the appellant. Similarly, the Madurai Bench of this Court vide its order dated 21.01.2020 in W.P.(MD).No.1055 of 2020 granted similar relief to the petitioner therein.

17. The Hon'ble First Bench of this Court also had an occasion to consider this issue. In its order dated 13.01.2020 in W.A.No.3904 of 2019 has considered the issue and has answered the issue as follows:-

4.The learned counsel for the appellants/State submits that the promotion can only be from the date of regularisation and not from any date anterior to the date of regularisation. However, the learned counsel for the respondent/writ petitioners points out the specific admission that has been made by the appellant/State in para 15 of the grounds of appeal which reads as under:-

15. The learned judge justice ought to have considered that with regard to promotion of the respondents herein, among those Secondary Grade Teachers /B.T Assistants / P.G.Teachers brought into regular time scale with effect from 01.06.2006 vide G.O.Ms. No.99, School Education Department dated 27.06.2006, the date of initial appointments under contract basis is taken into account already and injustice is caused to them.

5.In view of the statement made in para 15 of the grounds of appeal read with G.O.Ms.No.120, dated 18.07.2006, it is clear that the Government itself had agreed to grant the benefits of seniority from the date of initial appointment and all monetary benefits from the date of regularisation, which is from 01.06.2006.

6.The learned Single Judge has allowed the writ petition, directing the appellants herein to regularise the services of the respondents/writ petitioners from the date of entry into service for the purpose of seniority and extend all monetary benefits following thereof. The learned counsel for the respondents/writ petitioners concedes that the portion of the order which directs payment of monetary benefits from the date of appointment may be deleted. The learned counsel agrees that the seniority of the writ

petitioners be reckoned from the date of initial appointment and monetary benefits be given from the date of regularisation, i.e., from 01.06.2006.

In view of the submissions made, the Writ Appeal is allowed in part to the extent mentioned above. No costs. Consequently, C.M.P.No.24538 of 2019 is closed.

18. Since the issue is no longer res integra in the light of the above order of the Hon'ble First Bench of this Court, we are therefore inclined to allow this Writ Appeal. Considering the prejudice that would be caused the appellant by relegating him to challenge the consequential order dated 14.02.2020 by the 2nd respondent passed pursuant to the direction of the learned Single Judge in the impugned order dated 22.11.2019, we are inclined to hold that the said order is of no consequence in the light of this Judgment. Thus, the consequential order passed by the respondents on 14.02.2020 pursuant to the impugned order dated 22.11.2019 of the learned Single Judge shall have no effect.

19. The respondents are directed to include the name of the appellant in the additional vacancy for promotion for the year 2019 for the purpose of seniority.

20. This Writ Appeal is therefore allowed in terms of the order dated 13.01.2020 passed by the Hon'ble First Bench of this Court in W.A.No.3904 of 2019. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS)

//True copy//

Sub Assistant Registrar

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To:-

1.The Principal Department of School Education,
The State of Tamil Nadu,
Fort St. George, Chennai - 600 009.

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

3.Chief Educational Officer,
Vellore District,
Vellore - 632 009.

+1cc to Mr.Mr.P.Ulaganathan, Advocate SR.No.25253

+1cc to Government Pleader, High Court, Madras SR.No.25175

W.A.No.4187 of 2019 and
C.M.P.Nos. 5320, 6097 & 26048 of 2019

AJS (CO)
GMY (26/08/2020)



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