



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.03.2020

CORAM:

WEB COPY

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.8739 of 2014
and
M.P(MD)Nos.1 & 2 of 2014

K.Muthu Irulandi

... Petitioner

vs.

1.The Director,
Backward Class Welfare Department,
Chepauk, Chennai-05.

2.The District Backward Class
and Minorities Welfare Officer,
Ramanathapuram,
Ramanathapuram District.

3.Mr.P.M.Palani

4.Mr.Thiyagarajan

5.Mr.Paramaku

6.Mr.Shanmuganathan

... Respondents

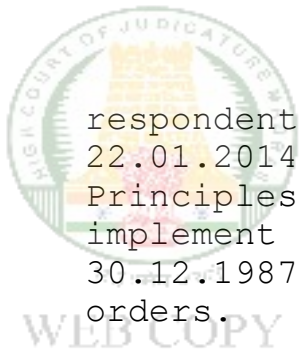
PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the second respondent in his proceedings in Na.Ka.LA/6841/2013 dated 22.01.2014 and quash the same as illegal and violation of Principles of law and further direct the second respondent to implement the G.O.Ms.No.2671, Social Welfare Department, dated 30.12.1987 with letter and spirit and for other consequential orders.

For Petitioner : Mr.K.Kumaravel

For R1 & R2 : Mr.J.Gunaseelan Muthiah
Additional Government Pleader

ORDER

This Writ Petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the second



respondent in his proceedings in Na.Ka.LA/6841/2013, dated 22.01.2014 and quash the same as illegal and violation of Principles of law and further direct the second respondent to implement the G.O.Ms.No.2671, Social Welfare Department, dated 30.12.1987 with letter and spirit and for other consequential orders.

2. The case of the petitioner is that he completed SSLC in the year March 1986, then he completed 12th Standard in the year March 1988 and he completed B.A., degree in the year 1991 and thereafter, he completed B.Ed., degree in the year 1995. Thereafter, he registered his name in the District Employment Exchange, Ramanathapuram on 19.12.1996.

3. He further submitted that the Social Welfare Department is running Hostels for the Welfare of Backward Class and De-notified Community Students studying in the Schools and Colleges. Separate Hostels are available for boys and girls. The post of District Backward Class and Minorities Welfare Officer will fall under Grade A and the post of Tutor-cum-Warden will fall under B Grade, the post of Warden fall under Grade C and posts of Servant-cum-Watchman, Cook, Office Assistant will fall under Grade D. On 30.12.1987, the Government has passed an order in G.O.Ms.No.2671. In the said G.O.Ms.No.2671 it was specifically stated that the posts of Tutor-cum-Warden shall be filled following the ratio 1:2 ie., one by way of direct recruitment and another two by way of transfer from other service or by promotion from lower categories. As per the said Government Order, the Government has pointed out that the ratio shall be adopted for each academic year and shall not be carried over to the succeeding year.

4. On 03.12.2013 totally there are three vacancies in the post of Tutor-cum-Warden in the Ramanathapuram District and it is the duty of the District Backward class and Minorities Welfare Officer, Ramanathapuram District/second respondent to follow the G.O.Ms.No.2671 and appoint one person by direct recruitment and remaining two posts by way of transfer or by way of promotion from lower categories. Instead, the second respondent passed an order and appointed the respondents 3 to 7 herein as a Tutor-cum-Warden. It is stated that the respondents 3 to 7 are already working as a warden in the Government Hostels run by the Social Welfare Department. The District Backward Class and Minorities Welfare Officer, Ramanathapuram District has not approached the District Employment Exchange to sponsor the name to appoint Tutor-cum-Warden by direct recruitment. The petitioner is having minimum eligibility to appoint as a Tutor-cum-Warden i.e., B.A., B.Ed., His name found place in the top of the Employment Exchange list. If the second respondent approached the District Employment Exchange, there is every possibility of Employment Exchange to

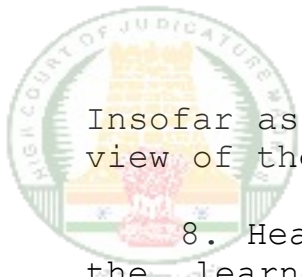


sponsor his name for the vacancy. Since the second respondent has not followed the Government Order, he was not in a position to get an opportunity.

5. He further submitted that the right of employment is a fundamental right guaranteed under Article 16 of the Constitution of India. Due to wrong procedure adopted by the second respondent, the petitioner did not able to participate in the selection process and hence, he prayed for quashing the proceedings of the second respondent in Na.Ka.LA/6841/2013, dated 22.01.2014 and to direct the second respondent to implement the G.O.Ms.No.2671, Social Welfare Department, dated 30.12.1987.

6. The respondents filed counter denying all the averments.

7. The learned Additional Government Pleader appearing for the respondents would submit that the Social Welfare Department issued G.O.Ms.No.2671, dated 30.12.1987 for appointment to the post of Tutor-cum-Warden fixing ratio as 1:2 i.e., one candidate through direct recruitment as sponsored by the respective District Employment Office and two candidates shall be appointed by recruitment through transfer or by promoting from the lower category. The Department of Backward Classes and Minorities Department was bifurcated from Social Welfare Department long back. Since the post of Tutor-cum-Warden and Secondary Grade Warden are for serving in the Backward Classes, Most Backward Classes and De-notified Community students Hostel, it was recommended to the Government that the said post shall be appointed through Teachers Recruitment Board by the Head of the Department in the year 2012 itself and the same was persisted by the department. Hence the Government issued G.O.Ms.No.20, dated 26.09.2019, Backward, De-notified and Minorities Department stating that all the appointments to the post of Tutor-cum-Warden and Secondary Grade Warden in the Government Hostel run for the students of Backward, De-notified Communities shall be appointed through Teachers Recruitment Board. In view of G.O.Ms.No.20, dated 26.02.2019 all the appointments are made only through TRB and as such the question of violation of G.O.Ms.No.2671, dated 30.12.1987 will not arise and no appointment was made to the post of Tutor-cum-Warden through employment office since 2013. It is also made clear that the writ petitioner's grievance is that if G.O.Ms.No.2671 is followed he cannot get the job for Tutor-cum-Warden. The contention of the writ petitioner is untenable on the ground that the department did not made recruitment through Employment Office since 2013 throughout Tamil Nadu on the account of fact that there was proposal to the Government that all the appointments in the Government hostel shall be made through TRB in the welfare of the students. Further, private respondents Nos.3,5 & 6 were promoted from the post of Secondary Grade Warden.



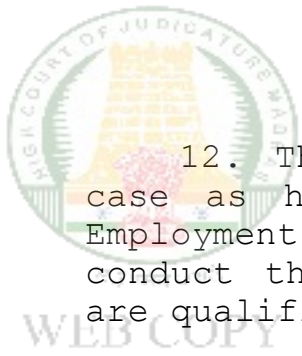
Insofar as the fourth respondent is concerned, who was promoted in view of the order passed by this Court in W.P(MD)No.816/2009.

8. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents 1 & 2 and perused the materials available on record.

9. From the materials available on record, it is seen that one P.Thyagarajan filed a writ petition in W.P(MD)No.816 of 2009 and this Court directed the respondents to consider the writ petitioner therein for promotion to the post of Tutor-cum-Warden on production of Certificate of qualifications in the future vacancies, subject to other qualifications. There is no materials produced to show that those persons has already been promoted in the year 2014. No such positive direction was given to promote the writ petitioner and this Court only passed an order to consider the petitioner request and accommodate him.

10. Further, on going through the Government Order in G.O.Ms.No.2671, dated 30.12.1987 it is clear that the said post to be filled by direct recruitment or by recruitment by transfer from other Service or by promotion from lower categories and that no ratio has been fixed towards direct recruitment and recruitment by transfer as in the case of recruitment to the Post of Tamil Pandits in the Tamil Nadu School Educational Subordinate Service, Madras, therefore requested that the ratio of 1:2, i.e., 33 1/3rd for direct recruitment and 66 2/3rd for recruitment by other methods to be fixed for appointment to the Post of Tutor-cum-Warden/Tutor-cum-Matron in the Government Hostels run by the Backward Classes Department.

11. From the above said Government Order, it is clear that the Special Rules for the Tamil Nadu Backward Classes Welfare Subordinate Service be filled up at the ratio of 1:2, i.e., 33 1/3% for direct recruitment and 66 2/3% for recruitment by transfer from other service or by promotion from Lower categories. The above orders will come into force with effect from the academic year 1988-1989. On 22.01.2014 the respondents 3,4,5 & 6 were promoted as Tutor-cum-Warden, which is challenged by the petitioner herein by way of present writ petition. They have been following the G.O.Ms.No.2671 order which states that the persons, who are already working in the said department can be appointed. According to the respondent, as per the Circular dated 28.06.2012 No.P1/6075/06 Clause 7(ii) and (x) the said posts were filled up. All these persons name found in the said list were all working earlier, they have been promoted to the post of Tutor-cum-Warden in the 2014. The petitioner herein has challenging the order stating that only 1:2 has to be followed in filling up the vacancies and not directly appointing.



12. That being the case, the petitioner cannot canvass the case as he has to be appointed by direct recruitment through Employment Exchange. The Government has already decided to conduct the common TRB examination and appoint the persons, who are qualified.

13. In view of the observations made, the writ petition fails and stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AS)

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Sub Assistant Registrar(CS)

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To

1.The Director,
Backward Class Welfare Department,
Chepauk, Chennai-05.

2.The District Backward Class
and Minorities Welfare Officer,
Ramanathapuram,
Ramanathapuram District.

+1 CC to M/s.SPL.GP (SR-11546[F] dated 13/03/2020)

+1 CC to M/s.K.KUMARAVEL, Advocate (SR-11562[F] dated
13/03/2020)

W.P(MD)No.8739 of 2014
12.03.2020

AL(CO)

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