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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.1853 of 2015

A.Francis Daniel Raja

...Petitioner

Vs.

1. The District Collector,
Karur District, Karur.
2. The District Employment Officer,
Karur District, Karur.
3. The Chief Educational Officer,
Karur District, Karur.
4. The District Educational Officer,
Karur District, Karur.
5. District Elementary Educational Officer,
Karur District, Karur.
6. The State of Tamil Nadu
Rep. by its Secretary,
Education Department,
Fort St. George, Chennai - 600 009.

...Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondents to appoint the petitioner as a Secondary Grade Teacher on regular basis w.e.f. 03.01.2002, date on which the petitioner's juniors Mrs.Sheik Alludin and Mr.T.Arunachala Sundaram were appointed regularly on time scale of pay with all consequential benefits including arrears of pay and allowances and continuous seniority.

For Petitioner : Mr.S.Giridhar and Sai

For Respondents : Mr.J.Ramesh,
Additional Government Pleader -
R1 & R2



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Ms.V.Annalakshmi
Government Advocate - R3 to R6

ORDER

This writ petition has been filed by the petitioner seeking direction to the respondents to appoint him as a Secondary Grade Teacher on regular basis with effect from 03.01.2002, the date on which the petitioner's juniors Sheik Alludin and T.Arunachala Sundaram were appointed regularly on time scale of pay with all consequential benefits including arrears of pay and allowances and continuous seniority.

2.It is the case of the petitioner that during the year 2000-01, steps were taken to fill up vacancies in the post of Secondary Grade Teacher in each District in the Government and Panchayat Union Schools. Based on the registration with the Employment Exchange, he was called for interview on 22.03.2001. Subsequently, by order dated 27.03.2001, it was communicated that he was selected to the post of Secondary Grade Teacher under the third respondent, but he was not given any appointment order. While so, he was issued a show cause notice dated 21.11.2001 calling upon him to explain as to why his employment registration shall be shifted to Madurai. Similarly placed persons approached the Court and obtained a direction to the respondents to consider the names of such persons for appointment to the post in question. Despite the same, the petitioner was not considered for appointment. It is the further case of the petitioner that he was issued with a call letter on 12.04.2004 for appointment to the post of Junior Grade Secondary Grade Assistant Teacher on a consolidated pay of Rs.3,000/-. After verification, he was issued with an order of appointment on 16.07.2004 and he joined duty on 20.07.2004. It is his grievance that the respondents ought to have appointed the petitioner to a regular post of Secondary Grade Teacher on a time scale of pay with effect from 03.01.2002, the date on which his juniors were appointed. Stating so, he has come up with this writ petition for the aforesaid relief.

3.Upon notice, the respondents filed a detailed counter affidavit, inter alia stating that the petitioner was appointed as Secondary Grade Teachers in the year 2004; though the vacancies filled up in the year 2004 are backlog vacancies, the belated appointments were made only due to administrative reasons; he cannot compare himself with the regular appointment which was held on 03.01.2002 and hence, the claim of the petitioner seeking regularisation with effect from 03.01.2002 during which period he was not at all in service, is untenable.



4. The averments made in the counter affidavit filed by the respondents have been seriously opposed by the learned counsel for the petitioner. He further submitted that the case of the petitioner is similar to that of the petitioner in W.P.No.47929 of 2006, who filed the same for the relief as claimed herein and the said writ petition was disposed of in his favour, by order dated 16.07.2010, which for better appreciation, is extracted below:

"The prayer in the Writ Petition is for the issuance of mandamus directing the respondents to appoint the petitioner as a secondary Grade Teacher on regular basis with effect from 03.01.2002, the date on which the petitioner's junior Mr. Sheik Alludin was appointed on time scale of pay with all consequential benefits including arrears of pay, continuous seniority.

2. The petitioner is native of Karur District. After passing Higher Secondary Course, he obtained a Diploma in Teacher Training and registered his name in the employment exchange of Karur on 12.10.1999 for the post of Secondary Grade Teacher [SGT] and he was assigned Registration Number 3961 of 1999 and later corrected as 4079 of 1999. In the year 2000-01 the department took a decision to fill up vacancies in the post of Secondary Grade Teachers in each district in the Government and Panchayat Union Schools after getting sponsorship from the employment exchange concerned. The petitioner's name was not sponsored based on the employment seniority for appointment in Karur District on the ground that the District Collector, by order dated 12.4.2001 stated that the petitioner is not a resident of Karur District and cancelled the registration. That order was passed without any notice or opportunity to the petitioner.

3. The petitioner challenged the said order by filing W.P.No.9 of 2002 and prayed for sponsorship of his name for appointment. This Court passed an interim order on 3.1.2002 and stayed the operation of the said order in W.P.M.P.No.17 of 2002. In view of the stay, the petitioner's employment registration in Karur District was not disturbed. However, the respondents failed to sponsor the petitioner's name even though several of his juniors were sponsored for appointment.

4. Thereafter, the Collector passed a revised order dated 23.07.2002 and cancelled the earlier order and held that the petitioner is a bona fide



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resident of Karur District. In view of the same the Writ Petition also disposed of with a direction to consider the candidature of the petitioner for appointment. The above order was passed based on the earlier order of this Court in batch of cases. Several similarly placed persons namely, Arunachalasundaram, Tamilselvan, G. Kalaiselvi, V. Kannan, M.Christy, Kokila and Hemalatha who were not initially appointed due to cancellation of their residence certificates, were given appointment as Secondary Grade Teachers on time scale basis with all benefits retrospectively and in some cases appointments were given on the basis of the this Court's Order. In fact, similarly placed persons namely, Kokila and Hemalatha were not granted regular appointment but granted appointment on consolidated pay basis initially. Therefore, this Court in Contempt Petition Nos.1012/2003 to 1020/2003, 257/04 and 260/04 in a common order dated 27.01.2006 directed notional regular appointment to be granted to all the above persons with effect from 03.01.2002 with all consequential benefits. All the said persons are juniors to the petitioner. The petitioner was given posting on a consolidated salary basis on 19.07.2004 with time scale of pay from 21.8.2006. Since the petitioner was not given seniority in terms of the seniority given to several of his juniors, he filed the present writ petition with the above said prayer.

5. The respondents were served as early as 2.2.2007. However, no counter affidavit is filed till date. The order of this Court passed in contempt petition Nos.1012 to 1020 of 2003 dated 27.1.2006 reads as follows:-

"The contempt petitions are disposed of with the observation that such persons would be entitled to the benefit of notional increments from 3.1.2002 till the date of actual appointment and their salary from the date of actual employment would be paid by taking into account the notional increments for the earlier period. Such a direction shall be carried out within a period of four months from the date of receipt of the order. It is clarified that the seniority of the concerned applicants will be in accordance with the seniority in the employment exchange. If any other employee was in fact senior to such applicants, obviously he has to be treated



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as senior such applicants."

6. Learned counsel for the petitioner submitted that the said order was also implemented by the department by issuing G.O.Ms.No.143 School Education (S-2) Department dated 25.6.2007 giving notional date of appointment as on 03.01.2002 without monetary benefits and the list of 9 persons whose names are also found in the proceedings of the District Elementary Educational Officer, Karur dated 29.01.2008, the petitioner is also similarly placed. The said contention raised by the learned counsel for the petitioner is not disputed by the learned counsel for the respondents either by way of counter affidavit or making submissions. The mistake committed by the District Collector in cancelling employment registration of the petitioner without any reason which was recalled subsequently cannot be put against the petitioner.

7. In the light of the said undisputed facts, the writ petition is ordered with a direction to the respondents to appoint the petitioner on a regular basis with effect from 03.01.2002 notionally with time scale of pay from the date of appointment given to the petitioner and also issue notional increment for the earlier period. By appointing the petitioner on 19.7.2004 the petitioner is deprived in getting pension as the persons appointed from June 2004 are not eligible to get pension as per the Government policy decision. Hence, the petitioner is seriously prejudiced by the illegal action of the District Collector, Karur. The respondents are directed to implement this order as it has been implemented to 9 other teachers through G.O.Ms.No.143 School Education (S-2) Department dated 25.6.2007, within a period of three (3) months, from the date of receipt of copy of this Order. No costs."

The learned counsel also submitted that the aforesaid order has also been implemented by the respondent authorities by G.O.(3D) No.128 School Education Department, Dated 28.09.2011. Thus, he prayed for similar order in this writ petition as well.

5. On the other hand, the learned counsel appearing for the respondent authorities fairly submitted that the respondent authorities would consider the claim of the petitioner, in the light of the aforesaid order and pass orders, on merits, within a time frame to be stipulated by this Court.

6. In view of the above, this writ petition is disposed of, with a direction to the first respondent to consider the claim of the petitioner, in the light of the aforesaid order dated



16.07.2010 passed by this Court in W.P.No.47929 of 2006 and pass appropriate orders, within a period of twelve weeks from the date of receipt of a copy of this Order. No costs.

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s/d-
Assistant Registrar (CS VII)

True Copy

Sub-Assistant Registrar

vrc
To

1. The District Collector,
Karur District, Karur.
 2. The District Employment Officer,
Karur District, Karur.
 3. The Chief Educational Officer,
Karur District, Karur.
 4. The District Educational Officer,
Karur District, Karur.
 5. The District Elementary Educational Officer,
Karur District, Karur.
 6. The Secretary, Education Department,
Fort St. George, Chennai - 600 009.
- +1 CC to The Government Pleader sr 21056.

W.P.No.1853 of 2015

GPL (CO)
SP (22/07/2021)