

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.1892 of 2015

& M.P.No.1 of 2015

P.Kumar

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Represented by the Secretary,
School Education Department,
Secretariat, St. George Fort, Chennai - 600 009.

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

3. The Secretary,
Tamil Nadu Public Service Commission,
Chennai - 600 003.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondents to regularize the petitioner service and also direct the respondents to consider his name for the promotion as per seniority.

For Petitioner : M/s.S.Suseela Devi

For Respondents : Ms.V.Annalakshmi
Government Advocate - R1 & R2
Mr.Karthik Raja (TNPSC) - R3

ORDER

Heard both sides and perused the materials placed before this Court

2.This writ petition has been filed seeking a direction to the respondents to regularize the petitioner's service and consider his name for the promotion as per seniority.

3.According to the petitioner, he was selected for appointment to the post of District Educational Officer in the Tamil Nadu School Education Service in the year 2001 through the third respondent, vide G.O.Ms.No.148, School Education (A1) Department, dated 13.09.2001. At the time of selection, he did not acquire B.Ed qualification and hence, he was permitted to

undergo teachers training as well as administrative training for the post of District Educational officer, vide G.O.(Ms) No.133, School Education (A1) Department, dated 22.08.2002. Accordingly, he completed the B.Ed training on 28.04.2003 and administrative training on 29.10.2003 and he was posted as District Educational Officer, by the proceedings of the second respondent in Rc.No.147027/C10/2001 dated 29.10.2003 and he joined the service on 31.10.2003. Subsequently, he was promoted as Chief Educational Officer on 18.09.2006 as per the proceedings of the second respondent dated 13.09.2006. Thereafter, he made a representation dated 31.03.2010 to the first respondent to regularise his service, but, till date no action was taken on the same. Hence, this writ petition.

4. Upon notice, the respondents filed a detailed counter affidavit, wherein it is stated that since the petitioner had not completed his probation for want of completion of departmental tests, on the crucial date i.e., 1.1.2005 for the panel for promotion to the post of Chief Educational Officer for the year 2005-06, his name was not included in that panel, but was included in the subsequent panel for the year 2006-07 and was accordingly, promoted as Chief Educational officer on 18.09.2006. It is further stated that in G.O.Ms.No.22, Personnel and Administrative Reforms Department, dated 24.02.2014, Rule 4 (a) of the General Rules for the Tamil Nadu State and Subordinate Services, has been amended by inserting clauses 1-J and 1-K as follows :

[1-J] No member of service shall be promoted or appointed to a post, if the member is undergoing any punishment imposed under Rule 8 of the Tamil Nadu Civil Services [Discipline and Appeal] Rules, either on the crucial date or on the date of consideration for actual promotion.

[1-K] Any punishment imposed on a member of service under rule 8 of the Tamil Nadu Civil Services [Discipline and Appeal] Rules shall take effect from the date on which the said punishment order is served to the member of service concerned and the name of such member of service shall not be considered for inclusion in the approved list until the said punishment is over.

Stating so, it is submitted that at the time of the consideration for inclusion in the panel for promotion to the post of Joint Director of the School Education for the year 2014 on 1.1.2014, the petitioner was under currency of punishment and hence, his name was not included. Since there was no disciplinary action initiated or any punishment pending against the juniors of the petitioner, their names were included in the panel and they got promoted as Joint Directors. With these averments, the respondents sought to dismiss this writ petition.

5. Such statements made in the counter affidavit have been stoutly refuted by the learned counsel appearing for the petitioner. According to him, the persons who are similarly placed, were considered by the Department, whereas the petitioner alone was left out; and that, even after the completion of punishment period, the claim of the petitioner seeking promotion was not considered by the respondents, despite several attempts having been taken.

6. In the given facts and circumstances of the case, having regard to the rival submissions, this Court finds it appropriate to direct the petitioner to approach the respondent authorities afresh and on such approach, the same be considered by them in accordance with law. Accordingly, this writ petition is disposed of, with a direction to the petitioner to submit a fresh representation pointing out all the relevant factors to the respondent authorities within a period of two weeks from the date of receipt of a copy of this order and on such representation being made, the respondent authorities shall consider the same and pass appropriate orders, on merits and in accordance with law, within a period of six weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

vrc

To

1. The Secretary,
School Education Department,
Secretariat, St. George Fort, Chennai - 600 009.
2. The Director of School Education,
Directorate of School Education,
College Road, Chennai - 600 006.
3. The Secretary,
Tamil Nadu Public Service Commission,
Chennai - 600 003.

+1cc to Mr. Yes S Associates, Advocate, S.R.No. 20895

+1cc to the Government Pleader, S.R.No. 21029

W.P.No.1892 of 2015

PP(CO)

GN(07/07/2021)