

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2021

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P. No. 28015 of 2011

1. N.Muthusamy
2. A.Anne Rupa
3. S.Prameela

... Petitioners

-vs-

1. The Secretary to Government,
Higher Education Department,
Fort St.George,
Chennai - 600 009.
2. The Director of Collegiate Education,
College Road,
Chennai - 600 006.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus directing the respondents to consider the case of the petitioners for regular appointment in the post of Librarian by way of transfer of service in Government Colleges.

For Petitioners :Mr.R.Prem Narayan

For Respondents :Mr.S.Karthikei Balan
Government Advocate

ORDER

The prayer sought for herein is for a Writ of Mandamus directing the respondents to consider the case of the petitioners for regular appointment in the post of Librarian by way of transfer of service in Government Colleges.

2. The petitioners were initially appointed as Junior Assistant and subsequently, promoted as Assistant and then as Superintendent. They claimed that, they have completed Master Degree in Library Science and M.Phil. Accordingly, they were fully qualified for the promotion to the post of Librarian in Government Colleges by way of transfer of service.

3. In this context, it is the contention of the petitioners that, by issuance of G.O.Ms.No.2476, Department of Education, Science and Technology dated 09.11.1982, the Special Rules for the Tamil Nadu General Sub-ordinate Service got amended, by thus, a ratio of 1:2 has been fixed for direct recruitment and by way of transfer of service for the said post of College Librarian / Graduate Librarian.

4. In view of the said quota of 1:2 for direct recruitment and by way of transfer, these incumbents who were working as Superintendent, also can be posted by way of promotion by transfer to the post of College Librarian / Graduate Librarian. When similarly placed persons who were considered for such a promotion by transfer, the plea of the petitioners since have not been considered, despite the specific representation having been made in this regard by these petitioners, they have approached this Court by filing the present Writ Petition.

5. Heard Mr.R.Prem Narayan, learned counsel appearing for the petitioners who would submit that, since these petitioners were qualified to hold the post of College Librarian / Graduate Librarian and for the vacancies caused in the said post, by adopting the ratio of 1:2, appointment can be made either by direct recruitment or by transfer and accordingly, these petitioners would be entitled to get appointment to the post of College Librarian / Graduate Librarian by way of transfer, for which, enabling rule also permits by fixing the ratio of 1:2. Therefore, the petitioners plea to give such promotion by way of transfer to the said post of Librarian can be directed to be considered.

6. However, Mr.S.Karthikei Balan, learned Government Advocate appearing for the respondents has relied upon the subsequent amendment which has been effected in the rule concerned by issuance of G.O.Ms.No.103, Higher Education (F2) Department dated 18.05.2009. By issuance of the said Government Order, the Special Rules for the Tamil Nadu General Subordinate Service got amended and the amendment shall be deemed to have come into force on 1st January 1986, even though the Government Order was issued on 18.05.2009. By relying upon the said amended rule, the learned Government Advocate would submit that, by virtue of the amendment having been effected the post of College Librarian / Graduate Librarian are no more available and only the post of Librarian alone was available, for which, by direct recruitment, appointment can be made. Therefore, the learned Government Advocate would submit that, the plea raised by the petitioners for getting appointment as College Librarian / Graduate Librarian by way of transfer may not be found feasible because of the rule position got amended by issuance of

G.O.Ms.No.103, dated 18.05.2009. Therefore, the learned Government Advocate seeks dismissal of this Writ Petition.

7. However, Mr.R.Prem Narayan, learned counsel appearing for the petitioners in reply to the said argument advanced by the learned Government Advocate would rely upon the Division Bench Judgment of this Court made in W.A.Nos.773 of 2009 etc., batch dated 14.09.2010, where, he has relied upon the following observations made by the Division Bench, which reads as follows:

"When the order passed by the learned Single Judge in one of the Writ Petitions was confirmed by order dated 05.11.2009 in W.A. No. 65709 of 2007, the Supreme Court observed that the learned Single Judge was fully justified in issuing the Mandamus for consideration of the claim of the candidates for appointment as "College Librarian" on recruitment by transfer. Therefore, the post available prior to the amendment has to be filled up only as per the prevailing recruitment Rules. In view of the finding rendered by the Supreme Court with respect to appointment of "College Librarian" on recruitment by transfer, the petitioners are in no way affected by the amendment. Therefore, we do not find any merit in the contention raised on behalf of the petitioners with respect to the amendment. Accordingly the Writ Petitions are dismissed"

8. By relying upon the aforesaid Division Bench Judgment, the learned counsel appearing for the petitioners would contend that, unmindful of the amendment, having been made by issuance of G.O.Ms.No.103 as stated above, the vacancies which arose prior to issuance of amendment shall only be filled up as per erstwhile rule, i.e., prior to amendment. Therefore, the petitioners can very well seek indulgence of this Court to give a direction for appointment to them by way of transfer for the vacancies that arose prior to the amendment, as similarly placed persons like the petitioners have already approached this Court and by virtue of the orders passed by this Court as per the line of the Division Bench order as referred above, they were considered for such appointment by way of transfer to the post of College Librarian / Graduate Librarian which vacancies in fact have arisen prior to the issuance of G.O.Ms.No.103.

9. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed on record.

10. As has been submitted by the learned counsel appearing for the petitioners, admittedly, the rule got amended even

before the Judgment was made in W.A.Nos.773 of 2009, etc., batch. In view of the Division Bench Judgment referred to above, retrospective effect cannot be given inasmuch as the vacancies arose prior to the issuance of G.O.Ms.No.103. Therefore, in all fairness, for all practical purposes, such amendment can be taken into account only from the date of issuance of G.O.Ms.No.103, i.e., from the year 2009.

11. Assuming that, the amendment having been made in 2009 by issuance of G.O.Ms.No.103, as per the dictum of the Division Bench Judgment as referred to above, the vacancies arose in the post of College Librarian / Graduate Librarian prior to amendment, shall be filled up only under pre-amendment rule. Therefore, this is what exactly the petitioners wants to be implemented.

12. However, the fact remains that, if the Writ Petitions were filed or Appeals were filed before this Court against an order of Writ Court during the relevant point of time, i.e, at the time of issuance of G.O.Ms.No.103, thereafter, if there are vacancies which arose prior to the amendment, certainly those vacancies could have been filled up by using the method of transfer as per the then existing rule, i.e., pre-amendment rule. However, in the case in hand, since long years have gone during the pendency of this Writ Petition and at this stretch of time, we cannot expect that the vacancies arose in the post of College Librarian / Graduate Librarian prior to the issuance of G.O.Ms.No.103 would have been still vacant for all these years.

13. After the amendment, the post of College Librarian / Graduate Librarian itself was taken away and the only post that was available is Librarian, for which, only method of appointment is by direct recruitment. Therefore, it cannot be expected that for decades together the post of erstwhile College Librarian / Graduate Librarian, those vacancies arose in the said post prior to G.O.Ms.No.103 i.e., in the year 2009, have been kept vacant till date.

14. Therefore, it is practically impossible to find any vacancy as of now, arose prior to issuance of G.O.Ms.No.103.

15. Since the post of College Librarian / Graduate Librarian is not available or not available at least from 2009, if not from 1986, the question of filling up the said post by adopting the 1:2 ratio, i.e., the erstwhile method prior to amendment by giving appointment to these petitioners or similarly placed persons by way of transfer at this length of time is completely ruled out.

16. In that view of the matter, this Court feels that, the prayer sought for by the petitioners cannot be granted. Accordingly, this Writ Petition fails and hence, it is dismissed. However, there shall be no order as to costs.

s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

vji

To

1. The Secretary to Government,
Higher Education Department,
Fort St.George,
Chennai - 600 009.

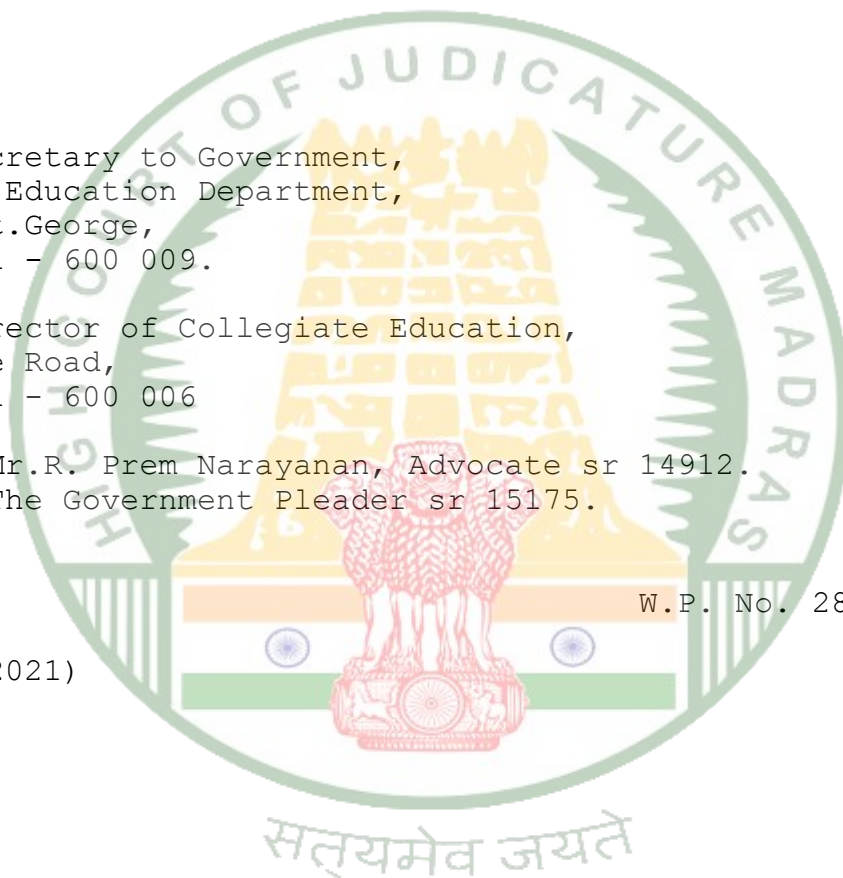
2. The Director of Collegiate Education,
College Road,
Chennai - 600 006

+1 CC to Mr.R. Prem Narayanan, Advocate sr 14912.

+1 CC to The Government Pleader sr 15175.

LN(CO)
SP(13/07/2021)

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