

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 15.02.2021

Judgment pronounced on : 24.02.2021

Coram :

THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Writ Appeal No. 2792 of 2019

1. The Secretary to Government
School Education Department
Secretariat, Fort St. George
Chennai - 600 009
2. The Director of School Education
DPI Campus, College Road
Chennai - 600 009 ... Appellants/ Respondents
- Versus
1. M. Jayachandran ...1st Respondent/ Petitioner
2. V. Harimoorthy
Headmaster
Government Higher Secondary School
Kovilkuchipakkam
Cuddalore District ...2nd Respondent/3rd Respondent

Appeal filed under Clause 15 of the Letters Patent against the Order dated 28.06.2018 passed in Writ Petition No. 5503 of 2009 on the file of this Court.

Prayer in Writ Petition No. 5503 of 2009:

Writ Petition filed under Article 226 of the Constitution of India Praying for issuance of a Writ of Ceritorarified Mandamus calling for the record of the second respondent in his proceedgns No. 84092/ W. -I 1/08 date 27/.09/.2008 and quash the same and consequently direct the respondents 1 and 2 to include the name fo the petitioner in the panel of the yer 2009 special panel for hte post of Headmaster Higher secondary school with due date thereon at the appropriate place more particularly over and above the 3rd respondnet /vHarimoorthy whose services wre regularized on 31-10-1983 (serial No. 226 rank NO. 251 of the panel of the year 2007 and promote the petitioner as Headmaster Higher secondary school with all benefits.

For Appellants : Mr. K. Kumaresh Baabu
Additional Advocate General XII,
assisted by Mrs.P.Kavitha,
Govt. Advocate (Education)

For Respondents : Mr. C. Johnson for R1

JUDGMENT

R. SUBBIAH, J

This writ appeal has been filed by the Government against the order dated 28.06.2018 passed by the learned single Judge, allowing the writ petition filed by the first respondent in WP No. 5503 of 2009. By the said order dated 28.06.2018, the learned single Judge quashed the proceedings of the second appellant herein dated 27.09.2008 and consequently directed the appellants 1 and 2 to include the name of the first respondent herein/writ petitioner in the appropriate place, more particularly over and above the second respondent in this appeal namely V. Harimoorthy, whose services were regularised on 31.10.1983 (Serial No.226 rank No.251 of the panel of the year 2007) by promoting the first respondent/writ petitioner as Headmaster, Higher Secondary School with all attendant seniority and monetary benefits till the date of retirement and further all revised pension benefits as available to him.

2. The case of the first respondent/writ petitioner before the learned single Judge is that, originally, the first respondent served as Secondary Grade Teacher for about ten years. Thereafter, the first respondent acquired Post Graduate Degree in Commerce and Bachelor of Education. Considering his seniority and educational qualification, he was appointed by transfer of service as Post Graduate Teacher (Commerce) vide proceedings of the Joint Director of Higher Secondary Education dated 21.10.1983. Such appointment to the post of Post Graduate Assistant by transfer of service was made from Tamil Nadu Educational Service to Higher Secondary Educational Service in terms of G.O.Ms.No.720, Education Department, dated 28.04.1981. His initial appointment to the post of P.G. Assistant (Commerce) was under Rule 10 (a) (i) of the General Rules of the State and Subordinate Service Rules. He joined duty on 29.10.1983 afternoon. His service was regularised with retrospective effect from the date of his initial appointment, viz., 30.10.1983 (forenoon), vide proceedings of the Joint Director (Higher Secondary School) in Na.Ka.No.36277/W-20 dated 12.08.1991. While the first respondent was working as such, the second appellant - Director of School Education, by proceedings dated 06.05.2006, called for particulars of P.G. Assistants, those who were appointed by transfer of service under Method (ii) of class II Service coupled with Rule 2 (b) of the Special Rules of Tamil Nadu Higher Secondary School Headmaster Service, for the purpose of fixation of seniority-cum-promotion. In response to the same, the first respondent/writ petitioner has submitted his

particulars seeking promotion to the post of Higher Secondary School Headmaster on the basis of his seniority. But the claim for promotion of the first respondent and the candidatures of P.G. Assistants of those who were similarly placed like the first respondent i.e., having been appointed by transfer of service, were not considered for the inclusion in the promotional panel of the year 2007 preferred for the post of Higher Secondary School Headmaster. However, the candidature of P.G. Assistant who have been appointed through TNPSC after the petitioner's date of regularisation namely 30.10.1983 were considered for such seniority cum promotional panel. Ultimately, they were given promotion to the post of Higher Secondary School Headmaster, vide Director of School Education proceedings dated 05.01.2007. Hence, the first respondent/writ petitioner has come forward with the writ petition for the relief stated supra.

3. The said writ petition was opposed by the appellants herein by filing a counter statement contending inter alia that the first respondent/writ petitioner was not selected through the Tami Nadu Public Service Commission (TNPSC). He was recruited as P.G.Assistant after 28.04.1981 by way of transfer of service by virtue of G.O.Ms.No.720, Education Department, dated 28.04.1981 and his service was regularised by virtue of G.O.Ms.No.1813, Education Department, dated 12.12.1988. As per the said Government Order, seniority of the first respondent/writ petitioner and similarly placed persons will be under the last person selected by the TNPSC for the relevant year. It is further stated in the counter affidavit that a Division Bench of this Court by order dated 24.11.2004 made in W.P.No.21163 etc., of 2003 and 9719 of 2004, had categorically laid down principles regarding seniority to be fixed in respect of P.G. Assistant for promotion to the post of Headmaster of Higher Secondary School and classified the Post Graduate Teachers into three categories, which are as follows

(i) As regards the first category of teachers, those appointed between 01.07.1978 and 28.04.1981, their seniority will be reckoned from the date on which they acquire the required qualification, provided that, they do so within such time as extended by the Government and subject to the concurrence of the TNPSC.

(ii) As regards the second category of teachers, those appointed after 28.04.1981 and selected by the TNPSC, their seniority will be fixed as per the TNPSC list.

(iii) As regards the third category of teachers, those appointed after 28.04.1981 and who have not been selected by the TNPSC and whose services have been regularised by G.O. Ms. No.1813 dated 12.12.1988, their seniority will commence immediately after the last person in the list under the second category.

4. Pursuant to the above order, list of first category viz., those appointed as Post Graduate Assistant between 01.07.1978 and 28.04.1981 were included and duly promoted as headmasters of Higher Secondary School as on 01.01.2006 and orders of promotion were issued on 13.11.2006 by holding counselling. The list of second category of persons namely

those appointed after 28.04.1981 and selected by the TNPSC were called for to prepare the panel as on 01.01.2007 vide proceedings RC No.995/W1-1 dated 05.01.2007 of the second appellant and those who are appointed and selected by the TNPSC during the year 1984-1986 were considered for preparation of the panel as on 01.01.2007. The remaining various type of candidates were called for preparation of panel as on 01.01.2008 and they were given promotion as Headmaster of Higher Secondary School. The turn of candidate who were appointed after 28.04.1981 and who have not been selected by the TNPSC and whose service have been regularised as per G.O.Ms.No.1813, dated 12.12.1988 are being considered in the panel as on 01.01.2009. Therefore, the action of the appellants is proper and the first respondent/writ petitioner falls within the third category mentioned above. The first respondent/writ petitioner was appointed as Post Graduate (Commerce) by transfer of service after 28.04.1981 and he was not selected by the TNPSC. Therefore, his service was regularised as per G.O. Ms. No.1813 dated 12.12.1988. Those whose service were regularised by G.O. Ms. No.1813 dated 12.12.1988 are being considered in the panel as on 01.01.2009. In such circumstances, contending that the first respondent/writ petitioner is not entitled for the prayer sought for in the writ petition, the appellants sought for dismissal of the writ petition.

5. The learned Single Judge, by rejecting the case of the appellants, granted the relief sought for by the first respondent/writ petitioner on a reasoning that the first respondent/writ petitioner was appointed in terms of G.O. Ms. No.720, Education Department, dated 28.04.1981 by way of transfer of service and his service was also regularised by applying the relevant provisions of the Service Rules. Further, it was held by the learned single Judge that G.O. Ms. No.1813 dated 12.12.1988 cannot be a ground to deny the lawful claim of the first respondent/writ petitioner.

6. Aggrieved by the order dated passed by the learned single Judge in allowing W.P. No. 5503 of 2009 filed by the respondent herein, the present appeal is filed by the appellants

7. The learned Additional Advocate General appearing for the appellants submitted that the first respondent/writ petitioner was originally appointed as Secondary Grade Teacher. He continued his work as a Secondary Grade Teacher for a period of ten years. Thereafter, he was appointed as a Post Graduate Assistant on 21.10.1983 temporarily, pursuant to G.O.Ms.No.720, Education Department, dated 28.12.1981 under Rule 10 (a) (i) of General Rules of the Tamil Nadu State and Subordinate Service Rules. His appointment was pursuant to G.O.Ms.No.720, Education Department, dated 28.12.1981, transferring him from the Tamil Nadu Educational Subordinate Service, temporarily. In the meantime, another category of teachers were appointed after 28.04.1981 and they were selected by the TNPSC whose seniority was maintained as per TNPSC list. The first respondent/writ petitioner and similarly placed persons were not selected through the TNPSC. However, considering their representation G.O.Ms.No.1813 was issued by the Government to regularise the service on a condition that they will be placed below the candidates selected by the TNPSC while ranking their

seniority viz., the candidates will be placed below the last candidate appointed by the TNPSC for the year. Therefore, the appellant is not entitled to be placed above the second respondent in this appeal. In fact, this issue is covered by the Judgment of the Division Bench of this Court in W.A.Nos.21163, 21164, 21347, 21640, 21641, 29075 to 29077 of 2003 and WP No. 9719 of 2004. Thus, the learned Additional Advocate General prayed for allowing this writ appeal.

8. Countering the submissions of the learned Additional Advocate General appearing for the appellants, the learned counsel for the first respondent/writ petitioner would contend that the TNPSC, for the first time, started to recruit candidates only after the year 1984. The first respondent got appointed as PG Teacher even prior to commencement of recruitment procedure by the TNPSC. Therefore, the first respondent/writ petitioner's name cannot be placed below the name of the candidates recruited by the TNPSC. The first respondent/writ petitioner originally worked as Secondary Grade Teacher and he was appointed as PG Assistant by transfer of service by G.O.Ms.No.720, dated 28.08.1981. The first respondent is not a temporary appointee and therefore, G.O.Ms.No.1813, dated 12.12.1988 cannot be made applicable to first respondent/writ petitioner. The first respondent /writ petitioner was duly recognised by the competent authority in terms of Special Rules as early as 1983. Therefore, absolutely, there is no justification in placing the candidature of the first respondent/writ petitioner below the last candidate selected by the TNPSC. Hence, the first respondent/writ petitioner is entitled to be ranked and placed above the candidates selected by the TNPSC. The contention of the second appellant that the first respondent/writ petitioner is included in the panel of 01.01.2009 among other third category of candidates cannot be justified. Thus, he sought for dismissal of the writ appeal.

9. Keeping in mind the submissions made by counsel on either side, we have carefully gone through the materials placed on record. It is the contention of the learned Additional Advocate General appearing for the appellants that the first respondent/writ petitioner was originally appointed as Secondary Grade Teacher for a period of ten years. In the year 1983, considering his qualification and seniority, he was appointed by transfer of service as Post Graduate Teacher (Commerce) on 21.12.1983. Subsequently, on the basis of representations made by the respondent and similarly placed persons like him, G.O. Ms. No. 1813 dated 12.12.1988 was issued and the service of respondent and others was regularised. Thus, it is clear that the respondent was not selected through the TNPSC and therefore, in accordance with G.O. Ms. No.1813 dated 12.12.1988, his seniority was rightly determined and placed below the last candidate appointed by the TNPSC during the year. In such circumstances, the first respondent cannot claim seniority above those who were selected by the TNPSC and his seniority was rightly fixed by the appellants.

10. Per contra, the learned counsel for the first respondent submitted that the appointment of the first respondent to the post of Post Graduate Assistant is only by

transfer of service and he is not a temporary appointee. The order passed in G.O. Ms. No.1813 will apply only to the temporary appointee and not to the first respondent/writ petitioner who was appointed by transfer of service.

11. On a perusal of appointment order dated 21.10.1983 of the first respondent/writ petitioner, we find that his appointment was only under Rule 10 (a) (i) of the General Rules of State and Subordinate Service. The relevant portion of the order of appointment reads as follows:-

"1. Under Rule 10 (a) (1) of the General Rules for the State and Subordinate Services, the person noted in the Annexure to these proceedings who is in possession of Post-Graduate to qualification in Commerce is appointed temporarily to the Class II of the Tamilnadu Higher Secondary Educational Services as subject teacher in Commerce by transfer from the Tamil Nadu Educational Subordinate Services/Tamilnadu Ministerial Services as the case may be and posted to the institution mentioned in Column 3 to the Annexure. To join immediately on relief.....

12. In the meanwhile, certain category of Post Graduate teachers were appointed after 28.04.1981 and they were selected by the TNPSC. Their seniority will be as per the list published by the TNPSC. Pursuant to the representation made by those who are not selected through the TNPSC, G.O.Ms.No.1813, dated 12.12.1988 was issued and it reads as follows:-

"1. In order to meet the growing and immediate needs of the various Higher Secondary Schools, P.G. Assistants in academic subjects/languages and Physical Directors have been appointed temporarily under the provisions of Rule 10 (a) (i) of the General Rules for the State and Subordinate Services. They have been continued in service for considerably a long time. The various teacher association have requested the Government frequently to regularise the service of those teachers.

2. The Government have examined the request of the Association sympathetically. The said posts of teachers have been excluded from the purview of Tamil Nadu Public Service Commission with reference to the orders issued in the Government Orders first and second read above. Recently a separate Teachers Recruitment Board has been constituted for recruitment of teachers to the schools. In the circumstances, the government direct that the services of the fully qualified P.G. Assistants in Academic subjects/languages and physical directors who were appointed temporarily under the provisions of the Rule 10 (a) (i) and who are in service till date shall be regularised from the date of their temporary appointment and subject to the following conditions.

(i) The candidates regularised by this order will get monetary benefit from the date of issue of this order.

(ii) They will be placed below the candidates selected by the Tamil Nadu Public Service Commission while ranking their seniority i.e., these candidates will take their seniority below the last candidate selected by the Tamil Nadu Public Service Commission for the year.

13. The aforesaid Government Order specifically indicates that persons who are not selected through the TNPSC will be below the last candidate selected by the TNPSC. If we look into the regularisation order of the first respondent/writ petitioner dated 12.08.1991, G.O. Ms. No.1813 dated 12.12.1988 is referred. Thus, only as per G.O. Ms. No.1813, dated 12.12.1988, the service of the first respondent was regularised with effect from 30.10.1983. Therefore, it cannot be said that his appointment has nothing to do with G.O. Ms. No.1813 dated 12.12.1988. As per G.O. Ms. No.1813 dated 12.12.1988, the name of the first respondent/writ petitioner has to be placed below the last candidate selected by the TNPSC and accordingly, the seniority of the first respondent has been determined. In such circumstances, absolutely, we do not find any error in such fixation of seniority of the first respondent/writ petitioner. The seniority of the first respondent/writ petitioner was rightly placed below the candidates who were appointed by the TNPSC during the relevant year.

14. In the result, we allow this Writ Appeal by setting aside the order dated 28.06.2018 passed in WP No. 5503 of 2009. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

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To

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

2. The Director of School Education
DPI Campus, College Road
Chennai - 600 009

+1cc to Mr.C.Johnson , Advocate SR.No. 11288
+1 cc to Government Pleader Sr.No. 11574

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