



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2021

CORAM:

THE HONOURABLE Mr. JUSTICE S.S.SUNDAR

W.P. No. 13365 of 2021

and

W.M.P. Nos. 14199 of 2021

S.Pattabiraman

.. Petitioner

Versus

1.The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.

2.The Chief Educational Officer,
Chennai District, Egmore,
Chennai - 600 008.

3.The District Educational Officer,
Chennai West Education District,
DPI Campus, College Road,
Chennai - 600 006.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to quash the impugned proceedings issued by the second respondent in O.Mu.No.9464/E4/2018 dated 29.03.2021 and consequently to direct the respondents to approve the promotion of the petitioner in the post of Junior Assistant with effect from 11.06.2018 in Pachaiyappa's College Higher Secondary School, Chennai, with all consequential and other attendant benefits, including payment of arrears of salary within a time frame to be fixed by this Court.

For Petitioner : Mr. G.Sankaran

For Respondents : Mr. C.Kathiravan
Government Advocate

O R D E R

This writ petition is filed for issuance of a Writ of Mandamus to quash the impugned proceedings issued by the second respondent in O.Mu.No.9464/E4/2018 dated 29.03.2021 and direct the respondents to approve the promotion of the petitioner in the post of Junior Assistant with effect from 11.06.2018 in Pachaiyappa's College Higher Secondary School, Chennai, with all consequential and other attendant benefits, including payment of arrears of salary within a time frame to be fixed by this Court.



2. The petitioner states that on 31.05.2011, he was initially appointed as Office Assistant in Pachaiyappa's College Higher Secondary School, Chennai, on compassionate ground. The appointment of the petitioner was duly approved by the Department and it is stated that he continued to work in the post of Office Assistant from the date of appointment. A vacancy to the post of Junior Assistant arose in Pachaiyappa's College Higher Secondary School, in the year 2007, due to the retirement of incumbent Thiru. Ramadoss on 28.02.2007. It is stated that the petitioner was eligible to the post of Junior Assistant. Based on his seniority and qualification, the petitioner was promoted to the post of Junior Assistant on 11.06.2018 in the existing sanctioned post. The school management has forwarded a proposal to the department on 13.06.2018 for approval of petitioner's appointment in the post of Junior Assistant with effect from 11.06.2018. The proposal submitted by the school management was also forwarded to the second respondent namely the Chief Educational Officer, Chennai. Since the proposal is kept pending without any orders being passed thereon, the petitioner and the school management has forwarded a representation to the second respondent through third respondent for passing orders on the approval application.

3. By the impugned communication dated 29.03.2021, the proposal submitted by the management was rejected by referring to G.O.Ms. No.238 School Education Department dated 13.11.2018, on the premise that as per the norms prescribed in the Government Order, the post of Junior Assistant is permitted only if the students strength exceeds 250 nos. Challenging the order of the second respondent, the petitioner has filed the above writ petition.

4. Learned counsel appearing for the petitioner submitted that the order of Government vide G.O.Ms.No.238 dated 13.11.2018, cannot be applied in the matter of promotion which was already made in the month of June 2018. Learned counsel also stated that several writ petitions have been filed questioning the validity of G.O. Ms. 238 dated 13.11.2018. Learned counsel relied upon a few judgments of this Court wherein similar situation was dealt with by this Court. Learned counsel relied upon the judgment of a learned single Judge in the case of S.Ebinezar & other Vs. The Chief Educational Officer, Nagapatinam District and others, in a batch of writ petitions in W.P. No.3139 of 2021 and batch, dated 16.02.2021, wherein similar writ petitions which were filed challenging the order rejecting the approval, were allowed by this Court following the earlier judgment of this Court dated 07.10.2020. There was a direction to consider the case of the petitioners without reference to G.O.Ms. No.238 dated 13.11.2018, after holding that G.O.Ms.No.238 dated 13.11.2018 cannot be applied in a case where



the post fell vacant prior to issuance of G.O.Ms.No.238 as the said Government Order can only have a prospective effect. The impugned order dated 29.03.2021, shows that the staff strength was fixed on the basis of G.O. Ms.No.238 dated 13.11.2018 and that thereafter the approval for petitioner's appointment was turned down.

5. Having regard to the facts admitted and narrated in this order, this Court is inclined to dispose of the writ petition in the same line as it was decided in the earlier writ petitions. Accordingly, the impugned order passed by the second respondent in O.Mu.No.9464/E4/2018 dated 29.03.2021, is hereby set aside and the respondents are directed consider the case of the petitioner without reference to G.O.Ms.No.238 School Education Department dated 13.11.2018 and pass appropriate orders on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this order after affording the petitioner an opportunity of hearing.

6. With the above direction this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

bkn

To

1.The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.

2.The Chief Educational Officer,
Chennai District, Egmore,
Chennai - 600 008.

3.The District Educational Officer,
Chennai West Education District,
DPI Campus, College Road,
Chennai - 600 006.

+1cc to M/s.G.Sankaran, Advocate, S.R.No.35124

+1cc to the Government Pleader, S.R.No.34951

W.P. No.13365 of 2021

NK(CO)

SB(18/08/2021)