



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:11.02.2021

CORAM:

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

W.P. (MD)Nos.2750, 1131 of 2009

and 5074 of 2011

and

M.P (MD)Nos.1 and 3 of 2009

and

M.P (MD)Nos.2 and 3 of 2011

W.P (MD)No.2750 of 2009

Tamil Nadu Nadunilaippalli
Pattathari Asiriyar Sangam,
represented by its
General Secretary,
P.Velmurugan
No.6/28, Lakshmi Illam
Mullai Street,
Valluvar Nagar
Karaikudi-630 002.
Sivagangai District.

... Petitioner

Vs.

1.The State of Tamil Nadu
Rep by its Secretary,
School Education Department,
For St. George,
Chennai-600 009.

2.The Personnel and Administrative Reforms,
Department,
Rep by its Secretary,
Fort St. George,
Chennai-600 009.

3.The Director of Elementary Education,
College Road,
Chennai-6.

4.Thiru.V.Guruchandran
(R4 impleaded as per order
dated 07.06.2010 in

M.P (MD)No.4 of 2009 in WP (MD)No.2750 of 2009)

... Respondents



Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned G.O.Ms.No.166 dated 07.06.1999 issued by the 1st respondent and the consequential proceedings in Na.Ka.No.5939/EDI/2001 dated 15.11.2001 and in Na.Ka.No.36679/D3/2008 dated 18.12.2008 passed by the 3rd respondent and quash the same and consequently, direct the respondents to give the Middle School Headmaster promotion for the B.T Assistant first, based on the seniority in B.T.Assistant Cadre by applying Rule 36(a) of the TN Subordinate Service Rules in accordance with law.

For Petitioner : Mr.H.Arumugam

For Respondents : Mr.C.M.Marichelliah Prabhu
(R1 to R3) Additional Government Pleader

For Respondent R4: B.Alagarsamy

W.P(MD)No.5074 of 2011

K.Velmurugan

... Petitioner

Vs.

1.The Secretary to Government,
School Education Department,
Fort St. George,
Chennai.

2.The Director of Elementary Education,
College Road,
Chennai.

3.The District Elementary Educational Officer,
Karur District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the impugned G.O.No.166, dated 07.06.1999 of the 1st respondent and quash the same and further direct the respondents 2 and 3 to fill up the post of Middle School Headmaster as per Rule 36(a) and 35(aa) of the Tamil Nadu State and Subordinate Service Rules.

For Petitioner : Mr.H.Arumugam

For Respondents : Mr.C.M.Marichelliah Prabhu
Additional Government Pleader



W.P(MD)No.1131 of 2009

Tamil Nadu Pattathai Asiriyargl
Kootamaipu represented by its
State Executive President
Ganesan,
No.10/303, Kanni Sundararajan Street,
Paramakudi,
Ramanathapuram District.

... Petitioner

Vs.

1.The State of Tamil Nadu
Through its Secretary,
School Education Department,
For St. George,
Chennai-600 009.

2.The Director of School Education,
College Road,
Chennai-6.

3.The Director of Elementary Education,
College Road,
Chennai-6.

4.Thiru.V.Guruchandran
(R4 impleaded as per order
dated 13.12.2013 in

M.P(MD)No.3 of 2009 in WP(MD).1131/09) ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned G.O.Ms.No.166 dated 07.06.1999 issued by the School Education Department(S2) and quash the same by directing the respondents to pass a fresh GO by providing that BT Assistants shall alone be eligible for promotions to the post of Middle School Headmaster by keeping their seniority from the date of their entry into service as BT Assistants by giving full effect to Rule 36(e) of Tamil Nadu State and Subordinate Service Rule.

For Petitioner	: Mr.A.L.Kannan for M/s.P.Thilak Kumar
For R1 to R3	: Mr.C.M.Marichelliah Prabhu Additional Government Pleader
For R4	: Mr.S.Alagarsamy



COMMON ORDER

These Writ Petitions have been filed for the issuance of the Writ of Certiorarified Mandamus calling for the records relating to the impugned G.O.Ms.No.166 dated 07.06.1999 issued by the School Education Department(S2) and quash the same and further direct the respondents to give Middle School Headmaster promotion for B.T Assistant, based on the seniority in B.T. Assistant Cadre, by applying Rule 36(a) of the TN Subordinate Service Rules in accordance with law.

2.Since the issue involved in these Writ Petitions is one and the same, all the writ petitions have been taken up together and disposed of by way of this common order.

3.The learned counsel appearing for the petitioner submitted that originally the post of Middle School Headmaster were filled up from the feeder categories of BT Assistant/Tamil Pandit and BT qualified Elementary School Headmaster, as the said posts were carrying equal pay. However, after the 6th pay commission, the scale of pay for the post of BT Assistant was increased higher than the scale of pay for the Elementary School Headmaster. Hence, as per Rule 36(a) of the Tamil Nadu Subordinate Service Rules, B.T Assistants are to be given promotion to the post of Middle School Headmaster. Therefore, the impugned G.O.Ms.No166, dated 07.06.1999, was issued contrary to the Rule 36(a) of the Tamil Nadu Subordinate Service Rules and the same is liable to be quashed.

4.The learned Additional Government Pleader appearing for the respondents submitted that the issue involved in all these writ petitions were already decided by this Court in ***W.P.No.15794 of 2013, dated 05.02.2020 (S.RAMADASS V. THE GOVERNMENT OF TAMILNADU REP. BY ITS SECRETARY, EDUCATION DEPARTMENT, FORT ST. GEORGE, CHENNAI-600 009 AND ORS.)***, wherein, in paragraph No.4, this Court has held as follows:

"4.In the decision of the above said writ petition in W.P.No.9386 of 2007, in paragraph Nos.3 to 7, it is held as follows:-

3. The petitioner was a Secondary Grade Teacher on and from 01.06.1988. Consequent on his acquiring B.Ed., qualification, he was promoted as B.T. Assistant from 15.10.1998. He seeks to challenge G.O.166, School Education dated 07.06.1999 which permits preparation of panel through combine seniority of B.T./ Tamil Pandit/ Primary School Head Master.



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4. The respondents filed reply affidavit in the Original W.P.No.15794 of 2013 Application. It is stated in the reply affidavit that prior to revision of pay, pursuant to the VI Pay Commission recommendations with effect from 01.01.1996, the scale of pay of Primary School Headmaster/B.T. Teachers/Tamil Pandit was one and the same i.e. R.1,400-2,600. However, different scales were fixed for B.T. Teachers and Tamil Pandits, on the one hand and primary school Headmasters on the other hand. The B.T. Teachers/Tamil pandit were given the scale of pay of Rs.5,500-9,000 and Primary School Headmasters were given the scale of pay of Rs.5300-8300.

5. The case of the petitioner is that in view of Rule 36(a) of the General Rules for Tamil Nadu State and Subordinate Services, Primary School Headmasters should be considered for promotion only after giving promotion to the B.T. Assistant, since the B.T. Assistants are admittedly getting higher scale of pay.

Provided that a member of a service or class of a service who, having satisfactorily completed his probation in the category in which he was appointed to the Service, has been promoted to the next higher category shall, notwithstanding that he has not been declared to have satisfactorily completed his probation in such higher category be eligible for promotion from such higher category.

Provided further that if scales of pay of posts in the feeder categories are different, the persons holding post carrying a higher scale of pay in the feeder category shall be considered first and that, if no qualified and suitable persons holding post in that feeder category are available, the persons holding post carrying the next higher scale of pay in descending order in other feeder categories shall be considered.

" Added in G.O.Ms.No.400 P & AR (Per.P) dated 17.04.1985 w.e.f. 13.10.1984.

6. On the other hand, G.O.166 of the first respondent dated 07.06.1999 was issued invoking the power of the Government under Rule 48 of the General Rules for Tamil nadu State and Subordinate Services. Since the Government exercised its power under Rule 48 to continue to



give the benefit, even after different scale is prescribed, by treating Primary School Headmasters also as th feeder category along with B.T. Assistants on equal footing, the petitioner cannot have any grievance. It is not in dispute that the Government has no power under Rule 48 to give necessary relaxation. Furthermore, the power of the government under Rule 48 is not in challenge.

7. In these circumstances, the writ petition fails and the same is dismissed. No costs."

Subsequently, following the above said judgment, this Court dismissed another writ petition in W.P.No.21430 of 2015 on 16.07.2015.

5. Accordingly, in the light of the decisions rendered by this Court in the above said writ petitions, these Writ Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

- 1.The Secretary to Government,
School Education Department,
Fort St. George,
Chennai 600 009.
- 2.The Secretary to Government,
The Personnel and Administrative Reforms Department,
Fort St. George,
Chennai-600 009.
- 3.The Director of Elementary Education,
College Road,
Chennai 600 006.
- 4.The District Elementary Educational Officer,
Karur District.



5.The Director of School Education,
College Road,
Chennai-6.

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+2 CC to M/s.B.ALAGARSAMY, Advocate (SR-4451 &4452[F] dated
11/02/2021)

+1 CC to M/s.GP (SR-4972, 4904[F] dated 15/02/2021)

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-5205[F] dated 15/02/2021)

**W.P.(MD)Nos.2750, 1131 of 22009
and 5074 of 2011**

**and
M.P(MD)Nos.1 and 3 of 2009**

**and
M.P(MD)Nos.2 and 3 of 2011
11.02.2021**

KMV(CO)
TR(27.04.2021) 7P 10C