



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD)No.5410 of 2021

and

W.M.P (MD)Nos.4319 & 4320 of 2021

R.Thirumurugan

... Petitioner

Vs.

1. The Chief Educational Officer,
Ramanathapuram District,
Collectorate,
Ramanathapuram.
2. The District Educational Officer,
Paramakudi Education District,
Paramakudi,
Ramanathapuram District.
3. The Secretary,
Ariya Visya Higher Secondary School,
Paramakudi,
Ramanathapuram District.

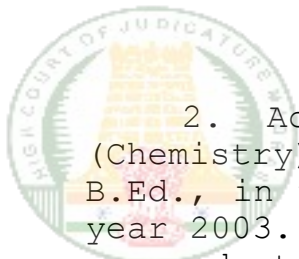
... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the entire records pertaining to the impugned order passed by the first respondent in ஓ.மு.எண்.5741/ஆ2/2020, dated 23.02.2021 and quash the same and consequently direct the respondents to promote the petitioner as PG Assistant in Commerce in the third respondent's School and approve the same within a time as stipulated by this Court.

For Petitioner	:	Mr.AL.Kannan for Mr.P.Gunasekaran
For R1 & R2	:	Mr.P.Subbaraj Government Advocate
For R3	:	Mr.V.Panneerselvam

ORDER

This writ petition is filed to quash the impugned order of the first respondent, dated 23.02.2021 made in ஓ.மு.எண்.5741/ஆ2/2020 and consequently direct the respondents to promote the petitioner as PG Assistant in Commerce in the third respondent's School and approve the same within a time as stipulated by this Court.



2. According to the petitioner, he has possessed B.Sc., (Chemistry) in 1994, M.Sc., (Chemistry) in 1998 and also completed B.Ed., in the year 1996, M.Ed., in the year 2000 and M.Phil in the year 2003. He was appointed as B.T.Assistant (Science) in the third respondent School. With the permission of the third respondent, the petitioner has also acquired M.Com., degree. A post in PG Assistant (Commerce) fell vacant in June 2019, in the third respondent School. The petitioner gave representation to the third respondent to promote him as PG Assistant (Commerce). The same was not considered by the third respondent. After taking charge by a new management of third respondent School, the petitioner again gave representation for his promotion. The third respondent did not consider the same. In such circumstances, the petitioner gave representation to the first respondent on 30.11.2020. The first respondent also did not pass any orders on the said representation. Hence, the petitioner filed a writ petition in W.P(MD)No.4576 of 2021. When the writ petition came up for hearing on 05.03.2021, the learned counsel appearing for the third respondent informed that the petitioner's request was rejected by the first respondent on 23.02.2021. According to the petitioner, the said order was not served on him. Without considering his representation for promotion for a long time, after he filed the writ petition, by the impugned order, dated 23.02.2021, the first respondent rejected the request of the petitioner. Challenging the said order, the petitioner has come out with the present writ petition.

3. The learned counsel appearing for the petitioner submitted that the first respondent has passed the impugned order without considering the Rules applicable to the third respondent School. The third respondent School is a private non-minority School, governed by the Tamil Nadu Recognised Private Schools (Regulation) Act and Rules. The Government Orders, passed with regard to Teachers appointed in the Government Schools, are not applicable to the Teachers appointed in the Private Schools.

4. The learned counsel appearing for the petitioner referred to Annexure-V(iv)(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 and submitted that a Teacher is eligible to be promoted as PG Assistant, if he possess Master degree in that particular subject and any degree is UG level, is sufficient. The learned counsel appearing for the petitioner further submitted that when the vacancy arose in the third respondent School for the post of PG Assistant (Commerce), the petitioner alone is possessing PG degree in Commerce and he is eligible to be promoted as PG Assistant since 2019. Unless the Rules are amended, the respondents cannot deny promotion to the petitioner. If more persons are possessing PG qualification, preference must be given to the person, who is possessing UG and PG degree in the same subject. In the present case, the petitioner alone is possessing PG degree in Commerce and the third respondent has to promote the petitioner as PG Assistant (Commerce) and he relied on the judgment **N.K. Geetha**



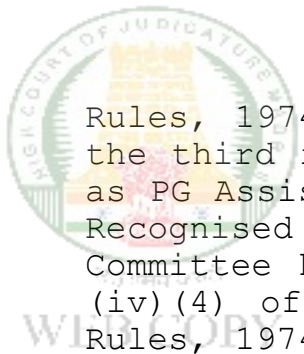
vs. The Government of Tamil Nadu reported in **2009(1) CTC 463.**

5. Mr.P.Subbaraj, learned Government Advocate appearing for the respondents 1 & 2 submitted that the petitioner is not possessing the Under Graduate Degree in Commerce subject and therefore, the petitioner is not eligible for being promoted as PG Assistant (Commerce). The reason given by the first respondent for rejection of promotion is valid and legal and prayed for dismissal of the writ petition.

6. Mr.V.Panneerselvam, learned Counsel appearing for the third respondent submitted that as per Rule 15(4)(i) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, the School is the competent authority to promote a Teacher as PG Assistant. The respondents 1 & 2 have no authority to promote the petitioner. The School Committee is yet to consider the request of the petitioner for promotion to the post of PG Assistant (Commerce). The case of the petitioner will be considered and promotion will be given and prayed for passing appropriate orders.

7. Heard the learned counsel appearing for the petitioner, learned Government Advocate appearing for the respondents 1 & 2 and the learned counsel appearing for the third respondent and perused the materials available on record.

8. From the materials on record, it is seen that the petitioner is working as BT Assistant (Science) in the third respondent School. After obtaining permission from the third respondent School, the petitioner acquired Master Degree in Commerce. When the post of Commerce fell vacant in the year 2019, the petitioner gave representation to the third respondent to promote him as PG Assistant (Commerce). The third respondent did not consider his request and pass orders and therefore, the petitioner gave representation to the first respondent. When the first respondent did not consider the representation of the petitioner, the petitioner filed a writ petition in W.P(MD)No.4576 of 2021. While the writ petition was pending, the first respondent, by the impugned order, dated 23.02.2021, rejected the representation of the petitioner. In the impugned order, the first respondent has stated that as per present Government Orders, the petitioner is not eligible to be promoted as PG Assistant (Commerce), as he studied the UG and PG degree in different subjects. The first respondent has also stated that if any vacancy arose in future in PG Assistant (Chemistry), the petitioner will be given preference. In the impugned order, the first respondent has not given the details of the Government Order, by which, the petitioner was not eligible to be promoted as PG Assistant (Commerce). In any event, the Government Order issued with regard to Teachers appointed in the Government Schools, are not applicable to the Teachers appointed in the Private Schools. The service conditions of Private Schools are



Rules, 1974. Further, the first respondent has no power to direct the third respondent to promote the petitioner as PG Assistant (Commerce). As per Rule 15(4)(i) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, only the School Committee has a power to promote the Teachers. As per Annexure V (iv)(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, the qualification for the person to be promoted as PG Assistant is, PG degree in particular subject along with B.T., or B.Ed., Degree or its equivalent. This Court, in the judgment, relied on by the learned counsel appearing for the petitioner, has held that a person who had possessed PG qualification in a particular subject, is eligible to be promoted as PG Assistant. Even if he possessed Under Graduate degree in different subject, when more than one person is claiming promotion as PG Assistant in a particular subject, the preference must be given to the person, who possessed Under Graduate degree and Post Graduate degree in the same subject. In the present case, according to the petitioner, he is the only person, possessing PG degree Commerce in the year 2019, when the vacancy arose.

9. Considering the above facts in its entirety, the impugned order of the first respondent, dated 23.02.2021, is set aside. The third respondent is directed to consider the request of the petitioner for being promoted as PG Assistant (Commerce), taking into account his qualification for the said post, as per the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 and the judgment of this Court referred to above and pass orders. If the petitioner is considered for the post of PG Assistant (Commerce), the third respondent is directed to send a proposal to the respondents 1 & 2 seeking approval for the said promotion, within a period of four weeks from the date of receipt of a copy of this order. On receipt of such proposal, the respondents 1 & 2 are directed to consider and pass orders on the proposal submitted by the third respondent, taking into consideration the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 and judgment of this Court referred to above, within a period of four weeks thereafter.

10. With the above direction, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

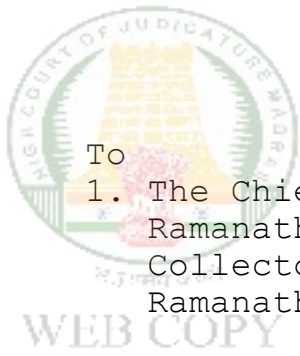
Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



To

1. The Chief Educational Officer,
Ramanathapuram District,
Collectorate,
Ramanathapuram.

2. The District Educational Officer,
Paramakudi Education District,
Paramakudi,
Ramanthapuram District.

+1 CC to M/s.V.PANNER SELVAM, Advocate (SR-21249[F] dated
05/07/2021)

+1 CC to M/s.SPL GP (SR-21327[F] dated 06/07/2021)

**W.P. (MD)No.5410 of 2021
05.07.2021**

RC (19.07.2021) 5P-5C