



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.06.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD)No.8868 of 2021

and

W.M.P (MD)Nos.6667, 6668 & 6669 of 2021

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M.Uthayasekar

... Petitioner

Vs.

1.The Tamil Nadu Public Service Commission,
TNPSC Road,
V.O.C.Nagar,
Park Town,
Chennai-600 003.

2.The Chief Educational Officer,
Ramanathapuram,
Ramanathapuram District.

3.The District Educational Officer,
O/o.the District Educational Office,
Mandapam,
Ramanathapuram District.

4.The Industries Commissioner and
Director of Industries and Commerce,
Department of Industries and Commerce,
SIDCO Corporate Office Building,
3rd Floor, Thiru-Vi-Ka Industrial Estate,
Guindy,
Chennai-600 032.

... 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 records pertaining to the impugned order in Proc.No.12665/EB2/2012, dated 21.06.2012, on the file of Respondent No.4 and consequential impugned Memorandum in Memorandum No.962/PSD-B4/2021, dated 27.03.2021 on the file of the Respondent No.1 and quash the same as illegal and consequently for a direction to direct the Respondent No.2 to regularise petitioner's service in the post of typist from 02.11.2007 and provide the other benefits and allowances within the time frame stipulated by this Court.

For Petitioner : Mr.T.Lajapathi Roy

For R1 : Mr.D.Sivaraman



For R2 to R4

: Mr.P.Subbaraj
Government Advocate

ORDER

This writ petition is filed to quash the order in Proc.No.12665/EB2/2012, dated 21.06.2012, on the file of Respondent No.4 and consequential impugned Memorandum in Memorandum No.962/PSD-B4/2021, dated 27.03.2021, on the file of the Respondent No.1 as illegal and consequently, for a direction to the second respondent to regularise petitioner's service in the post of Typist from 02.11.2007 and provide the other benefits and allowances.

2. Learned counsel appearing for the petitioner submitted that the petitioner was appointed as Typist under Rule 10(a)(i)(1) of the Tamil Nadu State and Subordinate Rules in the third respondent Office, vide proceedings in Na.Ka.5451/A1/2007, dated 01.11.2007. He joined duty on 02.11.2007 in the pay scale of Rs.3200-85-4900. Thereafter, the first respondent conducted special qualifying test for absorbing the persons, like the petitioner, who were appointed under Rule 10(a)(i)(1) of the Tamil Nadu State and Subordinate Rules. The written examination was held on 11.10.2009. After publication of results by the first respondent, the petitioner was wrongfully selected to the post of Typist in Group IV Service (Special Competitive Examination) in the fourth Respondent Department.

3. Learned counsel appearing for the petitioner submitted that the petitioner was working as Typist in the third respondent Office for more than three years and made a representation dated 15.11.2010, seeking allotment in the very same Office through the third respondent. The third respondent, vide his proceedings in Na.Ka.No.5615/A1/2010, dated 15.11.2010, has forwarded the proposal. But, the first respondent did not consider the petitioner's representation and also the proposal sent by third respondent. Hence, the petitioner filed a writ petition in W.P(MD)No.4805 of 2011, seeking direction to the first respondent to consider his representation, dated 15.11.2010, and consequently, direct the third respondent to permit the petitioner to continue with the Department of the third respondent / DEEO, Ramanathapuram. This Court, by order dated 26.04.2011, directed the first respondent therein to consider the representation of the petitioner, dated 15.11.2010, on merits and in accordance with law within a period of eight weeks from that order. Till date, the first respondent has not considered the petitioner's representation or the proposal of the third respondent. Based on the Government Order in A.Aa (Nilai) No.101, dated 18.05.2018, the Education Department enumerates the authority for appointment of Typist by the second respondent. Further, the petitioner has also made a representation to the respondents 2 and 3 to regularize him in the post of Typist under the second respondent Office. He is still continuing to work under the third respondent. On 29.07.2019, he was transferred to second respondent Office, vide proceeding in Na.Ka.No.5817/A1/2019.

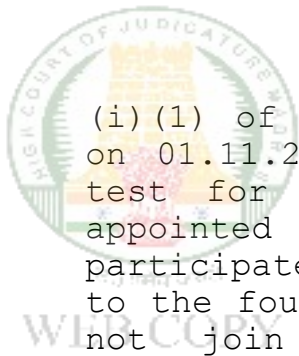


4. Learned Counsel appearing for the petitioner further submitted that for the past 13 years, the petitioner is working under the second respondent, but till date, he has not been regularized in the post. While so, he was served with a proceedings, vide Na.Ka.No.1157/A1/2020, dated 24.09.2020, seeking explanation and further development based on the order passed by this Court in W.P(MD)No.4805 of 2011, dated 26.04.2011. Again, he filed a writ petition in W.P(MD)No.840 of 2021, seeking a Writ of Mandamus, directing the first respondent to consider the proposal sent by the third respondent, vide proceedings in Na.Ka.No.5615/A1/2010, dated 15.11.2010 and allot the petitioner to School Education Department and also direct the second respondent to regularise petitioner's service in the post of Typist from 02.11.2007 and provide other benefits and allowances. This Court, by order dated 21.01.2021, directed the first respondent to consider the petitioner's representation, dated 15.11.2010 on its own merits and pass appropriate orders in accordance with law, within a period of eight weeks. The third respondent also forwarded a letter in Na.Ka.No.1157/A1/2020, dated 22.02.2021, to the first respondent for considering the case of the petitioner. Thereafter, the first respondent has passed an Memorandum No.962/PSD-B4/2021, dated 27.03.2021, rejecting the claim of the petitioner.

5. Learned counsel appearing for the petitioner submitted that the impugned order is liable to be set aside on the ground of non-application of mind and for not considering the facts of the case. It is his further submission that as the impugned memorandum, rejecting the claim of the petitioner stating that since the earlier allotment was under the fourth respondent, the claim to allot the petitioner to the Department of School Education was rejected, but the fourth respondent through his proceedings in Proc.No.12665/EB2/2012, dated 21.06.2012, has removed the petitioner's name from the list of selected candidates for appointment as Typist and therefore, the petitioner may be considered to be posted under the third respondent. The second respondent is the authority to appoint Typists in Education Department. The fourth respondent removed the name of the petitioner from the approved list and therefore, the petitioner is entitled to be regularised in the third respondent Office. The petitioner is working for 11 years continuously and entitled to be regularised and prayed for allowing the writ petition.

6. Heard Mr.T.Lajapathi Roy, learned counsel appearing for the petitioner, Mr.D.Sivaraman, learned counsel appearing for the first respondent and Mr.P.Subbaraj, learned Government Advocate appearing for the respondents 2 to 4 and perused the materials available on record.

7. From the averments made in the affidavit filed in support of the Writ Petition, it is seen that it is an admitted fact that the petitioner was appointed only as temporary Typist under Rule 10(a)



(i)(1) of the Tamil Nadu State and Subordinate Service Rules 2007, on 01.11.2007. The first respondent conducted special qualifying test for absorbing the persons, like the petitioner, who were appointed under Rule 10(a)(i)(1) of the Rules. The petitioner participated and was successful in the examination. He was allotted to the fourth respondent Industries Department. The petitioner did not join in the fourth respondent Department. He gave representation, dated 15.11.2010, for retaining him in the Education Department. The same was forwarded by the third respondent to the first respondent, but, no order was passed on the representation. Hence, the petitioner filed writ petition in W.P(MD)No.4805 of 2011. This Court, by order dated 26.04.2011, directed the first respondent to pass orders on the representation, dated 15.11.2010, within a period of eight weeks. The first respondent did not pass any orders on the representation. The petitioner also did not follow it up to get the orders for absorbing him in the Education Department. The petitioner knowing fully well that he was allotted to the fourth respondent Department, for being absorbed as permanent Typist and also did not follow up the representation, dated 15.11.2010, and orders of this Court, dated 26.04.2011. In view of the failure on the part of the petitioner in joining the fourth respondent Department, the fourth respondent by the proceedings, dated 21.06.2012, removed the petitioner's name from the approved list of candidates. The petitioner did not challenge the said order from the year 2012, but challenged the same only in the present writ petition in the year 2012. The reason given by the petitioner that he came to know about the order passed by the fourth respondent dated 21.06.2012, only when the second impugned order dated 27.03.2021 was served on him, is not acceptable and the said contention is without merits. The petitioner was allotted to the fourth respondent Department and he has given representation in the year 2010 itself, for being retained in the Education Department and therefore, he is not entitled to the relief of setting aside the order of the fourth respondent, dated 21.06.2012, by filing the writ petition in the year 2021. Further, according to the petitioner, he was served with proceedings dated 24.09.2020 and filed writ petition in W.P(MD)No.840 of 2021 for a direction to the first respondent to consider the proposal sent by the third respondent and the representation, dated 15.11.2010. This Court, by order dated 26.04.2011, directed the first respondent therein to dispose the representation of the petitioner, dated 15.11.2010, on merits within eight weeks. The first respondent by the second impugned order, dated 27.03.2021, rejected the request of the petitioner to allot him to the Education Department.

8. From the impugned order of the first respondent, it is seen that the petitioner was allotted to the fourth respondent based on the marks obtained by him, rule of reservation, post option exercised by him, vacancies, Gender etc. The first respondent has given cogent and valid reasons for rejecting the representation of the petitioner dated 15.11.2010 and there is no error in the



impugned order warranting interference by this Court.

9. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (Records)

// True Copy //

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Sub Assistant Registrar(CS)

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To

1.The Tamil Nadu Public Service Commission,
TNPSC Road,
V.O.C.Nagar,
Park Town,
Chennai-600 003.

2.The Chief Educational Office,
Ramanathapuram,
Ramanathapuram District.

3.The District Educational Office,
O/o.the District Educational Office,
Mandapam,
Ramanathapuram District.

4.The Industries Commissioner and
Director of Industries and Commerce,
Department of Industries and Commerce,
SIDCO Corporate Office Building,
3rd Floor, Thiru-Vi-Ka Industrial Estate,
Guindy,
Chennai-600 032.

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-19390[F] dated 16/06/2021)

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-19373[F] dated 16/06/2021)

+1 CC to M/s.SPL GP (SR-19421[F] dated 16/06/2021)

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