

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WRIT PETITION NO.12535 OF 2015

D.Jeyakumar Peter
S/o.R.Devaraj

... Petitioner

Vs.

1. State of Tamil Nadu,
represented by the
Secretary to Government,
School Education Department,
Government of Tamil Nadu,
Fort St.George, Chennai - 9.
2. The Chief Educational Officer,
Krishnagiri District,
Krishnagiri.
3. The District Elementary Educational Officer,
Krishnagiri District,
Krishnagiri.

... Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to appoint the petitioner as a Secondary Grade Teacher on regular basis with effect from 31.01.2002, date on which the petitioner's junior Mr.Selvan was appointed regularly on time scale of pay with all consequential benefits including arrears of pay and allowances and continuous seniority.

For Petitioner : Ms.Y.Kavitha
for M/s.Giridhar and Sai

For Respondents: Mr.S.Silambanan,
Additional Advocate General
assisted by Mrs.S.Anitha
Special Government Pleader

O R D E R

The relief sought for in the present writ petition is to direct the respondents to appoint the petitioner as a Secondary Grade Teacher on regular basis with effect from 31.01.2002, date on which the petitioner's junior Mr.Selvan was appointed regularly on time scale of pay with all consequential benefits.

2. The petitioner states that he was a native of Tuticorin until 1997 and he had shifted her residence to Krishnagiri and resided in his cousin's house. Thereafter, he settled at Krishnagiri and continued to work as a supervisor in a departmental store. The petitioner was also issued with a residence certificate dated 16.08.1999. The petitioner states that he has initially registered his name in the Employment Exchange in Tuticorin on 29.09.1992. Thereafter, he had transferred the registration to the Employment Exchange at Krishnagiri. The names of several candidates, who have registered with Employment Exchange, Krishnagiri, were sponsored for appointment to the post of Secondary Grade Teacher. However, the name of the petitioner was not sponsored. Mean while, the residence certificate dated 16.08.1999 was cancelled by the District Collector, Dharmapuri, by order dated 24.08.2000 without any opportunity to the petitioner. The petitioner filed O.A.No.8804 of 2000 before the Tamil Nadu Administrative Tribunal to appoint her in the post of Secondary Grade Teacher. Similarly, affected persons have filed W.P.No.15307 of 2000 challenging the order of cancellation of nativity certificate by the District Collector. The petitioner further filed W.P.No.3299 of 2002 before this Court challenging the order of cancellation of residence certificate by withdrawing the original application, which was pending before the Tribunal. This Court passed an order on 08.02.2002 setting aside the cancellation order and the matter was remanded back. Thereafter, the case of the petitioner was considered and the residence certificate was restored, consequently, the petitioner was appointed as Junior Grade Secondary Grade Assistant Teacher on 15.08.2004. The services of the petitioner were regularised in the said post on 01.06.2006.

3. The grievance of the petitioner is that the juniors to the petitioner in employment seniority secured employment prior to his appointment. Therefore, the petitioner must be given appointment with retrospective effect from the date on which his junior was appointed with all benefits.

4. Learned counsel for the petitioner reiterated that when the juniors to the petitioner in the employment seniority was appointed in the year 2001 after restoration of residence

certificate, the seniority of the petitioner must be restored and consequently, appointment shall also be granted with retrospective effect.

5. It is contended that in the year 2002, the benefit of seniority was granted to some other candidates on par with their juniors and therefore, the said benefit is to be extended to the petitioner also.

6. Admittedly, the petitioner filed W.P.No.3299 of 2002 and pursuant to the orders of this Court dated 08.02.2002, the petitioner was appointed on 15.08.2004. His services were also regularised on 01.06.2006. He was not sponsored through the District Employment Exchange in the year 2001 in view of the fact that his nativity certificate was cancelled by the District Collector. Such cancellation of nativity certificate is the administrative decision taken by the District Collector based on certain facts and circumstances. However, pursuant to the directions issued by this Court, re-enquiry was conducted and the nativity certificate was restored and thereafter, he was appointed in the year 2004. Under this circumstances, this Court, at this length of time, cannot issue any direction for retrospective appointment of the petitioner with effect from 2001. In certain circumstances, if the administrative decisions taken caused some delay in appointment or otherwise, after many years, appointment cannot be granted with retrospective effect, more specifically for the period during which, the person has not even served in the particular post.

7. That apart, employment registration would not confer any right on the candidate for seeking appointment. Employment registration is being maintained to facilitate the candidates to participate in the process of selection. Even the selection would not confer any right on the candidate. Only if an order of appointment is issued then alone the right accrues. Thus, sponsoring the name must be done with reference to the rules in force and by following the employment seniority. Mere seniority in the Employment Exchange would not confer any right for appointment. Therefore, cancellation of nativity certificate and restoration of the same would have provided right for the petitioner to restore the employment seniority but not appointment. Even in several cases where the names are sponsored by the Employment Exchange and the selection is cancelled or appointment order is not issued by the competent authorities then also the candidates cannot seek any direction for appointment based on the sponsorship. This being the principle, restoration of employment seniority cannot be a ground to seek the relief of retrospective appointment. Such restoration of seniority may be useful for further sponsorship in any other selection or otherwise but not for backdating the appointment

already issued in the year 2004, which was accepted by the petitioner and the petitioner is working for the past several years.

8. This Court is of the considered opinion that admittedly, the petitioner was appointed in the year 2004. The dispute regarding cancellation of residence certificate is noway connected with the appointment of the petitioner as his appointment was made pursuant to directions issued by this Court and after restoration of his residence certificate. Thus, at this length of time, the relief sought for to grant retrospective appointment is unknown to service jurisprudence and untenable.

9. The qualifying services under the Tamil Nadu Pension Rules are defined in Rule 11 of the Tamil Nadu Pension Rules. An employer must have worked in a cadre for the purpose of reckoning the qualifying services. When a person was not even appointed and not worked in the particular cadre or post, the question of reckoning the qualifying service would not arise at all nor the Court can issue any such direction for retrospective appointment for the purpose of fixation of seniority or to calculate the qualifying service, which would result in unjust gain to the candidates, which is impermissible.

Accordingly, this Writ Petition stands dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gm

To

1. The Secretary to Government,
School Education Department,
Government of Tamil Nadu,
Fort St.George, Chennai - 9.
2. The Chief Educational Officer,
Krishnagiri District,
Krishnagiri.

3. The District Elementary Educational Officer,
Krishnagiri District,
Krishnagiri.

+1cc to the Government Pleader, S.R.No.43952

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RGN(CO)
PM/27/07/2022