



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.27055 of 2010

K.G.Boopathy Selvaraj

.. Petitioner

Versus

The Director of School Education,
Office of the Director of School Education,
College Road, Chennai - 600 006.

.. Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records on the file of the respondent made in Na.Ka.No.93899/C5/E1/2010, dated 20.10.2010 and quash the same and consequently, to direct the respondent to promote the petitioner to the post of Teacher by transfer of service (from the post of Lab Assistant).

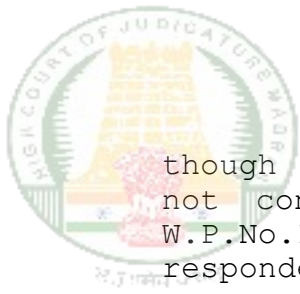
For Petitioner : Mrs.Selvi George

For Respondent : Mrs.E.Ranganayaki
Additional Government Pleader

ORDER

This Writ Petition is filed to call for the records on the file of the respondent in respect of the impugned order, dated 20.10.2010 and to quash the same and consequently, to direct the respondent to promote the petitioner to the post of Teacher by transfer of service.

2. The case of the petitioner is that the petitioner was working as Lab Assistant. He possessed all the educational qualifications to be appointed as Graduate Assistant (Tamil). As per the G.O.Ms.No.175, dated 19.07.2007 and the Government Orders preceding thereto, a total of 2% of the vacancies in the teaching posts were ordered to be filled up by way of transfer from among the personnel holding the posts in the ministerial service, having qualification in respect of the said post. Even



though the petitioner had the relevant qualification, they did not consider. Therefore, the petitioner had earlier filed W.P.No.15704 of 2010 and on 20.08.2010, this Court directed the respondents to consider the case of the petitioner and pass appropriate orders in accordance with law, keeping in mind the order passed by them in certain earlier cases pointed out by the petitioner. Thereafter, the impugned order, dated 20.10.2010 was passed rejecting the case of the petitioner. The reason stated in the impugned order is that the petitioner is not incumbent in the cadre of Superintendent, Assistant or Junior Assistant and therefore, he could not be granted appointment as Tamil Teacher.

3. Heard Mrs.Selvi George, learned Counsel for the petitioner and Mrs.E.Ranganayaki, learned Additional Government Pleader.

4. The learned Counsel for the petitioner would submit that the impugned order rejects the case of the petitioner by relying upon G.O.Ms.No.175, dated 19.07.2007 on the ground that he is not in the cadre of Superintendent, Assistant or Junior Assistant. Whereas, a careful perusal of G.O.Ms.No.175 would reveal that this G.O only lays down that preference should be given to the incumbent holding the posts of Superintendent, Assistant or Junior Assistant, while 2% is generally for all the persons holding posts in ministerial service and therefore, she would submit that the impugned order is liable to be quashed and the respondents are liable to be directed by this Court to notionally grant the post of Tamil Teacher to the petitioner, even though he was superannuated from the service so that he will get pensionary benefits.

5. Per contra, Mrs.E.Ranganayaki, learned Additional Government Pleader would submit that on reading of G.O.Ms.No.175, it would be clear that of the 2% vacancies, first preference should be given to Superintendent, second preference should be given to Assistant and third preference should be given to Junior Assistant and if only any vacancy is left thereafter, persons from other ministerial service can be considered. Accordingly, when these 2% vacancies were considered at the relevant point of time, the petitioner was not even within the zone of consideration and therefore, he was not considered.

6. I have considered the rival submissions made on behalf of either side.

7. I agree with the statement of the learned Counsel for the petitioner that the submission made by the learned Additional Government Pleader is not the reason mentioned in the impugned



order. The impugned order rejects the case of the petitioner only because he did not belong to the cadre of the Superintendent, Assistant or Junior Assistant. The fact as to the zone of consideration or number of vacancies are not mentioned in the impugned order, which are now being furnished only in the counter affidavit and therefore, the impugned order has to be set aside. But, however, in view of the facts mentioned in the counter affidavit relating to the number of posts i.e., 174 posts and how it has been filled up, this Court cannot grant any consequential relief to the petitioner, but only to remand the matter back to the respondents to pass orders afresh by taking a correct view, as per the rules in question and the number of vacancies and the manner in which it has been filled etc.

8. Therefore, the Writ Petition is disposed of on the following terms:-

(a) The impugned order, dated 20.10.2010 is quashed;

(b) The matter is remanded back to the respondent to consider the issue afresh, in view of the rule position that all the employees belonging to the ministerial cadre are entitled to be considered, but, however, first preference should be given to Superintendent, second preference should be given to Assistant and third preference should be given to Junior Assistant and thereafter, to the other cases as such of the petitioner. The respondent is directed to comply the above principle and consider the case of the petitioner afresh and pass orders in any event not later than eight weeks from the date of receipt of copy of the order. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

grs
To

The Director of School Education,
Office of the Director of School Education,
College Road, Chennai - 600 006.

+1cc to Mrs.Selvi George, Advocate, S.R.No.25004
+1cc to the Government Pleader, S.R.No.25486

W.P.No.27055 of 2010

GP[co]
NSK 21/04/2022