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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

WRIT PETITION NO.29037 OF 2010

A.Senthilvel Murugan

... Petitioner

-Vs-

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Education Department,
Secretariat,
Chennai - 9.

2. The Joint Director, (Personnel),
Officer of the Director
of School Education,
College Road,
Chennai - 6.

... Respondents

PRAYER:-

Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records made in the impugned proceeding of the 2nd respondent in O.Mu.No.046306/A4/E3/2010 dated 29.06.2010 and quash the same in so far as the date of promotion as 13.07.1999 only and direct the respondents to promote the petitioner as Assistant with effect from 04.04.1994 with all consequential benefits.

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mrs.E.Renganayaki
Additional Government Pleader

O R D E R

The petitioner has filed this Writ Petition challenging the impugned order dated 29.06.2010, whereby the request of the petitioner to grant retrospective promotion from 04.04.1994



i.e., date of promotion of his junior namely Sri.Saravanasamy, has been rejected.

2. The case of the petitioner is that the petitioner was appointed as Junior Assistant on compassionate basis on 06.10.1989 by due procedure of law. But, however, there was an administrative delay on the part of the respondents in passing the order of regularization, which was done on 28.09.1999 only. In the meanwhile, even though he was eligible to be promoted to the next higher post, his junior was promoted and he was not granted. Therefore, considering the situation of the petitioner and the similarly situated persons, the Government passed G.O.Ms.No.174, Higher Education (G2) Department, dated 11.11.2002, directing that, if any person has lost the promotional opportunity on account of the delay in regularization, the same should be granted to him. Accordingly, the petitioner's case was considered and he was granted promotion retrospectively with effect from 13.07.1999, that is, from the date of promotion of one of his juniors. However, there is another junior namely, Sri.Saravanasamy, who was granted promotion on 04.04.1994 itself and therefore, the respondents ought to have granted promotion from the said date onwards.

3. Mrs.E.Ranganayaki, learned Additional Government Pleader appearing in the matter would submit that the petitioner's case was considered in accordance with the Government Order and was granted benefit with effect from 13.07.1999. As far as grant of promotion with effect from 04.04.1994 is concerned, the petitioner was not qualified for promotion, as he did not pass the Departmental Test as in the year 1994 and therefore, his case has been rightly rejected, as his junior has passed the Departmental Test and got promotion.

4. In reply to the said submissions, Mr.S.N.Ravichandran, learned counsel for the petitioner would rely upon G.O.Ms.220, Education Science and Technology (M2) Department, dated 22.03.1996, whereby, the persons holding the posts of School Assistant and in the combined category of School Assistant and Deputy Inspector of Schools, were not required to pass the Deputy Inspector Tests and Accounts Tests. Further, the learned counsel pointed out that the said amendment is deemed to have come into force from 01.04.1970 and therefore, he is entitled for the relief. However, the said amendment is extracted hereunder:

"AMENDMENT

In the said Special Rules, in rule 13 in sub-rule (a) for Explanations (1) and (2) the following provisos shall be substituted namely:



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"Provided that any person appointed on or after the 1st April 1970 as School Assistant in the combined category of School Assistant and Deputy Inspector of Schools need not be required to pass the Deputy Inspectors Test and Account Test for Subordinate Officers Part-I for satisfactory completion of his probation.

Provided further that the probation of a person appointed between 1st April 1970 and 26th March 1982 shall be declared subject to the condition that the second and subsequent increments shall be sanctioned notionally and he shall be granted monetary benefit w.e.f. on or from 27-3-82.

Provided also that no person working in the Common Cadre of Deputy Inspector of Schools and school Asst. shall be given posting as Deputy Inspector of Schools unless he has passed the DI. Test and ATS-I."

(BY ORDER OF THE GOVERNOR)

Sd/

Secretary to Government

5. It may been seen that the said amendment is only for the purpose of grant of probation. The effect of the said amendment is irrespective of passing of the tests, probation has to be declared. Therefore, for promotion when there was a requirement of passing of the test as on the relevant date and when the petitioner has not passed the test, the respondents have rightly rejected the retrospective promotion with effect from 04.04.1994.

6. Therefore finding no merits, this Writ Petition is dismissed. No Costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Anu



To

1. The State of Tamil Nadu,
The Secretary to Government,
Education Department,
Secretariat,
Chennai - 9.

2. The Joint Director, (Personnel),
Officer of the Director
of School Education,
College Road,
Chennai - 6.

+1cc to Mr.S.N.Ravichandran, Advocate, S.R.No.25132
+1cc to the Government Pleader, S.R.No.25472

W.P.NO.29037 OF 2010

JPL(CO)
PBS/29/04/2022