

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.9453 of 2014

A.Arulmaran

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep.by the Principal Secretary to Government,
School Education Department,
Fort St.George, Chennai - 600 009.

2. The District Elementary Educational Officer,
Karur, Karur District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned Order of the first respondent in Letter No.16316/Tho.Ka.1(2)/2010-6 dated 31.10.2013, School Education Department, Chennai-600009 communicated to the Petitioner in Letter No.3609/Tho.Ka.1(2)/2014-1 dated 21.2.2014 and quash the same and direct the first respondent to issue necessary orders relaxing the rules relating to age limit and communal rotation in favour of the Petitioner and grant him all consequential benefits including grant of withheld annual increments selection grade in the post of Secondary Grade Teacher, promotions and regular pension.

For Petitioner : Mr.P.Mohanraj

For Respondents

[For R1 & R2] : Mr.L.S.M.Hasan Fizal
Additional Government Pleader

ORDER

The order passed by the first respondent/Government in proceedings dated 31.10.2013, declining the request of the writ petitioner to relax the relevant rules for age and communal rotation for the purpose of granting retrospective relaxation is under challenge in the present writ petition.

2. The writ petitioner was appointed as Supervisor under the Non-Formal and Adult Education Scheme on 05.05.1984. In the year 1989, the Government of Tamil Nadu issued orders in G.O.No.1211, Education (C-2) Department dated 07.09.1989, directing that the Adult Education Supervisors shall be appointed as Secondary Grade Teachers in the existing/future vacancies subject to their giving written declaration expressing their willingness to work as Secondary Grade Teacher.

3. It was also directed in the said Government order that proposals for relaxation of rules relating to communal rotation, age, etc., should be sent to Government, wherever such relaxation is necessary for regularization of their service as Secondary Grade Teacher. The petitioner submitted his willingness and absorbed as Secondary Grade Teacher on 21.10.1989. The services of the writ petitioner were regularized in the Post of Secondary Grade Teacher with effect from 21.10.1989 and his probation was declared. The petitioner was promoted to the Post of Primary School Headmaster and subsequently, the said promotion was cancelled and he was reverted to the Post of Secondary Grade Teacher. The petitioner filed O.A.No.4886 of 2000 before the Tamil Nadu Administrative Tribunal, Chennai and by virtue of an interim order, the petitioner continued.

4. Finally, the order of reversion dated 04.07.2000 was quashed by this Court in W.P.No.41611 of 2006 dated 24.09.2010.

5. The learned counsel for the petitioner made a submission that the proposals sent by the competent authorities for grant of relaxation was rejected without any valid reason. The cases of similarly placed persons were considered for grant of retrospective relaxation with all benefits. Thus, the writ petition is to be considered.

6. The learned Additional Government Pleader appearing on behalf of the respondents opposed the said contention by stating that the initial appointment of the writ petitioner was not in accordance with the recruitment rules. The petitioner was over aged and further, a communal rotation was not followed at the time of appointment. The Government has no power to relax the rule relating to communal rotation. The said fact was clearly stated in the counter affidavit filed by the respondents in Paragraph No.5, which reads as under:

"5.the writ petitioner herein filed writ petition in W.P.No.15628 of 2012 before this Hon'ble High Court for issuance of Mandamus, direct the Government to pass suitable order by relaxing age limit and forward service records to concern authorities sanctioning pension benefits. The said writ petition was disposed on 05.12.2012 direct the Government to consider the proposal sent by 2nd respondent. In pursuant to the order passed by this Hon'ble High Court, the Government herein considering the proposal of the petitioner for relaxing age as well as the communal rotation. The appointment of the petitioner is violation of the Rule 4 and 6 (a) of the Tamil Nadu Elementary Education Subordinate Special Rules. It is further submitted that the Government has no power to relax the communal rotation. Therefore, the claim of the petitioner for relaxing age as well as the communal rotation cannot be considered by the 1st respondent. Therefore, the 1st respondent in his order dated 31.10.2013, rejected the request of the writ petitioner. It is further submitted that government has no power to relax the communal rotation. The very appointment of the petitioner itself against the communal rotation. Therefore, request of the petitioner could not be considered. The order passed by the 1st respondent is as per law and relevant rules in force."

7. The learned Additional Government Pleader made a submission that the petitioner made a reference regarding the benefit granted to one Mr.V.Perumalsamy, the said Government order is not applicable to the writ petitioner for the reason that the petitioner is making a request to relax age as well as communal rotation. However, in the said case, the relaxation was granted only in respect of age and therefore, the case of the writ petitioner cannot be compared with the case of Mr.V.Perumalsamy.

8. The power of relaxation is conferred on the Government under the Rules. The power of relaxation is to be exercised discreetly, if any gross injustice occurred. Thus, relaxation cannot be granted in a routine manner. The recruitment rules are to be followed at all circumstances and relaxations are to be granted exceptionally, when the Government is of an opinion that a gross injustice occurred in a particular case. Further, relaxation can never be claimed as a matter of right by the employees.

9. In the present case, the petitioner at the time of appointment, was overaged and the communal rotation was not followed. The Government has clearly stated that the relaxation cannot be granted for not following the communal rotation. Under these circumstances, the Court cannot grant

any such relaxation in favour of the individual for the purpose of extending the benefit. The power of judicial review under Article 226 of the Constitution of India cannot be extended for the purpose of granting relaxation in the matter of not following the communal rotation for appointment and therefore, the writ petition is devoid of merits and accordingly, the writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal Secretary to Government,
School Education Department,
Fort St.George, Chennai - 600 009.
- 2.The District Elementary Educational Officer,
Karur, Karur District.

+lcc to Government Pleader SR. No. 40755

W.P.No.9453 of 2014

GPL (CO)
PR (18/07/2022)