



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.02.2022

Coram:

THE HONOURABLE MR.MUNISHWAR NATH BHANDARI, Chief Justice
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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W.P.No.19244 of 2021
and W.M.P.No.20561 of 2021

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1. R.Srinivasan
2. K.S.Burushothaman
3. S.Ravichandran
4. M.P.Devarajan
5. R.Radhika
6. R.Madhesan
7. T.Thimimarayan
8. V.T.Thangamani
9. K.Vijayakumar
10. S.Velmurugan

.. Petitioners

Vs.

1. The Principal Secretary to Government,
School Educational Department,
Fort St.George,
Chennai-600 009.
2. The Commissioner,
Directorate of School Education,
DPI Campus, Chennai-600 006.
3. The Director,
Directorate of School Education,
DPI Campus,
Chennai-600 006.

..Respondents



Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Declaration, declaring Section 8-A of the Tamil Nadu School Educational Service Rules insofar as Rule 2(a) with respect to the inclusion of Class V (High School Headmaster post) as Feeder Category for promotion to Class IV (the post of District Educational Officer) as arbitrary, discriminatory and unconstitutional.

For petitioners : M/s.Dakshayani Reddy

For respondents : Mr.C.Harsha Raj, Addl.G.P.

ORDER

(The Order of the Court was made by The Honourable Chief Justice)

By this Writ Petition, the challenge is made to Section 8-A of the Tamil Nadu School Educational Service Rules insofar as Rule 2(a) for inclusion of the post of High School Headmaster as the feeder post for promotion to the post of District Educational Officer, to be arbitrary and accordingly declare to be unconstitutional.

2. Learned Counsel for the petitioner submits that Rule 2(a) under challenge provides the avenue of appointment to several classes and categories of posts. One of the posts given therein is at paragraph IV(1) to Rule 2(a) and relevant part for challenge to the aforesaid is thus quoted hereunder:

"2. Appointment.--(a) Appoint to several classes and categories of the service shall be made as follows:

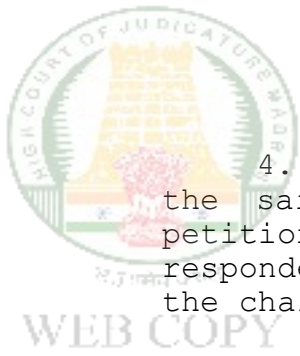
Class category (1)	Method of recruitment (2)
I.	
II.	
III.	



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Class and category (1)	Method of recruitment (2)
IV.(1) District Educational Officers, Inspectress of Girls Schools, Inspector of Anglo-Indian Schools, Assistant Director of School Education (Libraries) and Readers in the State Council of Educational Research and Training, Chennai	(i) Direct recruitment; or (ii) Promotion from Class V of the service; or (iii) Omitted, (iv) Recruitment by transfer from the category of Headmaster or Headmistress of Government Higher Secondary Schools borne on Class I of the Tamil Nadu Higher Secondary Educational Service including Headmasters or Headmistresses of Government Higher Secondary Schools appointed by recruitment by transfer from the post of Headmasters or Headmistresses of Government High Schools who opt to be so appointed.

3. Referring to the Rule quoted above, the learned counsel for the petitioner submits that the avenue of promotion to the post of District Educational Officer is provided from Class V of the service, apart from others, which includes the post of Headmaster or Headmistress of Model High Schools attached to Training Colleges in the Collegiate Education Department. The Headmaster or Headmistress of the Government Higher Secondary School borne on Class-I of the Tamil Nadu Higher Secondary Educational Service, can be promoted by way of transfer if so opted by the candidate. While carrying out the promotion to the post of District Educational Officer, the respondents are violating Section 41 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. The second proviso to Section 41(1) provides that when promotion to the higher post is from different feeder category than the post carrying higher pay scale in the feeder category, then that member of service would be given preference and if any post remains vacant, that has to be given to a feeder post category with lesser pay scale. In the said case, the petitioners working in the post of Headmaster of Higher Secondary School are in the pay scale of Rs.56,900/-, whereas, the Headmaster of High School carries the pay scale of Rs.36,900/-, which is much lower than the pay scale of the petitioners.



4. In view of the above, while giving effect to Rule 2(a) of the said Rule, preference should have been given to the petitioners in the higher pay scale. However, since the respondents are violating Section 41 of the Act of 2016, thus, the challenge to Rule 2(a) of the Rule has been made.

5. We have given consideration to the submissions made by the learned counsel for the petitioners and also the respondents and perused the records.

6. Rule 2(a) under challenge is under the Tamil Nadu School Educational Service, which is a separate service than the Tamil Nadu Higher Secondary Educational Service. The aforesaid difference is required to be clarified, because, by virtue of Rule 2(a) under challenge, the interchangeability between the two different services has been allowed. The petitioners belong to Higher Secondary Educational Service, while the Rule under challenge is of the Tamil Nadu School Educational Service. The main thrust of arguments is in reference to Section 41(1) of the Act, 2016, and for ready reference, the said provision is quoted hereunder:

"Section 41: Promotion:-- (1) No member of a service or class of a service shall be eligible for promotion from the category in which he was appointed to the service unless he has satisfactorily completed his probation in that category.

Provided that a member of a service or class of a service who, having satisfactorily completed his probation in the category in which he was appointed to the service, has been promoted to the next higher category shall, notwithstanding that he has not been declared to have satisfactorily completed his probation in such higher category be eligible for promotion from such higher category:

Provided further that if scales of pay or pay band of posts in the feeder categories are different, the persons holding post carrying a higher scale of pay or pay band in the feeder category shall be considered first and that, if no qualified and suitable persons holding post in that feeder category are available, the persons holding post carrying the next higher scale of pay or pay band in descending order in other feeder categories shall be considered."

7. A reference to second proviso to Section 41 of the Act,



2016 has been given to indicate that whenever a promotional post is to be filled by two feeder category posts, preference should be given to the post carrying higher pay scale. The aforesaid proviso has been invoked referring to the facts of the case, because, the petitioners are holding the post of Headmasters of Higher Secondary Schools in the pay scale of Rs.56,900/-, while the Headmaster of a High School carries pay scale of Rs.36,900/- and accordingly, the petitioners should have been given preference for promotion to the post of the District Educational Officer. If the analogy aforesaid is accepted, the question would be the requirement of challenge to Rule 2(a), because, it otherwise remains beneficial to the petitioners but knowing it well that Section 41 of the Act, 2016, would not be applicable to the facts of the case, the challenge to Rule 2(a) has been made.

8. To analyse the argument on the threadbare and in reference to Section 41, we need to clarify that two different services carrying different posts and avenue of promotion, cannot be inter-mixed for the purpose of regular avenue of promotion. In the instant case, one service to which the petitioners belong to, is the Higher Secondary Educational Service, while the other is the Tamil Nadu School Educational Service. It is to give chance to change of service, transfer has been made permissible under Rule 2(a). By virtue of it, a candidate working in the post of Headmaster, Senior Secondary School, can change the service from Higher Secondary Educational Service to the Tamil Nadu School Educational Service and accept the post of District Educational Officer by transfer as a mode of appointment, which is basically an administrative post and the regular avenue of promotion is given to the Headmaster of High School of the same services who discharges basically the administrative function also. No unconstitutionality in Rule 2 (a) has been shown.

9. The transfer from one service to another, has been taken to be the avenue of promotion, though it is an appointment, yet claimed right under Section 41 of the Act, 2016. This is without realising the scheme of service jurisprudence. It is also without realising that the transfer is not as a regular avenue of promotion, but permitted as an appointment from one service to another.

10. The Rule 2(c) further provides even bifurcation of quota, apart from an arrangement that even a Headmaster of High School can opt for his transfer to the post of Headmaster of Higher Secondary School, but with the clarity that once he joins the other service, he would not be reverted back to the original service. Again, the word 'transfer' has been used knowing it well that the Headmaster of a High School and Headmaster of the



Higher Secondary School belongs to two different services, and not one.

11. In the light of the discussion made above, the allegation of the petitioners that despite the Headmaster of the Higher Secondary School carrying on the higher pay scale, has not been given preference in the light of second proviso to Section 41 of the Act, 2016, is not made out, for the reason that the second proviso to Section 41 does not refer to the avenue of promotion from two different services, but two different feeder posts in the same cadre of the service. That differentiation was to be carved out by the petitioners while filing the Writ Petition. It is more so, when the post of the District Educational Officer carries almost the same pay scale as that of the Headmaster of the Higher Secondary School. Thus, it is only change of the service by way of transfer and it cannot be said to be the avenue of promotion to the cadre of different service, but an appointment, thus, Section 41 has no application for the reasons given above.

12. In view of the above discussion, we do not find any merit for challenge to Rule 2(a). The Writ Petition fails and it is accordingly dismissed. No costs. Consequently, W.M.P. is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

CS

To

1. The Principal Secretary to Government,
School Educational Department,
Fort St.George, Chennai-600 009.
2. The Commissioner,
Directorate of School Education,
DPI Campus, Chennai-600 006.
3. The Director, Directorate of School Education,
DPI Campus, Chennai-600 006.

+1cc to Mr. M/s.Dakshayani Reddy, Advocate, S.R.No.13463
+1cc Government Pleader Sr.No. 13778 (10/03/2022)

W.P.No.19244 of 2021

SRA(CO)

CT 08/03/2022