



W.P.No.9283 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.9283 of 2017

and

W.M.P.No.10258 of 2017

V.Gopal

... Petitioner

Vs.

1.The Principal Secretary
Government of Tamil Nadu
Welfare of Differently-abled Persons Department,
Fort St. George, Chennai – 600 009.

2.The State Commissioner,
Commissionerate for the Differently-abled Persons,
K.K.Nagar, Chennai – 600 078.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the entire records culminated in the 2nd respondent's impugned proceedings in Ref. Se.Mu.Na.Ka. No.2533/Ci.Pa/2015 dated 22.03.2017 and quash the same and consequently, issue directions to the respondents to give promotion to the petitioner w.e.f. 01.06.1995 by reckoning his service w.e.f. 24.12.1991 (now to the Post of Chief Educational Officer/ Deputy Director w.e.f. 01.03.2011) with arrears of Salary, continuity of service, all attendant, monetary and pensionary benefits.



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For Petitioner : Mr.P.Subburaj
For Mr.R.Prabhakaran

For Respondents : Mr.P.Kumaresan
Additional Advocate General
Assisted by Mrs.S.Anitha
Special Government Pleader

ORDER

The final seniority list issued by the respondents in proceedings dated 22.03.2017 is sought to be quashed in the present writ petition.

2. The petitioner states that he was initially appointed as Ministerial Assistant on 02.05.1983 in the Social Welfare Department. The department was bifurcated and new department of Directorate of Rehabilitation for the Disabled was constituted. The petitioner worked as Selection Grade, Post Graduate Assistant in the newly formed Department. He was appointed as PG Assistant on 24.12.1991. The said appointment was questioned by the other candidates before the Tamil Nadu Administrative Tribunal and the matter went up to the Hon'ble Supreme Court of India and appointment of the writ petitioner as PG Assistant in the year 1991 was declared as null and void. Thus, the petitioner was found not eligible to hold the post of PG Assistant in the Commissionerate of Differently-abled Persons Department.



3. The learned Additional Advocate General appearing on behalf of the 'State' furnished a copy of the judgment of the Hon'ble Supreme Court of India, wherein, the Apex Court held as follows:

“11. The matter, however, does not seem to end here. In the proceedings dated December 24, 1991, by which the appellant was appointed, the date of his application is mentioned as July 17, 1991. This appears to us quite inexplicable as the notice inviting applications is itself dated December 5, 1991. The counsel, appearing for the appellant, failed to give any satisfactory explanation for this anomaly. We, therefore, feel that the whole process of selection and appointment was quite irregular and unsatisfactory and in those circumstances, we are unable even to sustain the appointment of the appellant to the post of P.G. Assistant (Political Science). We, accordingly, direct the concerned authority to take fresh steps for filling up the said post in accordance with the rules. The process of selection and appointment must be completed within three months from today. Needless to say that every eligible candidate for the post on the date of the notice for appointment would be



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entitled to make application and selection will be made in accordance with the rules.

12. Since the appellant is working on the post for the past about 20 years, he would continue on it till a fresh appointment is made, as directed above.

13. The appeal is disposed of with the aforesaid observations and directions.”

4. The learned Additional Advocate General appearing on behalf of the ‘State’ made a submission that based on the judgment of the Hon’ble Supreme Court of India, the case of the writ petitioner was reconsidered and subsequently on acquisition of qualification in the year 2011 and accordingly, the petitioner was appointed in the post of PG Assistant on 11.01.2012 as per the orders of the Hon’ble Supreme Court of India. Thus, the seniority of the writ petitioner was reckoned from the date on which he was appointed as PG Assistant i.e. on 11.01.2012.

5. The learned counsel for the petitioner made a submission that the seniority of the writ petitioner is to be reckoned from the year 1991 and in earlier proceedings, his seniority was fixed above Smt.G.Anusiya Devi and



in the final seniority he was placed in S.No.4 below the said Smt.G.Anusiya Devi and thus, the final seniority list is to be set aside.

6. The comparison made by the petitioner deserves no merit consideration, since his first appointment as PG Assistant in the Commissionerate of Differently-abled Persons was set aside by the Courts and he was appointed as a fresh candidate in the post of PG Assistant as per the orders of the Hon'ble Supreme Court of India only on 11.01.2012 and thus, the respondents have fixed the seniority taking into consideration of the date of appointment as PG Assistant based on the orders of the Hon'ble Supreme Court of India.

7. The learned counsel for the petitioner relied on the proposals submitted by the Commissionerate of Differently-abled Persons in proceedings dated 17.08.2012. In respect of the proposals, a final decision was taken by the competent authorities. However, the final seniority list was published only after affording opportunity to all the candidates including the petitioner. The impugned order reveals that objections were received from all the employees concerned and considering the objections, the final seniority



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list was published by the competent authority in proceedings dated 22.03.2017.

8. The learned Additional Advocate General appearing on behalf of the 'State' brought to the notice of this Court that the petitioner passed PG (PS) in April 1986 and he has passed the subject in December 1987. As per the procedure is being started afresh, during the issue of notice to Thiru. V.Gopal / writ petitioner is senior than P.Gnana Selva Udaya Kumari in getting M.A. degree in Political Science. Though the petitioner is a Ministerial Staff, there is no bar or restriction in appointing him as PG Assistant (PS) as observed by the Hon'ble Supreme Court of India.

9. Thus, the petitioner was appointed as PG Assistant (PS) with effect from the date of the issuance of the order i.e. on 11.01.2012. It is clearly stated that in the order of appointment that "*The seniority of PG Teacher is fixed from the date of issue of the order i.e. on 11.01.2012*". It is further ordered that his past service rendered by him shall be counted only for pensionary benefits. As the petitioner was posted afresh, his pay may be fixed in the cadre afresh from the date of joining in the post.



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10. The order of appointment issued to the writ petitioner on 11.01.2012, unambiguously indicates that the seniority of the writ petitioner in the post of PG Teacher will be fixed from the date of appointment order on 11.01.2012 and earlier service will be taken into consideration only for the pensionary benefits. Accepting the said order of appointment, the petitioner joined in the post of PG Assistant in the year of 2012. Thus, now he cannot turn around and claim seniority with reference to the appointment, which was nullified by the Hon'ble Supreme Court in its order. Thus, the petitioner is not entitled for the relief as his seniority was fixed based on the appointment order as well as the conditions stipulated in the order of appointment.

11. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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(1/3)

Jeni
Index : Yes
Speaking order



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To

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S.M.SUBRAMANIAM, J.

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