



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.02.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.3379 of 2022
and
W.M.P.(MD) No.2954 of 2022

R.Guruprasath

... Petitioner

-vs-

1.The Director of Elementary Education,
Office of the Director of Elementary Education,
Chennai.

2.The Chief Educational Officer,
Office of Chief Educational Officer,
Theni District.

3.The District Educational Officer,
Uthamapalayam,
Theni District.

4.The Block Education Officer,
Uthamapalayam,
Theni District.

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus forbearing the respondents herein from in any manner filling up the vacancy caused in the Secondary Grade Teacher post in the Panchayat Union Middle School, Angadi Street (Bazar), Uthamapalayam Union, Theni District, in the counselling for transfer of Secondary Grade Teacher scheduled on 23.02.2022 and consequently direct the respondents herein to promote the petitioner herein as B.T.Assistant (Maths) by transfer to the vacancy caused in the Secondary Grade Teacher post in the Panchayat Union Middle School, Angadi Street (Bazar), Uthamapalayam Union, Theni District, as per the proceedings of the 1st respondent in Na.Ka.No.14765/D1/2007 dated 31.10.2007.

For Petitioner : Mr.K.Appadurai
For Respondents : Mr.N.Ga.Nataraj,
Government Advocate



O R D E R

The relief sought for in the present writ petition is to forbear the respondents from in any manner filling up the vacancy caused in the Secondary Grade Teacher post in the Panchayat Union Middle School, Angadi Street (Bazar), Uthamapalayam Union, Theni District in the counselling for transfer of Secondary Grade Teacher scheduled on 23.02.2022.

2.Filling up of the vacancy in Government Department is the prerogative of the competent authorities and an administrative decision is to be taken in this regard. Employees cannot seek a direction to fill up the post. Creation of post, abolition of post or filling up of post is the administrative prerogative wherein the employee has no service rights at all. However, if a decision is taken administratively to fill up the post, then the procedures contemplated and the rules are to be followed.

3.The learned counsel for the petitioner contended that the petitioner is the senior most Secondary Grade Teacher in the particular Union and one post is vacant and in the said post, the petitioner is to be promoted.

4.However, such a claim cannot be accepted in view of the fact that promotion *per se* cannot be claimed as a matter of right. However, consideration for promotion is a fundamental right. Whenever an administrative decision is taken to fill up the post by the competent authorities, then the procedures are to be followed for the purpose of filling up of the post. Promotions are to be granted by considering the name of all eligible persons who all are aspiring and waiting for promotion. It is to be borne in mind that while considering the names of eligible persons, the seniority is to be followed by verifying the eligibility in accordance with the rules. At the out set, the rules for promotion as contemplated must be followed in all respects while undertaking the process of filling up of a particular post. Contrarily, an employee cannot come to the Court by stating that he is the senior most Secondary Grade Teacher and therefore, he must be given with a promotion. Such a right is not conferred under the service jurisprudence, as promotion cannot be claimed as a matter of right.

5.The learned Government Advocate appearing on behalf of the respondents states that the Counselling was already concluded.

6.However, the counselling is only for posting and transfer. Promotion is to be granted in accordance with the rules in force. Once a Secondary Grade Teacher is promoted on promotion, a facility has been provided for counselling so as to choose the post or place, but the counselling also would not provide any right, as it is a



7. In the present case, the petitioner has not established any cause for the purpose of entertaining a writ petition. When the Court asked a question whether any of the junior to the petitioner has been promoted, the learned counsel for the petitioner replied by stating that no junior has been promoted. Therefore, the petitioner cannot seek promotion as a matter of right. However, the petitioner claims that he is in No.1 position and therefore, he should be promoted. Such a right is not contemplated under the service jurisprudence and whenever a decision is taken to fill up the post, then alone, the name of the petitioner along with all other eligible persons is to be considered and promotions are to be granted strictly in accordance with the rules in force. Thus, the petitioner has not established any cause of action for the purpose of entertaining the writ petition, nor established a right to consider the relief.

8. Accordingly, this Writ Petition is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

abr

To

1. The Director of Elementary Education,
Office of the Director of Elementary Education,
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2. The Chief Educational Officer,
Office of Chief Educational Officer,
Theni District.

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Uthamapalayam, Theni District.

4. The Block Education Officer,
Uthamapalayam, Theni District.

+1 CC to M/s.K.APPADURAI, Advocate (SR-8260[F] dated 24/02/2022)

W.P. (MD) No.3379 of 2022

22.02.2022

RJ(CO)

GC(11.03.2022) 3P 6C

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