



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P. (MD)No.16362 of 2014

and

M.P (MD) No.1 of 2014

WEB COPY

A.Ramesh

... Petitioner

Vs.

- 1.The Secretary to Government,
Department of School Education,
Chennai-9.
- 2.The Director of School Education,
Directorate of School Education,
College Road, Chennai-6.
- 3.The Joint Director (Personnel),
Directorate of School Education,
College Road, Chennai-6.
- 4.The District Elementary Educational Officer,
Thanjavur District.
- 5.The District Educational Officer,
Thanjavur District.

... Respondents

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the third respondent in his proceedings in Na.Ka.No.2997/J1/2012 dated 28.08.2012, quash the same as illegal and consequentially to direct the respondents to treat the petitioner as Junior Assistant from the date of his initial appointment on 23.12.1989 and grant promotion and all attendant benefits to the petitioner.

For Petitioner	: Mr.H.Mohammed Imran for M/s.Ajmal Associates
For Respondent	: Mr.V.OM.Prakash Government Advocate

O R D E R

This Writ Petition has been filed to call for the records relating to the impugned order passed by the third respondent in Na.Ka.No.2997/J1/2012 dated 28.08.2012, quash the same as illegal, direct the respondents to treat the petitioner as Junior Assistant

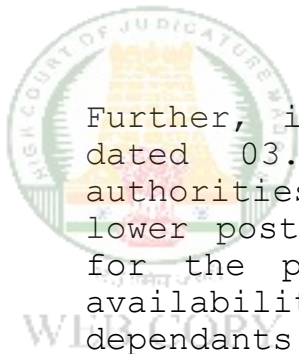


from the date of his initial appointment (i.e.,) on 23.12.1989 and grant promotion and all other attendant benefits to him.

2. The learned counsel appearing for the petitioner submitted that the petitioner was appointed as Office Assistant on compassionate ground by an order of the District Educational Officer, Thanjavur on 21.12.1989. He completed S.S.L.C., and he was qualified for the post of Junior Assistant, as per G.O.Ms.No.1499, Labour and Employment Department dated 03.08.1989. Since it was informed by the Authorities that there was no vacancy available for the post of Junior Assistant at the time of his appointment, he was offered the post of Office Assistant. Hence, he submitted a representation to the Authorities with a prayer to appoint him as Junior Assistant. On 15.04.1998, his claim was recommended by the Assistant Elementary Educational Officer, Kumbakonam and the Chief Educational Officer, Thanjavur. Since no order was passed, he gave another representation on 10.01.2001 to the Authorities. However, instead of appointing him as Junior Assistant, his juniors were promoted as Junior Assistants. Therefore, he has filed O.A.No.1216 of 2011 before the Tamil Nadu Administrative Tribunal. On 15.02.2001, the said Tribunal directed the Authorities to pass order on his representation dated 10.01.2011. The fourth respondent, by its proceedings dated 15.06.2001, recommended for his appointment to the post of Junior Assistant. Even thereafter, his case was not considered. Hence, he again approached this Court by way of a writ petition in W.P.No.32872 of 2005 to appoint him as Junior Assistant based on the educational qualification. On 20.02.2006, this Court directed the respondents to appoint the petitioner as Junior Assistant in the available vacancy. Thereafter, he was transferred and appointed as Junior Assistant on 17.10.2007 at Assistant Elementary Educational Office, Buthalur by the proceedings of the fourth respondent.

3. It is further submitted by the learned counsel appearing for the petitioner that on 07.11.2009, the petitioner submitted an application to the fourth respondent to appoint him as Junior Assistant from the date of his initial appointment (i.e.,) on 23.12.1989. However, no order was passed on his representation. Hence, the petitioner filed a writ petition in W.P.(MD).No.14706 of 2011 and this Court directed the third respondent to consider his claim based on the recommendation made by the fourth respondent. However, the third respondent, without considering G.O.Ms.No.1499, Labour and Employment Department dated 03.08.1989, passed the impugned order rejecting the claim of the petitioner on the ground that he has accepted the post of Office Assistant at the time of his initial appointment.

4. It is submitted that during the time of his initial appointment, he has possessed the requisite qualification to the post of Junior Assistant. However, for the lack of vacancy in the post of Junior Assistant, he was appointed as Office Assistant.



Further, in G.O.Ms.No.1499, Labour and Employment (Q1) Department dated 03.08.1989, it has been stated that "the appointing authorities, under no circumstances, should appoint a dependant to a lower post, when the dependant possess the qualifications required for the post of Junior Assistant/Typist on the ground of non-availability of vacancy in the office or Department or the dependants are not willing to work in other departments. In such circumstances, they should follow the existing procedure of approaching the District Collector for providing a suitable vacancy as suggested in G.O.Ms.No.1179, P & AR dated 17.10.1979".

5. In support of his submissions, the learned counsel for the petitioner has also relied upon the orders of this Court passed in W.P.Nos.34480 of 2013 and 15057 of 2011, and submitted that the petitioner is entitled to the post of Junior Assistant from the date of his initial appointment. However, the claim of the petitioner was not properly considered. Hence, this Writ Petition has been filed.

6. Per contra, the learned counsel appearing for the respondent submitted that at the time of appointment of the petitioner on compassionate ground, there was no vacancy available in the post of Junior Assistant and the petitioner has accepted the offer made by the Authorities to the post of Office Assistant. Therefore, it is not open for him to seek appointment as Junior Assistant from the date of his initial appointment. In the earlier writ petition filed by the petitioner in W.P(MD).No.32872 of 2005, he has not prayed any specific relief that he should be treated as Junior Assistant from the date of his initial appointment and therefore, the claim of the petitioner is to be rejected.

6. This Court considered the rival submissions made on behalf of both the parties and perused the records.

7. As already indicated above, it is specifically mentioned in G.O.Ms.No.1499, Labour and Employment (Q1) Department dated 03.08.1989 that the appointing authorities, under no circumstances, should appoint a dependant to a lower post, when the dependant possess the qualifications required for the post of Junior Assistant/Typist on the ground of non-availability of vacancy in the office or Department or the dependants are not willing to work in other departments. In such circumstances, they should follow the existing procedure of approaching the District Collector for providing a suitable vacancy as suggested in G.O.Ms.No.1179, P & AR dated 17.10.1979. The procedures as stated in the said Government Order have been reiterated by this Court in the orders passed in W.P (MD).Nos.34480 of 2013 and 15057 of 2011. The prayer in W.P.(MD). No.34480 of 2013 was to appoint the petitioner as Junior Assistant from the date of his initial appointment (i.e.,) on 02.01.1989, fix the seniority of the petitioner based on the initial date of his appointment and promote him to the post of Assistant on par with his immediate juniors with all monetary and attendant benefits, within

<https://hdservices.econline.gov.in/hdservices/> In that case also, the petitioner was appointed as



Gardener-cum-Sweeper on compassionate grounds. This Court considered the relief sought for in the said writ petition and directed the Government to post him as Junior Assistant with effect from 03.08.1989 with all attendant benefits.

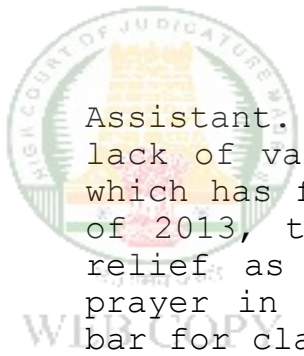
8. When a similar relief was dealt with by this Court in W.P (MD).No.15057 of 2011, wherein a person, who was initially appointed on compassionate ground, whether entitled to be appointed to the post of Junior Assistant and regularised from the date of his initial appointment was considered. It is pertinent to refer the relevant portion of the said order for better understanding as follows:-

6. G.O.Ms.No.1179 provides that, when a dependant of the deceased Government servant cannot be appointed in the department where the deceased Government servant worked, the names of such dependants of the deceased Government servant, who is qualified, should be furnished to the Collector of the Districts concerned, for the purpose of maintaining a list and sponsor them whenever suitable vacancy arises.

7. The procedure adopted by the respondents in regularizing the petitioner's services is against G.O.Ms.No.1499, dated 03.08.1989 and G.O.Ms.No.1179, dated 17.10.1979, which mandates that the dependant should be appointed on compassionate appointment either in the department in which the deceased Government servant was employed or in case there are Collector concerned, for the purpose of appointment, whenever suitable vacancies arise. This procedure was not followed by the respondents. Owing to their fault, they cannot now claim that the petitioner would be entitled for regularization only from the date on which he was promoted to the post of Junior Assistant. Consequently, it requires to be held that the petitioner herein would be entitled for regularization from 16.06.1986, when he was initially appointed to the post of a temporary Mazdoor.

8. In similar circumstances, this Court, in the case of C.Prabakaran and another Vs. The Secretary to Government, Department of Commercial Taxes and Registration passed in W.P.(MD) Nos.13354 & 13355 of 2013 dated 06.12.2018, had placed reliance on G.O.Ms.No.1499 and granted similar relief. It is submitted by the learned counsel for the petitioner that the directions issued in the aforesaid order came to be implemented by the Government.

9. This order squarely applies to the facts of the present case. In this case also, the petitioner was initially appointed as Office Assistant on compassionate ground and during that time, he



Assistant. However, he was appointed as Office Assistant for the lack of vacancy. Hence, applying the ratio in W.P.No.15057 of 2011 which has followed the orders passed in W.P.(MD).Nos.13354 and 13355 of 2013, this Court finds that the petitioner is entitled for the relief as claimed in this writ petition. Omission to claim the prayer in this writ petition is W.P(MD).No.32872 of 2005 is not a bar for claiming the relief in this petition.

10. In this view of the matter, this Writ Petition is allowed. The impugned order passed by the third respondent in Na.Ka.No.2997/J1/2012 dated 28.08.2012 is quashed. The respondents are directed to treat the petitioner as Junior Assistant from the date of his initial appointment (i.e.,) on 23.12.1989 and grant promotion and all other attendant benefits to the petitioner. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

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/06/2022

Sub Assistant Registrar(CS)

ssb

To

- 1.The Secretary to Government,
Department of School Education,
Chennai-9.
- 2.The Director of School Education,
Directorate of School Education,
College Road, Chennai-6.
- 3.The Joint Director (Personnel),
Directorate of School Education,
College Road, Chennai-6.
- 4.The District Elementary Educational Officer,
Thanjavur District.
- 5.The District Educational Officer,
Thanjavur District.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-25015[F] dated 10/06/2022)

+1 CC to M/s.SPL.GP (SR-25168[F] dated 10/06/2022)

W.P. (MD)No.16362 of 2014

09.06.2022

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