



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.04.2022

PRONOUNCED ON : 17.06.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.17921 of 2014

WEB COPY

- 1.E.V.Ilangovan
- 2.R.Edisan
- 3.S.T.Srinivasan
- 4.P.N.Shajehan Kabeer
- 5.S.Malliga
- 6.S.Jeyaprakashrajan
- 7.R.Partheeban
- 8.K.Karuppasamy
- 9.P.Ravisundara Bharathi
- 10.S.Panneer Selvam
- 11.D.Evangline
- 12.B.Vatsan
- 13.J.Uma Chitra
- 14.S.Premavathy
- 15.R.Soundara Sekari
- 16.A.Rajabalan
- 17.D.Murugavel
- 18.N.Sayee Subbulakshmi
- 19.S.Selvaraj
- 20.T.Ravichandran
- 21.S.Packiya Rupavathy
- 22.S.Ramadevi
- 23.N.Govindaraj
- 24.R.Ravichandran
- 25.V.Murugaiyan
- 26.Y.Jeyaraj
- 27.S.Chinnappan
- 28.G.Ganesan
- 29.C.Ramamoorthy
- 30.P.Vellaiyammal
- 31.S.Jeeva Gandhi
- 32.V.Arumaikkannu
- 33.S.Kasinathan
- 34.M.Ayyakkannu
- 35.A.Rajasekar

... Petitioners

-Vs-

- 1.The Secretary to Government,
The State of Tamilnadu,
School Education Department, Secretariate,
Fort St. George, Chennai-600 009.



2.The Director of School Education,
DPI Campus, College Road,
Chennai-600 006.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents to declare the post of Higher Secondary School Headmaster is equivalent to the post of District Educational Officer coming under the Tamil Nadu Educational Service, in the light of the Government Letter No.31252/SE1(1)/2017-1 dated 11.04.2018, School Education Department and to consider the petitioners for promotion to the post of Chief Educational Officer in compliance with Section 40(3) and second provision to Section 41(1) of Tamil Nadu Government Servants (Condition of Service) Act, 2016 as well as G.O.Ms.No.1069, P and AR Department dated 13.10.1984, in rectification of discrepancies/flaws in application of Rules for promotion/recruitment by transfer to the post of District Educational Officer and Chief Educational Officer respectively and by earmarking separate ratio/quota for Higher Secondary School Headmasters for promotion to the post of Chief Educational Officer.

For Petitioner : Mr.G.Sankaran
for M/s.F.Deepak

For Respondents : Mr.V.Omprakash
Government Advocate (Civil Side)

ORDER

This Writ Petition is filed for issuance of a writ of Mandamus, directing the respondents to declare the post of Higher Secondary School Headmaster is equivalent to the post of District Educational Officer coming under the Tamil Nadu Educational Service, in the light of the Government Letter No.31252/SE1(1)/2017-1 dated 11.04.2018, School Education Department and to consider the petitioners for promotion to the post of Chief Educational Officer in compliance with Section 40(3) and second provision to Section 41(1) of Tamil Nadu Government Servants (Condition of Service) Act, 2016 as well as G.O.Ms.No.1069, P and AR Department dated 13.10.1984, in rectification of discrepancies/flaws in application of Rules for promotion / recruitment by transfer to the post of District Educational Officer and Chief Educational Officer respectively and by earmarking separate ratio/quota for Higher Secondary School Headmasters for promotion to the post of Chief Educational Officer.

2.The brief facts of the case are that the petitioners herein are working as Headmasters in Government Higher Secondary Schools governed by Tamil Nadu Higher Secondary Educational Services Rules, which is Special Rule. The petitioners are commonly aggrieved



against non consideration of their promotional avenues based on the post of Headmaster of Higher Secondary School. Further they being sought to be treated equivalent to High School Headmaster which is the feeder category in the matter of further promotion to the post of District Educational Officer and Chief Educational Officer. Based on the existing Rules, a BT Assistant appointed in Tamil Nadu School Education Subordinate Services has opportunity for promotion upto the post of District Educational Officer and Chief Educational Officer/Inspecting Officers of Higher Secondary Services and therefore, persons with lesser qualification have been appointed as Inspecting Officers over the post of Headmaster of Higher Secondary School which is carrying higher qualification. The petitioners are claiming for promotion to the post of Chief Educational Officer from the post of Higher Secondary School Headmaster or to a separate ratio for the Higher Secondary School Headmaster to the post of Chief Educational Officer. The petitioners are directly recruited as PG Assistant in various subjects in Tamil Nadu Higher Secondary Educational Services. After considerable length of service, they are given promotion to the post of Higher Secondary School Headmaster. All the petitioners are working as Higher Secondary School Headmasters for several number of years without any promotional opportunity, since they are to be considered to be posted as DEO and that as CEO on transfer only with lesser percentage namely, 35% of the posts. In spite of the fact that the petitioners have rendered several years of service in the post of PG Assistant and Higher Secondary School Headmaster, they are not considered for further promotion to the post of DEO. Whereas number of persons appointed to the post of BT Assistant in Tamil Nadu School Education Subordinate Services, even subsequent to the appointment of the petitioners are now given promotion to the post of DEO and CEO based on the line of promotion from the post of BT Assistant to the High School Headmaster, DEO and CEO. Hence, there is discrepancy with reference to promotion to the post of Inspecting Officers namely DEO and CEO which are controlling Authorities for High Schools and Higher Secondary Schools, thereby offending the rights of Higher Secondary School Headmasters coming under Tamil Nadu Higher Educational Services.

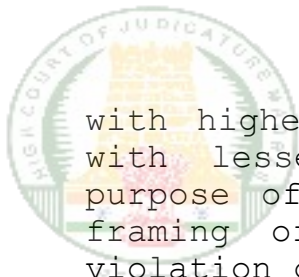
3.The contention of the petitioners is that the post of CEO, DEO and High School Headmaster are coming under Special Rules for Tamil Nadu School Educational Services notified G.O.Ms.No.1053 Education Department dated 09.06.1978. In this regard, the post of High School Headmaster is to be filled up by promotion, by recruitment by transfer from the holder of the post of School Assistant / BT Assistant / Tamil Pandit working in Tamil Nadu School Education Subordinate Services. Further, the post of High School Headmaster is held as feeder category for promotion to the post of DEO. Further, the post of CEO to be filled up by promotion from the post of DEO (feeder category) on completion of three years of service in the post of DEO. The further contention of the petitioners is that in respect of State of Tamil Nadu, Higher



Secondary Education was introduced from the academic year 1978-89. On abolition of the old PUC method by which large number of Government High Schools have been upgraded as Higher Secondary Schools from the academic year 1978-79 and later years.

4. In this regard, the Special Rules have been framed for Tamil Nadu Higher Secondary Educational Services notified in G.O.Ms.No.720 Education Department dated 28.04.1981 governing the post of Higher Secondary School Headmaster post Graduate Assistant in academic subjects and languages and Physical Directors. It is stated in G.O.Ms.No.720 dated 28.04.1981 that the post of Headmasters and Headmistress in Higher Secondary Schools be deemed to carry higher responsibilities than the post of Headmasters in High Schools. Therefore, the post of Higher Secondary School Headmaster carrying higher qualification and administering Higher Secondary Schools upto XII standard, stated to be carrying higher responsibilities than the post of High School Headmaster. As per the Special Rules, the post of Higher Secondary School Headmaster is to be filled up by promotion from the feeder category namely PG Assistant as well as the post of High School Headmaster by following ratio.

5. As per Special Rules for Higher Secondary Educational Services, there is no promotional avenue for the post of Higher Secondary School Headmaster. Assuming a teacher is appointed as PG Assistant getting a single promotion to the post of Headmaster of Higher Secondary School after several years is stagnated in the same post till the date of retirement. While so, the Government issued orders in G.O.Ms.No.528 School Education Department dated 31.12.1997 amending the Special Rules for Tamil Nadu School Education Services, by which the post of Higher Secondary School Headmaster has been included as feeder category to fill up the post of DEO along with High School Headmaster following ration of 50% for High School Headmaster and 25% for Higher Secondary School Headmaster and the balance 25% by direct recruitment. The Government has thought fit to modify the ratio and issued orders in G.O.Ms.No.155 School Education Services by which 40% posts earmarked for High School Headmaster by promotion and 35% of posts earmarked for Higher Secondary School Headmaster by transfer and 25% posts by direct recruitment. Since the post of Higher Secondary School Headmaster and DEO are carrying equal scale of pay and both the posts are administrative posts, it could not satisfy the need of promotional opportunity for the post of Higher Secondary School Headmaster in as much as there is no monetary benefits and both the posts are administrative posts. When the post of High School Headmaster being feeder category for promotion to the post of Higher Secondary School Headmaster and thereby, the post of High School Headmaster is lower post, for the purpose of appointment by transfer/promotion to the post of DEO, both the post of Higher Secondary School Headmaster and High School Headmaster are termed as feeder category. Accordingly higher post which carrying higher qualification, higher scale of pay



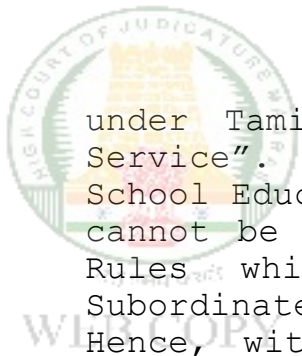
with higher responsibilities is made equivalent to the lower post with lesser qualification and lesser responsibilities for the purpose of transfer / promotion to the post of DEO and any such framing of Rules treating the unequal as equals resulting in violation of Article 14 and 16 of Constitution of India.

WEB COPY

6. The said issue was raised in O.A.No.4864 of 1993 before the Tamil Nadu Administrative Tribunal, by order dated 13.12.1994 and the relevant portion is extracted hereunder:

"Headmasters of Higher Secondary Schools are on the same scale of pay as District Educational Officers and therefore, the contention put forward in the application is that they should be appointed as Chief Educational Officers. This may not be acceptable. There should be provision for transfer of Headmasters of Higher Secondary Schools as District Educational Officers to enable them to gain administrative experience and thereafter they could be considered for the Higher posts of Chief Educational Officers. A quota could be fixed for such appointment by transfer of Higher Secondary School Headmasters as District Educational Officers or even by deputation for a specified period of three years and persons so deputed could be considered for the higher posts of Chief Educational Officers for which purpose also a quota can be fixed for Headmasters of Higher Secondary Schools and Headmasters of High Schools separately"

However, all along no such steps being taken by the Government / respondents to redress the grievances of the petitioners working as Higher Secondary School Headmaster and they could not reach the post of CEO by promotion which can be evidenced from the fact that only a handful DEO's have been given promotion to the post of DEO, so far. In this factual background, by adding fuel to fire, the Higher Secondary School Headmasters are seriously prejudiced since a person appointed as BT Assistant in Subordinate Services with qualification of Bachelor Degree and B.Ed., gaining promotion up to the level of DEO and CEO and thereby become Inspecting Officers / Controlling Authority over the post of Higher Secondary School Headmaster. The separate channel of promotion from the post of BT Assistant is so fortuitous since even a person appointed to the post of BT Assistant subsequent to the appointment of the petitioners in service availing promotion up to the post of DEO and CEO, which is causing serious anomaly in service law and infringing the rights of Higher Secondary School Headmasters for having been appointed in higher post carrying higher qualification with higher responsibilities. Further, the post of PG Assistant and Higher Secondary School Headmaster are coming

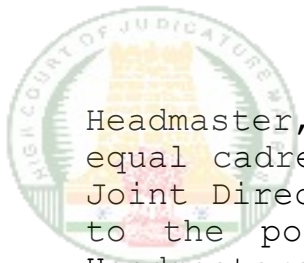


under Tamil Nadu Higher Educational Services which is a "State Service". Likewise, the post of DEO is coming under Tamil Nadu School Education Services and also a State Service. While so, there cannot be any recruitment by transfer under Rule 36(A) of General Rules which only contemplates recruitment by transfer from Subordinate Service to the State Service based on merit and ability. Hence, with reference to recruitment by transfer in the Special Rules relating to filling up the post of DEO from the post of Higher Secondary School Headmaster it would be against the Rule 36(A) of General Rules as well as the concept of recruitment by transfer, as explained. As per Rule 35(b) of State and Subordinate Service Rule, the transfer of a person from one clause or category of service to another category same scale of pay shall not be treated as first appointment to the later for the purpose of seniority and the seniority of a person so transferred shall be determined with reference to rank in clause or category from which he is transferred. Whereas, the respondents are not taking into consideration of services rendered in the post of Higher Secondary School Headmaster for promotion to the post of CEO from the post of DEO and thereby the same resulted in violation of Rules and General Rules. Even in respect of Central Government Services, the line of promotion is given as follows:

"BT Assistant/TGT (Trained Graduate Teacher)
PG Assistant-Vice Principal/High School Headmaster
Principal-Higher Secondary School Headmaster."

7. In the Central Government Services, a BT Assistant can get the promotion to the post of High School Headmaster only on acquiring PG qualification. Whereas, in the State Service a BT Assistant even without having PG qualification is given promotion up to the post of DEO/CEO and thereby controlling the post of Higher Secondary School Headmaster carrying higher qualification. In the said circumstances, the petitioners have also made several representations to the authorities and the same was not considered. In this regard, the draft amendment to the Special Rules for Tamil Nadu Education Services was forwarded by the Director of School Education to the first respondent/State Government as early as in the year 1980 to bring an integrated services of School Education and Higher Education Services, whereas the same was not implemented by the Government thereafter resulting in discrimination and segregated the Higher Secondary School Headmaster without any promotion. Hence, the petitioners filed this present writ petition.

8. The Deputy Secretary to Government, School Education Department, Chennai-9, has filed his counter stating that the service condition of Director, Joint Director, Chief Educational Officer and District Educational Officer were governed by the Special Rules for the Tamil Nadu School Educational Service. As per the said Special Rules for Tamil Nadu School Educational Service, the higher category to the post of DEO is the High School



Headmaster, and to the post of CEO the feeder category is DEO and equal cadre. The post of CEO is the feeder category to the post of Joint Director and the post of Joint Director is the feeder category to the post of Director. Whereas the Higher Secondary School Headmasters, who are governed by the Special Rules for Tamil Nadu Higher Secondary Educational Service had no further promotional avenue in the same service. Hence, the grievances of the Higher Secondary School Headmasters to treat them on par with High School Headmasters for the purpose of promotion were considered by the Government and accordingly orders were issued in G.O.Ms.No.528, School Education (A1) Department, dated 31.12.1997. In the said G.O., the post of Higher Secondary School Headmaster was also made as the feeder category to the post of DEO. Necessary amendments were issued to the Special Rules for Tamil Nadu School Educational Service to incorporate the Higher Secondary School Headmasters also as the feeder category to the post of DEO. After the issuance of the G.O., from the year 1998, 25% of the Headmasters of the Higher Secondary School were considered for promotion to the post of DEO and after the issuance of G.O.Ms.No.155, School Education (A1) Department, dated 03.07.2009, 35% of the Headmasters of Higher Secondary Schools were considered for promotion as DEO. Since the post of DEO are governed by the Special Rules for Tamil Nadu School Educational Service, hence the General Rules for the Tamil Nadu State and Subordinate Service cannot be applied to redress the petitioner's grievance.

9. Further, the promotion to the post of CEO as per the Special Rules for Tamil Nadu School Educational Service, a minimum of 3 years service in the post of DEO is essential to gain knowledge in the administrative line. Hence, the claim of the petitioner for promotion to the post of CEO directly from Higher Secondary School Headmaster for the reason that the post of Higher Secondary School Headmaster carries identical scale of pay as that of DEO, which is a feeder category for the post of CEO cannot be considered since the Headmaster of Higher Secondary School possess only academic experience unlike the DEO where nature of work is administrative in nature and not academic. It is further stated that the powers vested to the post of DEO are vast in nature and they are administrative, statutory and quasi-judicial, while the powers vested to Higher Secondary School Headmasters are only academic in nature. Hence, the contention that the Headmasters of Government Higher Secondary Schools by virtue of drawing the same scale of pay as that of DEO should be treated as similar to the post of DEO and to be promoted to the post of CEO could not be accepted. The writ petition with similar prayer was filed before this Court by Thiru.P.Thangarajan and others in W.P.(MD).No.8477 of 2008 along with an application seeking an order of interim stay of the operation of the G.O.Ms.No.528, School Education (A1) Department, dated 31.12.1997 and the same was ordered and made the following interim Order:



"Any promotion made is subject to the result of the writ petitioner"

The said writ petition is still pending.

Further, the another writ petition with similar prayer was filed before this Court by Thiru P.Natarajan and 15 others in W.P.(MD). No.9207 of 2014 and the said writ petition is also still pending. Without challenging to the Government Order which provides the posts of Higher Secondary School Headmasters as feeder category to the post of DEO, the petitioners being Headmasters of Higher Secondary Schools without being appointed as DEO cannot seek promotion as CEO directly to the post of Headmaster of the Higher Secondary School claiming to treat the post of Headmaster of Higher Secondary School as equivalent to the post of DEO by way of mandamus. Since the feeder post for promotion to the post of CEO as per the above said Special Rules in DEO and in the absence of Service Rules to this effect the prayer of the petitioners is not feasible of compliance. Therefore, the respondents prayed to dismiss this writ petition.

10. Heard the Mr.G.Sankaran for M/s.F.Deepak, the learned Counsel for the petitioners and Mr.V.Omprakash, the learned Government Advocate (Civil Side) for respondents and perused the file.

11. The contention of the petitioners are that they are serving as Higher Secondary School HM, but they are not having further promotional opportunities to the post of DEO, CEO etc. The said issue was raised in O.A.No.4864 of 1993, the Tamil Nadu Administrative Tribunal, by order dated 13.12.1994 has held a quota shall be fixed for the post. The reply of the respondents are that the grievances of the Higher Secondary School HM to treat them on par with High School HM were considered by the Government and issued G.O.Ms.No.528, School Education (A1) Department, dated 31.12.1997, wherein the post of Higher Secondary School Headmaster was made as the feeder category to the post of DEO and necessary amendments were issued to the Special Rules for Tamil Nadu School Educational Service. Thereafter from the year 1998, 25% of the Headmasters of the Higher Secondary School were considered for promotion to the post of DEO and after the issuance of G.O.Ms.No.155, School Education (A1) Department, dated 03.07.2009, 35% of the Headmasters of Higher Secondary Schools were considered for promotion as DEO.

12. But the petitioners submitted that the post of Headmasters of Higher Secondary Schools are on the same scale of pay as District Educational Officers and therefore the respondents ought to grant the promotional opportunity to the post of CEO. The DEO's are having lesser qualification but they are acting as Inspecting Officers of Higher Secondary Services, in turn they act as higher authorities to the post of Higher Secondary School HM. Therefore according to the petitioners the Higher Secondary School HM alone



ought to be in the feeder category and ought to be considered for the promotion of CEO. Atleast the respondents ought to increase the ratio for Higher Secondary School HM, since the Higher Secondary School HM is not having any other promotional opportunities.

13. The claim of the petitioners can be considered only by the Government by amending the Special Rules. However, Mandamus cannot be issued for enacting law or to amend the provisions of law / rules. But the 1st respondent ought to consider the claim of the petitioners. Therefore this Court is directing the 1st respondent to consider the claim of the petitioners and pass an order. The said exercise shall be completed within a period of four months from the date of receipt of the copy of the order.

14. The Writ Petition is allowed. There shall be no order as to costs.

Sd/-

Assistant Registrar(RTI)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsg

To:

1.The Secretary to Government,
The State of Tamilnadu,
School Education Department, Secretariate,
Fort St. George, Chennai-600 009.

2.The Director of School Education,
DPI Campus, College Road,
Chennai-600 006.

+1 CC to M/s.F. DEEPAK, Advocate (SR-26642[F] dated 20/06/2022)

+1 CC to M/s.SPL.GP (SR-26727[F] dated 20/06/2022)

order made in
W.P. (MD)No.17921 of 2014
Dated:17.06.2022

nsn(CO)

TR(29.06.2022) 9P 5C