



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.20571 of 2021

VENKATESAN

... Petitioner

versus

1. The Secretary to Government,
School Educational Department,
Secretariate,
Chennai.

2. The Commissioner,
School Educational Department,
DPI Complex,
Nungambakam,
Chennai.

3. The District Educational Officer,
Thirumangalam,
Madurai District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Mandamus, to direct the respondents 1 and 2 to promote the petitioner as Post Graduate Teacher by considering his representation dated 08.10.2021.

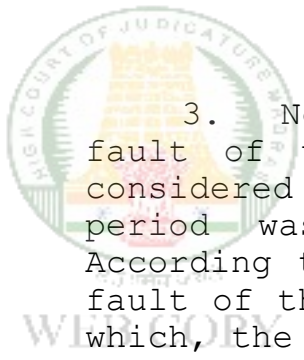
For Petitioner : Mr.R.Murali

For Respondents : Mr.G.V.Vairam Santhosh
Additional Government Pleader

ORDER

This writ petition is filed for a mandamus directing the respondents 1 and 2 to promote the petitioner as Post Graduate Teacher by considering his representation dated 08.10.2021.

2. Mr.R.Murali, learned counsel for the petitioner submits that the petitioner was appointed as Junior Assistant on compassionate ground, by proceedings dated 10.08.2007 and he joined in the services on 20.08.2007 and he completed his probation period on 19.08.2009. However, his services were regularized only in the year 2015, vide G.O.Ms.No.2D No.68 dated 03.06.2015 and due to administrative lapse on the part of the respondents, his services were not regularized within the stipulated time. Thereafter, the first respondent, vide G.O.1D No.112 dated 26.07.2021, declared the probation period of the petitioner with effect from 19.08.2009.



3. Now, it is the grievance of the petitioner that for the fault of the respondents, he is penalized and he has not been considered during the promotion of P.G.Assistant that his probation period was not declared and his juniors were accommodated. According to the learned counsel for the petitioner, it is not the fault of the petitioner and it is the fault of the respondents, for which, the petitioner cannot be penalized.

4. Mr.Vairam Santhosh, learned Additional Government Pleader, by referring the counter affidavit filed by the third respondent, submits that the petitioner was appointed as Junior Assistant on compassionate ground and posted at Government Higher Secondary School, Alagaiyanallur, Virudhunagar District on 10.08.2007 and the petitioner joined duty on 20.08.2007. Subsequently, he was transferred to the Government Higher Secondary School, Samayanallur on 07.05.2010. The Headmaster of Government Higher Secondary School, Samayanallur, sanctioned the second increment to the petitioner, by order dated 03.01.2017 vide Reference No.9 of 2017, when his probation period was not declared. As per the existing Rules, the second increment can be sanctioned only after the probation period is declared. After detecting this mistake, the petitioner was directed to remit the excess amount of Rs.5,15,729/- by order dated 18.10.2019 and the petitioner also remitted the said amount on 07.01.2019. Only thereafter, the proposals were submitted to the Government for declaration of his probation period and accordingly, the Government issued G.O.(1D) No.112, School Education Department dated 26.07.2021 declaring the probation period of the petitioner.

5. According to the learned Additional Government Pleader, it is on the fault of the respondents that the probation period of the petitioner was not declared in time. The petitioner has drawn more salary than the eligible amount and he has also remitted the excess amount of Rs.5,15,729/- on 07.01.2019 and only thereafter, the proposals were made to the Government to declare his probation period.

6. This Court paid its anxious consideration to the rival submissions made.

7. The reading of the counter affidavit would disclose that the probation period of the petitioner was declared only on 26.07.2021, however, with effect from 19.08.2009. The respondents have claimed that the petitioner was paid second increment in the year 2017 though he is not eligible for the same. The Headmaster of Government Higher Secondary School, Samayanallur, vide his proceedings dated 03.01.2017 sanctioned the second increment to the petitioner and later, he found that the petitioner is not eligible for the same and therefore, by proceedings dated 18.10.2019, he directed the petitioner to remit the excess amount of Rs.5,15,729/- and accordingly, the petitioner also remitted the said amount on

07.01.2019.

8. In the counter affidavit, it is not stated that the petitioner has made a wrong representation before the respondents and induced the Headmaster of Government Higher Secondary School, Samayanallur to pass the order of sanctioning the second increment. It was wrongly arrived by the Headmaster and provided to the petitioner in the year 2017 and thereafter, the mistake was deducted in the year 2019 and the petitioner was directed to remit the excess amount only in the year 2019. The petitioner has also paid the amount in excess to the respondents without any delay. The petitioner cannot be faulted for the mistake committed by the respondents.

9. In view of the above mistake of payment of second increment to the petitioner than the eligible amount, the Headmaster of the School delayed the proposal and made the proposal only after the remittance of amount paid in excess. There is a delay on the part of the department in sending the proposals for declaring the probation period of the petitioner. Therefore, for the fault of the department, the petitioner cannot be penalized. Now, the Government has also declared the probation period of the petitioner with effect from 19.08.2009. Therefore, the writ petition is allowed with a direction to the respondents to consider the case of the petitioner for promotion at par with his juniors. No costs.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Secretary to Government,
School Educational Department,
Secretariate,
Chennai.

2. The Commissioner,
School Educational Department,
DPI Complex,
Chennai.

<https://hcservices.hcsonline.in/trackcases/>



3. The District Educational Officer,
Thirumangalam,
Madurai District.

+1 CC to M/s.R.MURALI, Advocate (SR-4140[F] dated 04/02/2022)

WEB COPY
+1 CC to M/s.SPL.GP (SR-4215[F] dated 04/02/2022)

W.P (MD) No.20571 of 2021
03.02.2022

SB (CO)
KB (17.03.2022) 4P 6C