



W.P.(MD).No.847 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.847 of 2017

and

W.M.P.(MD).No.707 of 2017

K.S.Thirunavukkarasu

... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Secretary,
School Education Department,
Secretariat,
Chennai.

2.The Director of Elementary Education,
Chennai.

3.The District Elementary Educational Officer,
O/o. the District Elementary Educational Office,
Karur.

4.The Additional Assistant Elementary Educational Officer,
O/o. the Assistant Elementary Educational Office,
Krishnarayapuram Union,
Karur District.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the fourth respondent in his proceedings in அதிமு.எண்.732/அ2/16 dated 16.09.2016 and quash the same as illegal and consequentially to direct the respondents to grant seniority and back wages to the petitioner in the cadre of Secondary Grade Teacher from the date on which his immediate Junior was appointed by following the registration seniority of the District Employment Exchange Officer, Karur.

For Petitioner : Mr.M.Mohamed Zamil,
For M/s.Ajmal Associates.

For Respondents : Mr.J.John Rajadurai,
Government Advocate.

ORDER

This Writ Petition is filed to quash the impugned order dated 16.09.2016 with a consequential relief to direct the respondents to grant seniority and backwages to the petitioner in the cadre of Secondary Grade Teacher from the date on which his immediate junior was appointed.

2. The brief facts as stated in the affidavit are that the petitioner is a resident of Karur and belongs to Backward Class Community. After completion of D.T.Ed., in the year 2004, the petitioner registered his name in the District Employment Exchange, Karur on 05.04.2004 vide Registration No.



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2004M00558. At that time, the appointment of Secondary Grade Teachers were made with reference to employment seniority. The appointment to the post of Secondary Grade Teachers were governed by G.O.Ms.No.447 dated 16.07.1996. Since the petitioner was having employment seniority, he was anxiously waiting for the appointment. The Government of Tamil Nadu issued G.O.Ms.No.241 dated 22.09.2007 directing the second respondent to fill up various vacancies in respective District on the basis of Employment Exchange Seniority. Since the petitioner was coming under zone of consideration, the petitioner was issued with the call letter dated 19.02.2008. The petitioner appeared on 26.02.2008 along with necessary certificates. Thereafter, the petitioner attended the counselling on 28.02.2008 and eagerly waiting for the appointment order. However, the respondents issued appointment order to his juniors namely, R.S.Senthilkumar and S.Kavitha. Hence the petitioner filed W.P.(MD).No.7676 of 2008 and this Court vide order dated 27.03.2015 directed the respondents to consider the claim of the petitioner based on the certificate verification and issue appointment order. Since the order of the Court is not complied with, the petitioner filed Contempt Petition in Cont.P.(MD).No.103 of 2015. Thereafter, the third respondent vide proceedings dated 29.10.2015 appointed the petitioner as Secondary Grade Teacher at Panchayat Union Middle School, Karur District and the petitioner joined on 02.11.2015.



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3. The contention of the petitioner is that since his juniors were granted appointment order as early as on 2008 itself, because of the mistake committed by the respondents, the petitioner was not granted appointment in the year 2008, but granted only in the year 2015. Thus, the petitioner is eligible for service benefits and monetary benefits for which the petitioner relying on Rule 35 AA of Tamil Nadu State and Subordinate Service Rules which is extracted here under:

(aa) The seniority of a person in a service, class, category or grade shall, where the normal method of recruitment to that service, class, category or grade is by more than one method of recruitment, unless the individual has been reduced to a lower rank as a punishment, be determined with reference to the date on which he is appointed to the services, class, category or grade;

Provided that where the junior appointed by particular method or recruitment happens to be appointed to a service, class, category or grade, earlier than the senior appointed by the same method of recruitment, the senior shall be deemed to have been appointed to the service, class, category or grade on the same day on which the junior was so appointed:

However, the claim of the petitioner was rejected vide impugned order dated 16.09.2016, wherein, the respondents have stated that the petitioner is eligible for all benefits from the date of the appointment order and not prior to the appointment order.



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4. The respondents have filed a counter wherein it is stated that the petitioner was appointed on 02.11.2015. Any Government employee is entitled to draw pay and other allowances attached to the post only from the date of appointment from which date he assumed his office as stated under Rule 17 of the Fundamental Rules. Hence the claim of the petitioner for seniority and backwages is without any basis and he is not entitled to claim both seniority as well as monetary benefits and prayed to reject the Writ Petition.

5. Heard Mr.M.Mohamed Zamil, learned counsel for M/s.Ajmal Associates appearing for the petitioner and Mr.J.John Rajadurai, learned Government Advocate appearing for the respondents.

6. The petitioner is claiming seniority and backwages, since his juniors were appointed in the year 2008. The contention of the petitioner is that the appointment is based on the employment seniority and the seniority would continue in his service also, since the respondents did not give any appointment based on the seniority but have only granted appointment from the year 2015, the petitioner is entitled to seniority and backwages from the year 2008.



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7. The contention of the respondents are that the petitioner is having employment seniority, but the petitioner is eligible to claim his right of seniority and monetary benefits only from the date of issuance of appointment order and relied on Rule 17 of the Fundamental Rules. The FR17 states that an employee is entitled to draw pay and other benefits from the date of assuming the Office. As rightly stated in the counter, the petitioner was appointed in the year 2015 and he is entitled to drawing all the benefits from the year 2015. In such circumstances, the petitioner cannot claim any monetary benefits for the period where the petitioner was not in service at all.

8. At this juncture, the learned counsel appearing for the petitioner prayed atleast to grant service benefits.

9. This Court is of the considered opinion that since the petitioner was not in service for the period from 2008 till his appointment in the year 2015, he is not entitled to service benefits. If the claim of the petitioner is entertained to the period prior to the date of his appointment order, then absurd situation would arise that without being in service, the benefits would have been granted. Therefore, this Writ Petition cannot be entertained.



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10. Hence, this Writ Petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

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Index : Yes / No
Internet : Yes/ No
Nsr

To

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- 2.The Director of Elementary Education,
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- 3.The District Elementary Educational Officer,
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- 4.The Additional Assistant Elementary Educational Officer,
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S.SRIMATHY, J.

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