



WEB COPY

W.P.(MD)No.19132 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 26.04.2022

DELIEVERD ON: 14.06.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.19132 of 2018

and

W.M.P. (MD) .No.16975 of 2018

V.L.Sam Prince Kumar

... Petitioner

Vs

1.The Secretary to Government,
Education Department,
Fort St.George,
Chennai.

2.The Director of School Education,
DPI Compound,
College Road,
Chennai.

3.The Joint Director (Personal),
School Education,
College Road,
DPI Compound,
Chennai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the third respondent in Na.Ka.No.71074/C2/E2/2017, dated 08.05.2018 quash the same and consequently, direct the respondents to promote the petitioner to the post of B.T.Assistant from 01.01.2002 without monetary benefits.

For Petitioner : Mr.Vijay Shankar
for Mr.V.Perumal

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

O R D E R

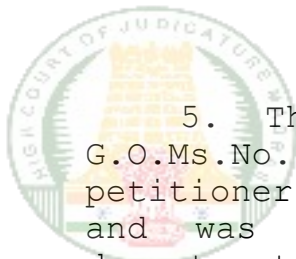
This writ petition is filed to quash the impugned order, dated 08.05.2018 and consequently, direct the respondents to promote the petitioner to the post of B.T. Assistant from 01.01.2002 without monetary benefits.



2. The brief facts of the case are that the petitioner was appointed as a Secondary Grade Teacher on 24.07.1997 and at the time of appointment, the petitioner had the qualification to be appointed as B.T. Assistant. Even though, the list of qualified Secondary Grade Teachers were obtained at the time of drawing panel, no promotion was given. The petitioner was approaching the authorities from 2002, to grant promotion in view of the qualifications. The respondents themselves by G.O.Ms.No.753, dated 16.07.1985 have stated that when a Secondary Grade Assistant is qualified to hold the post of B.T. Assistant, promotion is to be granted only when qualified teachers are not available, 50% of the B.T. Assistant post can be filled up by direct recruitment. The respondents without following the same have been promoting a few Secondary Grade Teachers and the rest of the post are filled through direct recruitment.

3. The Government issued G.O.Ms.No.100, has taken a policy decision to convert the secondary grade post from classes 6 to 8 as B.T. Assistant Post. Even though there were many Secondary Grade Assistant Teachers are qualified to be posted as B.T. Assistant, they were not promoted and the Government had recruited B.T. Assistants for the upgraded Secondary Grade Post, which fell vacant, due to recruitment, newly created posts, death or other reasons. From 2002 onwards, the Teachers Recruitment Board was established and the recruitments were made based on the Eligibility Exam conducted by the Board. Even though the petitioner was a qualified person from his appointment, no promotion was granted to the petitioner. The petitioner has served as a Secondary Grade Teacher till 2011 and all the persons who were appointed as per G.O.Ms.No.100 has become senior to the petitioner. All the above persons recruited through the Eligibility Examination are admittedly Juniors to the petitioner. Due to the denial of promotion, the persons who were recruited as B.T. Assistants directly have been promoted as P.G. Assistants and High School Headmasters. The Block Resource Teachers who were appointed under the Sharva Shiksha Abiyan Scheme(SSA) have been absorbed into the schools and appointed as B.T. Assistant regular staff in the High School and Higher Secondary Schools. They were given seniority from the date of their appointment.

4. The Government took a policy decision to appoint Graduate Teachers from Class VI in the place of Secondary Grade Teachers and the newly appointed Graduate Teachers were paid the scale of B.T. Assistants. The said appointments are contrary to the G.O.Ms.No.753. Even though, the petitioner was a qualified person holding the post of Secondary Grade Teacher, the petitioner's name was not considered and denied promotion. The petitioner submitted his representation and thereafter, filed W.P(MD)No.12985 of 2017 and the same was disposed of by an order, dated 01.01.2002, directing the respondents to consider the case.



5. The third respondent without properly considering the G.O.Ms.No.753 had rejected the representation stating that the petitioner was appointed as Secondary Grade Assistant on 24.07.1997 and was transferred to the Education Department from other department. Hence, the petitioner's name cannot be considered as per the petitioner's request. The third respondent has stated in the impugned order that the petitioner's seniority from 01.01.2002 cannot be considered, as there are 196 teachers who have joined before the petitioner. The persons who are said to be seniors in the impugned order are the persons who were appointed as Secondary Grade Teachers like the petitioner and have been promoted as B.T. Assistants, based on the qualification. The petitioner is not claiming any seniority with them. The third respondent without considering that the petitioner was a qualified person even before the requirement made through the Teachers Recruitment Board has passed the impugned order, without any basis. Aggrieved over the same, the present writ petition has been filed.

6. The District Educational Officer has filed a counter stating that the petitioner was appointed as a Secondary Grade Teacher on 24.07.1997 in the Elementary Education Department. Then the petitioner was transferred from Elementary Education Department to Secondary Education Department on 21.06.1999. The Selection Grade pay was sanctioned with effect from 24.07.2007. The petitioner had studied B.A., B.Ed., before the appointment. Hence, there was no promotion to the petitioner as B.T. Assistant as per G.O's. The Director of School Education prepared panel list for the promotion of the eligible teachers from Secondary Grade to B.T. Assistant with the qualification of B.A. / B.Sc., B.Ed. and from the B.T. Assistant to P.G. Assistant with the qualification of M.A. /M.Sc., B.Ed. under Government Norms. The Director of School Education prepared the panel list for the promotion of eligible teachers on 01.01.2011 after that the petitioner's name was also added in the Sl.No.197 and the eligible time of promotion is with effect from 23.11.2011. The petitioner had applied for the promotion to B.T. Assistant (History) from 01.01.2002 as per G.O.Ms.No.100. As per the said G.O., if a Secondary Grade Teacher retired from service, a B.T. Assistant should be appointed in that post on the basis of the need of the subject with effect from 01.06.2002. As such, if there is a Secondary Grade Teacher with the eligible qualification of B.A/B.Ed./B.Sc./B.Ed., he may be promoted as B.T. Assistant.

7. The petitioner's letter, dated 10.04.2017 was carefully considered for implementing the order passed in W.P(MD)No.12985 of 2017. The petitioner had joined as Secondary Grade Teacher on 24.07.1997, which comes under the Elementary Education Department. Thereafter, the petitioner had transferred from Elementary Education Department to Secondary Education Department on 21.06.1999 as Secondary Grade Teacher. The Seniority for the Secondary Grade Teacher coming under Elementary School Education is a separate list



the School Education Department is a separate list. The service rule applicable to the Elementary Education Department and the service rule applicable to the School Education Department are different. Therefore, in this situation, the petitioner's name was included in the seniority list in Sl.No.197, so that he was promoted as History School Assistant and he joined duty on 23.11.2011 as B.T. Assistant History Post. The seniority list under Sl.No.1 to 196 are seniors than the petitioner. Therefore, the petitioner's claim is against the rules applicable. Hence, the petitioner cannot be considered.

8. The third respondent has filed the counter, wherein, it is stated that the Government have issued special rules for the Tamil Nadu School Education Subordinate Service Rules in G.O.Ms.No.13, School Education Department, dated 30.01.2020 and the Rule 9 (Seniority) list states as follows:

"Seniority: The Seniority of teachers transferred to one unit from other units or from other departments shall be reckoned with reference to the date of joining to the category in which he was transferred subject to the following condition.

An approved probationer in the post appointed in the other units or department will be placed below the approved probationers in identical category in that unit or department".

9. The petitioner's averment to promote the petitioner as B.T. Assistant (History) as per G.O.Ms.No.753, dated 16.07.1985 is not in consonance with rules as stated above. It is also submitted by the respondents that the Middle, High and Higher Secondary Schools when the syllabus was revised periodically for 6th, 7th and 8th standards, particularly English, Maths and Science subjects, Secondary Grade Teachers found it difficult to handle the subjects. Thus, the quality of education was affected and hence, the Government issued G.O.Ms.No.79, School Education Department, dated 14.06.2002 to appoint Middle Grade Graduate Teachers in the place of all Secondary Grade Assistant vacancies as on 01.06.2002 for the standards 6-8th. In order to give effect to the above order stage by stage, G.O.Ms.No.100, School Education Department, dated 27.06.2003 was issued by Government and took a policy decision to appoint Junior Secondary Grade Teacher / Junior B.T. / Junior P.G. Assistant, on contract basis under consolidated pay of Rs.3000/-, Rs.4,000/- and Rs.4,500/- respectively by down grading all the regular Secondary Grade Teacher/BT/PG posts which had fallen due to retirement/resignation and other reasons. G.O.Ms.No.100 clearly states that the promotion from the feeder category (i.e.) Secondary Grade Teacher to B.T. Assistant and B.T. Assistant to P.G. Assistant will continue in regular scale of pay as usual according to Service Rules.



10. The respondents have also submitted that an existing Secondary Grade Teachers are promoted as B.T. Assistants every year in the 50% of vacancies earmarked for promotion. According to the Tamil Nadu School Educational Subordinate Service Special Rules, G.O.Ms.No.753, the remaining 50% of vacancies earmarked for Direct recruitment only allocated for appointment as Junior SGT / Junior BT / Junior PG on contract basis are considered as separate category and they were regularized with effect from 01.06.2006 under regular time scale as well as for seniority purpose. The Junior SGT/BT/PG's were included in the promotion panel only based on the date of regularization (i.e.) 01.06.2006, wherein the promotees from SGT to BT like the petitioners were included in the promotion panel based on the date of joining / regularization in the BT cadre. Therefore, there is no discrimination in between them as stated by the petitioner.

11. If the petitioner would have continued in the Elementary Education Department (Separate Unit), he is eligible for inclusion in the SGT to BT panel based on the date of joining in the Elementary education with effect from 24.07.1997. But the petitioner willingly got transferred from Elementary Education Department to School Education Department with effect from 21.06.1999. Hence, according to the rules, he is eligible to be included in the SGT to BT panel only with the date of joining in this unit with effect from 21.06.1999. The Principal Bench of this Court has confirmed that the seniority is only based on the date of unit transfer in many cases. In the judgment dated 16.11.2011, rendered in W.P.No.25090 of 2011 filed by T.Mangalaselvi was upheld by the Division Bench in W.A.No.3727 of 2019, dated 19.02.2020. Hence, the petitioner claim has been considered in accordance to law and the service rules applicable to the said departments.

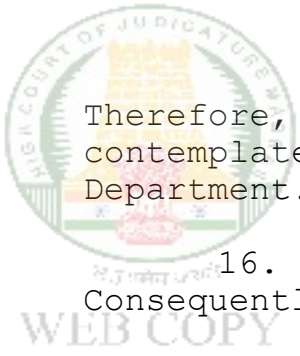
12. The petitioner filed reply affidavit stating the G.O.Ms.No.753 was not followed by the respondents and in 50% ratio was not valid at all. The petitioner got promotion in the year 2012. The petitioner is liable to be considered for promotion prior to 2012 in the promotional panel to the post of headmaster in the year 2019. Out of 16401, only 80 promotees find place in the seniority list. Similarly, the panel for 20481 list, only 9 promotees were in the panel. Thus it may be seen that the respondents are failed to make promotion as per G.O.Ms.No.753, as per which 50% earmark for promotees. The action of the respondents have severely affect the petitioners and hence, the petitioner prayed to allow the writ petition.

13. Heard Mr.Vijay Shankar, learned Counsel appearing for the petitioner and Mr.V.Om Prakash, learned Government Advocate (Civil Side) appearing for the respondents and perused the records.



14. It is seen from the records that the petitioner was appointed as a Secondary Grade Teacher on 24.07.1997 and the petitioner was conferred with Selection Grade from 24.07.2007. In the Secondary Grade post, if a person is stagnating in the same post without promotion, then the teacher would be eligible for Selection Grade pay and if the teacher is stagnating in the same post for more than twenty years, then the teacher would be eligible for the Special Grade of pay. Since the petitioner has received selection grade of pay for over stagnating in the secondary grade post for ten years, the petitioner cannot have any grievance that he was not promoted at all. The petitioner is either eligible for promotion or for selection Grade / Special Grade. In the present case, the petitioner has received the Selection Grade on 24.07.2007 for stagnating in the Secondary Grade post for ten years. In the meanwhile, the petitioner was promoted as B.T. Assistant in the year 2012. If the petitioner was stagnating in the secondary grade post for more than twenty years, then the petitioner would be eligible for special grade of pay. Since the petitioner was promoted in the year 2012 as B.T. Assistant, the petitioner is not eligible for Special Grade pay. Therefore, the grievance of the petitioner elaborately stated in the affidavit and the reply affidavit is without any merits. If the petitioner is seeking any promotion during the period from 1997 to 2012, then the petitioner should give up Selection Grade pay. In fact, in the Education Department in the promotion post, the teachers would be getting less salary than the teachers who were getting Selection Grade and Special Grade pay in the same post.

15. The petitioner is entitled to take the service rendered as Secondary Grade Teachers in the Elementary Education Department and then the service rendered as Secondary Grade Teacher in the school Education Department. But the petitioner is not entitled to claim seniority by taking the service of Elementary Education Department since the special rules state that the same cannot be taken, both are separate departments. The petitioner was serving in the Elementary Education Department, which is a separate Department and which is a separate unit having a special rules and separate seniority list. The petitioner was transferred from the Elementary Education Department to School Education Department in the year 1999. The School Education Department is a separate department having special rules for the School Education Department and a separate seniority list. The two Departments are functioning with separate Special Rules and separate seniority list. The separate special rules are being followed in order to maintain the department without any litigations by maintaining a separate seniority. The petitioner has no right to seek direction to direct the respondents to issue a separate rule for the petitioner alone. The claim of the petitioner is totally against the service rules applicable to the Elementary Education Department and School Education Department, therefore, more so when the petitioner had received the Selection Grade pay for stagnating in the secondary grade post in the year 2007.



Therefore, the petitioner has failed to establish any right as contemplated in the service rules applicable to School Education Department.

16. Therefore, the writ petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/06/2022

Sub Assistant Registrar(CS)

btr

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,
Education Department,
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- 2.The Director of School Education,
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+1 CC to M/s.V.PERUMAL, Advocate (SR-25495[F] dated 14/06/2022)
+1 CC to M/s.SPL.GP (SR-25809[F] dated 15/06/2022)

Order made in

W. P. (MD) No.19132 of 2018

14.06.2022