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W.P.No.1872 of 2020



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2023

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.1872 of 2020

M.Ramesh,
V.D.S. Jain Higher Secondary School,
Gandhi Nagar 8th Street,
Tiruvannamalai - 606 601. ... Petitioner

versus

- 1.The Government of Tamil Nadu,
Rep. by its Principal Secretary,
Education Department,
Fort St. George, Madras - 600 009.
- 2.The Director of School Education,
College Road, Madras - 600 006.
- 3.The Joint Director,
School Education Higher Secondary
D.P.I. Compound,
College Road, Chennai - 600 006.
- 4.The Chief Educational Officer,
Gandhi Nagar,
Thiruvannamalai - 606 001.
- 5.The District Educational Officer,
Gandhi Nagar 6th Street,
Thiruvannamalai.



6.V.D.S. Jain Higher Secondary School,
Gandhi Nagar 8th Street,
Tiruvannamalai.

Rep. by Secretary/Correspondent ...

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the entire records on the file of 1st respondent culminated in G.O.2(D) No.34 (School Education Dept. (Pa.Ka.6(1)) dated 01.07.2019, granting notional promotion to the petitioner as Physical Director Grade-I with effect from 29.12.1997, ending 30.06.2019 and quashing only that portion of the G.O. (granting notional promotion) and directing the respondents to issue order for the grant of monetary and all attendant benefits to the petitioner from July 1996 falling G.O.Ms.No.720 dated 28.04.1981 or alternatively from 29.12.1997 being the date of G.O.Ms.No.525, to the petitioner.

For Petitioner : Mr.C.Johnson

For Respondent Nos.1 to 5 : Mr.G.Nanmaran
Special Government Pleader

For Respondent No.6 : Mr.J.Chelladurai Caldwell

ORDER

The petitioner is having M.P.Ed. degree in the year 1996. He joined as a Physical Education Teacher in the 6th respondent School in the year 1993. G.O.(Ms.)No.720, Education Department, dated 28.04.1981 came into force with effect from 01.07.1978. As per Special Rules for the Tamil Nadu Higher Secondary Educational Service, under Class-I, the essential posts of one Headmasters / Headmistress; under Class-II, (1) P.G. Assistants



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in academic subjects, (2) P.G. Assistants in languages; (3) P.G. (SCERT PGT' SEC) Assistants in academic subjects, under Class-III Physical Directors and Physical Directresses in Higher Secondary Schools.

2. As per Rule 3(d)(ii) of the Tamilnadu Recognised Private Schools (Regulation) Rules, 1974, Higher Secondary School is defined as the School which has I to XII Std. or VI to XII Std. or IX to XII Std. As per Rule 15 (Annexure V), (Column 5), for the post of Physical Directors and Physical Directress in Higher Secondary Schools shall possess the qualifications of M.P.Ed., degree or equivalent or a diploma equivalent to M.P.Ed., degree.

3. Mr.C.Johnson, learned counsel for the petitioner submitted that as per the above Rules, the requirement of Physical Director is mandatory. As per G.O.(Ms.)No.525, School Education (D1) Department, dated 29.12.1997, for schools with a strength of over 400 students one post of Physical Director will be given through upgradation of Physical Education Teacher. Since the petitioner was not upgraded to the Physical Education Director, he filed a Writ Petition in W.P.No.21000 of 2012 for directing the



respondents 1 to 3 to upgrade the post of Physical Education Teacher held by the petitioner in the 6th respondent School to the post of Physical Director Grade-I from the year 1996, the day when the petitioner got qualified himself with a post graduation degree in Physical Education or from the date of the Government Order passed in G.O.(Ms.)No.525, School Education (D1) Department, dated 29.12.1997 with seniority and all attendant benefits. The said Writ Petition was allowed in-part and directions have been given as prayed. The operative portion of the order is extracted hereunder:-

“16. In view of the facts and circumstances involved in this case and also the discussion made above, this Court has no hesitation to allow the writ petition.

17. In the result, the writ petition is allowed in part with the following direction:

a) the respondents 1 to 3 are directed to pass orders on the recommendation of the 4th respondent dated 18.05.2010 by upgrading the post of Physical Education Teacher held by the petitioner in the 6th respondent school to the post of Physical Director Grade-I with effect from 29.12.1997 being the date of G.O.(Ms.)No.525. While passing the orders the respondents 1 to 3 shall bear in mind about the above observation made by this Court;



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b) the said exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order. There is no orders as to cost.”

4. An appeal filed in W.A.No.1997 of 2018 was disposed on 20.09.2018, by confirming the order of the learned single Judge. Then, the post was upgraded from 29.12.1997. However, the petitioner was given with the notional benefit from the date of upgradation and monetary benefit from the date of passing of G.O.(2D)No.34, School Education Department, dated 01.07.2019. In the Government Order, it is stated that the notional benefit will be given from 29.12.1997 on which date the post has been upgraded to Physical Director and monetary benefit will be given from the date of issuance of the Government Order i.e. 01.07.2019.

5. The grievance of the petitioner is that the respondents ought to have been given with monetary benefit also from 29.12.1997, from which date the post was upgraded and the petitioner has been functioning as a Physical Director Grade-I. In all other schools, the Physical Directors were given with the monetary benefits right from the date the post was upgraded



and not from the date of the Government Order. Only in the case of the petitioner, the monetary benefit was not given right from the day of upgradation and the petitioner has been discriminated.

6. Mr.G.Nanmaran, learned Special Government Pleader for the respondents 1 to 5 submitted that the petitioner has been given with the special pay from 01.12.1993 to 31.06.2019 as he had acquired a Masters Degree in Physical Education. After the issuance of G.O.(2D)No.34, School Education Department, dated 01.07.2019 he has been upgraded to the post of Physical Director Grade-I and hence a notional benefit was given from 29.12.1997 to 31.06.2019 and the monetary benefit has been given from 29.12.1997 to 31.06.2019.

7. The petitioner's Writ Petition in W.P.No.21000 of 2012 has been filed just to give a direction to the respondents 1 to 3 to upgrade the post of Physical Education Teacher held by the 6th respondent School to the post of Physical Director Grade-I from the year 1996. There was no quarrel on that point that the 6th respondent is a Higher Secondary School and it is qualified to have one post of Physical Director. As per the earlier



G.O.(Ms.)No.525, School Education (D1) Department, dated 29.12.1997, for schools having a strength of over 400 will be eligible to have a post of Physical Director through upgradation of the existing posts of Physical Education Teacher.

8. In pursuant to the above Government Order, the petitioner has filed the earlier Writ Petition in W.P.No.21000 of 2012 and got a direction against the respondents 1 to 3 to upgrade his post of Physical Education Teacher to the post of Physical Director Grade-I with effect from 29.12.1997. However, he got the Post Graduation degree in the year 1996 itself. The said Writ Petition is allowed and direction was given to upgrade the post from Physical Education Teacher to Physical Director Grade-I by taking into consideration of the petitioner's qualification as on 29.12.1997 itself.

9. The Writ Appeal challenging the above order was also disposed by confirming the above order. However, G.O.(2D)No.34, School Education Department, dated 01.07.2019 was issued. The petitioner was given with the monetary benefit only on the date of issuance of Government



Order i.e. 01.07.2019, even though the post has been upgraded as Physical Director Grade-I from 29.12.1997.

10. In this regard, various Government Orders have been passed for upgrading the post of Physical Education Teacher to Physical Director Grade-I and in some other schools and the post has been upgraded with the monetary benefit with effect from the date of upgradation and not from the date of issuance of the Government Order.

11. The petitioner ought to have been considered on par with similarly placed persons, who were upgraded to Physical Director Grade-I with effect from an earlier date. It is because immediately after the G.O.(Ms.)No.525, School Education (D1) Department, dated 29.12.1997 was passed, the petitioner has been functioning only as a Physical Education Teacher and not as Physical Director Grade-I.

12. G.O.(Ms.)No.525, School Education (D1) Department, dated 29.12.1997 has been implemented by the respondents 1 to 3 by way of issuing G.O.(2D)No.34, School Education Department, dated 01.07.2019



and by which the upgradation was given with effect from 29.12.1997. Once the post is upgraded to Physical Director Grade-I, the persons who got the upgradation should be presumed to be executing the functions of the Physical Director Grade-I and not the functions of the Physical Education Teacher, irrespective of the fact of giving or not giving the monetary benefit.

13. There is a difference between upgradation and promotion. In case of promotion, the person is expected to perform the functions of the promoted post only subsequent to the date of his promotion and by shifting to the promoted seat. But the effect of upgradation will start to operate from the moment the upgradation is given. To put it clearly, the petitioner who was functioning as Physical Education Teacher will be presumed to be performing the functions of Physical Director Grade-I immediately after his upgradation, even though there is no shift from one seat to another seat. Because the post of Physical Education Teacher is no more in existence as it had been upgraded and got merged with the post of Physical Education Director by virtue of G.O.(Ms.)No.525, School Education (D1) Department, dated 29.12.1997.



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14. As stated already, G.O.(2D)No.34, School Education Department, dated 01.07.2019 has been issued by accepting the upgradation of the post with effect from 29.12.1997. In such case, the petitioner ought to have been given with the monetary benefit also with effect from 29.12.1997. Issuance of G.O.(2D)No.34, School Education Department, dated 01.07.2019 is just a formality of ratifying the automatic upgradation of the post of Physical Education Teacher in pursuant to the earlier G.O.(Ms.)No.525, School Education (D1) Department, dated 29.12.1997. By taking into consideration of these facts only all other Physical Directors Grade-I who got the upgradation were given with the monetary benefit from the date of the upgradation itself without waiting for the issuance of the ratification Government Order.

15. The petitioner was having a required educational qualification for upgradation in the post of Physical Director Grade-I even at the time of issuance of G.O.(Ms.)No.525, School Education (D1) Department, dated 29.12.1997. The respondents 1 to 3 ought not to have denied the monetary benefit from 29.12.1997, just because the petitioner had knocked the doors



of the Court for getting suitable directions for upgradation. The monetary benefit is available to the petitioner on par with similarly placed persons for whom also monetary benefit was given from the date of upgradation.

In the result, this Writ Petition is **allowed** and the respondents 1 to 3 are directed to pay the monetary and attendant benefits to the petitioner w.e.f. 29.12.1997, within a period of eight (8) weeks from the date of receipt of a copy of this order. No costs.

18.12.2023

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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To

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R.N.MANJULA, J.

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