



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2023

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

AND

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

W.A.No.1741 of 2014
and M.P.Nos.1 and 2 of 2014

M.Mani

.... Appellant

Vs

1.The Government of Tamil Nadu
Rep.by its Secretary
School Education Department
Fort St.George, Chennai-600 009.

2.The Director of School Education
DPI Buildings, College Road
Chennai – 600 006.

3.The Chief Educational Officer
Kancheepuram District.

4.G.Murthy
District Inspector of Physical Education
(Incharge), Kancheepuram District.

5.The Joint Director of School Education
(Higher Secondary) DPI Buildings
College Road, Chennai – 600 006.

.... Respondents

For Appellant	:	Mr.T.Sundaravadanam
For Respondents	:	Mr.N.Murali
		Government Advocate
		-for RR 1,2,3 and 5
		R4 given up



Prayer : Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 04.06.2014 made in W.P.No.5517 of 2011.

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J U D G M E N T

(Judgment of the Court was delivered by V.LAKSHMINARAYANAN, J.)

The State of Tamil Nadu took a policy decision to have one District Inspector of Physical Education. To implement this policy, G.O.Ms.No.159 dated 10.07.2009 was passed. This Government Order has been impugned in the writ petition. The writ petition was dismissed. Against which the present appeal has been presented.

2. The writ petitioner is admittedly holding the post of Physical Education Director Grade-II. In order to hold the post of Physical Education Director Grade-I, in addition to B.P.Ed or allied qualification, Masters degree in Physical Education is necessary. The petitioner does not possess the same. Therefore, he is ineligible to hold the post of Physical Education Director Grade-I. The case of the petitioner is that the Government Order is discriminatory as he had put in long service in Physical Education Department and failure to consider his case for the purpose of promotion is unfair and arbitrary.

3. We have to point out here that the post of Physical Education Director Grade-I is a direct recruitment post or on recruitment by transfer. This implies that the person who is applying to the post must have the essential qualification necessary for the



purpose of being considered for appointment. The petitioner admittedly does not possess the same and therefore is ineligible. It is for the Government, as an employer, to fix the qualification for persons, whom it desires to employ in a post. If we were to direct the Government to accommodate the persons like the petitioner, who do not have the essential qualification to be appointed as Physical Education Director Grade-I, then we would be literally dictating to the Government as to what are the essential qualification. That is not the function of the Court. It is trite that Courts cannot fix qualification to a particular post and therefore the petitioner, not fulfilling the essential qualification, is not entitled to challenge G.O.Ms.No.159 dated 10.07.2009.

4. The learned Single Judge has given a detailed explanation as to why the petitioner is ineligible, in particular, in Para No.55 of the said order. We confirm the view of the learned Single Judge in Para 55 and feel that the order of the learned Single Judge does not require any interference.

5. At this stage, Mr.Sundaravadanam, learned counsel for the appellant would submit that the appellant had retired on 30.09.2016. He would bring to our notice an amendment made by the Government to the Special Rules for Higher Secondary Education Subordinate Service Rules on 30.01.2020. He would state that, persons like the appellant are not being considered to the post of District Inspector of Physical Education. Even for this, the method of recruitment is by transfer. He would state that those who have obtained B.P.Ed degree and subsequently have acquired M.P.Ed having



been not considered by the Government and therefore, would seek a direction from this Court to consider such cases also for the purpose of appointment.

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6. A perusal of the Rules shows that those are Statutory Rules which have been framed in exercise of the powers vested on the Government under proviso to Article 309. Those Rules are statutory in flavour. It is the discretion of the Government to amend the Rules. Suffice it to grant liberty to the petitioner / appellant or persons similarly situated to make a representation seeking for an amendment to the Rules, to permit the persons who are Physical Education Director Grade-II, on acquisition of the qualification of M.P.Ed, to be considered to the post of District Inspector of Physical Education. If such a representation is made, it is open to the Government to consider the same in accordance with law.

7. With the above observation, this writ appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

(R.S.K.,J.) (V.L.N.J.,)
05.07.2023

Index : Yes/No
Neutral Citation / Yes/No
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AND
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