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W.P.No.269



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 22.11.2023

DELIVERED ON: 22.12.2023

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.No.26916 of 2012

M.P.No.1 of 2012

M.Balakrishnan
Headmaster,
Panchayat Union Elementary School,
M.T.Anna Nagar,
Kaveripakkam Panchayat Union,
Kaveripakkam, Vellore District.
...Petitioner

vs.

1.The Government of Tamil Nadu
rep. by Secretary to Government,
School Education Department,
Fort St.George, Chennai – 600 009.

2.The Director of Elementary Education,
College Road, Chennai – 600 006.

3.The District Elementary Educational Officer,
Vellore District, Vellore.

4.The Asst. Elementary Educational Officer,
Kaveripakkam Panchayat Union,
Kaveripakkam, Vellore District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to

issue a Writ of Certiorarified Mandamus to call for the records issued in

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proceedings Na.Ka.No.23549/E3/2012 dated 22.09.2012 in

Na.Ka.No.4193/Aa5/2012 dated 24.09.2012 issued by the 2nd and 3rd

respondents respectively and quash the same in so far as it counts the seniority of the petitioner from the date of transfer as Secondary Grade Teacher and issue a consequential direction to the respondents to allow the petitioner to continue as Primary School Headmaster, Panchayat Union Primary School, M.T. Anna Nagar, Kaveripakkam Panchayat Union, Vellore District with service and monetary benefits, by counting the service from 01.10.1984.

For Petitioner : Mr.R.Saseetharan
For Respondents : Mr.R.Neethi Perumal
Government Advocate

ORDER

The Writ Petition has been filed challenging the orders passed by the second and third respondents dated 20.02.2012 and 24.09.2012, by reverting the post of the petitioner from Primary School Headmaster to the post of Pre-Vocational Instructor.

2.Heard, Mr.R.Saseetharan, learned counsel appearing for the petitioner and Mr.R.Neethi Perumal, learned Government Advocate appearing for the respondents.

3.Mr.R.Saseetharan, learned counsel for the petitioner would submit that



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the petitioner was initially appointed as a part time Pre-vocational Instructor on 03.01.1979 and then appointed as a full time Pre-vocational Instructor on 02.06.1980. The post of Pre-Vocational Instructor is known as "Craft Instructors". He would further contend that the petitioner had possessed S.S.L.C. qualification in March 1975 and he had also acquired Bachelor of Literature in April 1986, B.Ed. degree in August 1988 and M.A. Degree in May 1994.

4.He would submit that by G.O.Ms.No.1366, Education Department dated 05.09.1986, the minimum general qualification for the post Pre-Vocational Instructor was raised as S.S.L.C. Pass. Those who qualified shall get the benefit of pay scale as that of Secondary Grade Teachers. By another Government letter dated 18.11.1986, the Government has granted Secondary Grade Teachers scale of pay for those who have S.S.L.C. qualification including the petitioner from 01.10.1984 notionally and with monetary benefits with effect from 01.04.1986. He was also granted with selection grade and special grade scale of pay on 02.06.1990 and 02.06.2000 respectively. Even though the Pre-Vocational Instructors are paid the same scale pay of the Secondary Grade Teachers, the promotional avenues have not been equally distributed between the Secondary Grade Teachers and the Pre-Vocational Instructors. The petitioner and the similarly placed Pre-Vocational Instructors have been denied promotional avenues for all these years though they acquired B.Ed. qualification.



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5.He would further submit that in G.O.Ms.No.1297, Education Department dated 21.07.1979 has directed that whenever a vacancy arises in the post of Middle School Headmaster, such vacancy shall be filled up by the senior most person working as Secondary Grade Teacher or in other cadres of trained teachers but qualified for B.Ed/Tamil Pandit. He would contend that the post of Pre-Vocational Instructor comes under the category of other trained teachers, but the respondents have not considered the Pre-Vocational Instructors for promotion to the post of B.Ed. Middle School Headmaster.

6.He would submit that by G.O.Ms.No.400, Education, Science and Technology Department dated 25.05.1995, the Government has provided that the post of Middle School Headmaster shall be filled up by drawing a combined seniority in the category of Primary School Headmaster, Tamil Pandit and B.T. Assistant but qualified with B.Ed. or Tamil and that if the above said category of teachers are not available, then the post of Middle School Headmaster shall be filled up by the senior most person working as Secondary Grade Teacher or in the category of trained teachers carrying the same scale of pay.

7.He would further submit that the respondents had only considered the post of Secondary Grade Teachers as per seniority, for the post of Primary School Headmaster. In G.O.Ms.No.189, School Education (No.1) Department



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dated 04.06.1998, the Government has taken a Policy Decision to appoint B.T. Teachers, who teach subjects like Maths, Science and English for the students studying in Middle Schools. By the said Government Order, the Government has directed that the post of B.T. Assistant to be filled up by the senior most person working as Secondary Grade Teacher or in the category of special teachers carrying the same scale of pay. The category of Pre-Vocational Instructor can be termed as special teachers as well. But the Government of Tamil Nadu issued another G.O.Ms.No.294, School Education Department dated 30.11.2000 and directed that the post of B.T. Assistant shall be filled up by the senior most person working as Primary School Headmaster qualified with B.Ed. / Tamil Pandit and if Primary School Headmasters with the above said qualification are not available then only the post can be filled up by the Secondary Grade Teachers or any other category of teachers carrying the same scale of pay.

8.He would contend that the Government had wiped out the opportunity of the Pre-Vocational Instructors to become B.T. Assistants and the promotional avenues such as Primary School Headmaster, B.T. Assistant, Tamil Pandit and B.Ed. Middle School Headmasters are not equally distributed between the Secondary Grade Teachers and Pre-Vocational Instructors, the Pre-Vocational Instructors are completely excluded for promotion despite having necessary qualifications.

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9.He would further submit that the petitioner along with other Pre- Vocational Instructors made a representation to the first respondent on 23.04.2005, to consider their case for promotion, but no order had been passed. Thereafter, the petitioner and others had filed W.P.No.25803 of 2005 before this Court and by order dated 17.12.2007, this Court had considered the case of the Pre-Vocational Instructors and held that promotional opportunities can be given to the Pre-Vocational Instructors and issued a direction to the respondents to consider the representation dated 23.04.2005 and directed the first and second respondents to make appropriate amendments in the Rules.

10.He would further contend that the respondents as directed by this Court have not passed any orders and a Contempt Petition No.713 of 2009 was filed before this Court. In the meantime, the respondents had filed W.A.No.1824 of 2009 before the Division Bench of this Court and by order dated 01.12.2009, the Division Bench had held that the petitioner and others could be certainly considered for the post of Headmasters in a Primary School if they had put in sufficient period of service and if they had obtained B.Ed. qualification, although they might have joined initially without that qualification and to comply with the orders of the learned Single Judge, directed the respondents to consider the representation of the petitioner.



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11.He would further submit that after the order passed by the Division Bench of this Court, the District Elementary Educational Officer by its order dated 21.05.2010, has promoted the petitioner and one S.Anbananthan as a Primary School Headmaster on the ground that both possess B.Ed. Qualification. On 08.06.2011, the third respondent had cancelled the order of promotion of the petitioner on the ground that Pre-Vocational Instructor who possess B.Ed. qualification cannot be promoted as Primary School Headmaster without holding Diploma in Teacher Education and in the said order directed the petitioner to refund the excess payment drawn in the post of Primary School Headmaster. Against the order of cancellation of promotion, the petitioner has filed a Writ Petition in W.P.No.15720 of 2011. This Court by its order dated 01.07.2011 granted stay of cancellation of promotion and the petitioner continued in the post of Primary School Headmaster.

12.He would submit that by order dated 24.12.2009, the Government has taken a first stand that as per Rules which are in force, if Primary School Headmasters qualified with B.Ed. or Tamil Pandits are not available, then only, the Pre-Vocational Instructors with a necessary qualification will be considered for promotion and the Government taken a second stand that as per the rules for promotion to the post of Primary School Headmaster, 2 years of Diploma in



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Teacher Education is essential and therefore the rules could not be amended as per the judgment of the the Division Bench of this court in W.A.No.1824 of 2009. As against the letter of the Government dated 24.12.2009, the petitioner has filed W.P.No.15721 of 2011, before this Court. It was held that the equation of qualification of certificates obtained by the Pre-Vocational Instructors to the level of Diploma in Teacher Education cannot be done by this Court and it is for the Government to consider the equation and dismissed the writ petition.

13.He would further submit that W.P.No.15720 of 2011 filed by the petitioner was remanded with the observation that the respondents shall take into consideration that the petitioner has obtained Diploma in Teacher Education on 28.05.2010 and even much prior to that he had acquired B.Ed. qualification and directed the respondents to pass orders so as to enable the petitioner to be considered for promotion to the post of Primary School Headmaster and if eligible for further promotion and directed that till final decision is taken, the petitioner is entitled to continue in the post of Primary School Headmaster.

14.He would submit that when the petitioner approached the respondents on 26.06.2011, the Director of School Education by order dated 22.09.2012, wherein it has been stated that the petitioner could not be promoted straight away to the post of Primary School Headmaster from the post of Pre-Vocational



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Instructor, despite the fact that the petitioner has acquired a Diploma in Teacher Education. He would contend that the petitioner could be transferred to the cadre of Secondary Grade Teacher from 28.05.2010 onwards and his name to be included in the panel as on 01.01.2011 as per the eligible turn for promotion to the post of Primary School Headmaster counting the seniority from the date of transfer to the post of Secondary Grade Teacher.

15.He would further submit that on 20.02.2012 and 24.09.2012, the Director and the District Elementary Educational Officer had reverted the petitioner to the post of Pre-Vocational Instructor from the post of Primary School Headmaster wherein it has been stated that the petitioner is not within the seniority as per the panel prepared as on 01.01.2011. Hence, he would seek interference of this Court against the orders passed by the respondents as the post of Secondary Grade Teacher and the post of Pre-Vocational Instructor carries same scale of pay, therefore, his transfer from the post of Pre-Vocational Instructor to the post of Secondary Grade Teacher cannot be considered as fresh recruitment and the service rendered in the post of Pre-Vocational Instructor cannot be ignored as per Rule 35 (b) of the Tamil Nadu State and Subordinate Service Rules, when the transfer is made from one class to another class or one category to another category carrying the same scale of pay, then the service in the previous post can be taken into account.



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16.He would submit that the petitioner was getting the Secondary Grade Teacher scale of pay from 01.10.1984 and he is entitled for counting of his services from 01.10.1984 and not from 28.05.2010 when transfer has taken place as per the order of the Director of School Education dated 22.09.2012. He would further submit that if the service of the petitioner was counted from 01.10.1984, then in the panel prepared as on 01.01.2011, the petitioner would have been eligible for promotion to the post of Primary School Headmaster. He would further submit that from the panel prepared as on 01.01.2012, 9 persons were promoted. The last person promoted is one P.Suganthamala, who was appointed as Secondary Grade Teacher on 02.08.1997. The persons appointed upto 02.08.1997 as Secondary Grade Teacher were promoted as Primary School Headmaster.

17.He would submit that the post of Pre-vocational Instructor comes under class VII of Tamil Nadu Elementary Educational Subordinate Service Rules and the post of Secondary Grade Teacher comes under class III of the same service. Therefore, the transfer of post cannot be treated as a fresh recruitment. Hence, seeks interference of this Court to set aside the orders issued by the second and third respondents and pray to allow this Writ Petition.



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18. Countering his arguments, Mr.R.Neethi Perumal, learned Government Advocate appearing for the respondents would submit that on the date when the petitioner was appointed as a Pre-Vocational Instructor, he had only possessed a Technical Training Certificate in Teaching and such a certificate cannot be equated to that of a Diploma in Teacher Education. In the absence of equivalence in the basic qualification prescribed for the post, the question of equating the post subsequently may not arise.

19. He would further submit that the order issued by the second respondent, in reverting the post of the petitioner, from the post of Primary School Headmaster was that there are no Government Orders or Rules, wherein it has been stated that from the post of Pre-Vocational Instructor promotion can be granted to the post of Primary School Headmaster in the absence of any such orders or Rules, the Government cannot grant such an promotion and hence, the promotion granted to the petitioner cannot be allowed.

20. He would further submit that in the order issued by the second respondent dated 22.09.2012, wherein it has been stated that the petitioner shall be considered as a Secondary Grade Teacher with effect from 28.05.2010, the date on which the petitioner had completed the Teacher training course, and in



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the same order the second respondent had directed Vellore District Elementary Officer to include the name of the petitioner in the priority list for promotion dated 01.01.2011, and to promote the petitioner in the due course according to the order of the priority list. He would also submit that the third respondent/the District Elementary Educational Officer had also issued an order on 24.09.2012, wherein it has been stated that the petitioner is de-promoted from the post of Primary School Headmaster and there can be no promotion given directly from the post of Pre-Vocational Instructors. Hence, there is no infirmity in the orders passed by the second & third respondents and seek this Court to dismiss the Writ Petition.

21.I have considered the rival submissions made by the respective counsel appearing on either side and have perused the materials available on record before this Court.

22.The present impugned order had come to be passed pursuant to the order of remand made by the learned Single Judge of this Court in W.P.Nos.15720 & 15721 of 2011. In disposing of those Writ Petitions, the learned Single Judge had held that the objection raised by the respondents as regards to the claim of the petitioner does not any longer survive for various factors. For better appreciation, the relevant paragraph is extracted hereunder:

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“18.As seen from the counter affidavit, the only reason pointed out by the respondent is that the petitioner did not agitate for change of cadre. In my view, the question of such adoption may not arise since the authorities themselves considered the case of the petitioner for changing the cadre into the Secondary Grade cadre. This conclusion is fortified by the fact that the petitioner has acquired diploma in Teacher Education on 28.5.2010. Therefore, the objected stated in the impugned order dated 24.12.2009, does not any longer survive for consideration in so far as the petitioner's case is concerned. That apart, even much earlier, the petitioner had acquired his B.Ed. Qualification and the petitioner has been serving as PVI for nearly thirty years and was also given promotion on 21.5.2010, which was subsequently cancelled and reversion has been ordered.”

Therefore, the order of reversion that was impugned in W.P.No.15720 of 2011 was set aside and the matter was remanded to the respondents for fresh consideration and the respondents were also directed to take into consideration the fact that the petitioner had obtained a Diploma in Teacher Education and also B.Ed qualification while considering the claim of the petitioner. For better appreciation, the relevant paragraph is extracted hereunder:

“19.In that view of the matter, W.P.No.15721 of 2011 challenging the order dated 24.12.2009, stands dismissed. The order of reversion dated 8.6.2011, impugned in W.P.No.15720 of 2011 is set aside and the matter is



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remanded to the respondents for fresh consideration. The respondents shall taken into consideration the fact that the petitioner has acquired the Diploma in Teacher Educational qualification on 28.5.2010 and even much prior to that he has acquired B.Ed., qualification. By taking note of all these qualifications, the respondents shall pass appropriate orders so as to enable the petitioner to be considered for promotion to the post of Primary School Headmaster and if eligible for further promotion, as expeditiously as possible, preferably within a period of twelve weeks from the date of receipt of a copy of this order. Till final decision is taken, the petitioner shall be entitled to continue in the same post of Primary School Headmaster, in which post the petitioner has been continuing during the pendency of the writ petition due to the interim order granted by this Court. No costs.”

23. On remand, the second respondent herein had passed an order on 22.09.2012. A reading of the aforesaid impugned order would show that the second respondent had done nothing but extracted certain portions of the order that were set aside by the learned Single Judge in his order extracted supra and had held that already the petitioner's request had been rejected by the Government and therefore, there is nothing afresh to be considered and passed an order of reversion.

24. The action of the second respondent in passing the order impugned in this Writ Petition is nothing but an act of contempt. When the order passed by the Government had been set aside by the learned Single Judge by taking into consideration the petitioner had already obtained necessary qualifications and a



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specific direction has also been issued by the learned Single Judge to consider the case taking into consideration the qualifications that had been obtained by the petitioner, no such attempt had been made by the second respondent but had relied upon an order that had been set aside by the learned Single Judge, against which no appeal had been preferred by the Government in passing the impugned order. For this reason alone, I am inclined to interfere with the order passed by the second respondent and also the consequential order passed by the third respondent.

25.In fine, the impugned orders dated 22.09.2012 & 24.09.2012 are set aside and I do not propose to remit the matter back to the respondents considering the fact that the petitioner would have attained the age of superannuation a decade back. Since the order of reversion is set aside, the petitioner services shall be continued as Primary School Headmaster till the date of his superannuation and he would be entitled to all attendant benefits in the cadre of a Primary School Headmaster and he will also be entitled to pensionary benefits on the same strength.

26.In fine, the Writ Petition is allowed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.



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Index: Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No

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To

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- 1.The Secretary to Government,
Government of Tamil Nadu,
School Education Department,
Fort St.George, Chennai – 600 009.
- 2.The Director of Elementary Education,
College Road, Chennai – 600 006.
- 3.The District Elementary Educational Officer,
Vellore District, Vellore.
- 4.The Asst. Elementary Educational Officer,
Kaveripakkam Panchayat Union,
Kaveripakkam, Vellore District.



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K.KUMARESH BABU, J.

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