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W.A.No.2241 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2023

CORAM

THE HON'BLE Mr. JUSTICE R.SURESH KUMAR
AND
THE HON'BLE Mr. JUSTICE K.KUMARESH BABU

W.A.No.2241 of 2019
and
C.M.P.No.14877 of 2019

1.The State of Tamil Nadu rep. By
its Secretary to Government,
Education Department,
Fort St. George, Secretariat,
Chennai – 600 009.

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

... Appellants

Vs.

K.Jayakumar

... Respondent

Prayer : Appeal filed under Clause 15 of the Letters Patent Act, praying
to set aside the order dated 08.02.2018 in W.P.No.13884 of 2008.

For Appellants : Mr.R.Kumaravel
Additional Government Pleader

For Respondent : Mr.J.Selvarajan



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JUDGMENT

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The respondent was initially working as Secondary Grade Teacher subsequently he qualified to hold the post of B.T. Assistant as well as P.G. Assistant especially in Tamil.

2. In this context, it is to be noted that, the Government issued an order in G.O.Ms.No.79 Education Department dated 18.01.1990 under which the fifty percent of the post in School Assistants i.e. B.T. Assistants were earmarked for direct recruitment, out of which 10% were called for for the purpose of special quota for direct recruitment to the in service candidates viz., the Secondary Grade Teachers from various Government and Government Aided Schools.

3. Therefore under the 10% quota as per G.O.Ms.No.79, it is the claim of the respondent that, since he is qualified to hold the post of P.G. Assistant, he should be considered for appointment as B.T. Assistant from the 10% quota, therefore he had made that request to the respondents which was turned out by rejection order dated 13.12.2007.



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Challenging the same, the said writ petition was filed i.e. in W.P.No.13884 of 2008 and the said writ petition was allowed by the learned Judge through the order impugned dated 08.02.2018.

4. Aggrieved over the said order passed by the Writ Court, the present appeal has been directed by the State.

5. It is represented by Mr.R.Kumaravel, learned Additional Government Pleader who would submit that, G.O.Ms.No.79 though was issued that was not implemented to anyone as subsequently G.O.Ms.No.132 had come into effect which was also superseded subsequently by issuance of G.O.Ms.No.223, School Education (C2) Department dated 16.07.1999.

6. However, in none of the Government Orders, the rules i.e., the Tamil Nadu Educational Subordinate Service and the Tamil Nadu Higher Secondary Educational Service Rules were amended enabling to carve out the 10% to the 50% direct recruitment quota for the purpose of considering the candidature of Secondary Grade Teachers working in various Schools as stated supra as Special category.



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7. This was the reason mainly given by the Director of School

Education i.e., the appellant in the order dated 13.12.2007.

8. However, now only i.e., by issuance of G.O.(Ms).No.110 School Education (SE2(1)) Department dated 26.05.2017 the two rules got amended, therefore it become enabled for the candidates like the respondent to now make an application whenever it is called for to fill up the post of either B.T. Assistant or P.G. Assistant as the case may be for selection to the direct recruitment to the post of B.T. Assistant or P.G. Assistant by the exclusive 10% reservation as stated supra.

9. However, Mr.J.Selvarajan, learned counsel appearing for the respondent would contend that, he was eligible to hold the post of B.T. Assistant in the year 1999 itself as he qualified and the G.O.Ms.No.79 also was issued on 18.01.1990, subsequently G.O.Ms.No.132 also was issued on 21.02.1995, when that being so, only by citing the reason that the rule has not been amended, the import of the said G.Os. have not been implemented, therefore in order to implement the same, the respondent approached the 2nd Appellant/Director of School Education, he had rejected the same stating that the rule is yet to be amended.



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10. He would also submit that, in the meanwhile as per the regular promotion the respondent earned the promotion to the B.T. Assistant in the year 2008 and has been working as such till date, therefore atleast at this length of time by virtue of the amendment that has been made or effected through the G.O.(Ms).No.110 dated 26.05.2017, the respondent's candidature can be considered for direct recruitment to the post of P.G. Assistant (Tamil) in the 10% quota earmarked in this regard he contended.

11. We have considered the said submissions made by both sides.

12. No doubt, G.O.Ms.No.79 and G.O.Ms.No.132 were issued in the year 1990 and 1995, the G.O.(Ms).No.132 was subsequently issued, according to the Government, thereafter it was superseded by the subsequent G.O.(Ms).No.223 dated 16.07.1999. Under the said G.O., the 10% quota has been carved out from the 50% direct recruitment quota for the purpose of Secondary Grade Teachers to be selected and appointed in B.T. Assistant or P.G. Assistant as the case may be.



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13. However, for long years the rule has not amended and belatedly only in the year 2017 under G.O.(Ms).No.110 School Education Department dated 26.05.2017, the rule has got amended. The relevant amendment reads thus:

“The following Notifications will be published in the Tamil Nadu Government Gazette:-

NOTIFICATION – I

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Tamil Nadu hereby makes the following amendment to the Special Rules for the Tamil Nadu School Educational Subordinate Service (Section 48 in Volume III of the Tamil Nadu Services Manual).

2. The amendments hereby made shall come into force on 26.05.2017.

AMENDMENT

In the said rules, in rule 3, in sub-rule (a), in the Table, under Class I, against Category-I ‘Deputy Inspector of Schools and School Assistants’ in column(1) for the proviso in column (2) thereof, the following proviso shall be substituted, namely:-

"Provided that fifty percent of the substantive vacancies shall be filled by direct recruitment and out of this ten percent shall be filled from among the qualified Secondary Grade Teachers, and other teachers with Secondary Grade scale of pay, working in Government Higher Secondary Schools, Government High Schools, recognized Higher Secondary Schools, High Schools, Middle Schools and Elementary Schools under the Local Bodies (Corporation or Municipal or Panchayat Union) and all Aided Managements:

Provided further that if sufficient number of suitable Secondary Grade Teachers and other Teachers with Secondary



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Grade Scale of Pay working in the type of schools specified in the aforesaid proviso are not available for direct recruitment, such vacancies shall be filled up from other candidates available for selection in open market."

NOTIFICATION - II

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Tamil Nadu hereby makes the following amendment to the Special Rules for the Tamil Nadu Higher Secondary Educational Service (Section 37 in Volume II of the Tamil Nadu Services Manual, 1969).

2. The amendment hereby made shall come into force on 26.05.2017.

AMENDMENT

In the said rules, in rule 2, in sub-rule (b), in clause (ii), for the provisos, the following provisos shall be substituted, namely:-

“Provided that fifty percent of the substantive vacancies in Category I, 'Post Graduate Assistants in Academic subjects' under Class-II of the service shall be filled by direct recruitment and out of this, ten percent shall be filled from among the qualified Secondary Grade Teachers and other Teachers with Secondary Grade scale of pay working in Government Higher Secondary Schools, Government High Schools, recognized Higher Secondary Schools, High Schools, Middle Schools and Elementary Schools under the Local Bodies (Corporation or Municipal or Panchayat Union) and all Aided Managements:

Provided further that fifty percent of the substantive vacancies in category 2, "Post Graduate Assistants in Languages," under Class II of the service shall be filled by direct recruitment and out of this, ten percent shall be filled from the qualified Secondary Grade Teachers and other Teachers with Secondary Grade scale of Pay among working in Government Higher Secondary Schools, Government High Schools, recognized Higher Secondary Schools, High Schools, Middle Schools and Elementary Schools under the Local Bodies. (Corporation or Municipal or Panchayat Union) and all Aided Managements:



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Provided also that if sufficient number of suitable Secondary Grade Teachers and other Teachers with Secondary Grade Scale of Pay working in the type of schools specified in the aforesaid provisos are not available for direct recruitment, such vacancies shall be filled up from other candidates available for selection in open market.”

14. Therefore both the rules since has got amended there is no impediment now for the Government to consider these kind of candidates from the Secondary Grade for the direct recruitment/appointment to the post of B.T. Assistant or P.G. Assistant as stated supra.

15. In the present case, the respondent already earned the promotion to the post of P.G. Assistant, therefore if at all he wants to apply directly to be promoted by way of direct recruitment as he has become eligible to apply for consideration of appointment to the post of P.G. Assistant under the 10% quota, that can be made only at the time of recruitment is taken place. Therefore in any near future if applications are called for from the eligible candidates, it is open to the respondent to make such application under 10% quota seeking such promotion to the post of P.G. Assistant (Tamil) and in such eventuality, the application of the respondent shall be considered on merits and in accordance with law.



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16. With this observation, we feel that the order impugned passed by the learned Judge can be interfered with, because, in that order the learned Judge has given a direction as if that it is a promotion not by direct recruitment by giving a direction to the appellant Department to give promotion to the respondent to the post of B.T. Assistant or P.G. Assistant as the case may be as such kind of direction ought not to have been issued, therefore to that extent the order impugned passed by the learned Judge is erroneous, hence the order impugned is set aside.

17. With the aforesaid direction, the Writ Appeal is ordered accordingly. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[R.S.K., J.] [K.B., J.]

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Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

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R. SURESH KUMAR, J.
and
K.KUMARESH BABU, J.

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