



W.A.No.2650 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2023

CORAM

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

W.A.No.2650 of 2019

G.Nagesh

... Appellant

Vs.

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

2.The Joint Director of School Education, (Personnel)  
College Road, Nungambakkam,  
Chennai.

3.The Chief Educational Officer,  
Office of the Chief Educational Officer,  
Government Boys Higher Secondary  
School Campus, Gandhi Road,  
Krishnagiri – 635 001.

... Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent Act, praying to set aside the order dated 12.12.2018 in W.P.No.18995 of 2016 and thereby consequently direct the respondents to promote and regularize the petitioner service as Drawing Master with effect from 20.01.2004 as per order in O.A.No.38/2004 passed by the Tamil Nadu Administrative Tribunal only for the purpose of pension and other attendant benefits.



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For Appellant : Mr.R.S.Anandan

For Respondents : Mr.M.Murali  
Government Advocate

### **JUDGMENT**

(Judgment of the Court was delivered by R.SURESH KUMAR, J.)

The appellant was appointed as an Office Assistant in the year 1984. After some years of service he was promoted as Record Clerk in the year 2001. After he become Record Clerk since he has already earned the necessary qualification to hold the post of Drawing Master or Art or Craft Master, he sought for such promotion/appointment from the respondents since that was not considered the appellant approached the Tamil Nadu Administrative Tribunal and filed an original application where in the year 2004 a direction was given to the respondent Department to consider the plea made by the appellant.

2. Considering the same, it was rejected by order dated 17.06.2004 that order was under challenge in W.P.No.27046 of 2004 filed by the appellant.



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3. The said writ petition was ordered by the Writ Court on 23.02.2007 where the learned Judge has given direction to the respondent Department to consider the claim of the appellant in the light of the relevant GOs and pass orders within four weeks.

4. Pursuant to the said order passed by the Writ Court on 26.10.2007, having considered the candidature of the appellant, he was appointed as Drawing Master, in that capacity he had been working for some years and on superannuation retired from service on 31.05.2017.

5. Before he retires from service he had filed another writ petition i.e. W.P.No.18995 of 2016 where the prayer was to quash the order passed by the 3<sup>rd</sup> respondent dated 06.11.2015 under which the plea raised by the appellant was to consider his appointment as Drawing Master with effect from the date he become eligible to hold the post that too pursuant to the direction given earlier in the year 2004 by the Tamil Nadu Administrative Tribunal and accordingly his appointment to the post of Drawing Master on 26.10.2007 shall date back in the year 2004 and accordingly the notional payment shall be given based on which his pensionary benefits shall be recalculated and be paid. Since that was



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rejected through the said order dated 06.11.2015 which triggered the appellant to file the said writ petition in W.P.No.18995 of 2016.

6. The said writ petition was rejected by the order of the Writ Court dated 12.12.2018 as against which the present appeal has been directed.

7. Assailing the order impugned passed by the learned Judge, Mr.R.S.Anandan, learned counsel appearing for the appellant would contend that, in the year 2001 itself he has become eligible to be considered for appointment as a Drawing Master and thereafter upto 2004 several of his junior on clearing the said qualification since had been considered and such appointment were given, the appellant had to file the original application where a direction was given, however that was not considered in proper perspective and it was rejected in the year 2004 itself, when this was challenged in the writ petition in the year 2004 which was disposed only on 23.02.2007.

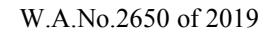
8. Thus delay caused is not to be attributable on the appellant as this delay caused only by the respondent Department.



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WEB COPY 9. He would also submit that, at the time of admission of the writ petition, there was an interim direction directing to keep one post of Drawing Master vacant for the purpose of deciding the plea raised by the appellant in the said writ petition. Therefore, in all fairness the respondent Department while giving such appointment or promotion to the appellant on 26.10.2007, that should be date back from the year 2004. However, the said gesture has not been shown even though for which the appellant is entitled to, hence he had rightly approached this Court by filing the said writ petition of course in the year 2016 while he was in service. However, the said writ petition has been rejected by the learned Judge who without considering the aforestated factual as well as the legal position in proper perspective since has rejected the plea of the appellant, the said order impugned is liable to be interfered with, he contended.

10. We have heard Mr.M.Murali, learned Government Advocate appearing for the respondents who would submit that, insofar as the claim made by the appellant to get the post of Drawing Master is concerned, it is not a matter of right to give such promotion and it is based on the eligibility of the candidates who are available and



be made.

12. We have considered the said submission made by the learned counsel for both sides and have perused the materials placed before this Court.

13. The right of the appellant to claim such a post is only based on the order passed by the Writ Court dated 23.02.2007. Even prior to that when an order was passed by the Tamil Nadu Administrative Tribunal in the year 2004 where a direction was given to consider the request that



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was considered and rejected by order dated 17.06.2004. When this was questioned, the Writ Court, while passing order on 23.02.2007 setting aside the said rejection order dated 17.06.2004, has simply given a direction to the respondents to consider the claim of the appellant and pass orders within a time frame.

14. The learned Judge, who passed order on 23.02.2007, has never stated that the consideration shall be for appointment to the post of Drawing Master for the appellant who was the writ petitioner therein and accordingly such appointment shall be made with effect from the date either the appellant become eligible to hold the post or atleast from the date where the Tribunal passed orders in the year 2004.

15. In the absence of any such direction, it cannot be construed as has been submitted by the learned counsel appearing for the appellant that, the direction given by the Writ Court by order dated 23.02.2007 should date back from the date of clearing the qualification to hold the post of Drawing Master or atleast from the date, the Tribunal passed orders in the original application filed by him, that kind of proposition, as has been projected by the learned counsel appearing for the appellant,



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cannot be accepted by this Court as it would go beyond the stretch of imagination.

16. Even though it is submitted by the learned counsel appearing for the appellant that, the rule position support his contention, the rule if at all enabling the authorities to select candidates from the various categories of in service candidates, it is not the promotion from a feeder category and the Record Clerk is not a mere feeder category based on which seniority panel would be drawn and promotion would be given to the next higher category i.e. Drawing Master or any other equivalent post in the academic side.

17. Hitherto the appellant was working in the Administrative side as he was working as Office Assistant subsequently as Record Clerk and thereafter he has to be shifted from Administrative side to academic side, whenever the academic side posts are being filled up, the academic qualification is a basic one, based on which only such kind of appointments are being made, for any stretch of imagination it cannot be treated as a mere promotion.



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18. If it is a mere promotion the proposition submitted by the appellant counsel may be accepted, but since it is not a promotion, it is only a selection post, from which date he has to be selected and appointed alone shall be taken into account.

19. The said appointment is only by way of recruitment by transfer, such recruitment is based on the qualification prescribed. In this regard, in the rule governing the service conditions of such employees, it cannot be stated that it is a mere promotion, therefore some juniors have already been considered and granted such appointment by way of transfer, therefore on par with them his seniority also to be reckoned and based on which his service benefits like pensionary benefits shall also be calculated, such kind of benefits as has been sought for by the appellant cannot be considered and granted. As in the Service Jurisprudence, when there is an appointment by transfer, on which date such appointment and transfer is made, that alone shall be taken into account where no seniority can be claimed.

20. Moreover, in the judgment dated 23.02.2007 the learned Judge had simply directed the respondent Department to consider his claim and



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to pass orders. If at all the learned Judge thought of giving such retrospective appointment to the appellant/petitioner, the learned Judge would have stated in his order, but nothing has been stated in the said order and against the said order the appellant/petitioner had not agitated the issue at all, he files the writ petition only in the year 2016 i.e. just one year prior to his superannuation.

21. For all these reasons, the rejection now made by the learned Judge in the impugned order rejecting the plea of the appellant to give retrospective selection and appointment by way of transfer to the appellant for the post of Drawing Master with effect from either 2001 or 2004 is to be justified and sustained. In the result, the Writ Appeal fails, hence it is dismissed. However, there shall be no order as to costs.

[R.S.K.J.] [K.B.J.]  
01.08.2023

Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

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