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W.P.No.14901 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2023

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THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.14901 of 2020

and

W.M.P.Nos.18496 & 18497 of 2020

R.Loganathan, aged about 48 years
S/o.N.Ramalingam
No.18, North Anna Nagar
Mongilpady Road
Chinna Salem 606 201

... Petitioner

/Vs/

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

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

3.The Joint Director of School Education (Personnel)
Directorate of School Education
College Road, Chennai 600 006

4.The Chief Educational Officer
Kallakurichi District
Kallakurichi 606 202



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5. The Headmaster
Government Boys High School
Chinna Salem
Kallakurichi District 606 201

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records relating to G.O.Ms.No.253 School Education (U2) Department dated 05.12.2006 issued by the first Respondent and quash the same in so far as paras 2 & 3 of the said G.O. are concerned and consequently direct the 1st, 2nd & 3rd Respondents to upgrade the Petitioner who is working as physical Education Teacher in the scale of pay of Rs.4500-125-7000 as Physical Education Director Grade II in the scale of pay of Rs.5500-175-9000 w.e.f. 21.04.2008 since the Petitioner who is possessed of B.A. in Economics, M.P.Ed in Physical Education and M.Phil degrees and is discharging the functions equal to physical education Director Grade II for the past 10 years is full qualified to be upgraded as Physical Education Director, Grade II and given priority in promotion.

For Petitioner : Mrs.Nalini Chidambaram
Senior Counsel
for Mr.R.Venkatavarathan

For Respondents : Mr.T.Arunkumar
Additional Government Pleader

ORDER

This Writ Petition has been filed for issuance of Writ of Certiorarified Mandamus to call for the records relating to G.O.Ms.No.253 School Education



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(U2) Department dated 05.12.2006 issued by the first Respondent and quash

the same in so far as paras 2 & 3 of the said G.O. are concerned and consequently direct the 1st, 2nd & 3rd Respondents to upgrade the Petitioner who is working as physical Education Teacher in the scale of pay of Rs.4500-125-7000 as Physical Education Director Grade II in the scale of pay of Rs.5500-175-9000 w.e.f. 21.04.2008 since the Petitioner who is possessed, B.A., in Economics, M.P.Ed., in Physical Education and M.Phil., degrees and is discharging the functions equal to physical education Director Grade II for the past 10 years and is fully qualified to be upgraded as Physical Education Director, Grade II and given priority in promotion.

2.The Petitioner has been appointed by virtue of G.O.Ms.No.253 School Education Department, dated 05.12.2006 as Physical Education Teacher in the time scale pay of Rs.4500-125-7000 has filed this Writ Petition.

3.Before getting appointed by virtue of impugned G.O.Ms.No.253 School Education (U2) Department dated 05.12.2006, the Petitioner was working as a temporary teacher for two years on consolidated pay. The Petitioner and like others accepted the benevolence of the Government in considering their past service and to appoint them as Physical Education Teacher. It is not denied by



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the Petitioner that at that point of time they are given required undertaking as contemplated under para No.3 of the said Government Order.

4.Heard Mrs.Nalini Chidambaram, learned Senior Counsel for Mr.R.Venkatavarathan, learned counsel for the Petitioner and Mr.T.Arunkumar, learned Additional Government Pleader appearing for the Respondents.

5.Mrs.Nalini Chidambaram, learned Senior Counsel for the Petitioner submitted that at the time when the Government Order was passed, the Petitioner was without any employment. As against the Government the Petitioner was not in a position to make any better bargain. As there was no equal bargaining capacity, he was under compulsion to accept the terms and conditions imposed in the Government Order. The Petitioner is continuing in service for the past 17 years, without any promotion to the next level viz., Physical Education Director Grade II. By length of service the Petitioner sometimes even discharges the functions meant for Physical Education Director Grade II. Hence, the unfair terms imposed in the impugned Government Order in paragraph 3 should be quashed.

6.Mr.T.Arunkumar, learned Additional Government Pleader appearing for



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the Respondents submitted that the Petitioner having accepted the appointment by accepting the terms of the impugned Government Order, cannot turn around and say that paragraph 3 of the said Government Order, which is part of the impugned Government Order is not fair and that it should be quashed. Only because the Petitioner and like others had rendered two years of service and then terminated, their plight was compassionately considered by the Government and the Government offered them the employment.

7. There is no doubt that the Government was benevolent and had given the advantage of appointing the Petitioner and like others in the post of Physical Education Teacher on 05.12.2006. The Government Order it reveals that at that point of time, it was not possible for the Government to appoint the Petitioner in the post of the Physical Education Director Grade II, in view of the existing 35 number of Physical Education Directors. So it was not possible to accommodate the Petitioner and like others in the posts of Physical Directors. But the Petitioner and others are working as Physical Education Teacher for 17 years and stagnated there. The Petitioner has to accept the employment by giving the undertaking as stipulated by the Government, as he did not have any other better choice. But there would be some expectation in the minds of the Government Servants that their length of service would be a better edge to



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consider them for promotion. Eventhough promotion cannot be claimed as a matter of right, the Government which was considerate in appreciating the plight of the Petitioner could have extended the same gesture to consider the length of service and give atleast one promotion, which will help them in great way to feel a career satisfaction.

8.The Petitioner's representation is said to have been already given to the Government. Taking into consideration of the vacancy that could have arisen during the past seventeen years due to the retirement of the then existed Physical Directors, who have been mentioned in the impugned Government Order, the Government shall consider the representation of the Petitioner and pass a positive and soothing orders within a period of twelve weeks from the date of receipt of a copy of this order.

9.With the above direction, this Writ Petition is disposed of. Consequently, connected Miscellaneous Petitions are closed. No costs.

02.11.2023

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order
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To



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R.N.MANJULA, J.

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