



WEB COPY



WP NO.42077 OF 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2023

CORAM:

THE HON'BLE MR.JUSTICE M.S.RAMESH

W.P.NO.42077 OF 2016
AND WMP NO.35991 OF 2016

V.Balakrishnan ... Petitioner

Vs.

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

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

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

4.The Chief Educational Officer
Tuticorin District,
Tuticorin.

5.The District Educational officer
Kovilpatti, Tuticorin District.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the third respondent in relation to the proceedings issued by the 3rd respondent in Moo.Mu.No.22076/W5/E2/09 dated ---.10.2010 and quash the same and issue a consequential direction to the respondents 1 to 3 to upgrade the petitioner to that of Physical Director from the post of Physical Education Teacher from the academic year 1998-99 onwards and to pay the scale of pay of Physical Director post to the petitioner with arrears of pay and thereafter calculate the last pay drawn of the petitioner and refix the pension and grant the arrears of pensionary benefits.

For Petitioner : Mr.D.J.Adhinarayanan

For Respondents : Mr.K.H.Ravikumar
1 to 5 Government Advocate

ORDER

By placing reliance on G.O.Ms.No.2498, Education (MS) Department, dated 22.11.1980 and G.O.Ms.No.525, School Education (DI) Department, dated 29.12.1997, the petitioner claims that the Higher Secondary Schools with the strength of over 400 students are entitled for upgradation of the existing post of Physical Education Teacher to the post of Physical Director.

2. The petitioner had been serving under T.V.A.Nallalagu Nadar



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Higher Secondary School, Perilovanpatty, Tuticorin District, as a Physical Education Teacher. He retired from service on 31.10.2020.

3. The learned counsel for the petitioner submitted that since the Government Order in G.O.Ms.No.525, School Education (DI) Department, dated 29.12.1997 was passed in the year 1997 itself and the School also had a strength of more than 400 students, the post of the petitioner ought to have been upgraded to Physical Director, while he was in service and therefore, now seeks for retrospective upgradation.

4. Per contra, the learned Government Advocate produced a copy of the order passed by this Court in W.P.No.13191 of 2011 dated 07.08.2012, wherein the School had also filed a writ petition for the similar relief, which came to be dismissed as withdrawn. In this background, the learned Government Advocate submitted that the present writ petition is barred by the principles of *resjudicata*.

5. As rightly pointed out by the learned Government Advocate,



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when the School had sought for a similar relief of upgradation and the writ petition was also withdrawn, without liberty granted either to the School or the aggrieved Teacher, the petitioner herein, cannot now seek for similar relief, before this Court. Hence, present writ petition would be hit by the principles of *resjudicata*.

6. Even otherwise, the petitioner had superannuated on 31.10.2020 and during his service, the post of Physical Education Teacher was never upgraded to the post of Physical Director. Even assuming that the School would be entitled for such an upgradation, the petitioner may not derive any benefits, either service or monetary, for such subsequent upgradation, in view of his retirement and the fact that he has not served in the upgraded post. Mere eligibility of the School to have the upgradation will not render any benefit to the Teachers, who were earlier employed in the same School and who had retired prior to such upgradation. On this ground also, the petitioner would not be entitled to the relief sought for in the writ petition.

7. In fine, the writ petition is dismissed. No costs. Consequently,



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connected miscellaneous petition is closed.

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Index : Yes/No
Internet : Yes/No
Speaking / Non-speaking order
TK

To

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M.S.RAMESH, J.

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