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WP.No.43908 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.09.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.43908 of 2016

and

WMP.Nos.37727 and 37728 of 2016

V.Gopal

... Petitioner

Versus

1.The Principal Secretary
Government of Tamil Nadu
Welfare of Differently-abled Persons Department,
Fort St.George, Chennai – 600 009.

2.S.Murugaiah, I.A.S,
State Commissioner,
Commissionerate for the Differently-abled Persons,
K.K.Nagar, Chennai – 600 078.

... Respondents

**** R2 – Deleted vide order dated 02.01.2017
in WP.No.43908/2017**

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus, directing the 2nd respondent to pay compensation of Rs.1,00,000/- (Rupees One Lakh only)



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from and out of his personal salary benefits to the petitioner for the harassment, humiliation and mental agony suffered by the petitioner and for depriving his fundamental right to livelihood and equality.

For Petitioner : Mr.R.Prabhakaran
For Respondents : Mr.S.Ravikumar
Special Government Pleader

ORDER

- (1) The writ petition has been filed in the nature of a mandamus seeking a direction to the 2nd respondent to pay compensation of Rs.1 lakh from and out of the personal salary benefits of the 2nd respondent who had since been deleted as a party to the writ petition.
- (2) The petitioner was appointed as Ministerial Assistant on 02.05.1983 in Social Welfare Department of Government of Tamil Nadu. This Department was then bifurcated to form the Directorate of Rehabilitation of the Disabled. He worked as Selection Grade Post Graduate Assistant. He was appointed as P.G.Assistant on 24.12.1991. Thereafter, he had been asked to hold full additional charge as Principal, Government Higher Secondary School for the Blind at Poonamallee and its allied Units from 01.08.2002 till



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29.08.2005 and thereafter, as Headmaster at Government Girls Higher Secondary School, Trichy, from 01.06.2006 till 17.09.2011. The petitioner had earlier filed a writ petition in WP.No.28336/2005 and by an order dated 05.09.2005, it was directed that his representation for seniority be considered by the respondents. The petitioner then again filed WP.No.16689/2009 seeking a direction to promote him to the post of Principal, Government Higher Secondary School for the Blind at Poonamallee, with effect from 01.06.1995 and also consequential promotion as Assistant Director, Special Schools, which was vacant from 01.08.2002. The petitioner then withdrew WP.No.16689/2009 and it was dismissed as withdrawn. The petitioner claimed that he had been denied due promotion. He had made several representations to the respondents. Finally, by proceedings dated 12.11.2015, the 2nd respondent had stated that the petitioner was not entitled for promotion as he had not been included in the panel for the post of Principal [Regular]. The petitioner then filed WP.No.5641/2016 seeking to interfere with that particular order.



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It is stated that an order of status quo had been granted and that the writ petition is still pending. The petitioner had also filed WP.No.9283/2017, again seeking promotion by reckoning his service with effect from 24.12.1991 and arrears of salary.

- (3) A learned Single Judge of this Court, by an order dated 27.10.2022, had dismissed the writ petition. The petitioner now claims compensation of Rs.1 lakh to be paid to him from the 2nd respondent's salary. The 2nd respondent had been deleted as a party to the writ petition by an order dated 02.01.2017 in WP.No.43908/2017. Therefore, there is no source for payment of compensation to the petitioner herein. Additionally, on 27.10.2022, subsequent to the deletion of the 2nd respondent, the earlier writ petition filed by the petitioner in WP.No.9283/2017 had also been dismissed. The ratio therein applies to the facts of this particular case.
- (4) Let me extract the said order for better appreciation:-

"2.The petitioner states that he was initially



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appointed as Ministerial Assistant on 02.05.1983 in the Social Welfare Department. The department was bifurcated and new department of Directorate of Rehabilitation for the Disabled was constituted. The petitioner worked as Selection Grade, Post Graduate Assistant in the newly formed Department. He was appointed as PG Assistant on 24.12.1991. The said appointment was questioned by the other candidates before the Tamil Nadu Administrative Tribunal and the matter went up to the Hon?ble Supreme Court of India and appointment of the writ petitioner as PG Assistant in the year 1991 was declared as null and void. Thus, the petitioner was found not eligible to hold the post of PG Assistant in the Commissionerate of Differently~abled Persons Department.

3.The learned Additional Advocate General appearing on behalf of the ?State? furnished a copy of the judgment of the Hon?ble Supreme Court of India, wherein, the Apex Court held as follows:

"?11.The matter, however, does not seem to end here. In the proceedings dated December 24, 1991, by which the appellant was appointed, the date of his application is



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mentioned as July 17, 1991. This appears to us quite inexplicable as the notice inviting applications is itself dated December 5, 1991. The counsel, appearing for the appellant, failed to give any satisfactory explanation for this anomaly. We, therefore, feel that the whole process of selection and appointment was quite irregular and unsatisfactory and in those circumstances, we are unable even to sustain the appointment of the appellant to the post of P.G. Assistant (Political Science). We, accordingly, direct the concerned authority to take fresh steps for filling up the said post in accordance with the rules. The process of selection and appointment must be completed within three months from today. Needless to say that every eligible candidate for the post on the date of the notice for appointment would be entitled to make application and selection will be made in accordance with the rules.

12.Since the appellant is working on the post for the past about 20 years, he would continue on it till a fresh appointment is made,



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as directed above.

13.The appeal is disposed of with the aforesaid observations and directions.?"

4.The learned Additional Advocate General appearing on behalf of the ?State? made a submission that based on the judgment of the Hon?ble Supreme Court of India, the case of the writ petitioner was reconsidered and subsequently on acquisition of qualification in the year 2011 and accordingly, the petitioner was appointed in the post of PG Assistant on 11.01.2012 as per the orders of the Hon?ble Supreme Court of India. Thus, the seniority of the writ petitioner was reckoned from the date on which he was appointed as PG Assistant i.e. on 11.01.2012.

5.The learned counsel for the petitioner made a submission that the seniority of the writ petitioner is to be reckoned from the year 1991 and in earlier proceedings, his seniority was fixed above Smt.G.Anusiya Devi and in the final seniority he was placed in S.No.4 below the said Smt.G.Anusiya Devi and thus, the final seniority list is to be set aside.

6.The comparison made by the petitioner



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deserves no merit consideration, since his first appointment as PG Assistant in the Commissionerate of Differently~abled Persons was set aside by the Courts and he was appointed as a fresh candidate in the post of PG Assistant as per the orders of the Hon?ble Supreme Court of India only on 11.01.2012 and thus, the respondents have fixed the seniority taking into consideration of the date of appointment as PG Assistant based on the orders of the Hon?ble Supreme Court of India.

7.The learned counsel for the petitioner relied on the proposals submitted by the Commissionerate of Differently~abled Persons in proceedings dated 17.08.2012. In respect of the proposals, a final decision was taken by the competent authorities. However, the final seniority list was published only after affording opportunity to all the candidates including the petitioner. The impugned order reveals that objections were received from all the employees concerned and considering the objections, the final seniority list was published by the competent authority in proceedings dated 22.03.2017.

8.The learned Additional Advocate General



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appearing on behalf of the ?State? brought to the notice of this Court that the petitioner passed PG (PS) in April 1986 and he has passed the subject in December 1987. As per the procedure is being started afresh, during the issue of notice to Thiru. V.Gopal / writ petitioner is senior than P.Gnana Selva Udaya Kumari in getting M.A. degree in Political Science. Though the petitioner is a Ministerial Staff, there is no bar or restriction in appointing him as PG Assistant (PS) as observed by the Hon?ble Supreme Court of India.

9.Thus, the petitioner was appointed as PG Assistant (PS) with effect from the date of the issuance of the order i.e. on 11.01.2012. It is clearly stated that in the order of appointment that ?The seniority of PG Teacher is fixed from the date of issue of the order i.e. on 11.01.2012?. It is further ordered that his past service rendered by him shall be counted only for pensionary benefits. As the petitioner was posted afresh, his pay may be fixed in the cadre afresh from the date of joining in the post.

10.The order of appointment issued to the writ petitioner on 11.01.2012, unambiguously indicates that



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the seniority of the writ petitioner in the post of PG Teacher will be fixed from the date of appointment order on 11.01.2012 and earlier service will be taken into consideration only for the pensionary benefits. Accepting the said order of appointment, the petitioner joined in the post of PG Assistant in the year of 2012. Thus, now he cannot turn around and claim seniority with reference to the appointment, which was nullified by the Hon?ble Supreme Court in its order. Thus, the petitioner is not entitled for the relief as his seniority was fixed based on the appointment order as well as the conditions stipulated in the order of appointment.

11. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed."

- (5) It is thus seen that it had been very categorically held that the petitioner having joined the post of PG Assistant in the year 2012, cannot turn around and claim seniority with reference to appointment which had been nullified by the Hon'ble Supreme Court in the order which has been extracted. The Hon'ble Supreme Court had nullified the said order whereby they had stated that they are not able to sustain



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the appointment of the petitioner therein to the post of PG Assistant [Political Science]. It had been held by the Hon'ble Supreme Court that therefore, it would only come into effect only from 11.01.2012. The said order is binding on the petitioner herein. The mandamus cannot be issued for payment of any compensation as respondent had followed Rule of Law and had applied the Rule of Law and the Rules and Regulations correctly.

(6) The writ petition stands **dismissed**. No costs. Consequently, connected miscellaneous petitions are closed.

04.09.2023

AP

Internet : Yes

To

The Principal Secretary
Government of Tamil Nadu
Welfare of Differently-abled Persons Department,
Fort St.George, Chennai – 600 009.



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C.V.KARTHIKEYAN, J.,

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