



WEB COPY



W.P.No.17443 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2023

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.17443 of 2020

R.Subramanian

...

Petitioner

/vs/

1. The Government of Tamil Nadu,
Rep. by Secretary to Government,
Education Department,
Secretariat,
Chennai – 600 009.

2. The District Educational Officer,
Edapadi, Salem District.

3. The District Elementary Educational Officer,
Salem District,
Salem – 636 007.

4. The Block Educational Officer – II,
Nangavalli, Salem District.

5. The Secretary,
Sri Lakshmi Devi Patasalai,
Jalakandapuram,
Salem District – 636 501.

... Respondents



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Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records of the second respondent relating to Pro.Na.Ka.No.542/A4/2018 dated 31.07.2020 to quash the same and to issue consequential directions to the respondents (1) to regularise the services of the petitioner in the post of Headmaster (Secondary Grade) from 01.06.1995 to 30.09.2008 (2) to fix his pay in the promoted post with effect from 01.06.1995 (3) to grant Selection Grade and Special Grade in the said post (4) to revise his pensionary benefits on that basis (5) to disburse consequential monetary benefits with interest 18% per annum, all within a limited time frame.

For Petitioner ... Mr.M.Ravi

For Respondents ... Mr.P.Sanjai Gandhi
Government Advocate

ORDER

This Writ Petition has been filed challenging the order of the second respondent dated 31.07.2020 in Pro.Na.Ka.No.542/A4/2018 and to issue consequential directions to the respondents to regularise the services of the petitioner in the post of Headmaster (Secondary Grade) from 01.06.1995 to 30.09.2008, to fix his pay in the promoted post with effect from 01.06.1995, to grant Selection Grade and Special Grade in the said post, to



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revise his pensionary benefits on that basis, to disburse consequential monetary benefits with interest 18% per annum, within a limited time frame.

2. The petitioner has been working as a Headmaster (Secondary Grade) from 01.06.1995 to 30.09.2008. Since the petitioner has not been given with the salary of Head Master (Secondary Grade), a proposal has been sent from the School to the 4th respondent. Since the fourth respondent did not pass any order, the petitioner has filed a Writ Petition in W.P.No.30007 of 2011 seeking to regularise his service as in the cadre of Headmaster (Secondary Grade) and to fix his pay in the scale of pay applicable to the Headmaster (Secondary Grade) from 01.06.1995 with all attendant benefits and revise the retirement and pensionary benefits also consequently.

3. The said Writ Petition was allowed and due directions have been given. Challenging the same, the Government respondents have preferred an Appeal in W.A.No.186 of 2020. Even though the delay on the part of the



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respondents is a matter of great concern, it is the authority who has to take a decision to regularise the services of the petitioner and hence a direction was given to the respondents to take a decision on the claim made by the petitioner and pass an order.

4. Pursuant to that an order has been passed by the second respondent on 31.07.2020 rejecting the request of the petitioner to regularise him in the cadre of Headmaster (Secondary Grade) from 01.06.1995 to 30.09.2008 (till the date of his retirement). The reasons stated by the 2nd respondent for rejecting the regularisation is that he has only been given with seniority and due permission from the authorities were not obtained and hence no approval can be given to the said appointment by promotion.

5. Mr.M.Ravi, the learned counsel for the petitioner, submitted that the petitioner was found to be fit enough by the School Management for being promoted to the post of Secondary Grade Headmaster, even though he was junior and there were 4 teachers above him; in view of that, the



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District Educational Officer /2nd respondent did not give his approval for the promotion; the private parties, did not raise any objection by stating that the juniors have been promoted to the Headmaster (Secondary Grade) and hence it is unfair on the part of the respondents to deny the approval for the same.

5.1. According to Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, the promotion shall be made on grounds of merit and ability and seniority being considered only when merit and ability are approximately equal; even though all the four persons were also seniors to the petitioner, the School selection authority has found that the petitioner was having more merit and ability and hence, the non-consideration of the seniority cannot be taken as an issue; according to Rule 15(4) of the said Rule, prior permission is mandated only when the appointment is made from any other School or by direct recruitment; but in the instant case, the promotion has been made within the School and hence prior promotion is not necessary.



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6. Mr.P.Sanjai Gandhi, the learned Government Advocate for the respondents, submitted that the promotion of the petitioner was not approved by the District Educational Officer / 2nd respondent and he has also issued an order by rejecting the promotion proposal of the petitioner sent by the School; the order of rejection was not challenged by the School authorities; until the order of the 2nd respondent is set aside, the petitioner cannot be accepted as a Headmaster (Secondary Grade) approved to the said post.

6.1. He further submitted that in the impugned order itself it is stated that the proposal sent by the fifth respondent school was rejected and thereafter, the fifth respondent has also filed an appeal on 12.09.1997; the second respondent has asked the School Authorities to submit the order of previous permission but so far it was not submitted.

7. During the course of argument, the learned Government Advocate has produced a letter of the Additional Assistant Elementary Education Officer, Nangavali dated 06.07.1998, wherein he returned the proposal to



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the school by stating that the proposal has to be sent through the District Education Officer in a proper form and after it is accepted by the District Education Officer, the proposal for fixation of pay can be sent to his office. In an another letter dated 19.09.2008 of the Additional Assistant Elementary Educational Officer, Nangavalli, it is seen that the communication has been sent to the Correspondent of the school to produce the Service Register details of the petitioner, his educational certificates, a copy of the joining report of the petitioner, etc.

8. In fact, in accordance with the above instructions it is seen that the District Educational Officer, Salem, himself has accepted the proposal and forwarded the letter to the Additional Assistant Elementary Education Officer, Nangavali to consider the service period of the petitioner from 01.06.1995 to 30.09.2008 as his service in the capacity of Head Master and fix his scale of pay accordingly and also in the stages of selection grade and special grade irrespectively. Despite the approval of the District Educational Officer has been obtained as demanded by the Additional Assistant Elementary Education Officer, Nangavali, no appropriate order



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has been passed. In fact in the earlier writ petition filed by the petitioner in W.P.No.3007/2011 itself the learned Single Judge has made the following observation:

“ .. 14. It is seen that when the petitioner had sent series of representations, the first respondent vide proceedings dated 08.10.2010 directed respondents 2 and 3 to take suitable action on the representation dated 16.09.2010 of the petitioner. However, it is unfortunate that till date the said representation has not been considered. It is further to be noted that the proposal sent by the third respondent school has also till date has not been considered by the respondent authorities. This attitude of the respondent authorities shows their lethargy and reeks of mala fide. When a representation has been sent by the petitioner or for that matter when a proposal is forwarded by the third respondent, it is incumbent upon the respondent authorities to pass orders one way or the other. Nothing has been placed on record by the respondent authorities to show that they have conducted any enquiry qua the validity of the promotion granted to the petitioner.”

9. By making the above observation, the said writ petition was allowed and the direction was issued to the respondent authorities to regularize the service of the petitioner as Headmaster (Secondary Grade) from 01.06.1995 to 30.09.2008 and fix the pay applicable to Headmaster (Secondary Grade) and grant Selection Grade / Special Grade in the said



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post and refix and revise the retirement and pensionary benefits to the petitioner on that basis and disburse the consequential monetary benefits. A time limit of three months was also fixed for completing the said exercise.

10. The Government respondents who have taken it on appeal in W.A.No.186 of 2020 has got a modification of the above order to the effect of directing the Government respondents to take decisions about the merits of the matter and then pass orders. In fact in Paragraph No. 5 of W.A.No.186/2020 the following observation has made:

“ .. 5. Having considered the case in depth we find that the issue of regularization will require sifting of facts and the determination thereof would be dependent upon the material available. It is true that the appellants have unnecessarily delayed the decision on the representation and therefore, the learned Single Judge was right in the conclusion that such a delay in the representation has caused prejudice to the respondent / writ petitioner. To that extent, we agree with the learned Single Judge. But so far as the direction issued to regularize the services of the respondent / writ petitioner and to fix his pay and revise all his monetary benefits is concerned, the same should be done only after a decision is taken by the authority.”



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So the appellate Court has also accepted the learned single Judge's conclusion that the delay in representation has caused prejudice to the petitioner herein and only thereafter the impugned order has been passed.

11. In this case, two reasons have been stated by the respondents for rejecting the proposal and for fixation of pay and other consequential benefits to the petitioner:

- i) The petitioner's promotion has been granted without considering the person who stood above him in the order of seniority;
- ii) Prior approval was not obtained from the District Primary Educational Officer.

12. In respect of the second objection, it would have been ideal on the part of the second respondent to refer the letter dated 08.10.2010 of the District Primary Educational Officer. In the said letter, the fourth respondent was requested to consider the period of service of the petitioner from 01.06.1995 to 13.09.2008 as Headmaster and that itself is sufficient



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to take his approval on this score. Hence, the reason that the proposal was not approved by the third respondent does not hold good.

13. So far as the other reason in respect of violation of seniority is concerned, the petitioner's school has got the authority in the matters of the promotion to consider not only seniority but also merits and ability. Even though the seniority is also a criteria for consideration of promotion, that should also align with the merit and ability of the candidate concerned. In the opinion of the fifth respondent, it was the petitioner who was found to be fit than his seniors and hence he was promoted to the post of Headmaster (Secondary Grade) and the proposal has been sent accordingly. Further, those persons who stood in the seniority above the petitioner has not raised any objection so far in any suitable forum and try to workout their remedy in this regard. In fact, all other persons appear to have got retired without any grudge or complaint.

14. The limited aspect on which the earlier order of the learned single Judge made in W.P.No.30007 of 2011 was modified in W.A.No.185



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of 2020 by the Division Bench of this Court was to direct the officers to consider the proposal and pass order. Now an order has been passed but without properly considering the merits of the matter. In fact, the person by name Jamunabhai who was the erstwhile Headmistress of the school got retired and only in that vacancy the petitioner has been appointed as Headmaster. So it is the petitioner who has to resend the proposal in his capacity of Headmaster in the absence of any other Headmaster available for the school. In fact, the papers on the file would reveal that both the petitioner and the school committee have been repeatedly making the representations and that has been well analysed in the earlier order in W.P.No.30007 of 2011.

15. The above stated reasons only show that the impugned order has been passed without considering the merits of the matter and the proposal has been dismissed for unsustainable reasons. Hence, I feel in the interest of justice, the impugned order has to be quashed.



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16. Accordingly, this Writ Petition is allowed and the order of the second respondent dated 31.07.2020 in Pro.Na.Ka.No.542/A4/2018 dated 31.07.2020 is hereby quashed and the respondents are directed to regularise the services of the petitioner in the post of Headmaster (Secondary Grade) from 01.06.1995 to 30.09.2008, fix his pay in the pay applicable to Headmaster (Secondary Grade), grant Selection Grade / Special Grade in the said post and refix and revise his retirement and pensionary benefits on that basis and to disburse consequential monetary benefits, within a period eight weeks from the date of receipt of a copy of this order. No costs.

20.12.2023

Index: Yes / No
Speaking order / Non-speaking order
Neutral Citation: Yes / No
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R.N.MANJULA ,J.

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To:

1. The Secretary to Government,
Government of Tamil Nadu,
Education Department,
Secretariat,
Chennai – 600 009.
2. The District Educational Officer,
Edapadi, Salem District.
3. The District Elementary Educational Officer,
Salem District,
Salem – 636 007.
4. The Block Educational Officer – II,
Nangavalli, Salem District.
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