



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA

PRASAD

Writ Petition No.19095 of 2020

and

W.M.P.No.23666 of 2020

P.Sivakumar

... Petitioner

Vs.

- 1.The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.
2. The Chief Educational Officer,
Chennai District,
Egmore, Chennai - 600 008.
3. The District Educational Officer,
Chennai North Education District,
SIDCO Nagar,
Villivakkam,
Chennai - 600 049.



4. The Secretary & Correspondent,
Dr.Gurusamy Mudaliar T.T.V.Higher Secondary School,
108, Amman Koil Street,
Sowcarpet, Chennai - 600 079.

5. The Joint Director of School Education,
(Higher Secondary),
DPI Campus, College Road,
Chennai.

... Respondents

(R5 is *suo motu* impleaded vide order dated
12.07.2021 passed in W.P.No.19095 of 2020)

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Mandamus, directing the respondents to approve the appointment of the petitioner in the post of P.G. Assistant (Economics) in the 4th respondent school under Schedule Caste category and consequently directing the respondents to make payment of salary to the petitioner from the date of appointment on 01.06.2018 with all consequential and other attendant benefits.

For Petitioner	:	Mr.S.Nedunchezhiyan
For Respondents	:	Mr.D.Gopal, Government Advocate.



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ORDER

This writ petition has been filed for a direction to approve the appointment of the petitioner in the post of P.G. Assistant, Economics Department in the fourth respondent School under Schedule Caste category and consequently, to direct the respondents to make payment of salary to the petitioner from the date of appointment on 01.06.2018 with all consequential and other attendant benefits.

2. The case of the petitioner is that he is an M.A. (Economics) and B.Ed., graduate. The fourth respondent School after obtaining permission vide order dated 05.02.2018 of the second respondent, has notified the vacancies in the Employment Office to be filled up under SC Arunthathiar (SCA) category, based on which, the District Employment Office forwarded only eligible candidates belonging to SCA for the post of P.G. Assistant in the Economics Department. The fourth respondent School also made an advertisement in newspaper on 04.04.2018 to fill up the said post. On the date of interview i.e.



18.04.2018, two teachers sponsored by the Employment Office alone participated in the interview, but, they were Telugu Medium Teachers and therefore, they could not be considered as eligible candidate for the above post. Since the said post was not filled, the fourth respondent forwarded proposal to the employment office calling for eligible candidates under SC category vide communication dated 19.04.2018. Consequently, the employment office forwarded list of eligible SC candidates vide communication dated 30.04.2018, since no candidates under SCA category were available. The fourth respondent also made an advertisement in the newspaper for selection on 09.05.2018 in response to which the petitioner also applied.

3. The fourth respondent School conducted interview on 23.05.2018 in which the petitioner participated along with other SC candidates. The petitioner was selected to the post of PG Assistant in Economics Department under SC category as per the Appointment Committee Resolution dated 28.05.2018 and was issued with the order of appointment. The petitioner also joined the fourth respondent



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school on 01.06.2018. While so, the fourth respondent school forwarded a proposal to the second respondent through the third respondent on 07.06.2018. The second respondent returned the proposal vide communication dated 06.09.2018, on the premise that the fourth respondent school is required to call for SC Arunthathiyars from the State Level by calling from other District Employment Offices. Consequent to this order, the Employment Exchange forwarded a list of five candidates from the State Level List. The fourth respondent school also made an advertisement under SCA category on 17.10.2018 and interview was scheduled to be conducted on 01.11.2018. Whereas, none appeared. In such circumstances, the fourth respondent school forwarded a communication dated 02.11.2018 to the second respondent requesting for permission to fill up the post of P.G.Assistant, Economics Department through SC candidates.

4. Since no SCA candidate attended the interview, the second



respondent issued a communication dated 22.01.2019 to re-conduct the interview and the interview was conducted for the third time, in which, only one SCA candidate appeared and he was not selected due to poor performance.

5. After a period of more than one year from the letter of fourth respondent school dated 02.11.2018, the second respondent issued a communication dated 18.12.2019 stating that the change of roster cannot be done at the level of Chief Educational Officer. Accordingly, the fourth respondent forwarded a detailed representation to the Joint Director of School Education on 29.01.2020 for revision of communal roster as Schedule Caste in the absence of qualified SCA candidates, but no orders have been passed by the Joint Director.

6. In such circumstances, the fourth respondent forwarded a proposal to the second respondent on 02.09.2020 by referring to the fact that the petitioner's appointment was made in the post of P.G. Assistant, Economics Department under SC category is valid. The



proposal forwarded by the fourth respondent was not considered nor any orders were passed. In the said circumstances, in the absence of approval of appointment the petitioner is not paid any salary and is continuing to work as P.G. Assistant in the fourth respondent School without salary. Hence, the petitioner prays that necessary direction may be issued to the respondents to make payment of salary to the petitioner in the post of P.G. Assistant, Economics Department in the fourth respondent school by taking note of the fact that the petitioner belongs to the Scheduled Caste Community and also appointment is valid as per Rule 22(a) of the General Rules in the absence of qualified candidates under SCA category.

7. The third respondent filed a counter affidavit wherein it is stated that the fourth respondent sought permission to fill up the post of P.G. Assistant, Economics Department to the second respondent. The second respondent accorded permission to fill up the said post by order dated 05.02.2018, stating that the post has to be filled up with qualified person following the rule of reservation. It is also submitted



that as per the roster maintained in the fourth respondent school, the above post has to be filled up from SCA (G) Category from the District Employment Office.

8. It is the stand of the third respondent that the Government issued G.O.Ms.No.50 (P & AR) Department, dated 29.04.2009, earmarking 3% reservation within 18% Reservation applicable for SC category. Accordingly, Government issued G.O.Ms.No.65 (P & AR) Department dated 27.05.2009 fixing separate roster point for SCA Categories in the 200 point roster. As per the above G.O., if no suitable candidates from SCA categories are not available, such vacancies may be filled up by SC category following the existing rule of reservation and prior permission be obtained to change the roster from the Department. In the said case, the fourth respondent school should have obtained prior permission from the statutory respondents, to fill up the vacancy earmarked for SC(A) category from SC (G Category). The first respondent is the competent authority to accord permission for interchange of roster, due to non availability of candidates in the



roster point fixed as per rotation.

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9. He further contended that the fourth respondent, without following the said procedure, has appointed the petitioner who belongs to the SC (G) category in the SC (A) category which is unacceptable and hence, his appointment is liable to be rejected and prays for dismissal of the writ petition.

10. Heard both sides and perused the materials available on record.

11. From the facts narrated above, it can be culled out that the petitioner is an M.A. Economics and B.Ed., Graduate and therefore, he is fully eligible and fit to be appointed to the post of P.G.Assistant, Economics Department in Higher Secondary Education. The fourth respondent school is governed by the provisions of the Tamil Nadu Recognized Private Schools (Regulations) Act 1973 and Rules 1974. There are 160 students studying in 11th and 12th Stds. A vacancy to



the post of P.G.Assistant, Economics Department arose in the fourth respondent school on 01.09.2017. The fourth respondent school notified the vacancies to the employment office to be filled up under SC Arunthathiar (SCA) category based on which, the District Employment Office forwarded only two eligible candidates belonging to SCA for the post of P.G. Assistant in Economics Department for want of qualified candidate under SCA category. The fourth respondent also made an advertisement in newspaper on 04.04.2018 to fill up the said post with candidate belonging to SCA category. On the date of interview on 18.04.2018, two teachers sponsored by the Employment Office alone participated in the interview, whereas, they are Telugu Medium Teachers and therefore, they could not be considered as eligible for the said post. The fourth respondent school forwarded proposal to the second respondent through the third respondent on 07.06.2018. Whereas the second respondent returned the proposal vide communication dated 06.09.2018, on the premise that the fourth respondent school is required to call for SC Arunthathiyars from the State Level by calling from other District



Employment Offices.

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12. The second respondent issued a communication dated 22.01.2019 to re-conduct the interview. Accordingly, the fourth respondent conducted the interview in which none appeared for the interview. The same was duly reported to the second respondent by the fourth respondent school. After more than one year the letter of fourth respondent school dated 02.11.2018, the second respondent issued a communication dated 18.12.2019 by stating that the change of roster cannot be done at the level of Chief Educational Officer. The fourth respondent forwarded a detailed representation to the Joint Director of School Education on 29.01.2020 for revision of communal roster as Schedule Caste in the absence of qualified SCA candidate. Since Government Orders are not forthcoming from the Joint Director of School Education or by the first respondent, the writ petitioner has approached this Court seeking payment of salary and approval of his appointment in the post of P.G.Assistant, Economics in the fourth respondent School. Since the Joint Director of School Education



(Higher Secondary), DPI Campus, College Road, Chennai - 600 006 is a necessary party, he is *suo motu* impleaded as the fifth respondent.

13. The learned Government Advocate appearing for the statutory respondents vehemently opposed the writ petition by stating that the fourth respondent School should have obtained necessary permission before selecting the petitioner for the post of P.G. Assistant in Economics Department who belongs to SC (G) category instead of persons from SCA category.

14. As G.O.Ms.No.59 (P & AR) Department, dated 29.04.2009, earmarking 3% reservation within 18% Reservation applicable for SC(A) category and accordingly, Government issued G.O.Ms.No.65(P & AR) Department, dated 27.05.2009 fixing a Separate roster point for SCA Categories in the 200 point Roster. Since the first respondent has not accorded permission for interchange of roster, the petitioner is not entitled to the relief from this Court.



15. The learned counsel for the petitioner in support of his contention relied on the Division Bench judgment of this Court in W.P.No.245 of 2019, dated 28.06.2023 (*in the case of C.Palani Vs The District Educational Officer, Thirupattur, Vellore District & others*), this Court has held as follows:-

"23.....(ii) *The W.A.No.245 of 2019 is allowed on the following terms:*

(a) The W.P.No.7680 of 2010, filed by the petitioner stands allowed by (i) quashing the orders of the first respondent dated 09.01.2009 and 25.05.2009; (2) the second respondent is directed to permit the appellant to forthwith join duty as B.T.Assistant (Tamil) and re-submit the proposal of the appellant for approval; (3) the first respondent shall approve the appointment if any vacancy in the post of B.T.Assistant (Tamil) is available in the second respondent school as on date; (4) if no such vacancy is available, the first respondent shall create/permit a supernumerary vacancy temporarily for the second respondent school and the appellant's appointment shall be approved; (5) it would be open for the first respondent to re-deploy the second respondent to any other school or post, subsequently after his appointment in accordance with law



or to accommodate him subsequently in the next vacancy which may arise in the same school and thereupon the supernumerary post shall cease to exist; (6) the appointment of the appellant shall be effective from the date of this order and will be considered effective for all purposes only with effect from the date of this order and the appellant will be entitled to salary and all other benefits from the date of this order.

(b) There shall be no orders as to costs.

(iii) There shall be no orders as to costs in the writ appeals also."

16. In such view of the matter, this Court is of the considered view that the petitioner's case is also similar to that of the judgment relied on by the learned counsel for the petitioner. In such circumstances, this Court issues a direction to the newly impleaded fifth respondent to pass orders on the proposal forwarded by the fourth respondent on 02.09.2020 to the second respondent with reference to the appointment made in the post of P.G.Assistant, Economics Department by approving the appointment of the petitioner. The said exercise shall be carried out within a period of



eight weeks from the date of receipt of a copy of this order.

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17. This writ petition is disposed of with the above directions.

No costs.

12.07.2023

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Index : Yes/No

Speaking Order : Yes/No

To:

1. The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.
2. The Chief Educational Officer,
Chennai District,
Egmore, Chennai - 600 008.
3. The District Educational Officer,
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4. The Secretary & Correspondent,
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108, Amman Koil Street,
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J.SATHYA NARAYANA PRASAD,J.



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