



W.P.No.29361 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 11.10.2023

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.29361 of 2023

V.Thavamurali

... Petitioner

- Vs -

1.The State of Tamil Nadu,
Rep.by its Principal Secretary to Government,
Adi Dravidar Welfare, Hill Tribes and Bonded
Welfare Department,
Secretariat, Fort St.George,
Chennai-600 009.

2.The Director of Tribal Welfare,
Ezhilagam, Chepauk,
Chennai-600 005.

3. The District Adi Dravidar and Tribal Welfare Officer,
The Nilgiris District,
The Nilgiris.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India
praying to issue Writ of Mandamus directing the respondents to grant



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seniority to the petitioner in the post of B.T.Assistant on par with his juniors granted promotion with effect from 26.09.2022 in operation of 2022 panel including payment of salary and other service benefits as well as to grant posting orders to the petitioner in the existing vacancy to the post of B.T.Assistant (English) in Ponneni GTR Middle School or Ayyankolli GTR Middle School in consideration of representation submitted by the petitioner dated 19.09.2023 within a time frame to be fixed by this Court.

For Petitioner : Mr.G.Sankaran, Senior Counsel
for Mr.S.Nedunchezhiyan

For Respondents : Mr.P.Ganesan
Government Advocate

ORDER

This petition has been filed seeking to issue a direction to the respondents to grant seniority to the petitioner in the post of B.T.Assistant on par with his juniors granted promotion with effect from 26.09.2022 in operation of 2022 panel including payment of salary and other service benefits as well as to grant posting orders to the petitioner in the existing vacancy to the post of B.T.Assistant (English) in Ponneni GTR Middle School or Ayyankolli GTR Middle School in consideration of



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representation submitted by the petitioner dated 19.09.2023 within a time frame to be fixed by this Court.

2. The petitioner is having B.A., (English) and B.Ed., and thereby eligible for promotion to the post of B.T.Assistant. The petitioner was appointed as Secondary Grade Teacher in Adi Dravidar and Tribal Welfare Department on 09.07.2015 and presently coming under the Directorate of Tribal Welfare after bifurcation of Department. The Tribal Welfare Department is concerned, the District is the unit for seniority and promotion to the post of B.T.Assistant. Though the petitioner was included in the 2022 panel, his name was not included in the panel published by the 2nd respondent dated 17.08.2022 in respect of Nilgiris District for the post of B.T.Assistant (English). Therefore, he submitted his objection for non-inclusion of his name in the panel. Therefore, the 2nd respondent issued the panel for promotion to the post of B.T.Assistant (English) in Nilgiris District vide proceedings dated 07.09.2022 wherein his name was included in Sl.No.6 in 2022 panel. When the counselling was conducted on 26.09.2022, out of five persons in the panel, one person was given



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promotion to the post of Primary School Headmaster and four persons were given promotion as B.T.Assistant (English). The petitioner was not considered for promotion on the ground of want of vacancy to the post of B.T.Assistant (English).

3. The learned counsel for the petitioner submits that there are two vacancies available in the post of B.T.Assistant (English), one in GTR Middle School, Ponnani and another in GTR Middle School, Ayyankolli. However the said vacancies have been wrongly noted as B.T.Assistant (Social Science) in the proceedings of the 2nd respondent dated 12.09.2022. The said vacancies have not been filled up and there is no vacancies in Social Science.

4. The petitioner states that his promotion to the post of B.T.Assistant (English) in the existing vacancy was curtailed due to the fact that the above said vacancies were wrongly noted as B.T.Assistant (Social Science), hence, his juniors were granted promotion as B.T.Assistant in the respective subject as early as on 26.09.2022. Hence, he submitted his representation to



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the respondents to consider him for the post of B.T.Assistant (English) at Ponneni GTR Middle School as well as Ayyankolli GTR Middle School and promote him in the existing vacancies in operation of panel on par with other teachers included in the panel. Since his representation was not considered, he has been filed writ petition before this Court in W.P.No.17161 of 2023 seeking writ of mandamus for promotion to the post of B.T.Assistant (English) in the existihng vacancies. This Court, by Order dated 09.06.2023 directed the respondents to consider his claim within a period of eight weeks. After receipt of the said order, the 2nd respondent passed an order dated 08.09.2023, granted promotion to the post of B.T.Assistant (English) in operation of panel of the year 2022 with crucial date 01.03.2022 but the petitioner was directed to join in GTR Middle School, Allimaya, Nilgiris District which is 161 Kms., from Gudalur to be travelled through different Districts as well as through Parisal to reach the destination. Since there was no vacancy to the post of B.T.Assistant (English) in Allimaya GTR Middle School, the existing vacancy to the post of B.T.Assistant (Tamil) is evident from the proposal submitted by the Headmaster of the school dated 09.08.2023 is sought to be converted as



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B.T.Assistant (English). There is no B.T.Assistant (Tamil) teacher working in the school. The single post of B.T.Assistant (Tamil) is converted as B.T.Assistant (English) for the petitioner. Since his promotion was not considered and his promotion has been deferred from 26.09.2022 to 11.09.2023 (by order dated 08.09.2023) for no fault on him and hence he is losing his service benefits as well as seniority for further promotion to the post of Middle School Headmaster. The facts remains that number of juniors were given promotion to the post of B.T.Assistant based on 2022 panel as early as on 26.09.2022 itself whereas the petitioner was granted promotion only on 11.09.2023 as per order dated 08.09.2023.

5. According to the petitioner, the relevant proviso to Section 40 of Tamil Nadu Government Servants (Conditions of Service) Act, 2005 is extracted below:-

"40. (1) The seniority of a person in a service, class, category or grade shall, unless he has been reduced to a lower rank as a punishment, be determined in the order of his placement in the list prepared by the recruitment



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agency or appointing authority, as the case may be, in accordance with the rule of reservation and the order of rotation specified in Schedule-V, where it applies. The date of commencement of his probation shall be the date on which he joins duty irrespective of his seniority.

... Provided that where the junior appointed by a particular method of recruitment happens to be appointed to a service, class, category or grade, earlier than the senior appointed by the same method of recruitment, the senior shall be deemed Appointment of full members."

6. According to the petitioner, Section 40 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2005 has to be considered and benefit of seniority and other benefits and other service benefits on par with the juniors of the petitioner based on over all seniority in the post of B.T.Assistant. The petitioner submitted representations to the respondents seeking for transfer and posting in the existing vacancy at Ponnani or Ayyankolli GTR Middle Schools as well as fixation of seniority



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on par with his juniors with effect from 29.06.2022 in the post of B.T.Assistant (English) with consequential salary benefits and hence the petitioner has filed the present writ petition with the above said prayer.

7. The learned Government Advocate appearing for the respondents would submit that as per vacancy list, there is no vacancy available in Ayyankolli and already BT Assistant (Tamil) teacher have been appointed and the petitioner cannot be placed in those place and to find out any other school in and around hill area is available.

8. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents and perused the materials on record.

9. The family residing at Ayyankolli is far end of the Nilgiris District and the distance between Ayyankolli and Allimaya is quite a long distance and petitioner would come to Mettupalayam and then to travel to Allimaya. It is very difficult for the petitioner to travel from Ayyankolli to Allimaya,



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Nilgiris District. Hence, this Court is inclined to consider his case instead of posting him at Allimaya, Nilgiris District, it was found that one of the post is available at Devala, this Court is inclined to direct the respondents to transfer the petitioner from Allimaya GTR Middle School to Government Tribal Residential High School at Devala for the post of BT Assistant (English) and to appropriate orders to be passed by the respondents to transfer the petitioner from Allimaya to Devala, if the petitioner is willing to accept his post at Devala, he has to give his consent for the same before the concerned Authorities, within a period of two weeks thereon and after receipt of the petitioner's consent, appropriate orders to be passed by the respondents within a period of four weeks thereafter. It is made clear that if the petitioner is willing to give his consent, his transfer will be considered. All other prayers will be considered based on the procedures established under law.

10. With the above direction, this Writ Petition is disposed of. No costs.



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To

1.The Principal Secretary to Government,
State of Tamil Nadu,
Adi Dravidar Welfare, Hill Tribes and Bonded
Welfare Department,
Secretariat, Fort St.George,
Chennai-600 009.

2.The Director of Tribal Welfare,
Ezhilagam, Chepauk,
Chennai-600 005.

3. The District Adi Dravidar and Tribal Welfare Officer,
The Nilgiris District,
The Nilgiris.

V.BHAVANI SUBBAROYAN, J.,

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