



W.P.(MD).Nos.7425 of 2012, 8902 & 1084 of 2013, 9956 of 2014, 6321 of 2015 and 7053 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.01.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).Nos.7425 of 2012, 8902 & 1084 of 2013,
9956 of 2014, 6321 of 2015 and 7053 of 2017

and

M.P(MD)Nos.2 &3 of 2012, 2 &2 of 2013,
1 & 2 of 2014 and 2 of 2015

and

W.M.P(MD)Nos.5572 & 5573 of 2017

W.P(MD)No.7425 of 2012:

Tamil Nadu History Teachers Association,
Represented by its General Secretary,
A.Palaniappan.

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort St.George, Chennai – 600 009.
- 2.The Director of School Education,
DPI Complex, College Road,
Chennai – 600 006.
- 3.The Joint Director of School Education
(Higher Secondary), DPI Complex,
College Road, Chennai – 600 006.



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4.The Joint Director of School Education (Personnel),
DPI Complex, College Road,
Chennai – 600 006.

5.The Chief Educational Officer,
Sivagangai, Sivagangai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned orders issued by the 1st respondent Secretary, State of Tamilnadu in G.O. Ms.No.266 (School Education Department) dated 18.10.2000 and the subsequent proceedings issued by the 2nd respondent Director of School Education in Na.Ka.No.22052/W3/E2/2012 dated 03.04.2012, quash the same in so far as it prescribes the ratio of 1:3 between Preferential persons and Non Preferential persons in the matter of recruitment by transfer to the post of Post Graduate Assistants History and further direct the respondents herein to effect promotion to the post of Post Graduate Assistant in History by giving preference to Preferential persons (persons possessing both Bachelor's Degree and Master's Degree in the same subject).

For Petitioner: Mr.E.V.N.Siva

For Respondents: Mr.D.Sadiq Raja
Additional Government Pleader



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ORDER

The writ petitions have been filed challenging the impugned orders with a consequential relief.

2. The petitioner is a registered association and the members of the petitioner association are working as BT Assistants (History). The members of the petitioner society are eligible for the promotion to the post of PG Assistants in academic subject (PG Assistants History). The promotion is governed by the Special Rules for the Tamil Nadu Higher Secondary Educational Service framed under G.O.Ms.No.720 (Education) dated 28.04.1981. The Rules provided for filling the post by direct recruitment or recruitment by way of transfer from the categories 3 and 5 of clause II (Deputy Inspectors of School, School Assistants, Pandits and Munshis Grade-I) of the Tamil Nadu Educational Subordinate Service. Fifty percentage of the vacancies arising to the above post shall be filled by direct recruitment and the remaining by way of recruitment by transfer. The Rules was amended vide G.O.Ms.No.266 (School



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Education Department) dated 18.10.2000 prescribing a ratio of 1:3 between the preferential persons (persons possessing both Bachelor's Degree and Master's Degree in the same subject) and non-preferential persons (persons possessing Bachelor's Degree and Master's Degree in different subjects) while granting promotion to the post of PG Assistant. Because of this amendment, the promotional opportunity of the members of the petitioner society was affected. Hence, they submitted a detailed representation, dated 27.12.2011, requesting the respondents to give preference to the petitioner association members who possess degree in same subjects. Thereafter, filed W.P.(MD)No.629 of 2012 and this Court vide order, dated 23.01.2012 directed the 2nd respondent to consider the representation and pass orders. The 2nd respondent vide order, dated 03.04.2012 rejected the petitioner's request stating the ratio is fixed as per G.O.Ms.No.266. Thereafter W.P.(MD) No.7425 of 2012 is filed by the association challenging G.O.Ms.No.266 (School Education Department) dated 18.10.2000.

3. The respondents have filed a counter stating the promotion to the PG Assistants is governed by Special Rules enacted under G.O.Ms.No.720 (Education Department) dated 28.04.1981. Under the said Government Order,



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the PG Assistants in academic subject may be filled up either by direct recruitment or by way of recruitment by transfer. The grant of promotion to the said post would be given to the preferential persons (persons possessing both bachelor's degree and master's degree in the same subject) and non-preferential persons (persons possessing bachelor's degree and Master's degree in different subjects) in a fixed ratio. Meanwhile, one A.Mani and 13 others filed O.A.No. 646 to 648 of 1994 and batch. As per the direction of the tribunal, the Government passed G.O.Ms.No.266, dated 18.10.2000, whereby the ratio was fixed as 1:3. The petitioner in this writ petition has also filed W.P(MD)No.629 of 2012 to consider the representation and this Court has directed to consider and pass orders. The respondents have considered and had passed the impugned order, wherein it is stated that the teachers available with cross major are more in number than teachers in same subjects. Therefore, based on the availability of number of teachers, the said ratio is fixed as 1:3 and there is no legally sustainable ground raised by the petitioner. Hence, the respondents prayed to reject the writ petition.

4. In the counter filed in W.P.(MD)No.7425 of 2012, which is filed by the Director of School Education submitted that the ratio 1:3 is adopted for



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preferential and non-preferential category respectively for the reasons that seldom the preferential category persons exist in a chunk of percentage and the non-preferential category also existed in a reasonable percentage. The said ratio is adopted to give fair opportunity to the non-preferential category persons. The said ratio is fixed based on the order passed by the Administrative Tribunal. In a matter of promotion, the date of joining of the concerned teacher is always essential category and it is immaterial whether they come under preferential or non-preferential. The averment of the petitioner that the preferential category should be given more preference would certainly cause monopoly of education. The apprehension of the petitioner that impugned G.O.Ms.No.266 would totally affect the preferential persons is totally, imaginary and illusionary and not supported by any evidence. The act of the petitioner challenging the impugned Government Order nearly 12 years from the date of passing is not acceptable. Hence, the respondents prayed to reject the writ petition.

5. Heard Mr.E.V.N.Siva, learned counsel appearing for the petitioner and Mr.D.Sadiq Raja, learned Additional Government Pleader for the respondents and perused the records.



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6. In the G.O.Ms.No.720, under Rule 2 Appointment (a) prescribes the Class and Category and Method of recruitment for the category of Post Graduate Assistants in Academic Subjects under Class II as,

(i) Direct Recruitment or

(ii) Recruitment by transfer from the categories 3 and 5 of Class II of Tamil Nadu Educational Subordinate Service (Deputy Inspectors of School, School Assistants, Pandits and Munshis, Grade-I)

or

If no qualified and suitable candidates are available for appointment by the method suggested above, appointment shall be made by recruitment by transfer from category 3 of Class V (Physical Training Instructors and Instructresses) of Tamil Nadu Education Subordinates Service or from category 3 of Class III (Physical Training Instructors of Tamil Nadu Educational Subordinate Service) B Wing

or

(iii) If no qualified and suitable candidates are available for appointment by the method (ii) above, appointment shall be made by recruitment by transfer from category 2 of Class I or from category 3 of Class III of the Tamil Nadu Educational Subordinate Service.

Based on Rule 7 (a), in Annexure it has been prescribed and the same is extracted hereunder:

as “Recruitment by transfer” and the qualification as under:



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“(i) A Master's Degree of a university in the State or a Master's Degree of equivalent standard in the subject in respect of which recruitment is made;

Direct Recruitment

*(i) Must have obtained a **Master's degree and Bachelor's degree in the same subject** or its equivalent in respect of which recruitment is made and*

(ii) B.T. or B.Ed., degree of a University in the state or a teaching degree of equivalent standard”

7. On perusing the above qualification, it clearly states that for direct recruitment the Master's Degree and Bachelor's Degree ought to be in the same subject. In such circumstances the persons possessing same subject in UG and PG ought to be placed ahead of the different subject persons. The learned counsel appearing for the petitioner submitted that the respondents have rightly considered the issue when the persons were recruited under direct recruitment. It has been clearly stated the master degree and the bachelor degree should be in the same subject. However, amendment in impugned G.O.Ms.No.266 has not taken into consideration the clear distinction stated under direct recruitment. The said G.O.Ms.No.266 is causing prejudice to the persons who have acquired



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degree in same subject and the relevant portion is extracted hereunder:

Provided that the ratio for appointment by recruitment by transfer from among the qualified persons possessing Bachelor's Degree and Master's Degree in the same subjects (preferential persons) and from among the qualified persons possessing Bachelor's degrees and Master's degree in different subjects (non-preferential persons) respectively shall be 1:3

Provided that if in any of the classification (i.e.) Preferential, or non- preferential no person is available or the list is exhausted, then remaining vacancies relating to the particular panel year may be filled up by the available persons from other classification (i.e.) (preferential or non-preferential as the case may be) as defined in item (i) above.

The qualification prescribed to direct recruitment is inconsistent, rather diagonally opposite to the qualification prescribed to in-service candidates. With this amendment serious prejudice is caused to the persons who have completed in same subject in UG and PG. For which, the petitioner relied on the panel of persons who are having same subject as on 01.01.2012 are 42 in members. All these persons were recruited in the year 1989 – 1994 i.e., the date of appointment is from 1989 – 1994. However, for the persons who have been completed cross major, the list consists of 114 persons and their date of appointment ranges from 1982 onwards until 2001. The learned counsel appearing for the petitioner submitted that “2001 recruits” are in this panel by



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following the ratio of 1:3. Based on this the persons who were recruited in the 2001 of degree in different subjects will march ahead of the persons who were recruited in the year 1994 of degree in same subjects. Therefore, this is causing a major concern to the persons who have acquired master and bachelor degree in the same subject. Therefore, the contention raised by the respondents that there is no evidence to show the member of the petitioner association are affected cannot be accepted. Based on this list itself, it is clear that the contention of the respondents that the petitioners' apprehension is imaginary and illusion is incorrect and the petitioners are seriously affected and they are prejudiced.

8. The contention of the respondent is that the G.O.Ms.No.266 was passed based on the order of the Tribunal. On perusal of the said G.O.Ms.No. 266 it is seen that there is reference of the Tribunal's order, wherein it is stated as under:

"The Tamil Nadu Administrative Tribunal in its order dated 11.11.1994 in O.A. No. 646 to 648 of 1994, 663, 1507, 2665, 2669 / 1994, 2717 to 2719 / 1994 2748 / 1994 etc., filed by the A. Mani and 13 others questioning the panel of Post Graduate Assistant based on the list of Seniority and preferential qualifications in the Tamil Nadu Higher Secondary Services as order as follows:

"A comprehensive review may be made by the Government of the Rules (Tamil Nadu Higher



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Secondary Educational Service) to ensure fair and equitable consideration of Seniority and the preferential qualification without either operating to the total exclusion of the other”

The reason for granting ratio of 1:3 is to include the non-preferential candidates also. The Tribunal has held the candidates need not be considered on exclusion of other, it has not stated that the non-preferential candidates should be granted preference than that of preferential candidates. Therefore the reasoning to fix a ratio of 1:3 (preferential : non-preferential) is erroneous.

9. The next contention that was raised by the respondents is for all recruitment and promotion, the date of joining will be taken into account. On perusal of the records, the respondents have not issued such list at all. The respondents if really intended to do so, then separate list ought to be issued. Then the respondents ought to have invoked Rule 35(aa) of the Tamil Nadu State and Subordinate Service Rules, 1978 and now Section 40(2) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, where it has been clearly stated if there are two different categories of teachers available, then the date of recruitment should be taken into account to fix the seniority. In the present case, the respondents ought to have issued separate seniority list for each and every year by taking the date of recruitment as the criteria to fix the



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seniority. If they have prepared such list, then the averment of the respondents that date of recruitment is taken into account would be correct. But such an exercise was not followed by the respondents. For example, the persons who are recruited in the year 1989 and passed UG and PG in the same subject, namely Neelavathi and Hemalatha would be given preference and they should be as Serial No.1 and 2. The persons in the list who passed different subjects namely Koperumdevi, Seenivasan, Muthulakshmi, Mallika and Jeyanthi should be kept as junior in the year 1989 list. Such an exercise was not followed at all. Therefore, in letter and spirit, the respondents have not prepared a list based on the date of recruitment.

10. The Learned Counsel appearing for the petitioner submitted that subsequently, the respondents have amended the rules by issuing G.O.Ms.No. 14 School Education Department dated 30.01.2020 and the said discrimination was taken away and the provision was deleted in the said G.O.Ms.No.14. Therefore, the discrimination exits from the date of issuance of G.O.Ms.No.266 School Education Department dated 18.10.2000 to the date of issuance of G.O.Ms.No.14 School Education Department dated 30.01.2020.



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11. Therefore, this Court is inclined to pass the following order:

(i) The impugned G.O.Ms.No.266 (School Education Department) dated 18.10.2000 is quashed.

(ii) Based on the subsequent G.O.Ms.No.14 School Education Department dated 30.01.2020, the promotions shall be granted.

(iii) The respondents are restrained from passing any promotion orders based on G.O.Ms.No.266. All the previous promotions granted shall be reversed.

(iv) The said exercise shall be completed within a period of twelve (12) weeks from the date of receipt of a copy of this order.

12. With the above said directions, all the Writ Petitions stand allowed.

No costs. Consequently, connected Miscellaneous Petitions are closed.

05.01.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No

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To

1.The Secretary,



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The State of Tamil Nadu,
Department of School Education,
Fort St.George, Chennai – 600 009.

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

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

4.The Joint Director of School Education (Personnel),
DPI Complex, College Road,
Chennai – 600 006.

5.The Chief Educational Officer,
Sivagangai, Sivagangai District.

S.SRIMATHY, J.

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