

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:02.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.4802 of 2021
and W.M.P(MD).No.3931 of 2021

M.P.Karl Marx

... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by the Principal Secretary,
School Education Department,
Fort St. George,
Chennai – 600 009.

2.The Director of Public Libraries,
Public Library Department,
No.737/1, Anna salai,
Chennai – 600 002.

3.D.Johnsamuel
4.R.Saravanakumar
5.M.Subramaniam
6.P.Renganayagi
7.L.Meenakshi Sundraram
8.R.Andal
9.C.Balasaraswathi
10.J.Anandhi
11.R.Yuvaraj

... Respondents

Prayer:Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in G.O.Ms.No.49, School Education (P.L.1) Department, dated 26.02.2021 and the consequential order in G.O.Ms.No.50, School Education (P.L.1) Department, dated 26.02.2021, on the file of the first respondent and the consequential impugned order in Na.Ka.No.2911/A1/2019 dated 26.02.2021 on the file of the second respondent and quash the same as illegal and consequently to direct the respondents to consider the petitioner for appointment through recruitment by transfer to the post of District Library Officer within the time stipulated by this Court.

For Petitioner : Mr.S.Louis

For Respondents : Mr.T.Amjad Khan
Government Advocate
For R1 & R2
Mr.M.Kannan,
For R4
No Appearance
For RR3, 8, 9 and 11
RR5 to 7 and 10- Tapal Returned

ORDER

This Writ Petition has been filed to call for the records pertaining to the impugned order in G.O.Ms.No.49, School Education (P.L.1) Department, dated 26.02.2021 and the consequential order in

G.O.Ms.No.50, School Education (P.L.1) Department, dated 26.02.2021, issued by the first respondent and the consequential impugned order in Na.Ka.No.2911/A1/2019 dated 26.02.2021, issued by the second respondent, quash the same as illegal and direct the respondents 1 and 2 to consider the petitioner for appointment through recruitment by transfer to the post of District Library Officer within the time stipulated by this Court.

2. The case of the petitioner is that he was appointed as Record Clerk on 15.07.1992 and was posted in Thanjavur District. Subsequently, he was promoted to the post of Grade III Librarian. On 05.06.2002, he was further promoted as Grade II Librarian and thereafter, on 07.07.2004, he was promoted as Librarian Grade I and presently, he is serving as Selection Grade Inspector of Libraries in Thanjavur. According to the petitioner, he is eligible for recruitment by transfer to the Post of District Library Officer.

3. While so, the first respondent issued G.O.Ms.No.60, School Education (K2) Department, dated 27.04.2006, in which, Tamil Nadu

Educational Subordinate Service Adhoc Rules was published for all the temporary posts of Libraries from Record Clerk to Librarian Grade I / Inspector of Libraries, with a saving clause that nothing contained in the Rules shall adversely affect any person holding any of the posts referred to in the Rules. Subsequently, a State level seniority list was prepared following the saving clause contained in G.O.Ms.No.60 and the petitioner's promotion to the post of Librarian Grade I was protected. Challenging the same, a batch of writ petitions were filed in W.P.Nos. 24947 of 2007 etc., batch. Subsequently, as against the order passed in the aforesaid batch of writ petitions, writ appeals were preferred in W.A.Nos.1173 to 1178 of 2010, in which, orders were passed on 20.09.2010 holding that the seniority list would be prepared for Librarian Grade I alone and thereafter, a clarification petition was filed and without notice to the petitioner, the aforesaid order was modified to the effect that the seniority list would be prepared for Librarian Grade I and Librarian Grade II. As against the same, Special Leave Petitions were filed before the Hon'ble Apex Court. In the meanwhile, vide proceedings of the second respondent, dated 11.02.2011, the petitioner and few others were reverted to the post of Grade II Librarian. Subsequently, as per the

interim orders passed by the Hon'ble Apex Court, the reversion order was cancelled and vide order of the second respondent ,dated 26.05.2011, the petitioner was restored to Librarian Grade I. Subsequently, the Hon'ble Apex Court passed final orders protecting the petitioner's position in the post of Librarian Grade I and thereafter, he is holding the same post and further, he was given Selection Grade in the said post.

4. The further case of the petitioner is that as per the Tamil Nadu Educational Service Adhoc Rules, the method of recruitment to the post of District Library Officer is by recruitment by transfer and the requisite qualification for such appointment is, any bachelor's degree in the pattern of 10+2+3, a bachelor's degree in Library Science or Library and Information Science and must have served as Librarian Grade – I/Inspector of Libraries or both for a period of not less than five years. According to the petitioner, he has already served in the post of Librarian Grade I/Inspector of Libraries for more than 15 years and therefore, he is eligible for appointment to the post of District Library Officer. However, the respondents as against the service Rules, are trying to make promotions from Subordinate Service to the State Service

based on the seniority list in the post Grade I Librarian/Inspector of Libraries, by giving relaxation to the ineligible persons and the same is against Section 36-A of the Tamil Nadu State and Subordinate Service Rules. Therefore, the petitioner was constrained to file a writ petition in W.P(MD)No.25829 of 2019 for a Mandamus directing the respondents to consider the petitioner's representation dated 02.11.2019 in the light of G.O.Ms.No.104, dated 23.05.2018. Subsequently, pursuant to the order passed by this Court dated 04.12.2019, the second respondent published the seniority list, dated 21.02.2020 and passed the order, dated 21.02.2020, rejecting the claim of the petitioner for promotion to the post of District Library Officer. The petitioner has challenged the order dated 21.02.2020 passed by the second respondent in W.P(MD).No.7162 of 2020 and also challenged the proceedings of the second respondent dated 21.02.2020 containing the State Level Seniority List as on 01.01.2019 in the post of Inspector of Libraries/Librarian Grade-I in W.P(MD).No.6096 of 2020. While the same were pending, the first respondent has issued the impugned order in G.O.Ms.No.49, School Education (P.L.1) Department, dated 26.02.2021 giving temporary promotions to the respondents 3 to 11 to the post of District

Library Officer by giving relaxation to the requisite experience qualification of five years of service as Librarian Grade-I/Inspector of Libraries as per Rule 4(b)(ii) of the Tamil Nadu Educational Service Adhoc Rules as amended and contained in G.O.Ms.No.104, School Education (PL1) Department, dated 23.05.2018 and on the same date, the second respondent has also given the posting orders. Challenging the same, the petitioner has filed the present writ petition with the aforesaid prayer.

5. The learned counsel appearing for the petitioner would submit that the petitioner is serving as Librarian Grade I, which is the feeder category to the post of District Library Officer and therefore, as per Section 36-A, he is entitled to be promoted as District Library Officer. However, the first respondent issued the impugned order giving temporary promotions to the respondents 3 to 11 by giving relaxation to the requisite experience qualification of five years of service as Librarian Grade-I/Inspector of Libraries and the second respondent has also given the posting orders to them, which is not sustainable one and accordingly, prayed for allowing of this writ petition.

6. The learned Special Government Pleader appearing for the respondents would submit that vide proceedings of the Director of Public Libraries in RC.No.14283/A1/2010, a draft seniority list for the post of Librarian Grade – II and Librarian Grade -I, was released on 22.12.2010 as per the judgment of the Honourable High Court. Subsequently, objections received on the draft seniority list were considered and thereafter, a final State wide seniority list was released on 11.02.2011. As per the same, the incumbents who were ranked as senior in the State wide seniority list, were promoted as Librarian Grade II and Librarian Grade I, while the ten incumbents including the petitioner holding the post of Librarian Grade – I and who were placed as junior in the State wide seniority list were reverted back to Librarian Grade II. Subsequently, the same was cancelled in pursuance of the order of the Hon'ble Apex Court and the petitioner was permitted to work in the post of Librarian Grade I till date.

7. Thereafter, the petitioner filed W.P(MD)No.25829 of 2019 seeking for a direction to the respondents to consider the petitioner for

appointment through recruitment by transfer to the post of District Library Officer without giving any relaxation to the incumbents who are holding the post of Librarian Grade I and who do not possess the required experience of 5 years of service as Librarian Grade I/Inspector of Libraries while making appointment through recruitment by transfer to the post of District Library Officer. Subsequently, in pursuance of the order passed by this Court, dated 04.12.2019, the Director of Public Libraries, in the light of the order dated 21.01.2015 passed in S.L.P(C).No.11088-11091 of 2011 and G.O.Ms.No.104, School Education Department, dated 23.05.2018, issued the seniority list and passed the order rejecting the request of the petitioner for promotion to the post of District Library Officer on 21.02.2020. Thereafter, on 26.02.2021, the first respondent has issued the impugned order giving temporary promotions to the respondents 3 to 11 to the post of District Library Officer and on the same date, the second respondent has given the posting orders, which is perfectly in order and hence, prayed for dismissal of these writ petitions.

8. Heard the learned counsel appearing for the petitioner, the learned Special Government Pleader appearing for the respondents and perused the materials placed before this Court.

9. The issue arising in the present writ petition has already been decided by this Court in W.P(MD).Nos.7162 and 6096 of 2020 on 21.12.2022 and the relevant paragraphs are extracted hereunder:-

11. Admittedly the petitioner into service as Record Clerk in the year 1972 and promoted as Librarian Grade – III in the year 1995. He passed Bachelor of Library and Information Science in December 1996. Further, he was promoted as Librarian Grade II on 05.06.2002 based on District seniority. Again, he was promoted as Librarian Grade I on 07.07.2004 based on District seniority and thereafter, in order to follow the uniformity in the Library Department, Adhoc Rules were framed vide G.O.(Ms)No.60, School Education Department, dated 27.04.2006, classifying the posts in the Tamil Nadu Educational Subordinate Service. Thereafter, State wide seniority list was drawn. Aggrieved by the same, some of the persons filed writ petition in W.P.No.24947 of 2007 etc., batch before this Court, wherein an order was passed to restore the seniority list prepared as per the proceedings, dated

29.08.2006 and there was a direction to give notional promotion to the writ petitioners therein, who are eligible for promotion and all the Adhoc promotions effected between 1996-2006 were ordered to be re-worked based on the seniority list, dated 29.08.2006. Assailing the said order, W.A.Nos.1173 – 1178 of 2010 were filed. The Division Bench of this Court disposed of the writ appeals on 20.09.2010, with a direction to prepare a draft State wide seniority list of Librarian Grade I/Inspector of Public Libraries and to publish the seniority list so as to enable the aggrieved persons to submit their objections to the draft seniority list and on receipt of objections, directed to consider the same and publish the final seniority list. Since the post of Librarian Grade- II was not included in the above said order, a clarification petition was filed and in which, it was clarified to include the Librarian Grade-II also. Against which, the petitioner and other aggrieved persons preferred S.L.P.(C)Nos.11088 – 11091 of 2011. In the meanwhile, the petitioner was reverted back to Librarian Grade II. Subsequently, in pursuance of the order passed by the Hon'ble Apex Court, the said reversion was cancelled and the petitioner was permitted to work in the post of Librarian Grade I and is still continuing in the said post.

12. However, the grievance of the petitioner is that he was not given promotion to the Post of District Library Officer.

The fact remains that before filing W.P.No.25829 of 2019, the petitioner already made a representation to the second respondent for promotion to the post of District Library Officer on 16.05.2018. The said representation was rejected, on 13.11.2018. However, suppressing the earlier rejection order, the petitioner filed W.P.No.25829 of 2019, in which, this Court dispose of the writ petition with a direction to consider the petitioner's representation and pursuant to which, the present impugned order is passed. Since the petitioner has not challenged the earlier order, dated 13.11.2018, he has no right to file a writ petition seeking for a Mandamus.

13. Though the petitioner was reverted from Librarian Grade I to Librarian Grade II, the said reversion was subsequently cancelled vide order of the Hon'ble Apex Court, dated 21.01.2015 passed in Civil Appeal Nos.1104 to 1107 and 1108 of 2015. Relevant portion of the said order reads as follows:

“Ordinarily, we would have remanded the matter to the High Court to afford an opportunity of hearing to the appellants but in course of hearing it has transpired that 4 out of the 9 appellants herein have already reached the age of superannuation. Regard being had to the fact that they have been

superannuated and taking note of the fact that they have not given an opportunity of being heard in the miscellaneous petition before the High Court, without remanding matter, we are only inclined to direct that the 9 appellants, who are before this Court, shall not be affected by the clarificatory order. We say so, as Mr.Subramonium Prasad, learned Additional Advocate General appearing for the State, has apprised us that the clarificatory order has been worked out by giving benefits to many and, therefore, this Court should restrict the grant of benefit to the present appellants. In view of the aforesaid, we only direct the appellants shall avail benefits of the concession order passed in the writ appeal and nothing shall be done qua them because of the clarificatory order passed by the High Court. Needless to say, we have not adverted to the merits of the clarificatory order. Because of our order, be it further clarified, the grant of any benefit to the present appellants will in no way cause any prejudice to the persons who are entitled to get benefit of the clarificatory order. As we have passed this order, regard being had to the special feature of the case, any proceeding pending before the High Court shall be disposed of on its own merits.”

14. However, aggrieved by the non promotion to the post of District Library Officer, again the very same persons filed contempt petitions before the Hon'ble Apex Court in Contempt Petition (civil) Nos.1611 – 1614 of 2017. The said contempt petitions were disposed of vide order, dated 24.04.2018. The order of the Hon'ble Apex Court makes it clear that the respondent-State shall consider the grievance if the same does not affect the seniority of others at the State level that is prevalent as on that date.

15. The grievance of the petitioner is that pursuant to the order passed by the Division Bench, confirmed State Wide list was published and in the said list, the petitioner's name was not included in the list of Librarian Grade I and his name was included in the list of Librarian Grade II and his serial number is 56. Merely because the petitioner possessed the Selection Grade in Librarian Grade I only based on the direction of the Hon'ble Apex Court, that does not mean that the petitioner is entitled for promotion to the post of District Library Officer, since the petitioner did not reach the feeder category to the post of District Library Officer namely, Librarian Grade I.

16. As per the Adhoc Rules, issued in G.O.(Ms)No.104, School Education Department, dated 23.05.2018, the method of

appointment for the post of District Library Officer, is described as follows:

(i) by direct recruitment through Tamil Nadu Public Service Commissioner from the open market against 50% of the substantive vacancies in the permanent cadre;

(ii) by recruitment by transfer from the post of Librarian Grade I or Inspector of libraries in the Public Libraries Department;

(iii) by recruitment by transfer from any other service if no qualified and suitable persons are available in the method provided in Rule 3 (ii)

17. A perusal of the aforesaid Rules makes it clear that in order to regularize the services of the personnels, who were appointed as District Library Officer, it was decided to incorporate the post of Librarian Grade I and Inspector of Libraries as feeder categories in the method of appointment.

18. However, in the present case, the petitioner did not reach the feeder category of Librarian Grade I in the State wide seniority list and hence, his name was included in the list of Librarian Grade II and the impugned order was passed rejecting the claim of the petitioner.

19. In view of the foregoing reasons, this Court is of the view the impugned seniority list and the impugned order passed by the second respondent, are perfectly in order which does not require interference at the hands of this Court.

20. In the result, these writ petitions are dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

10. Applying the above ratio laid down by this Court, this Writ Petition is dismissed. No costs. Connected miscellaneous petition is closed.

02.02.2023

ssb

NCC:Yes/No

Index:Yes/No

Internet:Yes/No

To

- 1.The Principal Secretary,
State of Tamil Nadu,
School Education Department,
Fort St. George,
Chennai – 600 009.
- 2.The Director of Public Libraries,
Public Library Department,
No.377/1, Anna salai,
Chennai – 600 002.

W.P.(MD)No.4802 of 2021

M.DHANDAPANI, J.

ssb

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