



W.P(MD)No.15881 of 2020.P(MD)No.15881 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 12.04.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.15881 of 2020

and

W.M.P.(MD)Nos.13297 and 13298 of 2020

C.Shanmuganathan

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Represented by its Principal Secretary,
School Education Department,
Fort St.George, Chennai – 600 009.
- 2.The Commissioner of School Education,
College Road, DPI Campus,
Nungambakkam, Chennai – 600 006.
- 3.The Director General of School Education,
College Road, DPI Campus,
Nungambakkam, Chennai – 600 006.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 2nd respondent vide his proceedings R.C.No.48119/A1/S1/2019 dated 28.09.2020 and quash the same as illegal and consequentially direct the



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respondents to fix the seniority of the petitioner in the cadre of District Educational Officer taking into consideration of the date on which the petitioner was promoted to the post of Head Master of Higher Secondary School in conformity with section 40(3) of Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and consequently to consider the petitioner for promotion to the post of Chief Educational Officer as per the seniority of the petitioner within the period that may be stipulated by this Court.

For Petitioner : Mr.M.Ajmal Khan, Senior Counsel,
For Mr.C.Venkatesh Kumar.

For Respondents : Mr.N.Satheesh Kumar,
Addl. Government Pleader.

ORDER

Heard the learned senior counsel for the writ petitioner and the learned Additional Government Pleader for the respondents.

2.The petitioner joined the education department as P.G. Assistant on 26.11.1988. He was promoted as Higher Secondary School Headmaster on 03.09.2010. He functioned as Personal Assistant to the Chief Educational Officer for about three years from 05.03.2015 to 04.07.2018. He was recruited as District Educational Officer on



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15.02.2019 by transfer. He was promoted as Chief Educational Officer on 13.09.2022 and he retired on 28.02.2023.

3. When the petitioner was working as District Educational Officer, he wanted his seniority to be fixed in the said post by taking into account his service as Headmaster of Higher Secondary School and consequential promotion to the post of Chief Educational Officer from an earlier date. He filed W.P.(MD)No.17908 of 2019 in that regard. Vide order dated 20.01.2020, the Director of School Education, Nungambakkam, Chennai was directed to consider his request. Pursuant to the said direction, the impugned order of rejection dated 28.09.2020 came to be passed. Challenging the same, he filed the present writ petition. The learned senior counsel for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and grant relief as prayed for.

4. The respondents have filed counter affidavit and the learned Additional Government Pleader took me through its contents and called upon this Court to dismiss the writ petition.



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5.I carefully considered the rival contentions and went through the materials on record. Annexure to the Special Rules for Tamil Nadu School Educational Service sets out the mode of recruitment for the post of Chief Educational Officer. It is seen therefrom that the post of Chief Educational Officer is to be filled up by promotion of those candidates having experience in the post of District Educational Officer or any other equivalent post for a period of not less than three years. The stand of the learned senior counsel for the petitioner is that since the post of Headmaster of Higher Secondary School and the post of District Educational Officer are in the same pay scale, they should be considered as equivalent to each other. Once equivalence is accepted, the petitioner's service in the post of Headmaster should be reckoned for the purpose of fixing his seniority in the post of District Educational Officer.

6.When the learned senior counsel for the petitioner placed reliance on Section 40(3) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, the learned Additional Government Pleader literally jumped to intervene. He pointed out that Section 40 of the said Act has already been struck down in W.P.Nos.998 of 2017 etc



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batch [2019 (6) CTC 750 (K.Raja and Others vs. Additional Chief

Secretary to Government and Others)]. It is true that the order of the Court does read so. But then, Writ of Declaration was filed only for declaring Sections 1(2), 40(1) and 70 of the Act as ultra vires and unconstitutional. The Hon'ble Division Bench did not consider Section 40 in full. What was challenged before the Hon'ble Division Bench was Section 40(1) only. There has been a typographical error. Section 40(3) was not at all considered.

7.Let me see if Section 40(3) of the 2016 Act will come to the rescue of the petitioner. The provision reads as follows:-

“40(3) The transfer of a person from one class or category of a service to another class or category carrying the same scale of pay or pay band shall not be treated as first appointment to the latter for purpose of seniority and the seniority of a person so transferred shall be determined with reference to the rank in the class or category from which he was transferred; where any difficulty or doubt arises in applying this provision, seniority shall be determined by the appointing authority.”



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A careful reading of Section 40(3) would clearly indicate that where an employee is transferred from one class or category of a service to another class or category carrying the same pay scale, his seniority in the transferred post will be determined with reference to the rank in the class or category from which he was transferred. The petitioner was appointed as District Educational Officer from the category of Headmaster of Higher Secondary School by way of transfer. It is not in dispute that both the posts are in the same pay scale. I, therefore, endorse and accept the contention of the learned senior counsel for the petitioner that the petitioner's seniority in the post of District Educational Officer must be reckoned by counting his service as Headmaster of Higher Secondary School. To this extent, the impugned order may warrant interference.

8. But the petitioner has “crossed half the well” only (to attempt a literal translation of a Tamil saying). Seniority is one thing, eligibility is another. The question that arises for consideration is whether the petitioner can be considered as eligible for promotion to the post of District Educational Officer by taking into account his service in the post Headmaster in Higher Secondary School. The statutory rule is as follows:-



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ANNEXURE
[referred to in rule 6 (i)]

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<i>Category (1)</i>	<i>Method of recruitment (2)</i>	<i>Qualification (3)</i>
<i>Deputy Director of School Education and Chief Educational Officer</i>	<i>By Promotion</i>	<i>Experience in the post of District Educational Officer or in any equivalent post for a period of not less than three years.</i>
<i>District Educational Officers, Inspectress of Girls Schools, Inspector of Anglo-Indian Schools, Assistant Director of School Education (Libraries) and Readers in the State Council of Educational Research and Training, Chennai.</i>	<i>Direct recruitment (otherwise than from among teachers employed in Recognised Aided Secondary Schools)</i>	<i>(i) A Master's degree of any university in the State or a degree of equivalent standard in such subject or language as may be specified by the State Government; and</i> <i>(ii) Should have studied Tamil under part I or Part II of their intermediate or Pre-University course or Higher Secondary Course; and</i> <i>(iii) B.T. or B.Ed of any recognised University in the State or a degree of equivalent standard.</i>
	<i>Direct recruitment from among teachers employed in Recognised Aided Secondary Schools</i>	<i>(i) A Master's degree of any university in the State or a degree of equivalent standard in such subject or language as may be specified by the State Government; and</i> <i>(ii) Should have studied Tamil under part I or Part II of their intermediate or Pre-University course or Higher Secondary Course; and</i> <i>(iii) Teaching experience for a period of not less than twelve years in a recognised school after acquiring the degree of B.T or equivalent qualification.</i>



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	<i>Promotion</i>	<i>(i) A degree of any University in the State or a degree of equivalent standard; and (ii)Teaching experience in a training or secondary school for a period of not less than two years.</i>
	<i>Recruitment by transfer</i>	<i>(i) A Master's degree of any University in the State or a degree of equivalent standard; and (ii)Teaching experience in a Training, Secondary, or Higher Secondary school for a period of not less than two years.</i>

The petitioner was appointed as District Educational Officer only on 15.12.2019. If his service in the post of Higher Secondary School can also be taken into account for the purpose of computing his eligibility, then, he would have been eligible for promotion to the post of Chief Educational Officer from day one onwards.

9.In fact, such a request was made in W.P.(MD)No.17921 of 2014. The respondents had enclosed a copy of the order dated 17.12.2022 in the typed set of papers. The learned senior counsel appearing for the petitioner exclaimed that the writ petition filed by similarly placed persons had been allowed and that therefore, the present writ petition



should also be allowed. Actually, the learned Judge had not at all allowed the writ petition. It was more the contribution of the typist. The order reads as follows:-

“11. The contention of the petitioners are that they are serving as Higher Secondary School HM, but they are not having further promotional opportunities to the post of DEO, CEO etc. The said issue was raised in O.A.No.4864 of 1993, the Tamil Nadu Administrative Tribunal, by order dated 13.12.1994 has held a quota shall be fixed for the post. The reply of the respondents are that the grievances of the Higher Secondary School HM to treat them on par with High School HM were considered by the Government and issued G.O.Ms.No.528, School Education (A1) Department, dated 31.12.1997, wherein the post of Higher Secondary School Headmaster was made as the feeder category to the post of DEO and necessary amendments were issued to the Special Rules for Tamil Nadu School Educational Service. Thereafter from the year 1998, 25% of the Headmasters of the Higher Secondary School were considered for promotion to the post of DEO and after the issuance of G.O.Ms.No.155, School Education (A1) Department, dated 03.07.2009, 35% of the Headmasters of Higher Secondary Schools were considered for promotion as DEO.

12. But the petitioners submitted that the post of Headmasters of Higher Secondary Schools are on the same scale of pay as District Educational Officers and therefore



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the respondents ought to grant the promotional opportunity to the post of CEO. The DEO's are having lesser qualification but they are acting as Inspecting Officers of Higher Secondary Services, in turn they act as higher authorities to the post of Higher Secondary School HM. Therefore according to the petitioners the Higher Secondary School HM alone ought to be in the feeder category and ought to be considered for the promotion of CEO. Atleast the respondents ought to increase the ratio for Higher Secondary School HM, since the Higher Secondary School HM is not having any other promotional opportunities.

13. The claim of the petitioners can be considered only by the Government by amending the Special Rules. However, Mandamus cannot be issued for enacting law or to amend the provisions of law / rules. But the 1st respondent ought to consider the claim of the petitioners. Therefore this Court is directing the 1st respondent to consider the claim of the petitioners and pass an order. The said exercise shall be completed within a period of four months from the date of receipt of the copy of the order.”

Pursuant to the direction given by the Court, the issue was considered and the Government vide Letter No.19623/SE1(1)/2022-2, dated 24.11.2022 rejected the request for promoting the Higher Secondary School Headmaster directly as Chief Educational Officer.



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10. Some thirty-five years ago, the great jurist Prof. Upendra Baxi wrote an article “Canine jurisprudence” in “Lex Et Juris”, a law magazine run by Shri. Mahesh Jethmalani. The nation was talking of Bofors scandal. Shri. Ram Jethmalani raised ten questions a day for the Prime Minister to answer. Shri. Rajiv Gandhi replied at a press conference that he would not respond to barking dogs. The irrepressible lawyer remarked that a dog will bark only at a thief. In this background came the aforesaid article. The venerable scholar can now write an article “Typo jurisprudence”. I have come up with a suggestion because recently in an order passed by the Hon'ble Apex Court, the name of the counsel was typed as “Mr. Put Mine”. The advocate who argued the matter wanted his name to be recorded. He had texted his clerk on the whatsapp. The clerk forwarded the message as received. The record of proceedings got generated with the name “Mr. Put Mine, Advocate” (SCC Online Blog dated 15.04.2023 by Prachi Bhardwaj).

11. The question that calls for consideration is whether the post of Higher Secondary School Headmaster can be considered as equivalent to the post of District Educational Officer. I may not fully agree with the



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stand of the learned of Additional Government Pleader that the post of District Educational Officer is administrative and that the post of Headmaster is not. The learned senior counsel for the petitioner drew my attention to the very same Special Rules in which the post of Headmaster has also been included in the list of administrative posts. Whether the post of Headmaster is an administrative post or not cannot be the right question. The Special Rules employ the expression such as “equivalent post”, “equivalent standard”, “equivalent qualification” etc. It has been held time and again that the issue of equivalence can be decided only by the Government. It is not open to the Writ Court to issue any declaration regarding equivalence. The Headmasters of Higher Secondary School had not obtained any declaration from the State Government that their post is equivalent to the post of District Educational Officer. When there is no such declaration holding the field, I have to reject the contention of the learned senior counsel for the petitioner that both the posts are equivalent. Once I hold that both the posts are not equivalent as contemplated in the recruitment rule, I have to necessarily sustain the argument of the learned Additional Government Pleader that the service put in by the petitioner as Higher Secondary School Headmaster cannot



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be included while considering him for promotion to the Chief Educational Officer. The petitioner has already retired. Therefore, going into the issue of seniority has become academic and infructuous. The impugned order is sustained and the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

12.04.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

- 1.The Principal Secretary,
School Education Department,
Fort St.George, Chennai – 600 009.
- 2.The Commissioner of School Education,
College Road, DPI Campus,
Nungambakkam, Chennai – 600 006.
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G.R.SWAMINATHAN, J.

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