

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.02.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.12099 of 2017

and

**W.M.P.(MD)Nos.9331 to 9333,
11095 and 13859 of 2017**

M.P.Ilango

... Petitioner

vs.

- 1.The Secretary,
The Government of Tamil Nadu,
School Education Department,
Fort St.George,
Chennnai-600 009.
- 2.The Director,
Directorate of School Education,
DPI Buildings, College Road,
Chennai-600 006.
- 3.The Joint Director,
Directorate of School Education (Hr.Sec),
DPI Buildings, College Road,
Chennai-600 006.
- 4.The Chief Educational Officer,
CEO Office, Theni District.

5.C.Senthil

6.J.Muthukumar

... Respondents

*(R5 is impleaded, vide Court order, dated
06.09.2017, in W.M.P.(MD)No.13304 of 2017)*

*(R6 is impleaded, vide Court order, dated
30.11.2022, in W.M.P.(MD)No.19859 of 2022
in W.P.(MD)No.12099 of 2017)*

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the second respondent in Na.Ka.No.8726/W.3/E.2/2008, dated .05.2017 and to quash the same and consequently, to direct the 2nd respondent to implement the earlier proceedings issued by the 3rd respondent in Na.Ka.No.8726/W.3/E.2/2008, dated 09.02.2017, by reserving 25% in state employment exchange seniority before the appointment of the District Inspector of physical education in Tamil Nadu.

For Petitioners	: Mr.C.Jeganathan for M/s.Veera Associates
For R1 to R4	: Mr.D.Sadiq Raja Additional Government Pleader
For R5	: Mr.P.Muthuvel for M/s.Isaac Chambers
For R6	: Mr.A.Ilayamperumal

ORDER

This writ petition is filed for issuance of a writ of Certiorarified Mandamus, to quash the impugned order of the second respondent, dated .05.2017 and consequently, to direct the 2nd respondent to implement the earlier proceedings issued by the 3rd respondent, dated 09.02.2017, by reserving 25% in state employment exchange seniority before the appointment of the District Inspector of Physical Education in Tamil Nadu.

2. The petitioner qualified B.Sc. degree in the year 1987, M.P.Ed., in 1989 and M.Phil. in 2007. The petitioner was appointed on 04.03.2005 as Physical Education Teacher at Government Boys Higher Secondary School, Ganguvarpettai, Theni District. He was appointed as Grade-I Physical Director at Government Girls Higher Secondary School, Ganguvarpettai, Theni District on 17.09.2010 and the said appointment was made through the Seniority maintained in State Employment

Exchange, Chennai. The petitioner was appointed temporarily as District Inspector of Physical Education at Theni District by 4th respondent.

3. The 1st respondent issued G.O.Ms.No.159, School Education Department, dated 10.07.2009, wherein the post of District Inspector of Physical Education was created by merging the Regional Physical Education Inspector men and women. As per the said G.O., the Grade 1 Physical Director will be appointed as District Inspector of Physical Education through redeployment.

4. The contention of the petitioner is that the post of Grade-I Physical Director was appointed by Direct recruitment through Teacher Recruitment Board and also from State Employment Exchange. The Grade-I Physical Director is eligible for appointment as District Inspector of Physical Education. The 2nd respondent issued the impugned order, dated 09.02.2017, by inviting the particulars about Grade I

Physical Education Director. Initially, the 3rd respondent issued, the proceedings, dated 23.12.2016, inviting the particulars of the Grade-1 Physical Director. The proceedings of the 2nd respondent in the month of May 2017 is contrary to the earlier proceedings issued by the 3rd respondent, dated 09.02.2017. The Annexure -1 deals about the particulars about direct recruits regarding Grade-1 Physical Education Director and Annexure-II deals about the Physical Education Teacher, Physical Director Grade-II and Physical Director Grade-1. There are 32 districts in Tamil Nadu and only 1 post of District Inspector of Physical Education will be appointed and therefore, the selection should be equally from Grade-1 promotees as well as Grade-1 direct recruits. The 3rd respondent clearly followed the rules and issued the proceedings, dated 09.02.2017. After receipt of the all particulars, the 2nd respondent with *mala fide* intention issued the impugned order by ignoring the particulars about the promotees of Grade-I Physical Directors. Hence, the petitioner made a representation to the 2nd respondent but the same

was not considered by 2nd respondent. Hence, the petitioner has come forward to file this writ petition.

5. Pending this writ petition, the Government issued Special Rules for Tamil Nadu Higher Secondary Education Service wherein it is stated under Clause 3 that for the category I, District Inspector of Physical Education, the candidates who are serving under category Physical Director II, and Physical Directors in Higher Secondary School are eligible for promotion to District Inspector of Physical Education and must possess the educational qualification of Bachelor of Physical Education. The prescribed educational qualification also prescribes that the candidates should have passed accounts tests and various other tests.

6. The contention of the respondents 5 and 6 are that the petitioner has not passed the said four tests. Therefore, even if the writ petition is allowed, the petitioner will not come under the zone of consideration.

7. The learned Counsel appearing for the petitioner submitted that the petitioner has passed only two tests and he will be attempting to complete the test in the month of May. But the official respondents cannot be directed to wait until the petitioner has completed the said four tests. Therefore, this Court is not inclined to entertain this writ petition for this plea.

8. The next plea that was raised by the petitioner is that the earlier proceedings conferred ratio among the direct recruits through Teachers Recruitment Board and recruits through employment exchange. The same should be conferred in the subsequent promotion as well. The said plea cannot be entertained, since the recruitment through employment exchange by following the employment seniority is totally against public employment policy. Any vacancy should be filled up through open market by calling for candidates from employment exchange and paper publication. Thereafter, the candidates shall be selected based on merit

and ability and hence, such a ratio cannot be fixed for the subsequent promotion. Therefore, the plea of the petitioner is against provisions of law and settled propositions of law.

9. Therefore, this Court is not inclined to entertain this writ petition. Hence, the writ petition is dismissed. However, if the petitioner is otherwise eligible, as per the rules and regulations, the official respondents shall consider the same. The petitioner is at liberty to submit fresh representation. No costs. Consequently, connected miscellaneous petitions are closed.

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

28.02.2023

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