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W.P.No.4756 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2024

CORAM :

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.4756 of 2021
and
W.M.P.Nos.5368, 5371 and 5375 of 2021

E.Vijayaraj

... Petitioner

Vs.

1.The Director of School Education,
DPI Campus, College Road,
Chennai 600 006.

2.The Joint Director of School Education (Personnel),
Directorate of School Education,
DPI Campus, College Road,
Chennai 600 006.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the 2nd respondent in Na.Ka.No.055712/C3/E2/2021 dated 10.02.2021 and to quash the same and consequently directing the respondents to prepare panel in respect of 2% vacancies reserved for Non-teaching staff in School Education Department from the year 2014 in accordance with G.O.Ms.No.175 School Education (M2) Department dated 19.07.2007 and Special Rules for Tamil Nadu School



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Education Subordinate Service, including for the panel year 2020-21, before finalizing the panel for promotion to the post of B.T. Assistant from the category of Secondary Grade Teacher.

For Petitioner : Mr.G.Sankaran

For Respondents : Mr.K.H.Ravikumar
Government Advocate

ORDER

The petitioner is working as Junior Assistant in Tamil Nadu Ministerial service in School Education Department and for want of promotional avenue the petitioner is continuing in the very same post for a very long time. Under those circumstances, the petitioner and similarly situated persons approached the Government requesting for providing promotional avenue to them for being appointed to the teaching post in the School Education Department. Accordingly, the Government having considered the said request, issued G.O.Ms.No.175 School Education (M2) Department dated 19.07.2007 by providing 2% of the vacancies out of the vacancies to be filled up by promotion for the ministerial staff working in the School Education Department by recruitment by transfer.



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2. Accordingly, the claim of ministerial staff working in School Education Department were considered for appointment by transfer till the year 2011. Thereafter, the same was not given effect to and finally the Government issued G.O.(2D).No.53, School Education (SE3(1)) Department dated 27.08.2014 not to give effect to the said 2% reservation provided under G.O.Ms.No.175 School Education Department (M2) dated 19.07.2007 till the Special Rules for Tamil Nadu School Education Subordinate Service rules were appropriately amended. Thereafter, by issuing G.O.Ms.No.7 School Education Department dated 20.01.2020, the Special Rules for Tamil Nadu School Education Subordinate Service rules were amended by including the Superintendent, Assistant and Junior Assistant working in Tamil Nadu Ministerial Service in School Education Department as one of the feeder category to the post of School Assistant and also earmarking 2% out of 50% vacancies earmarked to filled up in by promotion for the employees working in Tamil Nadu Ministerial Service School Education Department.



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3. Through the very same Government Order dated 20.01.2020, the post of School Assistant is named as Graduate teacher of the respective subjects and the said amendments made to Rule 3A has been given retrospective effect from 19.07.2007 i.e., date on which G.O.Ms.No.175 School Education (M2) Department dated 19.07.2007 was issued earmarking 2% of vacancies to be filled in by way of transfer from among staff of Tamil Nadu Ministerial service in School Education Department. Thereafter, the Government issued yet another Government order vide G.O.Ms.No.13 School Education (S.E.3(1)) Department dated 30.01.2020 superseding the special rules for the Tamil Nadu School Education Subordinate Service existing by then and issued new Rules which came into with effect from 30.01.2020.

4. The petitioner herein and all the persons working in various schools in Tamil Nadu Ministerial School Education Department and falling under the feeder category included in IV in Column 2 of Rule 3A and claiming the benefit of 2% out of 50% vacancies earmarked to be filled in by way of promotion.



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5. The grievance of the petitioner is that the Government had issued G.O.Ms.No.7 School Education Department dated 20.01.2020 retrospectively amending the relevant Rule as noted above with effect from 19.07.2007, the respondents have not taken any steps pursuant to the said retrospective amendment.

6. According to the learned counsel for the petitioner, the respondents are under obligation to workout the total number of vacancies that were filled up by way of promotion under 50% earmarked quota and 2% of such vacancies are bound to be earmarked for being filled up from among the category of the employees working in Tamil Nadu Ministerial service as against 2% quota.

7. Though the respondents have filed a counter affidavit contending that the, no posts of graduate teacher were filled up in view of availability of surplus staff in the category of Graduate Teacher, it is brought to the notice of this Court that in all 1424 posts of Graduate Teacher were filled only by way of promotion from the post of Secondary Grade Teacher/Special Teacher during the year 2014-2015, 2015-2016 and 2016-2017 and 2% of the posts worked out of 32 posts during the panel year 2014-2015, 2015-2016 and 2016-2017.



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WEB COPY 8. Thus it is contended by the learned Government Pleader appearing for the respondents that the said 2% reservation for ministerial staff was implemented till 2014-2015.

9. The learned counsel for the petitioner disputed the same and contended the same was given effect only till the year 2011 but not thereafter. There is no serious dispute on the factual aspects and also with regard to the Rule position. Admittedly, the amendments that were made to the Special Rules for Tamil Nadu School Education Subordinate Service Rules through G.O.Ms.No.7, School Education Department dated 20.01.2020 were given retrospective effect with effect from 19.07.2007. From the very fact that the said amendment was given retrospective effect, shows that the same with an intention to extend the benefit to the ministerial staff in school education department for being considered for appointment by transfer to the post of School Assistants/Graduate Teacher in Tamil Nadu Education Subordinate Service in terms of G.O.Ms.No.175, School Education (M2) Department dated 19.07.2007. In the absence of any dispute about giving retrospective effect to the above said amendment, it is not understand as to why the benefits of such



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amendment should not be allowed to be enjoyed by the ministerial staff working in Tamil Nadu School Education Subordinate Service. There is no dispute about their entitlement to claim the benefit of such retrospective effect.

10. It is further submitted by the learned counsel for the petitioner that the petitioner is not seeking for any retrospective appointment by transfer or any monetary benefits with retrospective effect. He is only seeking appointment by transfer prospectively.

11. In the light of the above, this Court does not see any impediment for granting the relief as sought for in this writ petition. Accordingly, this Writ Petition is allowed by directing the respondents to give effect to the amendments made to the Special Rules for the Tamil Nadu School Education Subordinate Service through G.O.Ms.No.7, School Education Department dated 20.01.2020 with effect from 19.07.2007.

12. The respondents are further directed to ascertain the number of vacancies filled up since 19.07.2007 to the posts of School Assistant/Graduate Teacher by way of promotion and ascertain 2% of such posts, and fill up the



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said 2% posts by considering the ministerial staff working in School Education Department by way of appointment by transfer in accordance with G.O.Ms.No.7, School Education Department, dated 20.01.2020 till 29.01.2020 and thereafter to consider the claims of the said ministerial staff for appointment by transfer to the posts of Graduate Teacher in terms of G.O.Ms.No.13 School Education (S.E.3(1)) Department, dated 30.01.2020. The respondents are further directed to complete the entire exercise as directed above as expeditiously as possible at any rate within a period of three months from the date of receipt of a copy of this order.

13. It is made clear that the petitioner and other ministerial staff working in the School Education Department and claiming appointments by transfer to the posts of Graduate Teacher/School Assistants, shall be subject to their satisfying the qualification criteria prescribed for the respective posts.



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14. This Writ Petition is accordingly allowed. No costs. Consequently, connected writ miscellaneous petitions are closed.

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Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

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To

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Chennai 600 006.

2.The Joint Director of School Education (Personnel),
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