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W.A.No.1346 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

W.A.No.1346 of 2021
and
C.M.P.No.8427 of 2021

S.Ramadass

... Appellant

Vs.

1. The Government of Tamil Nadu,
Rep. by its Secretary,
Education Department,
Fort St.George, Chennai – 600 009.
2. The Director of Elementary Education,
College Road, Chennai – 600 006.
3. The Assistant Elementary Educational Officer,
Bodinayakkanur, Theni District.
4. R.Jeyabarathi
5. S.Dhanalakshmi
6. M.Parvathy
7. S.Selvi



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8. S.Malliga

9. N.Valarmathi

10. Sagayapushparani

11. V.Sivaraj

12. S.Lathamaheshwari

13. Senthamarai

14. P.Nagarathinam

15. A.P.Selvi

16. S.Ramathilagam

17. C.Lakshmi

... Respondents

Prayer:-Writ Appeal filed under Clause 15 of the Letter Patent Act against the order passed by the learned Single Judge of this Court in W.P.No.15794 of 2013 dated 05.02.2020.

For Appellant : Mr.M.R.Jothimanian

For R1 to R3 : Mr.R.Neelakandan,
Additional Advocate General

For R4 to R8, R10 to R12
& R14 to R16 : No appearance

For R9, R13 and R17 : Not ready in notice



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JUDGMENT

[Judgment was delivered by **S.M.SUBRAMANIAM, J.**]

The writ petitioner is the appellant before us. The Writ Petition was instituted challenging the Government Order in G.O (Ms) No.166, School Education Department dated 07.06.1999. Admittedly, the Writ Petition was instituted after a lapse of 14 years from the date of issuance of G.O (Ms) No.166, School Education Department dated 07.06.1999. The Government Order relates to grant of promotion to the post of 'Middle School Headmasters' from amongst the eligible persons working in the cadre of 'Elementary School Headmasters' and 'B.T.Assistants'. It is not in dispute that the 'Elementary School Headmasters' and 'B.T.Assistants' are the feeder categories for promotion to the post of 'Middle School Headmasters'.

2. Mr.M.R.Jothimanian, learned counsel appearing on behalf of the appellant would submit that as per Proviso (ii) to Rule 36 of the Tamil Nadu State and Subordinate Service Rules, amongst the feeder categories, the feeder category having the highest pay must be considered first for promotion



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to the post of 'Middle Headmasters'. Contrarily, the respondents have promoted the 'Elementary School Headmasters' as 'Middle School Headmasters', which resulted in institution of the writ proceedings.

3. Mr.R.Neelakandan, learned Additional Advocate General would oppose the said contention by stating that the Government Order in G.O (Ms) No.166, School Education Department was issued in the year 1999 and the Writ Petition was instituted by the appellant in the year 2013, after a lapse of about 14 years. The issues raised regarding G.O (Ms) No.166, School Education Department dated 07.06.1999 is no more *res-integra*.

4. The learned Division Bench upheld the validity of G.O (Ms) No.166, School Education Department dated 07.06.1999 vide order dated 07.06.2023 passed in W.A (MD) No.932 of 2023. The relevant paragraphs of the said order reads as under:-

“ 23. After having analysed all these aspects as quoted herein above, the learned Judge has come to a conclusion, of course, rightly that, there is no manifest illegality in the impugned order i.e., G.O.Ms.No.166 as well as the order of the Additional Assistant Elementary Educational Officer, rejecting the request of the appellant / petitioner for revision of seniority and accordingly, the said Writ Petition was dismissed.



24. *The reasonings given by the learned Judge is perfectly in tune with the rule position.*

25. *No doubt, the second proviso to Rule 36(a) makes it clear that if scales of pay in the feeder categories are different, the persons carrying a higher scale of pay in the feeder category shall be considered first. If the said rule, if it is applied in the present case in hand, i.e., giving promotion to the post of Middle School Headmaster for Tamil Pandit by virtue of Rs.200/- higher pay that they are enjoying over the Primary School Headmaster, then the resultant situation would be disastrous insofar as 25,000 and odd Primary School Headmasters, as their further promotional avenues would be completely shattered because of lesser pay of Rs.200/- alone.*

26. *Therefore, this situation having been visualized by the State Government, they had come forward to pass G.O.Ms.No.166, of course, by exercising the power of the Governor for giving relaxation to any part of the rules under Rule 48 of the said Rules.*

27. *Under such relaxation power, the import of second proviso to Rule 36(a) has been relaxed only for the purpose of giving relaxation to this category of people to the post of Middle School Headmaster.*

28. *Insofar as the powers vested with the Governor / State Government under Rule 48 is concerned, there is no difficulty and that has not been questioned by the appellant / petitioner, even before the Writ Court.*



29. *Once the power is vested under the Rule, that can be exercised by the State Government in the name of Governor. In exercising such relaxation power, if it is arbitrarily exercised, which shocks the conscience of the Court, then only, the question will arise as to whether the State Government or Governor has invoked their power of relaxation in a right direction.*

30. *Here, in the case in hand, the situation has been completely explained, whereunder 25,000 and odd people would be denied the promotion, whereas, very handful of people in the name of either Tamil Pandit or Graduate Teacher would be marching over these 25,000 people for getting the promotion to the post of Middle Schoold Headmaster.*

31. *Such a situation at any cause be avoided, otherwise, there will be a heavy unrest in the minds of the 25,000 and odd Primary School Headmasters as their morale would get defeated as for the whole career before superannuation, they would not see the light of the day for getting the promotion to the next avenue i.e., Middle School Headmaster. This situation has been completely visualized and the State Government has come forward to make such relaxation by invoking the powers under Rule 48 of course rightly, and therefore, absolutely there has been no scope for any infirmity in issuing the G.O.Ms.No.166, which is impugned before the Writ Court.*

32. *However, the G.O. was issued on 07.06.1999, thereafter, it has been in vogue and has been pressed into service for several years, however, this Writ Petition has been filed in 2013*



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i.e., after 14 years, even for a limited reason of laches also, this kind of prayer cannot be sought for by the petitioner and therefore, on that ground also, the learned Judge considered the plea raised by the petitioner / appellant before the Writ Court and rejected the same. The said approach adopted by the learned Judge in deciding the issue raised before him through the impugned judgment, in the considered opinion of the Court is perfectly right and also in consonance with the Rule position, therefore, the said order impugned does not warrant any interference from us.

33. In the result, the Writ Appeal fails and the same is dismissed. However, there shall be no order as to costs."

5. The learned Additional Advocate General furnished a copy of the letter 14.03.2024 issued by the Director of Elementary School Education addressed to the learned Additional Advocate General. The said letter reveals that an exemption was granted by the Government in G.O (Ms) No.12, School Education Department dated 30.01.2020 for implementing Section 41(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. Based on G.O (Ms) No.166, School Education Department dated 07.06.1999, promotions were granted till the year 2020. Since the Government granted exemption. Subsequently a decision was taken to implement Section 41(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 with effect from 31.12.2023 by making



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necessary amendments to the Elementary School Subordinate Service Rules.

Therefore, as of now, promotions to the post 'Middle School Headmasters' are made based on Section 41(1) of Tamil Nadu Government Servants (Conditions of Service) Act, 2016.

6. With reference to the grievance as advanced by the appellant, though we could able to find some discrepancies in following the Rules for grant of promotion to 'Middle School Headmasters', that was rectified by the Government by granting exemption and therefore, the settled seniority need not be now unsettled after several years. The appellants have approached the Writ Court after a lapse of 14 years from the date of issuance of G.O (Ms) No.166, School Education Department dated 07.06.1999. Though they have approached the Writ Court at the time of considering their names, we could able to find by that time, the seniority was settled and promotions were granted to large number of employees served in the cadre of 'Elementary School Headmasters' and 'B.T Assistants'. Since the seniority position was settled and all those promoted candidates are serving in the cadre of 'Middle School Headmasters', unsettling the settled seniority would result in wider repercussions. Thus, we are not inclined to undo the promotions already



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granted based on G.O (Ms) No.166, School Education Department dated 07.06.1999, which has been upheld by the learned Division Bench as stated supra.

7. Thus, the case of the appellants are directed to be considered with reference to Section 41(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. It is needless to state that all promotions hereinafter must be made strictly in accordance with the provisions of the Act. In the event of any violations, actions are to be initiated against the officials, who are responsible and accountable.

8. With these observations, the Writ Appeal stands dismissed. No costs. Connected Miscellaneous Petition is closed.

[S.M.S., J.] [C.K., J.]
01.07.2024

skr
Index : Yes
Speaking order
Neutral Citation : Yes

To



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