



WEB COPY



W.P.No.18798 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 01.12.2023
ORDER PRONOUNCED ON : 11.01.2024
CORAM

**THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MRS. JUSTICE N.MALA**

**W.P.No. 18798 of 2020
and
WMP.Nos. 23363, 23366 & 23368 of 2020**

P.Charles Nelson

...Petitioner

Vs.

1.The Secretary to Government,
School Education Department,
Secretariat, Chennai-600 009.

2.The Commissioner of School Education,
College Road,
Chennai-600 006.

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

4.The Chief Educational Officer,
Chennai District,
Gandhi Irwin Road,
Egmore, Chennai- 600 008.

...Respondents



W.P.No.18798 of 2020

Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the 1st Respondent issued in G.O. (Ms). No.14, School Education (SE-2(1)) Department dated 30.01.2020 and Quash the same in so far as the provision under the proviso 2 of Rule 2(b)(ii) of Rule 2 of the Tamil Nadu Higher Secondary Educational Service Rules, 2019 is concerned and consequently direct the respondents to fill up the 10% vacancies earmarked to the Secondary Grade Teachers with PG Qualification in Economics and Commerce also by "Transfer of Service" as has been provided to the Ministerial Non-Teaching Staff, under the proviso 4 of Rule 2(b)(ii) of the Tamil Nadu Higher Secondary Educational Service Rules.

For Petitioner : Mr.S.N.Ravichandran
for Mr.T.Ranganathan

For Respondents: Mr.Silambanan
Additional Advocate General
assisted by Mr.R.Vigneswaran
Government Advocate

ORDER

(Order of the Court was made by N.MALA,J)

The petitioner has filed the writ petition challenging the G.O(MS).No. 14, School Education (SE-2 (1)) Department dated 30.01.2020, in so far as the provision under the proviso 2 of Rule 2(b)(ii)



W.P.No.18798 of 2020

of Rule 2 of the Tamil Nadu Higher Secondary Educational Service Rules 2019 is concerned with further direction to the respondent to fill up the 10% vacancies earmarked for the secondary Grade Teachers with P.G. Qualification in Economics and Commerce also by Transfer of Service as has been provided to the Ministerial Non-Teaching Staff, under the proviso 4 of Rule 2(b)(ii) of the Tamil Nadu Higher Secondary Educational Service Rules.

2. The petitioner was appointed as a Physical Education Teacher in the year 1998 through Employment Exchange and posted in Arignar Anna Government Higher Secondary School at Wallajahbath, Kancheepuram District. While in service, the petitioner with the permission of the department obtained his Post Graduate degree in M.A (Economics) in 2004 and M.Phil in the year 2007. The petitioner acquired B.Ed degree in 2010 from Indira Gandhi Open University. The petitioner is presently working as Physical Education Teacher in the Government Higher Secondary School at Kodambakkam, Chennai. The Government issued G.O(Ms).No. 79, Education Department, dated 18.01.1990 and G.O(Ms).No.132, ES & T Department dated 21.02.1995.



W.P.No.18798 of 2020

3. The petitioner in pursuance of the aforesaid G.O's. Submitted a representation to the Joint Director of School Education on 04.07.2011 for considering him for appointment as P.G. Assistant. The Chief Educational Officer rejected his request and therefore the petitioner made a similar representation to the Secretary to Government, School Education Department on 12.09.2011. As the 1st respondent did not consider the petitioner's representation, the petitioner filed writ petition in W.P.No.25505 of 2011, for a writ of mandamus directing the 1st respondent therein to pass orders on his representation. This Court vide order dated 04.11.2011, directed the 1st respondent therein to consider and pass orders on the petitioner's representation within the time stipulated therein. Thereafter the Joint Director of School Education (Higher Secondary) vide order dated 01.12.2011 rejected the petitioner's representation stating that he had no authority to examine the request of the petitioner as the process of appointment by direct recruitment was to be undertaken by the Tamil Nadu Teachers Recruitment Board.



W.P.No.18798 of 2020

4. The petitioner states that two secondary grade teachers working in Government Higher Secondary Schools with Economics and Commerce degree filed writ petitions in W.P.Nos.18074 and 18908 of 2013 for a writ of mandamus directing the respondents therein to consider their names for appointment as P.G. Assistant, Commerce and Economics, as against 10% posts reserved for Secondary Grade Teachers under the Tamil Nadu Higher Secondary Educational Service Rules, as on 09.05.2013. The said writ petition was dismissed stating that the petitioners had no *locustandi* to file the writ petition seeking for a direction to the respondents to consider their names for appointment as P.G. Assistants (Commerce/Economics), as against the 10% posts reserved for the Secondary Grade Teachers under the Tamil Nadu Higher Secondary Educational Service Rules, as the G.O (Ms).No.132, ES & T Department dated 21.02.1995 was superseded by G.O(Ms).No.223, dated 16.07.1999 and the said G.O(Ms).No. 223 was not applicable to the teachers working in Government Schools, but applicable only to qualified Secondary Grade Teachers working in recognised Higher Secondary Schools, High School, Middle Schools and Elementary Schools under local bodies (Corporation and Municipal bodies) and all



W.P.No.18798 of 2020

aided managements. As against the said order one of the writ petitioners therein filed a writ appeal in W.A.No.309 of 2014 and the Division Bench of this Court vide order dated 05.03.2014 dismissed the appeal confirming the order of the learned single judge.

5. Whiles, the petitioner filed a writ petition in W.P.No.9957 of 2014 for a Writ of Mandamus directing the respondents 1 & 2 therein to include the secondary grade teachers working under the Government schools also for consideration against the 10% reservation in the direct recruitment for appointment as P.G. Assistant along with secondary grade teachers working under the panchayat unions, municipalities and corporations. The petitioner thereafter filed another writ petition in W.P.No.3930 of 2013 challenging the letter of the 1st respondent therein dated 15.05.2012 with a further direction to the respondent to consider the name of the petitioner for appointment as P.G. Assistant (Economics) against the quota of 25 posts earmarked for secondary grade teacher for the year 2011-2012 as per the provisions of Rule 2, Sub-Rule (6) of clause (ii) of the Tamil Nadu Higher Secondary Education Service Rules. This Court vide order dated 28.11.2016 allowed



W.P.No.18798 of 2020

the writ petition directing the respondents therein to consider the name of the petitioner for the post of P.G. Assistant (Economics) as per the provisions of the Tamil Nadu Higher Secondary Education Service Rules and issue appointment order within the time stipulated therein. Meanwhile, on 30.01.2020 the 1st respondent issued orders in G.O(Ms).No. 14, School Education Department [SE2(1)], re-issuing the Special Rules for the Tamil Nadu Higher Secondary Educational Service. Aggrieved by the proviso 2 of Rule 2(b)(ii) of Rule 2 of the Tamil Nadu Higher Secondary Educational Service Rules the petitioner has filed the writ petition to quash the same with a consequential direction to the respondents to fill up 10% vacancies earmarked for secondary grade teachers with P.G. Qualification in Economics and Commerce also by transfer of service as has been provided under proviso 4 of Rule 2(b)(ii) of the Tamil Nadu Higher Secondary Educational Service Rules to the Ministerial staff.

6. The 3rd respondent filed counter contending *inter alia* that the petitioner who was working as Physical Education teacher in the scale of pay of secondary grade Assistant was eligible to be considered under



W.P.No.18798 of 2020

the 10% reservation earmarked for secondary grade teachers and allied posts notified under direct recruitment for the post of P.G. Assistants.

The 3rd respondent further contended that the reservation of 2% to the Ministerial staff provided by way of transfer of service was already in existence and so the challenge made in the writ petition by the petitioner was misconceived. The 3rd respondent further contended that the petitioner had not challenged the Government Order earmarking 2% reservation for Ministerial Staff to the post of P.G. Assistant by way of transfer of service. According to the 3rd respondent, it was always open to the petitioner to participate in the selection process of P.G. Assistant conducted by Teachers Recruitment Board (Herein after referred to as TRB) by direct recruitment for availing benefit of promotion to the post of P.G. Assistants. The 3rd respondent contended that the recruitment to the post of P.G. Assistant by promotion was made only on the basis of seniority from the post of B.T. Assistants in the relevant subjects and as the petitioner was only a Physical Education Teacher, he could not be considered for promotion to the post of P.G. Assistants. It was further contended by the 3rd respondent that if the claim of the petitioner was accepted, then it would amount to unsettling issues and the same would



W.P.No.18798 of 2020

cause great prejudice to the respondents. It was finally contended that the impugned Rules could not be interfered with, as it reflected the policy decision of the Government.

7. The learned counsel for the petitioner submitted that after a long battle with the Government, the Government acceded to the petitioner's request by issuing the impugned G.O (Ms).No.14 dated 30.01.2020, reserving 10% of the vacancies under Direct Recruitment to secondary grade teachers and teachers with secondary grade scale of pay namely craft instructors, Art Masters, Music Teachers and Physical Education Teachers, working in Government Higher Secondary, High School and Middle School. According to the counsel while issuing the said order, the Government had deliberately introduced a condition that the 10% reservation to the secondary grade teachers/ PETs with M.A Economics and M.Com shall be by way of Direct Recruitment thereby subjecting them to the examination conducted by TRB. According to the counsel while the secondary grade teachers were to appear for an examination to be conducted by the TRB, the Ministerial staff working in the School Education Department were to be appointed by transfer of service



W.P.No.18798 of 2020

without the necessity of appearing for examination conducted by the TRB. This according to the counsel was clearly discriminatory and as such violative of Articles 14 and 16 of the Constitution of India. The learned counsel for the petitioner further submitted that there was no justification or rationale for considering the non-teaching Ministerial staff working in Education Department for appointment as P.G. Assistant under recruitment by transfer of service without subjecting them to examination conducted by the TRB, while at the same time subjecting the teaching staff who already had several years experience to appear for the examination to be conducted by TRB. The learned counsel therefore submitted that Rules were per-se illegal and liable to be quashed. The learned counsel further submitted that he was not aggrieved by the 2% reservation given to the Ministerial Staff by way of transfer of service, but his grievance was that the 10% reservation given to the petitioner should also be under "Transfer of Service" so that the necessity of appearing for the examination by the TRB is dispensed with. The learned counsel for the petitioner submitted that the petitioner has now attained superannuation on 31.01.2023 and hence all that he seeks is a direction to the respondents to promote him as P.G. Assistant



W.P.No.18798 of 2020

(Economics and Commerce) along with all monetary service benefits for a period of 2 years i.e. 2021-2023. The learned counsel therefore prayed that the writ petition may be allowed.

8. The learned Additional Advocate General appearing for the respondents submitted that 2% reservation to the Ministerial staff in the recruitment by method of transfer of service was already in existence and the amendment was made giving legal sanctity to the already existing method of recruitment. The learned counsel further submitted that as the petitioner was a Physical Education Teacher he was not considered for promotion because promotion to the post of P.G. Assistant is made from the post of B.T Assistants in the relevant subject and that too on seniority. The learned counsel submitted that the petitioner was at liberty to participate in the selection process to be conducted by the TRB for the post of P.G. Assistant under direct recruitment by availing the benefit of reservation. The counsel further submitted that without challenging the Rule providing for 2% reservation for Ministerial staffs to the post of P.G. Assistant by the method of transfer of service, the petitioner as an afterthought



W.P.No.18798 of 2020

challenged the amended Government Order and therefore the challenge has to be rejected. The learned counsel submitted that if the petitioner's claim was entertained, then grave prejudice would be caused to the respondents. The learned counsel finally submitted that the impugned rule is a policy decision of the Government and therefore the writ petition should not be entertained.

9. We have heard both the learned counsels and we have perused the entire materials placed on record.

10. The petitioner has filed the above writ petition challenging proviso 2 to Rule 2(b)(ii) of Rule 2 of the Tamil Nadu Higher Secondary Educational Service Rules 2019 and for consequential direction to the respondents to fill up the 10% vacancies earmarked for the secondary grade teachers with P.G. qualification in Economics and Commerce also by transfer of service as has been provided to the Ministerial Non-Teaching staff, under the proviso 4 of Rule 2(b)(ii) of the Tamil Nadu Higher Secondary Educational Service Rules, 2019.



11. The relevant Rule 2(b)(ii) of Rule 2 along with proviso is as follows:

(i) Fifty percent of the substantive vacancies in Class II and category 2 of Class III of the service shall be filled or reserved to be filled by direct recruitment, and remaining fifty percent shall be filled or reserved to be filled by recruitment by transfer.

Provided that fifty percent of the substantive vacancies in category 1, 'Post Graduate Assistant in Academic Subjects' under Class-II of the Service shall be filled by direct recruitment and out of this, ten percent shall be filled from among the qualified Secondary Grade Teachers and other Teachers with Secondary Grade scale of pay viz. Craft Instructors, Art Masters, Music Teachers, Physical Education Teachers and Pre-Vocational Instructors (Full time) working in Government Higher Secondary Schools, Government High Schools and Higher Secondary Schools, High Schools, Middle Schools and Elementary Schools under the Local Bodies (Municipal Corporation or Municipality or Panchayat Union), and all recognized Aided Managements.

Provided further that fifty percent of the substantive vacancies in category 2, 'Post Graduate Assistant in Languages,' under Class II of the Service shall be filled by direct recruitment and out of this, ten percent shall be filled from among the qualified Secondary Grade Teachers and other Teachers with Secondary Grade scale of pay viz. Craft Instructors, Art Masters, Music Teachers, Physical Education Teachers and Pre-Vocational Instructors (Full time) working in Government Higher Secondary Schools, Government High Schools and Higher Secondary Schools, High Schools, Middle Schools and Elementary Schools under the Local Bodies (Municipal Corporation or Municipality or Panchayat Union), and all recognized Aided Managements.

Provided also that if sufficient number of suitable Secondary Grade Teachers and other Teachers with Secondary Grade Scale of Pay working in the type of schools specified in the aforesaid provisos are not available for direct recruitment, such vacancies shall be filled up from other candidates available for selection in open market.

Provided also that 2% of the total number of substantive vacancies of all subjects and languages put together in category 1 (Post Graduate Assistant in Academic subjects) and category 2 (Post Graduate Assistant in Languages) under Class II, shall be reserved for appointment by recruitment by transfer from among those staff, who are qualified in the Tamil Nadu Ministerial Service working in the School Education Department (i.e.) Superintendent, Assistant/Seno-Typist and Junior Assistant/Typist without fixing subject wise reservation.

12. From the above rule, it is clear that 50% of the substantive vacancies in Class II and category 2 of Class III of the service shall be filled by direct recruitment and the remaining 50% shall be filled or reserved to be filled by recruitment by transfer of service. The petitioner admittedly is covered by proviso 2 of Rule 2(b)(ii). The said rule pertains to filling up 50% of vacancies by direct recruitment to the post of Post-Graduate Assistant in languages under which 10% is reserved for qualified secondary grade teachers and other teachers with secondary scale of pay like Craft Instructors, PETs etc. working in Government



W.P.No.18798 of 2020

Higher Secondary Schools, Government High Schools, Higher Secondary Schools, High Schools, Middle Schools and Elementary Schools under the Local Bodies and all recognised aided managements.

13. It is seen that the methods of recruitment to the post of P.G. Assistant is either by direct recruitment or by transfer of service. The method of recruitment may be different, but the nature of work to be discharged by the persons recruited under both the methods is one and same (i.e) teaching. Whereas the non-teaching ministerial staff are permitted to teach at the Higher Secondary level without under going any selection process conducted by TRB, the secondary grade teachers like the petitioner who have number of years of teaching experience as Physical Education Teachers, Craft Teachers, Art Teachers etc. are subjected to a process of selection by the TRB. In our view, there is absolutely no rationale or justification for dispensing with the selection process for the non-teaching ministerial staff, but insisting on the same for teacher's in service. When the object of subjecting the direct recruits under 10% reservation category to a selection process conducted by the TRB is to ensure the high quality of teachers then why and how can it be



W.P.No.18798 of 2020

dispensed with for Ministerial staff who would also be teaching. There is absolutely no clue in the counter affidavit on the rationale behind the policy and the mere contention that it is the policy decision of the Government cannot be accepted. If the rule is otherwise found to be violative of the provisions of the Constitution namely Articles 14 and 16 the policy decision could very well be interfered with by this court.

14. It is pertinent to note that appointment by transfer is usually made in the same service or different service but usually in the same rank or status. But when the transfer is made from lower to higher posts not by promotion but by direct appointment without any examination or any similar criteria but merely on the basis of eligibility and qualification it cannot be permitted as the same would not be in consonance with service discipline. When for the very same post, the direct recruits under 10% reservation category are subjected to a selection process a different yardstick for recruitment by Transfer of Service merely on the ground of different method of recruitment cannot be countenanced. It is further relevant to point out here that as rightly contended by the petitioner the Ministerial staff who are appointed as



W.P.No.18798 of 2020

P.G. Assistant under the 2% reservation earmarked for them have absolutely no teaching experience. Therefore it defies logic to subject a teacher who has number of years of teaching experience to a selection process conducted by TRB, but at the same time dispensing the same for Ministerial staff who have absolutely no teaching experience. We find force in the submission of the petitioner in this regard. Though the respondent in its counter submitted that if the petitioner's claim is accepted, it would unsettle settled issues, in the absence of any particulars in support of the claim we are not inclined to accept it.

15. Though the petitioner has filed the writ petition to quash the proviso 2 of Rule 2(b)(ii) of Rule 2 of the Tamil Nadu Higher Secondary Educational Service Rules, 2019 and consequential direction to fill up 10% vacancies earmarked to the secondary grade teachers with PG Qualification in Economics and Commerce also by transfer of service, the petitioner's counsel at the time of arguments submitted that the petitioner would be satisfied if the service and other monetary benefits are paid to the petitioner for a period of 2 years i.e. 2021-2023 as per 2021 notification. On the facts of the case, it is seen as stated supra that the



W.P.No.18798 of 2020

petitioner has been agitating for appointment as P.G. Assistant for more than 10 years. Initially the Government took a stand that the earlier G.O's. were not applicable to the petitioner as he was only a Physical Education Teacher and that the promotion to the post of B.T. Assistant was made on the basis of seniority from graduates in other subjects. Even the 10% reservation as per G.Os.79 dated 18.01.1990 and 132 dated 21.02.1995 were denied to the petitioner on the ground that the said G.Os' were not applicable to the Government teachers. Now after amending the Rules though the benefit is given to the petitioner but the same is made under direct recruitment quota which is subject to a selection process by the TRB. Therefore considering the arduous struggle undergone by the petitioner and also in the peculiar facts and circumstances of the case, instead of directing the respondent s to amend proviso 2 of Rule 2(b)(ii) of Rule 2 of the Tamil Nadu Higher Secondary Educational Service Rules 2019 to the effect that the vacancies earmarked for secondary grade teachers with P.G. Assistant having qualification with Economics and Commerce be filled with transfer of service as has been provided to the Ministerial Non-Teaching Staff, under the proviso 4 of Rule 2(b)(ii) of the Tamil Nadu Higher Secondary



W.P.No.18798 of 2023

Educational Service Rules, We direct the respondents to promote the petitioner as P.G. Assistant (Economics and Commerce) as per 2021 notification with all monetary benefits and service benefits.

16. The observations made by us supra are for the limited purpose of deciding the petitioner's claim. We have not expressed our opinion either way on the validity of the Rule, as in our opinion it is unwarranted due to the limited prayer sought at the time of hearing.

17. Accordingly the writ petition is disposed of with a direction to the 1st respondent to promote the petitioner as P.G. Assistant (Economics and Commerce) as per 2021 notification with all monetary and service benefits within a period of four (4) weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed. There shall be no order as to costs.

(J.N.B,J.) (N.M,J.)
11.01.2024

Index: Yes/No
Speaking Order: Yes/No
Neutral Citation: Yes/No
dsn



W.P.No.18798 of 2020

To

WEB COPY

1.The Secretary to Government,
School Education Department,
Secretariat, Chennai-600 009.

2.The Commissioner of School Education,
College Road,
Chennai-600 006.

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

4.The Chief Educational Officer,
Chennai District,
Gandhi Irwin Road,
Egmore, Chennai- 600 008.



WEB COPY



W.P.No.18798 of 2020

J. NISHA BANU, J.
and
N.MALA, J.

dsn

PREDELIVERY ORDER IN
W.P.No. 18798 of 2020

ORDER DELIVERED ON
11.01.2024