



W.A.No.2312 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.10.2024

Coram

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.A.No.2312 of 2022

S.Poongundran

... Appellant /Petitioner

Vs.

1. The State of Tamil Nadu
Rep. By its Secretary,
Education Department,
Chennai – 9.
2. The Director of School Education,
College Road, Chennai – 6.
3. The Director of Elementary Education,
College Road, Chennai – 6.
4. The Chief Educational Officer,
Cuddalore.
5. The District Educational Officer,
Virudhachalam, Cuddalore District.
6. The District Elementary Educational Officer,
Cuddalore.



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7. The Assistant Elementary Educational Officer,
Keerapalayam, Cuddalore District.

8. The Secretary,
Nataraja High School, Sozhatharam,
Cuddalore Distirct. ... Respondents 1 to 8/Respondents 1to 8

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against
the order dated 5.07.2022 in W.P.No.18351 of 2014.

For Appellant : Mr.S.N.Ravichandran

For Respondents 1 to 7 : Mr.J.C.Durairaj, A.G.P.

For Respondent - 8 : Mr.C.Prabakaran

JUDGMENT

(D.Krishnakumar, J.)

Today this writ appeal is listed under the caption 'For clarification'.
After hearing the submissions made by the learned counsels appearing
for the parties concerned, the following order is passed.

2. The appellant is the writ petitioner, he filed the writ petition
challenging the impugned order passed by the second respondent in
Na.Ka.NO.88721/D2/E1/2013 dated 29.01.2014 and for a direction to the
respondents to approve the appointment of the petitioner in the post of
Headmaster or B.T. Assistant in the 8th respondent High School w.e.f.



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01.03.1998 with all consequential benefits. The Writ Petition was dismissed by the Writ Court, against which the present intra court appeal has been filed.

3. The case of the petitioner in brief, is that the appellant/writ petitioner was appointed as a Secondary Grade Teacher on 22.7.1991, in the 8th respondent School. The petitioner studied B.A. in the year 1983 and B.Ed. in the year 1985. His appointment was not approved and he filed W.P.No.13667 of 1991 for a direction for approval of his appointment and the said writ petition was allowed. Thereafter, his appointment was approved from the date of his initial appointment. The 8th respondent school was upgraded as High School in the year 1996-97 by the proceedings of the Joint Director of School Education dated 12.01.1998. Consequently, the High School sections were bifurcated and are functioning separately. The then Middle School Headmaster was only a Secondary Grade qualified and therefore, he was transferred to primary school and there is no Headmaster for the High School. In this context, the appellant claims that he is fully qualified for appointment to the post of B.T. Assistant and his case is to be considered for upgradation of post in the said school, so as to accommodate him.



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4. The Writ Court, after contest, has held that upgradation of post can never be claimed as a matter of right by an employee. For upgradation of post, the decision has to be taken by the competent authorities of the department, as per Rules. The teachers are eligible to consider their names for appointment or promotion only if the posts are sanctioned, but not otherwise. A teacher who is working as a Secondary Grade Teacher has no right to claim that a particular post is to be upgraded as B.T. Assistant / Middle School Headmaster, in view of the fact that he is fully qualified for the post. Possession of an educational qualification would not confer any right to claim such upgradation. Only if the administrative decision is taken by the competent authorities and if the posts are upgraded then only, the case of the writ petitioner can be considered and therefore, the Writ Court dismissed the writ petition, against which the instant writ appeal has been filed.

5. The learned counsel appearing for the appellant contended that despite the fact that recommendation made by the 5th respondent, the second respondent rejected the claim of the respondent. Admittedly, the appellant is qualified to the post of Secondary Grade teacher only, the appellant cannot claim upgradation of such post as B.T. Assistant /



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Middle School Headmaster as a matter of right. It is for the competent authorities to decide the upgradation of any such post and an employee cannot claim upgradation of such post. Further, the 5th respondent School is governed by the rules and regulations of the Tamilnadu Private Schools Regulations Act, 1973 and rules 1974 and there is no patent error or illegality in the order passed by the Writ Court in W.P.No.18351 of 2014 dated 5.7.2022 and prays for dismissal of this writ appeal.

6. Mr.J.C.Durairaj, learned Additional Government Pleader appearing for the official respondents 1 to 7 has drawn the attention of this Court to the counter affidavit filed by the 5th respondent before the writ court, wherein it is stated that the 8th respondent has to abide by the rules and regulations of Tamilnadu Private Schools Regulations Act, 1973 and rules framed thereunder and the school was upgraded as a High School in the year 1996-97 from that of aided Middle School. The standards 6 to 8 are receiving grant and Standards 9 & 10 of the School did not receive any aid from the Government. The 8th respondent School is partly Government aided. Since the Headmaster was qualified only as Secondary Grade and not having the B.T. Qualification, he was transferred to the Primary School on his own volition. Whenever a



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Middle School is upgraded as a High School, the incumbent holding the post of Middle School Headmaster, may be transferred to another Middle School reverting the junior most Headmaster of middle School as B.T. Teacher in the upgraded High School. If it is not feasible, the Headmaster of Middle School has to be appointed as B.T. Teacher in the upgraded High School. In the instant case, the then Middle School Headmaster was having only a Secondary Grade qualification and not B.T. Qualification. Moreover, the management of the 8th respondent is functioning only one Middle School. Therefore, the post of Middle School Headmaster was downgraded as Primary School Headmaster on his own volition, after the upgradation and bifurcation. Therefore, the appellant is not entitled to claim either Middle School Headmaster or the B.T. Teacher post and therefore, prayed for dismissal of this writ appeal.

7. Heard Mr. S.N.Ravichandran learned counsel appearing for the appellant and Mr. J.C.Duraiaraj, learned Additional Government Pleader appearing for the respondents 1 to 7 and Mr.C.Prabakaran, learned counsel appearing for the respondent no.8 and perused the materials available on record.



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8. Admittedly, the appellant, who served as a Secondary Grade Teacher in the 8th respondent's school, sought an upgrade of his post to either a Middle School Headmaster or a B.T. Teacher. To support his claim, the appellant relied on various Government Orders (G.O.s) and administrative decisions. However, upon careful scrutiny of these G.O.s and the facts of the case, it becomes evident that his claim lacks merit.

8.1. Applicability of G.O.Ms.No.100, School Education Department, dated 27.06.2003:

The appellant primarily relied on G.O.Ms.No.100, School Education Department, which governs the upgradation of posts from Secondary Grade Teacher to B.T. Assistant. According to this G.O., whenever a vacancy arises in a Secondary Grade post, it would be upgraded to the level of B.T. Teacher, provided to satisfy certain conditions. However, as noted in the order passed by the Director of School Education, Chennai, dated 20.01.2014 (vide Na.Ka.88721/D2/S1/2013), no such vacancy arose during the appellant's tenure until his retirement on 31.10.2022. Therefore, while the G.O. outlines a clear process for upgradation, the appellant cannot claim the benefit of this order in the absence of a vacancy. The administrative



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framework established by G.O.Ms.No.100 did not apply to the appellant's situation because there was no vacancy to trigger the post-upgradation process during his service period.

8.2. Applicability of G.O.Ms.No.1297, Education Department, dated 21.07.1979:

The appellant further relied on G.O.Ms.No.1297, which deals with the pay scales of Middle School Headmasters who hold B.Ed qualifications. The relevant portion of this G.O. clarifies that teachers holding the necessary B.Ed qualification are eligible for pay protection at the B.Ed scale. However, this G.O. does not provide for the automatic creation of a Middle School Headmaster post or its upgradation to a High School Headmaster post. The appellant's misunderstanding of this G.O. is evident, as he seems to equate pay protection with the creation or upgradation of posts. Since the appellant did not hold the requisite qualifications and there was no existing vacancy for the post he sought, this G.O. cannot support his claim for upgradation.



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8.3. The appellant has further relied on G.O.Ms.No.525, Education Department, dated 29.12.1997. Since the 8th respondent school has no adequate strength of students as mentioned in the said G.O, the submissions made by the appellant cannot be considered.

8. 4. The Case of Mr. S. Robert Mohanraj relied by the appellant;

The appellant's comparison to the case of one Mr. S. Robert Mohanraj, whose post was upgraded from Middle School Headmaster to B.T. Assistant, is not applicable to the appellant's situation. In the case of Mr. Mohanraj, the upgradation was approved because he possessed the requisite B.T. qualification, and the upgradation took place as per the relevant G.O.s when the school was upgraded. However, C. Sundaramoorthy, who worked as Headmaster in the school did not possess the necessary B.Ed qualification at the time of the upgradation of the school. As a result, there was no basis for upgrading his post to that of a B.T. Assistant, and the appellant cannot claim on par with Mohanraj.



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WEB COPY 9. In view of the above, it is clearly proved that the 8th respondent school did not have any vacancy for the post of Middle School Headmaster or B.T. Teacher posts at the time of the appellant's request. Furthermore, it is the administrative prerogative of the school, not the appellant, to make decisions regarding vacancies and the creation of new posts. As per the records, the post of Middle School Headmaster in the appellant's school was downgraded to that of a Primary School Headmaster due to the incumbent's lack of the required qualifications. This decision was made by the 8th respondent with the consent of the school committee, and pay protection was provided to the existing Headmaster. Thus, the appellant's role remained unchanged, and he was not adversely affected by this administrative decision. Further, it is brought to the notice of this Court that the appellant had retired from service on attaining superannuation on 31.05.2023.

10. In light of the above, we conclude that the appellant's reliance on G.O.Ms.No.100, G.O.Ms.No.1297, and G.O.Ms.No.525 is misplaced, as none of these Government Orders support his claim for upgradation of



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post of Secondary Grade Teacher to Middle School Headmaster or a B.T.

Teacher or the creation of additional posts. Additionally, there was no vacancy in the school at the relevant time to justify his claim, and his comparison with other cases is factually unsupported. The learned Single Judge has correctly dismissed the writ petition, and there is no reason to interfere with that decision. The writ appeal is dismissed. No costs.

[D.K.K.,J.]

[K.B., J.]

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Index : Yes/No

Internet: Yes/No

Speaking order/Non Speaking order
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