



W.A.No.158 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2024

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE K. KUMARESH BABU

W.A.No.158 of 2021and

CMP No.745 of 2021

1. The District Forest Officer,
Thirupattur Division, Tirupattur,
Vellore District.

2. The Forest Ranger, Tirupattur,
Vellore District.

... Appellants

Vs.

1. D.Thiruthakadevar
2. R.Balasubramanian

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent to allow the writ appeal and set aside the order passed by this Court dated 06.03.2019 in W.P.No.13436/2009.

For Appellants

: Mr.R.Neelakandan, Addl.Adv.General

Asst. by Dr.T.Seenivasan,

Spl..Govt.Pleader for forest

For Respondents

: Mr.M.Aravindan for R2

No appearance for R1



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JUDGMENT

WEB COPY (Order of the Court was delivered by D.KRISHNAKUMAR, J.)

This Intra-Court Appeal has been filed by the District Forrest Officer, Thirupattur Division, as against the order passed by this Court in W.P.No.13436/2009, dated 06.03.2019, in and by which, " *the appellants were directed to give promotion to the first respondent herein in the post of PG Assistant-Tamil on and from the date, the second respondent herein was given promotion to the said post.*"

2. The brief facts leading to the filing of the writ appeal is as follows.

The first respondent herein was appointed as Secondary Grade Teacher on 02.02.1988 in the Forest Elementary School, Pudur Nadu, Thirupathur Taluk, Vellore District and subsequently, he was promoted as Middle School Headmaster on 22.10.2007. One post of PG Assistant-Tamil became vacant in the Forest Hr.Sec.School, Pudur Nadu and since the petitioner was having qualification of M.A (Tamil) and M.Ed., he gave representation on 16.04.2009 to the District Forest Officer, seeking promotion to the post of PG Assistant-Tamil in the above vacancy.



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However, the District Officer had promoted the second respondent namely R.Balasubramanian, to the above said post, who is junior to the first respondent and also whose name was shown in the seniority list at Sl.No.50, whereas the first respondent's name was shown at Sl.No.23. Therefore, the first respondent has filed the above writ petition to cancel the promotion given to the second respondent herein as PG Assistant-Tamil, with a further direction to the Department to promote him as PG Assistant- Tamil from the date on which R.Balasubramanian (second respondent herein) was promoted as PG Assistant-Tamil with all consequential benefits. The above writ petition was allowed by this court and challenging the same, the present writ appeal has been filed.

3. The learned Additional Advocate General appearing for the appellant submitted that the first respondent is having qualification of M.A. (Tamil) and M.Ed. However, he had studied upto SSLC (10th standard) alone in regular stream and rest of the qualification acquired by him was only through the Distance Education and hence, he does not have regular qualification i.e. 10 + 2 + 3 for promotion, as per G.O.Ms.No.107 P & AR



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Department dated 18.08.2009. He further submitted that, the first respondent was promoted to the post of Middle School Head Master, and this post is not a feeder category for promotion to the post of P.G. Assistant. Further, all the categories of the officers in the Forest School are generated only by the Forest Subordinate Service Rules and not by the General Service Rules. He also brought to the notice of this court that the method of appointment to the post of P.G. Assistant, as generated by the Forest Subordinate Service Rules is by way of i) Direct recruitment (or), ii) Promotion from any Category in Class IV, iii) By transfer from any other Class or iv) Recruitment by Transfer from any other Service in the Forest Department, if no qualified and suitable candidate is available in item No.i) and ii) above.

3.1. He further submitted that in Class IV of the Forest Subordinate Service Rules, there are eight categories, viz., i) Post Graduate Assistant, ii) School Assistant, iii) Tamil Pandit, iv) Secondary Grade Teacher, v) Drawing master, vi) Physical Training Instructor, vii) Higher Elementary Grade Teacher, viii) Laboratory Assistant and only from the above



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categories, the appointment/promotion can be granted. Accordingly there were only three candidates belonging to the Secondary Grade Teacher, with the requisite qualification for the post of P.G. Assistant (Tamil) and the second respondent Balasubramanian was the senior most amongst the three persons and hence, he was promoted, as per Rules, on 11.06.2009. He also submitted that the learned Judge, without considering the facts and circumstances and also above rules, as prescribed in the Tamil Nadu Forest Subordinate Service Rules, has allowed the writ petition and hence, the order of Writ Court is liable to be set aside.

4. Despite service of notice, no representation on behalf of the first respondent.

5. The learned counsel for the second respondent supported the argument made by the learned Additional Advocate General and hence, seeks to allow the writ appeal.



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6. Heard the learned counsel for the appellant and the learned counsel appearing for the second respondent and also we have gone through the materials on record.

7. The primordial contention of the appellant is that the Forest Schools are governed by the Tamil Nadu Forest Subordinate Service Rules, not by the Tamil Nadu Subordinate Service Rules. Accordingly, as per the Forest Subordinate Service Rules, the second respondent was promoted to the post of P.G.Assistant. At this juncture, it is relevant to extract the ***Categories*** of the Officers of the Forest Department in ***Class-IV***, as prescribed in ***Rule 1 of the Forest Subordinate Service Rules***, which runs as follows:

1. Class-IV Category

1. Post Graduate Assistant
2. School Assistant
3. Tamil Pandit
4. Secondary Grade Teacher
5. Drawing Master
6. Physical Training Instructor
7. Higher Elementary Grade Teacher
8. Laboratory Assistant.

8. Further, the method for appointment to the post of "Post Graduate Assistant" ***in Class-IV, as prescribed in Rule 2 of the Forest Subordinate***



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Service, is reproduced as follows:

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IV. Post Graduate Assistant:

1. Direct Recruitment (or)
2. Promotion from any Category in Class IV or
3. By Transfer from any other class (or)
4. Recruitment by transfer from any other service in the Forest Department, if no qualified and suitable candidate is available in item 1, 2 above.

From the above Rules, it is clear that for appointment to the post of P.G. Assistant, the candidates, who are under the categories as mentioned in Class-IV can be promoted. No doubt, at the relevant point of time, the first respondent was not serving in any one of the categories, as mentioned in Rule 1, Class IV of the Forest Subordinate Service, whereas, he was a Middle School Headmaster. It is also admitted fact that at the time of giving promotion to the second respondent, he was a Secondary Grade Teacher, which comes under the category, as mentioned in Class-IV, which is also a feeder category for promotion to the post of Post Graduate Assistant. The contentions of the appellant that the first respondent does not possess educational qualification under regular stream i.e. 10 + 2 + 3 and he had studied upto SSLC alone in regular stream and rest of the qualification acquired by him was only through distance education, are also not denied by the first respondent. Admittedly, **as per G.O.(Ms).No107**, Personnel and Administrative Reforms (M) Department dated 18.08.2009, the Diploma/



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Graduation/Post Graduation obtained from the open universities, *after passing 10th standard and the Higher Secondary Examination (12th standard) alone are approved for the appointment in public services and for the purpose of promotions.* Therefore, though the first respondent possessed qualification of M.A (Tamil) and M.Ed., he had obtained the above degrees only after passing the Xth standard and not after passing the XII Standard. Therefore the name of the first respondent find place in the seniority list at Sl.No.23 and receiving the scale of Pay at Rs.5900/- by him alone are not the criteria for considering promotion to the P.G.Assistant, whereas, all the aspects coupled with the Rules of Tamil Nadu Forest Subordinate Service shall be taken into consideration for promotion to the above said post.

9. The appellant Department, after considering the educational qualification as per G.O.Ms.No.107 dated 18.08.2009, and also taking into account the senior candidate, who was in the feeder category of Secondary Grade Teacher, as prescribed in Class-IV of Tamil Nadu Forest Subordinate Service, has granted promotion to the first respondent and we find no



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illegality or irregularity in giving promotion to the first respondent as P.G.Assistant. In view of the above discussion, we inclined to interfere with the order passed by the learned Single Judge.

10. Accordingly, the order passed by the learned Single Judge in W.P.No.13436/2009, dated 12.09.2019 is set aside and the writ appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.J.)

(K.B.J.)

23.04.2024

Internet: Yes/No
Index : Yes/No
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