



W.P.No.6945 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2024

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

W.P.No.6945 of 2017

C.Raman

... Petitioner

Vs.

1. The State of Tamilnadu
rep. By its Principal secretary to Government,
School Education Department,
Secretariat, Fort St. George,
Chennai – 600 009
2. The Director of School Education,
DPI Compound,
College Road, Chennai – 600 006
3. The Joint Director of School Education,
(Higher Secondary) College Road,
Chennai – 600 006
4. The Chief Educational Officer,
Saidapet, Chennai – 600 008
5. The District Educational Officer,
(South), Egmore, Chennai – 600 008
6. The Correspondent,
Chindaripet Higher Secondary School,
Chennai – 600 004

...Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India for an

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issuance of a Writ of Mandamus directing the respondents 1 to 6 to consider the final representation dated 27.01.2017 and upgrade the petitioner as Physical Director Grade I in the 6th respondent school from the post of Physical Director Grade II from 01.07.1999, as per G.O.Ms.No.525 School Education (D1) Department dated 29.12.1997 with the scale of pay and attendant benefits attached to the post thereto and grant arrears of pay and all other benefits.

For Petitioner : Mr. C.Johnson

For Respondents : Mr.L.S.M.Hasan Fizal for R1 to R5
Additional Government Pleader
No representation for R6

ORDER

This Writ Petition has been filed for an issuance of a Writ of Mandamus directing the respondents 1 to 6 to consider the final representation dated 27.01.2017 and upgrade the petitioner as Physical Director Grade I in the 6th respondent school from the post of Physical Director Grade II from 01.07.1999, as per G.O.Ms.No.525 School Education (D1) Department dated 29.12.1997 with the scale of pay and attendant benefits attached to the post thereto and grant arrears of pay and all other benefits.

2. The case of the petitioner is that he has obtained B.Sc. (Maths



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Degree) in the year 1982 and B.P.Ed., in the year 1983 and completed B.E.d in the year 1991 and M.P.Ed., degree in June 1999. Subsequently, the petitioner had obtained M.Phil [Phy.Education] degree in the year 2008 and M.Sc., (Psy.,) in the year 2015 and Ph.D. [Physical Education] in the year 2015. According to the petitioner, he was temporarily appointed as Physical Director Grade II, by the 6th respondent on 06.06.1996 on probation for academic year 1996-1997 and he assumed charge on 06.06.1996 and continued as such in the 6th respondent school.

3. Subsequently, on 06.06.2006, the petitioner had completed 10 years of service as Physical Education Director Grade II in the 6th respondent school and he has completed M.P.E.D degree in Physical Education through in Pondicherry University in the year 1999. Further, the 6th respondent – school is an aided non minority (recognized) school and the petitioner is eligible for the post of Physical Director Grade-I, (P.G.Cadre) as per the instructions contained in G.O.Ms.No.720 Education dated 28.04.1981 and G.O.Ms.No.525 School Education Department dated 29.12.1987 and he has been submitting requisition to the respondents from 23.12.1999 onwards to promote and appoint the petitioner as Grade-I Physical Director in the said school.



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4. Thereafter, the 6th respondent from the date of petitioner's eligibility have been writing to the 2nd respondent and other respondents informing that he is eligible to be promoted as Physical Director Grade-I. The petitioner submits that on 23.12.1999, he sent a letter to the 3rd respondent requesting to enter his name in Grade-II Physical Director List maintained in the office of the 3rd respondent, since the petitioner had M.P.Ed., degree. The petitioner had also stated that in the year 2010, he sent a representation to upgrade him as a Physical Director Grade-I, but the respondents have not considered the representation and the 5th respondent on 30.09.2010, requested the 6th respondent-school to send particulars of service of the petitioner for appointing the petitioner as Physical Director Grade-I. Moreover, in a similar circumstances, the 1st respondent issued G.O.No.(4D) No.25 Education department dated 30.11.2011 appointing one M.S.Subbiah as Physical Director Grade I in Hindu Higher secondary school pursuant to the order dated 23.12.2010 in W.P.12848 of 2010.

5. According to the petitioner, one M.S.Subbiah has been fixed in the proceeding dated 11.06.2012 of Chennai East District Education Officer as applicable to Grade I Physical Director with effect from 29.12.1987, being the date of G.O.Ms.No.525. The other persons, viz., one N.Moorthy and one N.Karthikeyan were appointed as Physical Directors Grade I in their respective schools, as per the order dated 29.06.2011 made in



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W.P.Nos.9342 and 9920 of 2011 and he would submit that in similar circumstances, the petitioner also shall be given the same indulgence and has to be promoted to the said post.

6. Per contra, the learned Additional Government Pleader appearing for the respondents 1 to 5 would submit that there is no sanctioned post of Physical Director Grade I in 6th respondent-School and there is no provision for granting promotion to the higher qualification possessed by an individual teacher. The post cannot be elevated as higher post to suit his higher qualification with a view to get higher scale of pay by the individual. The G.O.Ms.No.720 Education Department dated 28.04.1981 contains Special Rules for Tamilnadu Higher Secondary Education Service and it does not speak about creation of new posts including Physical Director Post to the higher secondary schools. In G.O.Ms.No.525 School Education Department dated 29.12.1987 has stated that for sub-title of higher secondary schools (XI and XII standard), higher power official norms committee have recommended that for schools with a strength of 400 one post of Physical Director will be given by a up-gradation of existing post of Physical Education Teacher and the recommendation has been accepted by the Government and orders have been issued accordingly in the same G.O., it is pertinent to note that there are two grades in Physical Director Category, namely, Physical Director Grade I in the scale of pay applicable to



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Post Graduate Teacher and Physical Director Grade-II in the scale pay applicable to B.T.Teacher. In G.O.Ms.No.525 Education dated 29.12.1997, it has not been specifically stated that the grade of the Physical Director Post will be created by upgrading the existing Physical Education Teacher post and upgradation of Physical Education Post could be ordered only to the next higher post of Physical Director Grade II. There is no order for upgrading existing Physical Education Teacher post to the second level of Physical Director Grade I by skipping Physical Director Grade II Status.

7. Further it is also stated that only if the school strength is more than 400, the same can be considered and according to the respondents, in the absence of sanctioned Physical Director Grade II, the petitioner's claim to promote him cannot be considered. Though the petitioner has made representation to the 3rd respondent to include his name in the State Level Seniority List of qualified person, there is no procedure for maintaining list of Physical Directors Grade II working in aided private schools by the 3rd respondent and only when the proposal is submitted by the management of a private school to the Government to pass order of upgradation of existing vacant post of Physical Education Teacher provided such private school maintains pupils strength of about 400, in total in 11th and 12th standard. There is no provision for upgrading a Physical Director Grade II of aided private school of Physical Director Grade- I and the petitioner had not cited



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any Rule or Order of the Government providing provision to upgrade a Physical Director Grade II post as Physical Director Grade I as and when the individual, holds the post qualifies M.P.Ed Degree, the Government could not act for the whims and fancies of the petitioner.

8. The learned Additional Government Pleader for the respondents 1 to 5 also submitted that the Government alone has power to pass any orders for upgradation and there is no order from the Government authorising any education authority to upgrade the existing post of Physical Education Teacher post as Physical Director Post. This Court by exercising extraordinary jurisdiction has passed order dated 23.12.2010 in W.P.No.12848 of 2010 in favour of the petitioner, and it is obvious that there is no whisper to upgrade an existing Physical Director Grade-II Post as Physical Director Grade-I Post and a person can claim only when the Government had provided such provision. Therefore, the said case cannot be taken as a precedent. Further, in those cases, the Physical Director Post will be given by upgradation of existing Physical Education Teacher in respect of schools with a strength of over 400.

9. That apart, Part IV under Paragraph 5 of the G.O.Ms.No.525 School Education dated 29.12.1997 refers XI and XII standard and in Clause (f) under Part IV of Para 5 of the said G.O., supra refers only when



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the total pupils strength in 11th and 12th standard exceeds 400 existing Post of Physical Education Teacher shall be upgraded as Physical Director.

They would further submit that G.O.Ms.No.525 shall not be mis-intercepted and the petitioner is not eligible as per G.O.Ms.No.525 and the same has to be dismissed.

10. The learned Additional Government Pleader appearing for the respondents 1 to 5 further contends that the petitioner, viz., C.Raman, was awarded selection grade in the post on 06.06.2006, he had obtained higher education and he had retired on superannuation in the afternoon on 30.09.2018 and continued reemployment till 31.05.2019. The petitioner filed this present writ petition seeking to upgrade the petitioner's post from Physical Director Gr.II to Physical Director Gr.I from 01.07.1979 as per G.O.Ms.No.525 referred supra, to pay and attendant benefits attached to the post thereto and to grant arrears of pay and all other benefits and according to the respondents, the benefits were already been paid and settled to the petitioner and further, there is no provision for the sake of higher qualification possessed by an individual teacher and the said individual cannot be elevated to a higher post to suit his higher qualification.

Further, no rules speaks about creation of new post including physical director post for higher secondary school and only when the



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strength is 400 and above, the same can be considered.

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11. Heard the learned counsels on either side and perused the materials available on record.

12. It is seen that the petitioner has filed the present writ petition seeking for prayer mentioned supra. The petitioner was appointed as a Physical Director Grade II on 06.06.1996 and the 6th respondent school is a aided private school and he was appointed on an temporary basis. The post was not a sanctioned post on the 6th respondent's school and the petitioner's argument that he had acquired qualification and he has to be posted in a higher post to suit his educational qualification, cannot be accepted by this Court.

13. It is clear that as per G.O.Ms.No.525 Education dated 29.12.1997, “ for schools with strength of over 400, one post of Physical Director will be given upgradation of existing Post of Physical Education Teacher”, hence it is to be noted that the upgradation shall be ordered only by the Government and in this case, there is no order for the upgradation of Physical Director Grade II post. Further the said G.O., reveals that 'Higher Secondary school, Schools mean 11th and 12th Standard. Therefore, schools having a total strength in 11th and 12th standard above 400 alone



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eligible for upgradation' However, the same has not been satisfied by the petitioner and the Pupils strength in 11th and 12th standard in the 6th respondent's school is below 400, therefore, the claim of the petitioner to promote him as Physical Director Grade I is an unrealistic one.

14. That apart, it is also seen from the records that the respondent-management has not forwarded any proposal as claimed by the petitioner and the petitioner merely making a representation cannot yield him any result. Unless and until the 6th respondent, in which the petitioner had completed his service, forwards the representation and if it is permissible in law, the same will be considered otherwise it would not have been considered. Mere possession of higher qualification, does not entitle the petitioner seeking upgradation of Physical Director Grade I. When there is no provision either under statute or under government orders, only acquiring higher qualification is not a criteria for seeking upgradation of an individual employee, unless the government order or statute provides for him.

Therefore, for all the above reasons, the petitioner's case cannot be considered, at this juncture and there is no merit in the writ petition and the same is dismissed. No costs.

14.02.2024



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Index:Yes/No
Internet:Yes/No
Speaking / Nonspeaking order
ssd

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V.BHAVANI SUBBAROYAN J.

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