



W.P.No.32802 of 20...

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.02.2024

PRONOUNCED ON : 23.04.2024

CORAM

THE HON'BLE MR. JUSTICE **BATTU DEVANAND**

W.P.No.32802 of 2017
and WMP.Nos.37214, 36142 & 36141 of 2017 & 262 of 2018

P.Kamalasekar

... Petitioner

Vs.

1. The Secretariat to Government,
School Education Department,
Secretariat, Chennai.
2. The Director of School Education,
DPI Campus, College Road,
Chennai 600 006.
3. The Joint Director (Personnel),
DPI Campus, College Road,
Chennai 600 006.

... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the second respondent herein in Na.Ka.No.92931/C1-E1/15, dated



W.P.No.32802 of 20...

09.12.2017 so far as the inclusion of the promoted PG Assistants in the seniority list for appointment to the post of High School Headmaster are concerned and consequently direct the respondents to prepare the seniority list for promotion to the post of High School Headmaster by strictly following the service rules.

For Petitioners : Mrs.Dakshayani Reddy

For Respondents : Mr.V.Manoharan

ORDER

This Writ Petition has been filed against the proceedings of the second respondent in Na.Ka.No.92931/C1-E1/15, dated 09.12.2017 so far as including the names of the promoted PG Assistants in the panel for promotion to the post of High School Headmaster.

2. The case of the petitioner is that he has been working as BT Assistant and eligible for promotion to the post of High School Headmaster. But the respondents, without following the relevant Service Rules, included the B.T.Assistants, who are promoted to the post of PG Assistants, in the seniority list to be appointed to the post of High School Headmaster in the panel of promotion.



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3. The learned Senior Counsel for the petitioner contends that though PG Assistant is not a feeder category to the post of High School Headmaster, the promoted PG Assistants are included in the panel for promotion to the post of High School Headmaster. She further contends that because of such illegality being followed by the respondents, the petitioner has lost the opportunity of being promoted to the post of High School Headmaster.

4. The learned Senior Counsel for the petitioner has raised several grounds relying on the relevant Service Rules to substantiate the stands of the petitioner.

5. The learned Senior Counsel for the petitioner placed reliance on the common judgment dated 23rd March 2023 in W.A.(MD).No.1468 of 2017 and batch submits that the issue involved in the present Writ Petition has been already dealt with by a Division Bench of this Court and in the said judgment, it was held that the Post Graduate Teachers cannot be recruited by transfer to the post of High School Headmaster based on their



service as B.T.Assistants as they have been recruited by transfer be a completely different service.

6. On behalf of the respondents, a counter affidavit has been filed in support of the proceedings dated 09.12.2017 issued by the second respondent.

7. It is contended by the learned Government Pleader appearing for the respondents that the impugned proceedings have been issued strictly in respect of the proceedings contained in the General and Special Rules of Tamil Nadu State and Subordinate Service Rules. Hence, the petitioner is not at all entitled for any orders against the impugned proceedings and the petitioner is not entitled for any relief and sought to dismiss the Writ Petition.

8. Having considered the contentions of the respective counsels and on a perusal of materials available on record and particularly, the common judgment rendered by a Division Bench of this Court, it appears that the same issue has been dealt with by the Division Bench of this Court on



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consideration of the relevant Service Rules and the judgments of the Apex Court and this Court and held that the Graduate Teachers (B.T. Teachers) who have been recruited by transfer as Post Graduate Teachers cannot seek recruitment by transfer as High School Headmasters based on their service as B.T.Assistants in the Tamil Nadu Subordinate Educational Service.

9. It is appropriate to extract the relevant paragraphs of the said judgment herein under:

“41. A close reading of the different Rules that have been made by the Government in this regard would show that three of them deal with different sets of posts. Though they are under the same Department, they are governed by different sets of Recruitment Rules. Care has been taken to provide for recruitment by transfer wherever necessary. If we are to take the post of Post Graduate teacher or Post Graduate Assistants the mode of recruitment is either by direct recruitment or by recruitment by transfer from Graduate teacher who were working in High Schools. As far as the High School Head Masters are concerned the Rules provide for recruitment by transfer from BT Assistants who are working in High Schools. Though the Tamil Nadu Educational Service Rules which consists of the administrative posts only was amended



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providing a proportional representation of Head Masters and Head Mistresses of Higher Secondary Schools to the other administrative posts viz., the District Educational officer, Chief Educational Officer, Deputy Director of School Education, Director of School Education etc., the feeder category to the post of Head Masters by High Schools was not changed or amended to include Post Graduate teachers. Therefore the directly recruited Post Graduate teachers cannot become a Head Master or Head Mistresses of a High School. Whereas if the impugned letter which provides for promotion of Post Graduate teachers as High School Head Master taking into account the seniority as Graduate teachers is upheld, that by itself would create an anomaly, where two persons appointed to the same post and same service would be treated differently. Therefore, we do not think that these three services could be treated as ones coming under the same umbrella.

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45. The next question to be decided is the applicability of Rule 9. As far as the applicability of Rule 9 is concerned Mr.Ajmal Khan, learned Senior Counsel appearing for the Graduate teachers would vehemently contend that Rule 9 cannot be applied in the case on hand since it would apply only in a case where the member of service is absent from duty in such service and not otherwise. Rule 9 of the State and Subordinate



Service Rules read as follows:-

9.Members absent from duty - The absence of a member of a service from duty in such service, whether on leave, or on foreign service or on deputation or for any other reason and whether his lien in a post borne on the cadre of such service is suspended or not, shall not, if he is otherwise fit, render him ineligible in his turn.

(a) for re-appointment to a substantive or officiating vacancy in the class, category, grade or post in which he may be a probationer or an approved probationers;

(b) for promotion from a lower to higher category in such service;

(c) for appointment to any substantive or officiating vacancy in another service for which he may be an approved candidate, as the case may be, in the same manner as if he had not been absent. He shall be entitled to all the privileges in respect of appointment, seniority, promotion and appointment as full member which he would have enjoyed but for his absence subject to his completing satisfactorily the period of probation on his return.

(d) for appointment to any substantive or officiating vacancy in another service, if according to the rules governing appointment to such other service-

(i) he is entitled to such appointment; and



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W.P.No.32802 of 20...

*(ii) the normal method of recruitment to such other service is by transfer from the service of which he is a member of any class or category thereof. ** Provided that a member of a service who is appointed to another service outside his regular line and is continuing in that service beyond five years shall not be considered for promotion or for appointment by recruitment by transfer to a higher post in his regular line eventhough he is otherwise qualified under the rules for such promotion or appointment, unless he returns to the former service and puts in a fresh service for a period of not less than one year in the former service?. ** Substituted in G.O.Ms.NO.103, P & AR(S) Dept. , dt .21-7-2006 w.e.f.21-7- 2006*

.....

49. We are therefore unable to conclude that Rule 9 of the Tamil Nadu State and Subordinate Rules could be applied to the case on hand to conclude that the PG Assistants were absent from duty in the Tamil Nadu Educational Subordinate Service and therefore they are not rendered ineligible for appointment to any substantive or officiating vacancy in another service if according to Rule governing appointment to such other service he is entitled to such appointment.



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50. More over the proviso to Rule 9 would apply and a Graduate teacher who was promoted as Post Graduate teacher and appointed as such under the Higher Secondary service, if he wants to return to parent service and claim a post of High School Head Master on the basis of his/her service as Graduate teacher he/she should serve as Graduate teacher for one year. We need not elaborate on this since we have concluded that Rule 9 will not be itself applicable to the case on hand.

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60. No doubt an argument can be raised on the ground that people who had obtained higher qualification are being denied the benefit, but such an argument is only illusory, since the pay scale for High School Head Master and Post Graduate teachers is one and the same. In view of the above conclusions, we find that the Post Graduate teachers cannot be recruited by transfer to the post of High School Head Masters based on their service as BT assistants as they have been recruited by transfer to a completely different service.

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63. In fine, we conclude that the Graduate teachers who have been recruited by transfer as Post Graduate Assistants cannot seek recruitment by transfer as High School Head Masters based on their service as BT Assistants in the Tamil Nadu Subordinate Educational Service. ”



W.P.No.32802 of 20...

WEB COPY

10. On a perusal of the judgment of the Division Bench stated supra, this Court is of the considered view that the said judgment is squarely applicable to the issue raised in the present Writ Petition and accordingly following the said judgment, this Writ Petition is allowed holding that the B.T.Teachers, who have been promoted as Post Graduate Assistants are not entitled for appointment to the post of High School Headmaster on Promotion.

11. i) Accordingly, the order impugned in this Writ Petition is set aside and the respondents are directed to prepare a seniority list for promotion to the post of High School Headmaster by strictly following the Service Rules and the judgment in W.A.(MD).No.1468 of 2017 etc., batch.

ii) No costs.

iii) Consequently, connected miscellaneous petitions are closed.

23.04.2024

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

pvs



W.P.No.32802 of 20..

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W.P.No.32802 of 20...

BATTU DEVANAND.J.,
pvs

Pre-delivery order in

W.P.No.32802 of 2017

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