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W.P.No.25326 of 20...

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.03.2024

PRONOUNCED ON : 17.04.2024

CORAM

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

W.P.No.25326 of 2017

P.Vadivelan

... Petitioner

Vs.

1. State Commissioner for Differently abled persons
Commissionerate for Welfare of Differently abled,
Jawaharlal Nehru Inner Ring Road,
K.K. Nagar, Chennai -78.
2. The Head Master,
Government High School for Blinds,
Thanjavur District,
Thanjavur.
3. K.Mahalakshmi

... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus by calling for the records on the file of the 1st respondent culminating in the impugned order bearing No.Se.Mu.N.K. Order No.6676/C.P./2015, dated 17.03.2017 and quash the



same and consequently direct the respondents to consider the promotion of the petitioner to the post of BT Assistant from the panel year 2015-16.

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For Petitioners : Mrs.Thenmozhi Shivaperumal

For Respondents : Mr.L.S.M.Hasan Fizal, AGP, for RR1 & 2

ORDER

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus to quash the impugned order in Se.Mu.N.K. Order No.6676/C.P./2015, dated 17.03.2017 and consequently direct the respondents to consider the promotion of the petitioner to the post of BT Assistant from the panel year 2015-16.

2. The case of the petitioner is that he is a visually challenged person with 85% visual disability. The petitioner completed Bachelors Degree in Tamil, B.Ed. Course in Teachers Training and also completed Senior Diploma Course in teaching for the blind. The petitioner was appointed as Secondary Grade Teacher on 18.11.2008. The petitioner's next avenue of promotion is to the post of B.T.Assistant for Tamil subject. During 2015-16, there were several vacancies available to the post of B.T.Assistant in the



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disable category over the entire state of Tamil Nadu. As per the policy decision of the State Government, 50% of the vacancies shall be filled up by direct recruitment and the balance 50% by way of promotion from the feeder category of Secondary Grade Teacher.

3. The first respondent prepared a panel of qualified secondary grade teachers eligible for promotion to the post of B.T.Assistant on the crucial date. As per the panel, there was a vacancy for the promotional post of B.T. Assistant in Tamil. In the said panel, five eligible Teacher's including the name of the petitioner were found. Out of the 5 teachers, 2 teachers, viz., S.Suresh Kumar and K.R.P.Saravana Manikandan were undergoing punishments for the charges under Sec.17B and hence, they became ineligible and the other Teacher V.Chitra was not qualified, as she did not complete her Senior Diploma for Teaching the Blind. Therefore, one S.Marimuthu and the petitioner were available for consideration under promotional avenue. Due to the seniority of S.Marimuthu, he was promoted as B.T.Assistant and posted in the Government Boys High School, Poonamallee.



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4. When the vacancy arose during the panel period 2015-16, the petitioner was the only eligible qualified candidate available for promotion. However, he was not promoted and kept the post vacant and hence, he gave a representation. Subsequently, the petitioner filed a Writ Petition in WP.No.24325 of 2016 seeking direction to the respondents to promote him to the post of BT Assistant (Tamil) in accordance with the eligibility panel prepared for the year 2015-16 by considering his representation dated 03.03.2016. This Court, vide its order, dated 23.01.2017 directed the first respondent to dispose of his representation within a period of 6 weeks. The first respondent vide order dated 09.03.2017 rejected his representation without giving any acceptable reason. However, based on the concession of 5 marks given vide G.O.Ms.No.25 School Education (G.E.D.) Department, dated 06.02.2014, which was upheld by Supreme Court, one H.David Rajasingh was appointed to the said vacancy on 23.12.2016.

5. It is further stated that the petitioner was the only eligible teacher available in the panel prepared for the last year, i.e., 2016-17. However, he was not promoted, instead the third respondent was promoted and posted in the vacancy that arose during the said panel period. Had the respondents



acted promptly, the petitioner should have been promoted and posted in the place of third respondent as he was the only eligible teacher in the said panel. When the eligible candidate viz., the petitioner was there in the said panel and the post was kept vacant, there is no justification to carry forward the vacancy and fill it up by promoting the third respondent herein. Hence, the present Writ Petition.

6. The first respondent filed a detailed counter affidavit, wherein the service particulars of the petitioner and the third respondent were provided, which is extracted below:

<i>S.No.</i>	<i>Particulars</i>	<i>Petitioner</i>	<i>3rd Respondent</i>
1	Date of joining	18.11.2008	02.03.1994
2	Joined as	Secondary Grade Teacher	Deputy Warden (Interchangeable post with Secondary Grade Teacher post)
3	D.T.Ed/D.E.E.	10/2006	04/1989
4	B.A.(Tamil)/B.Lit	05/2012	05/2011
5	B.Ed.	05/2014	2013
6	M.A.(Tamil)	05/2017	05/2017
7	Junior Diploma in Teaching the Blind	06/2009	06/1997
8	Senior Diploma in Teaching the Blind	12/2014	01/2016
9	B.A.(Commerce)	05/2009	Nil
10	M.A. (Sociology)	Nil	1999



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7. It is stated that in the panel year 2015-16, there was one estimated vacancy for the post of Graduate Teacher (Tamil) and an approved list in the order of seniority was finalised with the crucial date on 01.10.2015. The petitioner was listed in Sl.No.4. Out of the total 5 secondary grade teachers listed in the approved list, teachers listed in Sl.Nos.2, 3 were not eligible for consideration because of the pending charges against them and Sl.No.5 was not considered because of non-availability of SDTB (Senior Diploma in Teaching for the Blind) qualification. Hence, the teachers mentioned in Sl.No.1 and 4 were found to be eligible. Since the estimated vacancy was only one, the secondary grade teacher listed in Sl.No.1 was promoted to the vacant post.

8. It is further stated that for preparing panels to fill up single vacancy like the present one, the then prevailing Part II Rule 4 of State and Subordinate Service Rules (hereinafter called as Rule 4) reads that the claims of the first two qualified candidates in the seniority list should be considered. Based on this rule, the qualification of the first qualified candidate listed in Sl.No.1 was considered. Since the first qualified



candidate had all the qualifications, he was promoted. The same is not under challenge in this writ petition.

9. It is further submitted that as per the then prevailing rule 4, the validity period of the panel is one year from the date of approval by the competent authority and the panel so approved shall lapse after the expiry of one year. It is also submitted that the next vacancy for the post of Graduate Teacher (Tamil) was filled only during the panel year of 2016-17. The respondent released the approved list for the panel year 2016-17 to fill up the one post of Graduate Teacher (Tamil) and the date of the approved list of the panel was 25.01.2017.

10. There are 7 secondary grade teachers found their place in 2016-17 approved list. The third respondent was listed at Sl.No.2 and the petitioner herein was listed at Sl.No.5. Since the secondary grade teacher at Sl.No.1 was promoted to the post of Primary School Head Master, Sl.No.2, the third respondent herein, has been promoted as B.T.Assistant and Sl.Nos.3 to 6 were not selected because of no vacancy. Therefore, it is clear that as per Rule 4, the second qualified candidate in the approved list i.e., the third respondent, was promoted to the vacant post of Graduate Teacher (Tamil).



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11. It is further stated that the crucial date for 2016-17 panel was 01.10.2016. Since the third respondent completed her “Senior Diploma in Teaching the Blind” in June 2016, she was included in the 2016-17 panel year. Hence, on the crucial date, the third respondent was having the requisite qualification. Further the reason for placing the third respondent above the petitioner herein is because of the fact that the date of joining of third respondent is 02.03.1994, where as the date of joining of the petitioner is 18.11.2008.

12. It is the contention of the petitioner that the respondents have carried forward the vacancy that arose during the last panel year 2015-16 to 2016-17 panel year and promoted the third respondent, which is illegal. However, it is submitted that the vacancy so carried forward was not a vacancy to be filled by way of promotion but through direct recruitment. The same was communicated to the petitioner through a letter dated 09.03.2017.

13. It is further submitted that the third respondent was promoted in the year 2019 based on his seniority and now working as a Middle School



Headmaster for Visually Impaired School at Madurai and the petitioner was promoted to Primary School Headmaster for Visually Impaired School at Pudhukottai for the promotion in the year 2019-2020. Therefore, he seeks to dismiss this Writ Petition.

14. In spite of service of notice, there is no representation for the third respondent.

15. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents 1 and 2 and perused the materials available on record.

16. It is an admitted fact that the name of the petitioner was included for the panel year 2015-16 for the post of Graduate Teacher (Tamil) in the order of seniority. During that period, though the petitioner found eligible for consideration, as estimated vacancy was only one, basing on the seniority one S.Marimuthu was promoted.



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17. During the panel year of 2016-17, to fill up one post of Graduate Teacher (Tamil), the first respondent released the approved list for the panel year 2016-17 on 25.01.2017 i.e., 13 months after the last panel drawn in 2015-16. It is an admitted fact that the crucial date for 2016-17 panel was 01.10.2016. The contention of the petitioner is that out of 4 vacancies, which arose on 01.06.2016 at Thanjavur Blind Higher Secondary School were not filled up till 30th September 2016 and despite availability of eligible candidates, posts were not filled up without any justifiable reason. It is also admitted fact that the petitioner was qualified and his name was included in the panel of eligible candidates during the year 2015-16 also. The third respondent had acquired eligibility only during the panel year 2016-17. It appears that no satisfactory reason stated by the respondent No.1 with regard to the approval of the panel for the year 2016-17 to finalise the panel for the particular year, the crucial date would be 1st October of the said year. Further for every panel year with the eligible candidates, panel has to be prepared, but in the present issue, the date of approval of panel is 25.01.2017, i.e., 13 months after the last panel drawn in 2015-16.



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18. One of the basic qualification to be considered for the post of Graduate Teacher (Tamil) was that one should possess “Senior Diploma in Teaching the Blind”. The petitioner acquired the said qualification in the month of 2014 itself. Due to that reason, his name was included in the panel for 2015-16. It is also admitted fact that the third respondent has acquired Senior Diploma in Teaching the Blind in the month of January 2016. But on the crucial date, it appears that the third respondent was having requisite qualification. Considering the date of appointment of the petitioner and the third respondent, the third respondent was promoted because he is senior to the petitioner. Under this circumstances, it appears that there is no illegality for promoting the third respondent.

19. Further, it is stated in the counter affidavit of the first respondent that basing on the seniority, the petitioner was promoted in the year 2019 and he was working as Middle School Headmaster for Visually Impaired at Madurai. On considering the entire materials available on record, this Court is of the opinion that in the panel year 2015-16, there is only one vacancy arose and in the said vacancy, basing on the seniority, petitioner was not



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considered and in the panel year 2016-17 also, basing on the seniority, the third respondent was appointed and subsequently, on seniority in 2019, the petitioner was promoted.

20. i) In view of the above, there is no illegality or irregularity in the order impugned in this Writ Petition and this Writ Petition is also liable to be dismissed.

ii) For the aforesaid reasons, this Writ Petition is dismissed.

iii) No costs.

17.04.2024

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

pvs

To

1. State Commissioner for Differently abled persons
Commissionerate for Welfare of Differently abled,
Jawaharlal Nehru Inner Ring Road,
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2. The Head Master,
Government High School for Blinds,
Thanjavur District, Thanjavur.

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BATTU DEVANAND.J.,
pvs

Pre-delivery order in

W.P.No.25326 of 2017

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