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W.P.No.33311 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.33311 of 2023

R.Thangavelu

.. **Petitioner**

Vs.

1.The Director of School Education
College Road, Nungambakkam
Chennai – 600 006.

2.The Chief Educational Officer
Erode – 638 101.

3.The Chief Educational Officer
Coimbatore.

4.The District Educational Officer
Pollachi.

.. **Respondents**

Prayer: Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent made in Na.Ka.No.2655 / A2 / 2020 dated 20.09.2021 and quash the same as null and Void, illegal and invalid only in so far as portion,



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namely column -2 at page 3 fixing up of the petitioner appointment as 07.08.2009 forenoon as against 09.06.2008 and consequently directing the respondents, especially the 3rd Respondent in re-fixing the petitioner's seniority with effect from 09.06.2008 on par with his batch - mates namely 25 other selectees of the year 2008-09 selected as Physical Education Teacher Dated 09.06.2008 disbursing the arrears of difference in pay scale to the tune of Rs.16,99,957/- as of August 2023 with all other attendant benefits including the arrears of his difference in pay -scale increments and all allowances from June 2008.

For the Petitioner : Mr.A.Amalraj

For the Respondents : Mr.C.Jayaprakash
Government Advocate

ORDER

This Writ Petition is filed challenging the order dated 20.09.2021 in and by which the petitioner's probation was declared with effect from 06.08.2011.

2. *Mr.Amalraj*, learned counsel appearing on behalf of the petitioner would submit that the petitioner was originally selected under a 25 member



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selection list on 09.06.2008 and the name of the petitioner found place at

Sl.No.15. The petitioner had his school education in the State of *Karnataka*.

The same was verified earlier to his appointment. However, while determining the selection and drawing of the selection list, erroneously it is mentioned as if again the verification has to be made. The same is unacceptable. The petitioner earlier filed a Writ Petition in W.P.No.27561 of 2008 and while restraining the respondents from filling up the vacancy against which the petitioner was appointed, this Court directed the respondents to pass orders at the earliest. The 2nd respondent appointed the petitioner on 04.08.2009. Even thereafter, raking up the self-same issue of verification of the certificate, the petitioner's probation was never declared. Therefore, the petitioner filed W.P.No.34407 of 2019 and by a Judgment dated 03.02.2020 this Court again directed the respondents therein to pass an order and also held that upon declaring the probation of the petitioner, the petitioner will be entitled to all other consequential benefits. Therefore, the respondents ought to have properly reckoned the date of the appointment of the petitioner and should have declared the probation accordingly. For the



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fault of the respondents, the petitioner is losing more than a year of service and seniority and also the pay increments. When the petitioner is duly qualified and the issue has been settled in the earlier two Writ Petitions, the respondents cannot rake up the very same issue, and delay the appointment as well as declaration of probation of the petitioner.

3. Per contra, *Mr.C.Jayaprakash*, learned Government Advocate would submit that the fact remains that the petitioner did not get 35% of marks in the examination conducted by the State of Karnataka in the 10th Standard exam. Anyhow, only because of the earlier directions of this Court and there was a contempt petition filed, the petitioner was appointed. Subsequently, as per the date of appointment of the petitioner, his probation was also declared. As a matter of fact, in a connected Special Leave Petition in CA No.6991 of 2015, the stand of the respondents is vindicated. Unless the petitioner satisfies the minimum marks, he cannot be held to be possessing equivalent qualification.



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4. I have considered the rival submissions made on either side and perused the material records of the case.

5. As far as the present case is concerned, I am of the view that both the petitioner as well as the respondents cannot rely upon the other Judgments. The petitioner has earlier filed two Writ Petitions and therefore, the said orders would bind inter-parties. In the first instance, when the petitioner was not appointed in spite of the fact that he was selected by the panel for the years 2008 – 2009, the petitioner filed W.P.No.27561 of 2008. It is essential to extract the prayer made by the petitioner in the said Writ Petition.

“Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Mandamus directing the second respondent to pass orders on the petitioner's representation dated 29.08.2008 appointing him as “Physical Education Teacher” on the strength of his selection made through Employment Exchange as per the placement given as S.No.15 out of 25 members selection list dated 09.06.2008 and in the light of the Evaluation Certificate issued by the first respondent pursuant to his proceedings Na.Mu.No.132635/N-2/200 dated 14.11.2000 evaluating the petitioner's Physical Education Teacher Certificate issued by the Karnataka Secondary Education Examination Board dated 12.07.1993 besides evaluating the Petitioners S.S.L.C and +2



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Certificates after appointment as “Physical Education Teacher.”

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6. Thus, it can be seen that the specific prayer of the petitioner is for the appointment of a Physical Education Teacher as per the placement given in Sl.No.15 out of 25 members of the selection list dated 09.06.2008. This Court passed the following order and the relevant paragraph Nos. 5 to 7 are extracted hereunder:-

“5.The apprehension of the petitioner is that in the guise of keeping the application for evaluation pending, the second respondent is attempting to appoint somebody else in the place, where the petitioner has already been selected, but the appointment order was not issued. Therefore, the learned counsel for the petitioner would submit that till the second respondent completes the evaluation, he should be directed to make appointment of the petitioner as per the selection list. The learned counsel would also submit that this is a case when the application was made originally to the Director of Government Examinations, the petitioner was directed to approach the first respondent and the first respondent, in turn, directs the petitioner to approach the second respondent, before whom the application is now pending and therefore, the delay has only damaged the petitioner's right of being appointed, especially when selection process has already been completed.

6. Considering the above facts and circumstances of the case, I am of the view to meet the ends of justice, that the second respondent should be directed to consider the claim of the petitioner for evaluation and to pass appropriate orders within a particular time.

7. Under these circumstances, the writ petition is disposed of with a direction to the second respondent to consider the representation of the petitioner dated 29.08.2008 and complete the evaluation of the certificates of



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the petitioner and pass appropriate orders on merits and in accordance with law within a period of two weeks from the date of receipt of copy of this order. Until the second respondent passes such order, the second respondent shall not make any appointment in the place, where the petitioner is selected as per the selection list issued on 09.06.2008 for the year 2008-2009, in which the petitioner is arrayed as Serial No.15. No costs.”

7. Thus, it can be seen that even though the petitioner had prayed that from the date of appointment as per Sl.No.15 of the selection list, the Court did not grant the relief prayed for but directed the 2nd respondent to consider the claim of the petitioner for evaluation and pass appropriate orders thereon. The Court also directed that until the orders were passed, the vacancy should not be filled up by appointing any other person. In that scenario, the petitioner was appointed by an order dated 04.08.2009 and he accordingly joined the service. The petitioner did not challenge his appointment at that relevant point of time. However, the petitioner's probation was never declared and therefore, he was again forced to approach this Court, by way of W.P.No.34407 of 2019 and it is essential to extract the prayer of the petitioner:-

“Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus,



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directing the 2nd Respondent to declare forthwith the completion of the Petitioner's probation in the cadre of 'Physical Education Teacher' considering the inordinate delay caused for more than 10 years from the date of selection and appointment in the light of the evaluation of the crucial Karnataka Physical Education Course Certificate by the 1st Respondent, completion of the Tamil Written and viva voce tests and the publishing of the same in the Tamil Nadu Government Gazette, the evaluation of the petitioner's S.S.L.C and+ 2 certificates too by the 3rd Respondent, apart from re-fixing the petitioner's seniority in the light of his selection not only on merits, but also on communal reservation giving 15th ranking out of 25 members Selection List dated 09.06.2008 besides re-fixing the petitioner's pay-scale on par with his batch mates disbursing the difference of his pay, increments and all allowances from June 2008. ”

8. In the teeth of the said prayer, this Court has made the following findings in the paragraph No.9 and granted the following order in paragraph No.10:

“9. It is seen from the earlier order passed by this Court in WP.No.27561 of 2008 dated 20.11.2008 that this Court has already directed the second respondent to evaluate the certificates of the petitioner. The certificates were evaluated by the District Educational Officer, Pollachi and it was found to be valid. It is only, thereafter, the petitioner was appointed to the post of Physical Education Teacher. The very same issue cannot be again raked up while considering the declaration of probation of the petitioner. A process, which has already been completed, should not be again taken up and thereby, the declaration of probation insofar as the petitioner is concerned has been postponed for a long period of time, resulting in the petitioner being denied with the scale of pay and the attendant benefits. Yet another



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fact that has to be considered in this case is that the Physical Education Course Certificate that was essential for getting appointment, has already been evaluated by the first respondent and he, by his proceedings dated 14.11.2000 has found that the said certificate is equivalent to that of the Tamil Nadu Physical Education Certificate.

10. In view of the above discussion, no further delay must be caused in considering the request made by the petitioner for declaring his probation. The petitioner is directed to make a fresh representation to the second respondent along with all the necessary certificates and a copy of this order and the second respondent shall pass appropriate orders declaring the probation of the petitioner, based on the earlier evaluation that was made by the authorities and pass necessary orders, within a period of four (4) weeks from the date of receipt of a copy of this order. Once the probation is declared, the petitioner will be entitled for all other consequential benefits.”

9. Thus, it can be clear that even in the 2nd round the petitioner's appointment from the year 2009 was not set at naught. The Court also directed the respondents to declare probation and grant all the consequential benefits to him. Accordingly, by the impugned order, the probation was declared on the petitioner completing, two years of service i.e., on 06.08.2011. Now the petitioner had approached this Court as third round of litigation by raising the very same stand that his appointment should be reckoned from the date of appointment of other batch mates. In this regard,



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it can be seen that the very same prayer has been raised in the 1st round of litigation and this Court directed the respondents to pass orders prospective basis and the said appointment order which was passed in the year 2009 remains unchallenged. The petitioner cannot now in the 3rd round of litigation rake up the self-same issue and ask for the benefits. It may be the case, that the respondents have unduly delayed the matter of appointment. But at the same time, it can be seen that when the order of appointment was passed in the year 2009 with effect from 04.08.2009, the petitioner having accepted the same and having appointed, cannot now belatedly contend that the date of appointment should be from the year 2008. Accordingly, since I find that the issue has been constructively negated in the earlier round, I am of the view that the petitioner cannot file the 3rd round of litigation for the self-same purpose. Thus, it goes without saying that the seniority of the petitioner came to be fixed as per the order of this Court in the earlier round. The petitioner will be entitled to all other benefits, which will flow from the order of declaration of probation, including reckoning of seniority with effect from 04.08.2009.



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10. With the above observation, this Writ Petition stands dismissed.

No costs.

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Index : Yes
Neutral Citation : Yes
Speaking order : Yes

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