



W.A(MD)No.894 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 11.01.2024

PRONOUNCED ON : 15.02.2024

CORAM:

**THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.A(MD)No.894 of 2019
and
C.M.P(MD)No.7962 of 2019**

M.Muthukkaruppanan

... Appellant/Petitioner

vs.

- 1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Higher Education Department,
Secretariat,
Chennai.
- 2.The Director of Elementary Education,
DPI Compound,
College Road,
Chennai.
- 3.The Chief Educational Officer,
O/o.The Chief Educational Office,
Thallakulam,
Madurai,
Madurai District.



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4.The District Educational Officer,
O/o.The District Educational Office,
Thallakulam,
Madurai,
Madurai District.

... Respondents

PRAYER : Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 09.07.2019 passed in W.P(MD)No.13981 of 2015, on the file of this Court.

For Appellant

: Mr.H.Mohammed Imran
for M/s.Ajmal Associates

For Respondents

: Mr.D.Sadiq Raja
Additional Government Pleader

JUDGMENT

(Judgment of the Court was made by D. KRISHNAKUMAR, J.)

Assailing the order, dated 09.07.2019 passed by the learned Single Judge in W.P(MD)No.13981 of 2015, this Writ Appeal has been filed by the appellant / writ petitioner.

2.The brief facts leading to the filing of the Writ Appeal are as follows:



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The appellant/writ petitioner was initially appointed as B.T Assistant (Mathematics) in the Government High School, Munaivendry on 06.12.1989 and he was promoted to the post of P.G Assistant (Mathematics) in the Government Higher Secondary School, Mallaanginar, Virudhunagar District on 14.08.2001. Thereafter, he was posted as Headmaster in High School on 03.07.2009 by way of transfer. In the cadre of P.G Assistant, the appellant worked for a period of 8 years and in the cadre of Headmaster of the High School, he worked for a period of more than 2 years. As the appellant has completed 10 years of service in the equal cadre ie., in the post of P.G Assistant and Headmaster of the High School, he is entitled to be awarded Selection Grade on completion of 10 years of service. Hence, the appellant submitted a representation dated 08.01.2015 before the fourth respondent to confer selection grade to him. In response to the same, the fourth respondent vide proceedings dated 12.02.2015, rejected the claim of the appellant as there is no Government Order in force for grant of selection grade in respect of the employees worked in different cadres carrying equal scale of pay. Challenging the same, the appellant filed the Writ Petition in W.P(MD)No.13981 of 2015.



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3.The learned Single Judge by order dated 09.07.2019, observing that the policy of the selection grade has been enumerated in the pay commission to the effect that only in the event of stagnation in a particular post, the benefit of selection grade can be extended. However, the appellant was originally appointed as B.T Assistant and subsequently, he was appointed to the post of P.G Assistant by way of transfer of service. Since the posts of B.T Assistant and P.G Assistant are governed by different set of Rules, the appellant is not entitled to get selection grade and accordingly, dismissed the Writ Petition. Aggrieved over the same, the instant Writ Appeal has been filed by the appellant.

4.The learned counsel appearing for the appellant/writ petitioner would submit that the post of P.G Assistant is governed by the Special Rules for the Tamil Nadu Higher Secondary Educational Service issued under G.O.Ms.No.720, Education Department, dated 28.04.1981 (hereinafter referred to as 'Service Rules'). As per Rule 2 of the Service Rules, the post of Headmaster of a Higher Secondary School shall be filled up by the following methods:



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'(i) Recruitment by transfer from the category 10 in Class II of the Tamil Nadu Educational Service. Provided that from the 5th July 1978, recruitment by transfer from Class V of the Tamil Nadu School Educational Service and also be recruitment by transfer from the Tamil Nadu Educational Service (B.Wing).

(ii) Promotion from Class II and Class III of the service.'

5.The learned counsel appearing for the appellant would further submit that in view of the above position, the post of Headmaster of Higher Secondary School shall be filled up by promotion from the post of P.G Assistant. The post of High School Headmaster and the post of P.G Assistant are having identical scale of pay and therefore, both the posts, as per the Service Rules, are the feeder category for promotion to the post of Headmaster of the Higher Secondary School. Thus, the service rendered in both the posts being equal cadre is eligible to be reckoned for awarding selection grade. Therefore, the appellant is entitled for selection grade and the order of the learned Single Judge is liable to be set aside.



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6.Per contra, the learned Additional Government Pleader appearing for the respondents would submit that the appellant was initially appointed as B.T Assistant on 06.12.1989 in the Tamil Nadu Educational Subordinate Service and subsequently, he was promoted as P.G Assistant on 14.08.2001 in the Tamil Nadu Higher Secondary School Subordinate Service in view of the higher qualifications obtained by him. When the appellant was appointed as Headmaster by way of transfer of service based on the service rules applicable to the post of P.G Assistant, the question of considering the earlier service for the purpose of granting selection grade would not arise at all. The learned Single Judge, after analysing the facts and circumstances of the case in the light of the legal principles, has rightly dismissed the Writ Petition and hence, the same does not call for any interference by this Court.

7.Heard both sides and perused the materials available on record.

8.It an admitted fact that the appellant was appointed as B.T Assistant on 06.12.1989 in the Tamil Nadu Educational Subordinate Service and he was promoted as P.G Assistant on 14.08.2001. It is pertinent to note that the elevation of the appellant from the post of B.T Assistant to



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that of P.G Assistant was an appointment of transfer by virtue of the qualifications possessed by him. Taking into account the seniority in the post of B.T Assistant, the appellant was promoted as Headmaster in the Government High School on 03.07.2009 by way of transfer of service. Although these two posts ie., P.G Assistant and Headmaster carry identical scale of pay, they are governed by different set of service rules. The post of P.G. Assistant is governed by the Tamil Nadu Higher Secondary Service whereas the post of High School Headmaster is governed by the provisions of Tamil Nadu School Educational Service. The said factum has not been disputed by the appellant.

9.The appellant was promoted to the post of P.G. Assistant on 14.08.2001 and hence he would have completed the period of 10 years only in the year 2011. The procedure for counting the services in the identical scale of pay does not exist in the revised scale of pay with effect from 01.01.2006. Inasmuch as the appellant was promoted as P.G Assistant on 14.08.2001 and further promoted as Headmaster of High School on 03.07.2009, the concept of counting services in the posts of P.G Assistant and Headmaster High School although on identical scales of pay does not arise in the revised scales of pay from 01.01.2006. In this regard,



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clarifications have been issued by the Government in Letter No. 23373/S/2011-2, dated 09.08.2011 and the operative portion of the same is as follows:

'In the Government Order first, second and third cited, orders have been issued to the effect that the services rendered in the Selection Grade / Special Grade of the lower post shall be counted for awarding Selection Grade in the higher post if the scale of pay of the Selection Grade/Special Grade of the lower post and that of the higher post are identical / higher.

2.In the revised pay scales implemented with effect from 1.1.2006, no separate scales of pay have been provided for Selection Grade / Special Grade posts. Only one increment equal to three Percent of the basic pay including grade pay in the same pay band is allowed to the employees of award of Selection Grade / Special Grade. Therefore, the question of counting the services rendered in the Selection Grade / Special Grade of the lower post for awarding Selection Grade / Special Grade in the promotion post does not arise. Hence the orders issued in the Government Order / Letter first to third cited cannot be made applicable in the revised scales of pay implemented with effect from 1.1.2006.'

10.Considering the facts and circumstances of the case and also considering the clarification issued by the Government with regard to the issue involved in the case on hand, we are of the view that the appellant is not entitled to get selection grade, as the appellant was promoted to the



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post of P.G Assistant on 14.08.2001 by way of transfer and subsequently, promoted to the post of Headmaster in the High School on 03.07.2009. Therefore, the appellant has not made out any ground much less valid ground to interfere with the order of the learned Single Judge.

9.Accordingly, the Writ Appeal is dismissed. No costs.
Consequently, connected Miscellaneous Petition is closed.

[D.K.K.,J.] [R.V.,J.]
15.02.2024

NCC : Yes / No
Index : Yes / No
ps



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D. KRISHNAKUMAR,J.
and
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ps

ORDER MADE IN
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DATED : 15.02.2024