

(2009) 11 MAD CK 0031

In the Madras High Court

Case No : Writ Petition No. 29607 of 2008

G. Elayaperumal

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 23-11-2009

Acts Referred:

Tamil Nadu Educational Subordinate Service Rules — Rule 2

Citation : (2009) 11 MAD CK 0031

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : T. Sellapandian, for M. Hidayathulla Khan, for the Appellant; R. Murali, Government Advocate, for the Respondent

Judgement

P. Jyothimani, J.—The writ petitioner was originally appointed as an Office Assistant on 10.8.1981 and was subsequently promoted as

Record Clerk on 22.3.2000. Later, he was further promoted as Laboratory Assistant on 14.5.2003. It is the case of the petitioner that he has

qualified himself to be appointed as a Drawing Master, which is a teaching staff post. However, his claim has not been considered on the ground

that he has been holding a non-teaching staff post and therefore, not eligible to transfer into the teaching side. The petitioner has made many

representations, including the representation to the third respondent dated 20.10.2008, requesting for considering him for the teaching post of

Drawing Master. As no orders have been passed, the present writ petition is filed.

2. It is seen that under similar circumstances, N. Paul Vasanthakumar J. in W.P. No. 23412 of 2008, in the case of A.C. Manikandan v. The

Director of School Education, Chennai-6 and Anr. by order dated 30.9.2008, while referring to Rule 2 of the Tamil Nadu Educational

Subordinate Service Rules wherein for the purpose of filling up of the post of Drawing Master various methods have been shown, in which one

method is recruitment by transfer from any other service, and relying upon various other judgments and Government Orders, including G.O.Ms.

No. 753, Education Department, dated 15.7.1985 which is still in force without any amendment, directed the Director of School Education to

consider the claim of the petitioner therein as per his representation in the light of G.O.Ms. No. 753, Education Department, dated 15.7.1985,

without reference to the Government letter dated 18.12.2000. This Court has referred to the Tamil Nadu Educational Subordinate Service Rules in

relation to the Drawing Masters and the method of appointment, which is as follows:

- (i) Promotion from II Grade for I Grade and III Grade for II Grade
- (ii) If no qualified and suitable candidate is available for appointment by method (i) above,
 - (a) Direct recruitment, or,
 - (b) Transfer from any post in the service on an identical scale of pay, or
 - (c) Promotion from any post in the service on a lower scale of pay, or
 - (d) Recruitment by transfer from any other service.

Relying on the said rule, petitioner contends that as he is serving as Watchman, which comes under the general subordinate service, is entitled to be

promoted as Drawing Master by recruitment by transfer.

and ultimately held as under:

9. The contention of the learned Counsel for the petitioner that the Government Order issued in G.O.Ms. No. 753 dated 15.7.1985 is still in force

is not controverted. Whether the special rules made by the Tamil Nadu Educational Subordinate Services issued and notified in G.O.Ms. No. 753,

Education Department on 15.7.1985 can be given a go-bye by the Government through Government letter is the matter in issue in this writ petition.

10. A similar issue was considered by me in the decision reported in (2006) 4 MLJ 1027 K. Sampath v. State of Tamil nadu and Ors. where in I

have elaborately considered the validity of the Government letter in the absence of amendment issued to the Government order and held that the

Government letter will not over ride the Government Order. In the said judgment

I have followed the judgments of the Honourable Supreme Court reported in (2005) 10 SCC 244 R.P. Bhardwaj v. Union of India and Ors. 2004 WLR 805 P. Jaya v. Union of India and Ors. and

Chandraprakash Madhavrao Dadwa and Others Vs. Union of India and Others, in support of my finding.

3. That was also the view taken by K. SUGUNA J. in J. Munusamy v. State of Tamil Nadu rep. by its Secretary to Government, School

Education Department, (W.P. No. 35800 of 2004, etc. batch, order dated 31.3.2006).

4. It is also brought to the notice of this Court that the respondents themselves have considered such similar cases for appointment as Drawing

Masters, as it is seen in the proceedings of the Chief Educational Officer, Villupuram in Na.Ka. No. 14937/M4/04, dated 20.6.2005 in respect of

one R. Chinnasamy, who was considered for appointment as teaching staff from the post of Record Clerk, after he obtained necessary

qualifications and after he obtained a direction from this Court.

5. For the aforesaid reasons, I am of the considered view that the petitioner being a non-teaching staff is entitled to be considered for the post of

teaching staff, viz., as Drawing Master, provided the petitioner is having necessary qualification as required under the Rules concerned.

Under such circumstances, the writ petition is disposed with a direction against the third respondent to consider the representation of the petitioner

dated 20.10.2008, in the light of the above said judicial pronouncements and also the various Government Orders passed by the respondents

themselves, to appoint the petitioner as Drawing Master by way of transfer and pass appropriate orders on merits and in accordance with law

expeditiously, in any event within eight weeks from the date of receipt of a copy of this order. No costs. Consequently, M.P. No. 1 of 2008 is

closed.