

**(1988) 08 MAD CK 0041**

**In the Madras High Court**

**Case No : Writ Petition No. 9083 of 1981**

M. Viswanathan

APPELLANT

Vs

Govt. of Tamil Nadu and Others

RESPONDENT

**Date of Decision : 26-08-1988**

**Acts Referred:**

Tamil Nadu Educational Inspection Code — Rule 110, 115, 116

**Citation : (1990) 1 LLJ 473**

**Hon'ble Judges : Swamikannu, J**

**Bench : Single Bench**

## Judgement

Swamikannu, J.—This is a petition for the issue of a writ of certiorarified mandamus calling for the records in reference letter Dis. No. 271/G2/72 dated. 12th July 1972 of Chief Educational Officer, Coimbatore, the second respondent herein and all other connected and related records for the purpose and quashing the same, directing the respondents to fix the seniority of the petitioner in the Grade I Tamil Pandit so as to enable the petitioner for his due and legitimate promotion to the Selection Grade and for such monetary compensation permissible in the circumstances of the case.

2. The case of the petitioner in the accompanying affidavit sworn to by him runs thus :

He is a Tamil Pandit Grade I working in Government Board High School Mudis. He should have been promoted to Grade I Tamil Pandit soon after he finished his Pandit training on 1st December, 1960 as per G.O. No. 2221/D/17th August 1960. But, without any justifiable cause or reason, he was denied of the promotion till he made representation by his letter dated 4th August, 1971.

3. He was first appointed on 1st August, 1955 as Grade II Tamil Pandit and posted to Coimbatore, Government District Board High School. He was then S.S.L.C., with Vidwan 2 D qualification. He underwent the Pandit Training between 2nd July, 1960 and 1st December, 1960. He became fully qualified to be

promoted as Grade I Tamil Pandit. It is seen from the proceedings of the Chief Educational Officer in his Proc. No. D. Dis. No. 13-9-66/DB/60/2 dated 24th April, 1960 that the Special Officer. District Board, Coimbatore has issued communication fixing his seniority as Grade II Tamil Pandit. It is seen from the same that the persons who had been subsequently promoted to Grade I and thereafter to the Selection Grade are much junior to him and his name should have been considered for promotion as a matter of seniority and as a matter of course even without his application for the purpose. He, therefore, submitted to the Chief Educational Officer, Coimbatore, by his representation dated 4th August, 1971 that he is fully qualified and entitled to Grade I and that there is no reason that his name should have been ignored from such promotion for the past 10 years i.e. from 2nd December, 1960. On his representation, he was appointed to Grade I with effect from 25th February, 1971 by the proceedings of the Chief Education Officer. Coimbatore and Nilgiris in R.C. No. 141/S.2/71 dated. 30th August 1971 in the time scale of Rs. 275-10-375-15-450. He made further representation that he was entitled to be so promoted even as early as 2nd June, 1960 by being fully qualified for such promotion as on 2nd December, 1960. According to the petitioner, he should be considered for retrospective benefits as he would have had, had he been given the first opportunity for such promotions. He also brought to the knowledge of the authorities the names of Ponnuswamy and two others who were his juniors and who were promoted to Grade I and later to Selection Grade. The instance of N. Mylswamy, Vettakaran Pudur whose date of first appointment as Grade I Tamil Pandit and whose seniority was fixed along with the petitioner as per the proceedings cited above was 22nd July 1957 whereas his first appointment was 1st August, 1955. The petitioner, therefore requested the authority to consider the possibility of granting him adequate relief by way of compensation or otherwise, and his promotion to selection grade may not be further delayed.

4. The Chief Educational Officer, Coimbatore, the 2nd respondent herein wrote to him by his letter Dis. No. 271/2/72 dated 12th July, 1972, to say that he did not claim for promotion as Tamil Pandit Grade I immediately on being fully qualified for the same and therefore, the appeal was barred. He represented again that his training period and subsequent qualification as Grade I Tamil Pandit was duly intimated to the authorities and the relevant entries were made in his Service Register and as such the authorities are fully aware of his qualification and competency to be promoted to Grade I Tamil Pandit and the promotion being a matter of seniority and a matter of routine nature which does not require any special application claiming such promotion. In the circumstances, the petitioner submits that the authorities should have been pleased to consider the ways and means to mitigate the loss and damage done to him by fixing his seniority in Grade I suitably to enable him to have the advantage of being appointed to the selection grade at the earliest opportunity.

5. It is submitted by the learned counsel for the petitioner that an appeal had been preferred by the petitioner herein to the Chief Educational Officer for

retrospective regularisation and it was rejected on 12th July, 1972. Further an appeal has been preferred to the Government by the petitioner and the same is pending disposal.

6. It is contended on behalf of the respondents that the petitioner has not made any representation regarding his promotion before 4th August, 1971 and that as soon as he became qualified, he should have applied to the higher authorities for his promotion. The chief Educational Officer, Coimbatore on receipt of his representation dated 4th August 1971 has upgraded his post and promoted him to Grade I with effect from 25th February 1971 with reference to G.O.Ms. No. 325 Education dated 25th February 1971. He had represented for his promotion only eleven years after he became eligible.

7. In this regard, Mr. P. Balagopal, learned counsel for the petitioner, referred to the Rules framed under the Tamil Nadu Educational Inspection Code, in particular R. 110 relating to inspection of remarks of the previous inspecting officers, R. 115 adequacy and suitability of teaching staff and R. 116 unqualified and untrained teachers and submitted that it is the paramount duty of the Department itself to consider suo motu about the promotion that is to be given to the teachers as and when they become eligible and that it is not for the teacher employee to write and get the promotion from the department.

8. This Court feels that the contention raised on behalf of the petitioner in this regard cannot be said to be unreasonable. The petitioner's representation to the Chief Educational Officer for retrospective regularisation was rejected by his reference in L.D. is No. 271/G2/72 dated 12th July 1972 stating that his request was belated. The reason given by the Chief Educational Officer for rejecting the prayer of the petitioner for retrospective regularisation is not acceptable. There is no time limit. Promotion or a legitimate right to which an employee is entitled ought to have been given to the employee even without asking. The qualification and other particulars of an employee are entered in his Service Register. Whenever vacancies arise, it is the duty of the authorities to consider the persons who are qualified for those posts and who are eligible for promotion. Merely because relevant entries regarding the petitioner's qualification have been made on 26th January, 1977, it does not mean that the petitioner has lost his right of promotion. The Service Register is maintained in the School itself and the School is inspected by the authorities concerned. Therefore, it cannot be said that the entries in the Service Register had escaped the notice of the authorities. Therefore, the petitioner's statement that the authorities were fully aware of the petitioner to be promoted, cannot be brushed aside as unreasonable or untenable. It is for the authorities to take steps for considering the qualified persons for the suitable post as and when vacancies arise. It is not for employee to apply for the same. So the contention raised on behalf of the respondents that the petitioner had kept silent for nearly 11 years is not acceptable and the same is not a ground to reject the justifiable request to promote to the post for which he had been qualified when it had fallen vacant.

9. In the result, the writ petition is allowed as prayed for. No costs.