

(2009) 08 MAD CK 0150

In the Madras High Court

Case No : Writ Petition No. 10978 of 2009 and MP. No's. 1 to 3 of 2009

N. Muthukumaraswamy

APPELLANT

Vs

The Principal Secretary Higher Education Department and
The Director of Collegiate Education

RESPONDENT

Date of Decision : 06-08-2009

Acts Referred:

Citation : (2009) 08 MAD CK 0150

Hon'ble Judges : K.N. Basha, J

Bench : Single Bench

Advocate : T.P. Prabhakaran, for the Appellant; G. Sankaran, Spl.G.P., for the Respondent

Judgement

K.N. Basha, J.—By mutual consent of both the learned Counsel for the petitioner and the learned Special Government Pleader, the main

writ petition is taken up for final disposal.

2. The petitioner has come forward with the present petition seeking for the relief of quashing the order of the first respondent dated 11.6.2009

and to direct the respondents to promote the petitioner to the post of Principal Grade II.

3. The learned Counsel for the petitioner contended that the name of the petitioner was included in the interse seniority list dated 24.03.2009

issued by the proceedings of the second respondent in RC No. 345/J2/2009. It is also submitted by the learned Counsel for the petitioner that

again the second respondent in his proceedings in RC No. 345/J2/2009 dated 11.05.2009 finalising the interse seniority list of Readers and

Lecturers working in the Government colleges referring the earlier proceedings dated 24.03.2009 included the name of the petitioner. It is

contended by the learned Counsel for the petitioner that after including the name of the petitioner in the inter-se seniority list dated 24.3.2009 and

11.5.2009, surprisingly excluded the petitioner's name in the impugned order dated 11.6.2009 for the promotion to the post of Principal Grade II

post. It is also pointed out by the learned Counsel for the petitioner that as per the Government Order in G.O.Ms. No. 177 Higher Education (F1)

Department dated 11.06.2009, the first respondent issued a panel of 42 persons selected for the post of Grade II Principal for the year 2009 and

in the same order, it is stated that any person who has not been included in the promotion list is entitled to give a representation within a period of

two months from the date of issue of the order dated 11.06.2009, but on the same day, the impugned order of posting of Principal Grade II was

issued depriving the opportunity of the petitioner to put forward his representation seeking for the relief of including his name in the order dated

11.6.2009.

4. Mr. G. Sankaran, learned Special Government Pleader on the other hand submitted before this Court that the petitioner's name has been

included in the list prepared earlier on 24.03.2009 and the final list on 11.05.2009 and his name was not included in the regular panel dated

11.06.2009 on the ground that the petitioner has not passed the Accounts test. It is contended by the learned Special Government Pleader that as

per the Government Order in G.O.Ms. No. 1265 Education (F2) Department dated 15.12.1992, the candidates who are working as Lecturers

are entitled for promotion only in the event of passing accounts test. Learned Special Government Pleader [Education] would also submit that a

detailed counter was also filed by the respondents herein narrating the sequence of events and the reason for not including the petitioner's name in

the impugned order dated 11.6.2009 approving the regular panel for the promotion as Principal in Government Colleges. Therefore, it is

contended that there is no illegality or infirmity in the impugned order dated 11.6.2009.

5. In reply to the contentions put forward by the learned Special Government Pleader, it is submitted by the learned Counsel for the petitioner that

the said government order dated 15.12.1992 in G.O.Ms. No. 1265 Education [F2] Department, relied on by the learned Special Government

Pleader cannot have any statutory force as the same is only a proposal for making certain amendments in the original statutory rules and till date the said proposal was not considered and the rule was not amended accordingly and as such, as on date there is no condition to pass the accounts test for seeking the relief of promotion as Principal.

6. I have carefully considered the rival contentions put forward on either side and also perused the materials available on record including the impugned order and G.O.Ms. No. 1265 Education [F2] dated 15.12.1992 relied on by the learned Special Government Pleader.

7. The fact remains that admittedly the petitioner is eligible and qualified for the post of Principal and as a matter of fact, his name was included in

two lists prepared, viz., the first list dated 24.3.2009 and the final list dated 11.5.2009 as per his seniority. But the petitioner's name was excluded

in the impugned order dated 11.6.2009 while the Government approving the regular panel for promotion as Principal in Government Colleges. It is

pertinent to note that the first respondent herein, prior to the passing of the impugned order, viz., G.O.[D] No. 133 Higher Education dated

11.6.2009, passed an order in G.O.[D] No. 177 Higher Education on the same day, viz., 11.6.2009 to the effect of directing the temporary

Grade II Principal at serial number 1 and the Selection Grade Lecturers/Readers from Sl. No. 2 to 42 are included in the regular panel for the post

of Grade II Principals for the year 2009 as per the list incorporated in the said order. It is relevant to note that in the very same order, it is

specifically stated as here under:

5. Any person, who wishes to make representation against his/her non inclusion in the panel shall do so, within a period of two months from the

date of issue of this order.

But without affording any opportunity to the aggrieved persons including the petitioner to make their representation within a period of two months

from the date of issue of G.O.[D] No. 177, the first respondent herein passed the impugned order on the same day, i.e., 11.6.2009 in G.O.[D]

No. 133 Higher Education. Therefore, this Court has no hesitation to hold that the first respondent herein passed the impugned order in G.O.[D]

No. 133 dated 11.6.2009 in flagrant violation of the principles of natural justice pursuant to the earlier order passed on the same day in G.O.[D]

No. 177.

8. The contention put forward by the learned Special Government Pleader [Education] and the counter affidavit filed by the 2nd respondent on his behalf and on behalf of the first respondent, makes it crystal clear that the only ground on which the petitioner's name was not included in the impugned order dated 11.6.2009 in G.O.[D] No. 133, is that the petitioner has not passed the accounts test. As per the contention of the learned Special Government Pleader and as per the statement made in the counter affidavit and as per G.O.Ms. No. 1265 Education [F2] Department dated 15.12.1992, the passing of accounts test is a condition precedent for consideration of promotion as Principal in Government Colleges. At this juncture, it is better to refer the relevant portion of G.O.Ms. No. 1265 dated 15.12.1992 which reads hereunder:

3. The Commissioner of Collegiate Education, has recommended that the passing of Account test for Executive Officers prescribed in the Special Rules of Tamil Nadu Collegiate Educational Service may be dispensed with and however passing of Account Test for Executive Officer may be made as pre-requisite qualification for promotion as Principal. He has therefore requested that necessary amendments may be made to the Special Rules for Tamil Nadu Collegiate Educational service in this regard.

4. The Government have examined the proposal of the Commissioner of Collegiate Education and have decided that passing of Account Test for Executive Officer need not be insisted upon for college Teachers but however they should qualify themselves by passing the Account Test for executive Officer for promotion as Principal in Government Colleges. Accordingly the Commissioner of Collegiate Education is requested to send necessary proposals for amending the Special Rules for Tamil Nadu Collegiate Educational Service in this regard.

9. The reading of the above said portion of the government order in G.O.Ms. No. 1265 dated 15.12.1992 makes it crystal clear that the Government only accepted the proposal of the Commissioner of the Collegiate Education to the effect that the College teachers should qualify themselves by passing the accounts test for executive Officer for promotion as Principal in Government Colleges and the Commissioner of the Collegiate Education was requested to send necessary proposals for amending

the Special Rules for Tamil Nadu Collegiate Educational Services

in this regard. But the admitted fact remains that the said proposal is not yet culminated into the amendment of the Special Rules for Tamil Nadu

Collegiate Educational Services.

10. In view of the above said undisputed fact, this Court is of the considered view that the mere proposal to amend the rules cannot have any

statutory status and the same cannot over-ride the rules under the Tamil Nadu Collegiate Educational Services. Therefore, this Court has no

hesitation to hold that there is absolutely no justification or any legal impediment for denying the promotion of the petitioner by including the name

of the petitioner in the impugned order, viz., G.O.[D] No. 133 dated 11.6.2009 for promotion to the post of Principal in the Government Colleges.

11. It is brought to the notice of this Court that the petitioner already reached the age of superannuation on 30.6.2009. At this juncture, it is also

pertinent to note that this Court while passing the interim order dated 29.6.2009, recorded the statement of the learned Special Government

Pleader to the effect that in the event of the petitioner succeeding this writ petition, the petitioner would be given all the benefits as if the petitioner

deemed to have been served as Principal on the date of superannuation. In the very same order, this Court also directed the respondents to keep

one post of Principal vacant pending disposal of the writ petition.

12. In view of the aforesaid reasons, this Court is constrained to direct the respondents herein to include the name of the petitioner in the impugned

order, viz., G.O.[D] No. 133 dated 11.6.2009, approving the regular panel for promotion as Principal in the Government Colleges and further this

Court is also constrained to direct the first respondent to treat the petitioner as if he has deemed to have been appointed and retired as Principal on

the date of superannuation, i.e., 30.6.2009 and further directed to give all the attendant benefits to the petitioner within a period of eight weeks

from the date of receipt of a copy of this order.

13. With the above direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.