

(2011) 10 MAD CK 0130

Madras High Court

Case No: Writ Petition No. 26767 of 2009

A. Gnanasekaran and Others

APPELLANT

Vs

The Secretary to Government,
School Education Department,
Secretariat, Chennai-9, The
Director of School Education,
Chennai-6 and The Joint Director
of School Education (Higher
Education), Chennai-6

RESPONDENT

Date of Decision: Oct. 18, 2011

Acts Referred:

- Constitution of India, 1950 - Article 12, 136

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: Sellapandian for Mr. G. Elanchezhiyan, for the Appellant; J. Arokiasamy, GA (Edn.), for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Honourable Mr. Justice K. Chandru

- The petitioners who are all working as Vocational Instructors in Computer Science, have filed the present writ petition seeking for a direction to the respondents to make the post of Vocational Instructor (Computer Science) as a feeder category for the post of High School Headmaster and P.G. Assistant and grant them all benefits in terms of their representation, dated 27.11.2009.
- In their representation, they have stated that they are getting Graduate Assistant scale of pay. The qualification for the post of Vocational Instructor was degree or diploma. The benefit of promotion was not extended to them. Hence the rule should

be amended providing them as feeder category for the post of P.G. Assistant and Head master of the High School.

3. When the matter came up on 23.12.2009, notice was ordered to be served. Subsequently, it was admitted on 4.1.2010. In the interim application by an order dated 15.7.2010, this court held that any promotion made will be subject to the result of the writ petition and that the request for reserving seats will not arise.

4. Reliance was placed upon a judgment of the Supreme Court in AIR 1988 1033 (SC) , wherein the Supreme Court has held that reasonable promotional opportunities should be available in every wing of public service as that will generate efficiency in service and fosters the appropriate attitude to grow for achieving excellence in service. In the absence of promotional prospects, the service is bound to degenerate and stagnation kills the desire to serve properly.

5. However, such general remarks made in the context of some other cadre and in some other department will not help the case of the petitioners. The Supreme Court has held that while there is no direct right to promote and only right to be considered for promotion, then such rule must be available in the existing service rules. In this context, it is necessary to refer to a judgment of the Supreme Court in Food Corporation of India and Others Vs. Parashotam Das Bansal and Others . The following passages found in paragraphs 9, 12 and 13 from the said judgment may be usefully extracted below:

9. The appellant is "State" within the meaning of Article 12 of the Constitution of India. An employee of a State although has no fundamental right of promotion, it has a right to be considered therefor. What is necessary is to provide an opportunity of advancement; promotion being a normal incidence of service.

12. When employees are denied an opportunity of promotion for long years (in this case 30 years) on the ground that they fell within a category of employees excluded from promotional prospect, the superior court will have the jurisdiction to issue necessary direction.

13. If there is no channel of promotion in respect of a particular group of officers resulting in stagnation over the years, the court although may not issue any direction as to in which manner a scheme should be formulated or by reason thereof interfere with the operation of existing channel of promotion to the officers working in different departments and officers of the Government but the jurisdiction to issue direction to make a scheme cannot be denied to a superior court of the country.

6. With reference to the very same claim in respect of the very same service, the Supreme Court in S. Devasahayam and Another Vs. Joint Director and Another , had negatived the claim of persons, who do not come under the feeder category. It is necessary to refer to the following passages found in paragraphs 2 and 3, which

reads as follows:

2. In order to find out whether the view taken by the High Court and the Tribunal is erroneous, it is necessary to examine the matter with reference to the relevant rules. Rule 15(4)(1)(d) provides that the post of Headmaster could be filled up only from amongst the categories stated therein and they are from the category of: (1) Headmasters of high schools; (2) Postgraduate Assistants in academic subjects; (3) Postgraduate Assistants in languages provided that they possess the prescribed qualifications. It cannot be seriously disputed that the appellant is not a Postgraduate Assistant and he does not come under the feeder category. Merely because he possesses the necessary qualifications by itself will not enable him to claim to be appointed as a Headmaster. It is on this basis the Appellate Authority, the learned Single Judge of the High Court held that the appellant is not entitled to be appointed as the Headmaster.

3. The claim made by the appellant is that he possesses Master's degree in History but he had not undergone the regular course but a condensed course conducted by the Department itself for a period of 10 months and his degree is conferred by way of certificate and such teachers are held to be not in the feeder category so as to become eligible to be appointed as Headmaster. Such arrangement of giving certificates to certain teachers became necessary as there was dearth of postgraduate teachers being available in the higher secondary schools such as that of the second appellant. Thus he becomes an inducted teacher and not a regular teacher in the cadre. Bearing these aspects in mind the Appellate Authority as well as the High Court have taken a view, we do not find this matter calls for interference in a proceeding arising under Article 136 of the Constitution.

7. In the light of the above, there is no case made out. Accordingly, the writ petition will stand dismissed. However, there will be no order as to costs.