



W.P.(MD).Nos.12523 of 2013 and 12037 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 22.12.2023

CORAM

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.(MD).Nos.12523 of 2013 and 12037 of 2018

and

M.P.(MD).Nos.1 of 2013, 1 of 2014 and W.M.P.(MD).No.10975 of 2018

W.P.(MD).No.12523 of 2013

M.Chandrasekaran,
Superintendent,
Office of the Assistant Elementary Educational Office,
Ramanathapuram,
Ramanathapuram District.

.. Petitioner

Vs.

1.The Principal Secretary to Government,
School Education (R2) Department,
Secretariat,
Chennai – 9.

2.The Director of School Education,
Chennai – 6.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, calling for the records pertaining to the order of the 1st respondent herein passed in G.O.(2D) No. 38, School Education (R2) Department, dated 23.07.2009 and quash the same and direct the respondents herein to re-fix the petitioners seniority in



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the light of the Division Bench decision of this Court in W.P.No.21654 of 2004, W.P.Nos.3822 and 3823 of 2006, dated 03.04.2006, with all consequential service and monetary benefits.

W.P.(MD).No.12037 of 2018

M.Chandrasekaran,
P.A. to District Educational Officer,
O/o. the District Educational Office,
Ramanathapuram.

.. Petitioner

Vs.

1.The Director of School Education,
Nungambakkam,
Chennai.

2.The Joint Director of School Education (Personal),
O/o. the Joint Director of School Education,
Nungambakkam,
Chennai.

3.The District Educational Officer,
O/o. the District Educational Office,
Ramanathapuram,
Ramanathapuram District.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorari, calling for the records relating the impugned order passed by the 2nd respondent in his proceedings ந.க.எண். 008624/அ3/இ2/2017 dated 10.05.2018 and quash the same as illegal.



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For Petitioner : Mr.S.Mohamed Suhail
for M/s.Ajmal Associates

For Respondents : Mr.R.Baskaran
Additional Advocate General
assisted by Mr.T.Amjad Khan
Government Advocate
(In both Writ Petitions)

COMMON ORDER

Since the facts in the present cases are common, both the writ petitions are heard together.

2. The matter relates to seniority that has to be fixed with respect to those who were appointed on compassionate grounds and those who entered the service of the Tamil Nadu Government by way of the special examination that was held in the year 1984.

3. The petitioner was appointed as Junior Assistant on compassionate grounds on 28.11.1984. He was promoted to the post of Assistant on 06.04.1994. As per G.O.Ms.No.951, dated 14.09.1984, a combined seniority list was published on 29.11.2002. In the said seniority list, the petitioner's name is found in Serial No.75. Subsequently, the Government Order



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impugned in W.P(MD)No.12523 of 2013, namely, G.O.(2D).No.38, School

Education (R2) Department dated 23.07.2009 was passed. As per the said

G.O., the seniority was fixed as follows:-

“7. தமிழ்நாடு சார்நிலை பணி விதிகளின் விதி 38ன்படி பதவி உயர்வுக்கு தேர்ந்தெடுக்கப்பட்ட தகுதியான பணியாளர்கள் பட்டியலை முடிவுக்கு கொண்டு வரவோ அல்லது மாற்றவோ (annul modify or reuse) அரசுக்கு மட்டுமே அதிகாரம் உள்ளது. தமிழ்நாடு நிர்வாக தீர்ப்பாயம் மற்றும் உச்சநீதிமன்ற தீர்ப்புகளுக்கிணங்க பள்ளிக் கல்வித்துறையில் 1984, 1985-86-ம் வருடங்களில் நியமனம் செய்யப்பட்ட இளநிலை உதவியாளர்/ தட்டச்சர்/ சுருக்கெழுத்துத் தட்டச்சர் ஆகியோருக்கு இடையிலான முதநிலையினை

(1) தமிழ்நாடு அரசுப்பணியாளர் தேர்வாணைய நியமன நபர்கள் (தேர்வாணையத்தால் நிர்ணயிக்கப்பட்ட முதுநிலைபடி)

(2) அரசாணை 996, பணியாளர் மற்றும் நிர்வாகச் சீர்திருத்தத்துறை நாள் 22.09.1984ன்படி சிறப்பு தேர்வு மூலம் பணிவரன்முறை செய்யப்பட்டவர்கள்.

(3) பணிமாற்றம் பணி உயர்வு மூலம் இளநிலை உதவியாளர்கள், கருணை அடிப்படையில் நியமனம் பெற்றவர்கள், 25.06.1984-க்கு



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பிறகு இளநிலை உதவியாளராக பணிவரன்முறை
செய்யப்பட்ட தட்டச்சர்கள், சுருக்கெழுத்துத்
தட்டச்சர்கள் (பணிவரன்முறை செய்யப்பட்ட நாளின்
அடிப்படையில்)

என்ற வரிசைக் கிரமத்தில் நிர்ணயம் செய்யலாம் என அரசு
முடிவு செய்து ஆணையிடுகிறது. அவ்வாறே இளநிலை
உதவியாளர்/ தட்டச்சர்/ சுருக்கெழுத்துத் தட்டச்சர்
ஆகியோருக்கு இடையிலான முதுநிலையினை நிர்ணயம்
செய்யுமாறு பள்ளிக் கல்வி இயக்குநர்
கேட்டுக்கொள்ளப்படுகிறார்.”

4. It is the primary contention of the learned counsel appearing for the petitioner that this G.O. runs contrary to the view taken by judgment of this Court as early as in 1988, which was confirmed by another Division Bench judgment of this Court, in W.P.No.21654 of 2004, dated 03.04.2006 and W.A.Nos.302, 425 and 855 of 2014, dated 28.05.2015. There were three categories of persons, who joined the service,

- (i) those who were directly recruited through TNPSC
- (ii) those who were appointed on compassionate grounds
- (iii) those who had been recruited under the Rules of Special Absorption in G.O.Ms.No.996.



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5. The last category of persons were not appointed through TNPSC or compassionate appointment, but they were absorbed into Government service by virtue of an order passed by the then Government in the year 1984 by recruiting approximately 14,000 persons through a special examination. Those, who had appointed on compassionate grounds, demanded that they should be treated above the persons, those who had been recruited directly through TNPSC. This matter went up before the Supreme Court in ***K.Parthasarathi and another Vs. Additional Director Agriculture and others, 1999 SCC Online SC 309***, wherein, the Supreme Court had held that those who were directly recruited through TNPSC should be ranked first and those who had been appointed on compassionate grounds should be ranked below.

6. After the judgment in *K.Parthasarathi's* case, a dispute arose between those who were appointed on compassionate grounds and those who were appointed by way of special recruitment examination held in the year 1984. This matter went up before the High Court in W.P.No.21654 of 2004. A Division Bench of this Court heard the matter and finally disposed it of on 03.04.2006. The issue that was dealt with directly in this judgment



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was how to place the *inter se* seniority between those appointed on compassionate grounds and those appointed by way of Tamil Nadu Special Absorption Rules, 1987. The relevant portion of the judgment reads are as follows:-

*“12. It is, therefore, obvious that the seniority of a person appointed on the basis of November, 1983 examination, has to be fixed on the basis of the date of substantive appointment and not on the basis of the date of the examination. As a matter of fact, this aspect has been very elaborately clarified by Justice Sathiadev, in the decision dated 8.4.1988, which has been specifically approved by the Division Bench. Hence, we are not inclined to take any different view of the matter. In view of the direction clearly indicated in paragraph 9 of the judgment of the learned single Judge, which has been specifically approved by the Division Bench, **it is apparent that the question of seniority of the person appointed through TNPSC or person appointed on compassionate ground, has to be fixed on the basis of the date of appointment.***

13. So far as General Rules 10(a)(1) candidate are concerned, obviously such candidates have to be ranked below the TNPSC candidates irrespective of the date of appointment of such TNPSC candidates and the Special



Absorption Rules candidates. In other words, 10(a)(1) appointees have to be ranked below the last TNPSC candidate selected on the basis of the examination held in November, 1983. Since the validity of such rule has not at all been challenged, the General Rules 10(a)(1) candidates are deemed to be below all candidates selected on the basis of November, 1983 examination held by the TNPSC.

14. For the aforesaid reason, the writ petition Nos. 3822 and 3823 of 2006 filed by the Government, are dismissed. Writ Petition No.21654 of 2004 is partly allowed, and it is directed that the candidates selected by the TNPSC on the basis of the examination held in November, 1983, shall rank above General Rules 10(a)(1) candidates; but, so far as compassionate appointees and TNPSC candidates shall depend according to the date of their initial appointment, as has been held in paragraph 9 of the judgment in W.P.No.7730/87 and W.A.No.787/88. No costs. Consequently, connected WPMPs are closed.”

7. On taking into account the judgment passed in *K.Parthasarathi's* case, the impugned G.O. was passed. As per the impugned G.O., the seniority has been fixed as follows:

(i) those directly recruited through TNSPC



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(ii) those appointed through G.O.Ms.No.996, dated 22.09.1984

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(iii) those had been appointed on compassionate grounds etc.,

On account of this G.O., the writ petitioner's seniority, which was confirmed as serial No.75 in 2002, was taken away and recovery order has been passed. Challenging the order of recovery, the writ petition in W.P.(MD).No.6116 of 2010 came to be filed before this Court. This Court took note of the legal principle that there cannot be a revision of seniority and recovery without issuing show cause notice to the affected Government servant, had set aside the same and directed that the entire issue to be reconsidered by the respondents. This order was passed on 08.01.2018.

8. Consequent to the order passed by this Court, the impugned proceedings in W.P(MD)No.12037 of 2018 came to be passed on 10.05.2018. The prayer of the petitioner was rejected by the impugned order and I have to add, in a non-speaking manner. The issues directed by this Court were not considered. Hence, aggrieved by the same, the other writ petition came to be filed as stated above.

9. Heard Mr.S.Mohamed Suhail, learned counsel appearing for the petitioner and Mr.R.Baskaran, Additional Advocate General, assisted by



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Mr.T.Amjadkhan, learned Government Advocate appearing for the respondents.

10. The issue to be considered in this case is rather simple one as to whether the order passed by the Government in G.O(2D)No.38, School Education Department, dated 23.07.2009 had been passed in accordance with the order passed in W.P(MD) No.21654 of 2004?

11. A perusal of the Government order dated 23.07.2009 shows that the order passed by the Division Bench had not been taken into consideration at all. The Division Bench had categorically laid down the manner in which the seniority has to be fixed *inter se* between those who had been appointed under the Special Absorption Rules and those who had been appointed by way of compassionate appointment. The Division Bench had categorically stated that the *inter se* seniority between these categories should be fixed depending upon the date of initial appointment.

12. The learned Additional Advocate General would vehemently contend that the impugned order should be read as if the *inter se* seniority between those compassionate appointees should be read as initial



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appointment and similarly, those who had been appointed under the Special Absorption Rules should be read distinctly from those appointed by compassionate appointment and this is the effect of paragraph No.14 of the said order. He would also point out that the impugned order merely implements the judgment of the Supreme Court in *K.Parthasarathi's* case. Therefore, it does not require interference.

13. I have carefully considered the arguments on either side.

14. As pointed out above, what I am able to peruse from paragraphs Nos.12 and 14 of the order dated 03.04.2006 in W.P.No.21654 of 2004 is that those who were directly recruited through TNPSC should be placed first and they will rank above those who had been appointed under Rule 10(a)(1) of the Tamil Nadu State and Subordinate Services Rules. This issue had been taken to the Supreme Court in *K.Parthasarathi's* case. In *K.Parthasarathi's* case, those appointed on compassionate grounds wanted to take a march over those who were directly recruited and that came to be rejected by the Supreme Court in **1999 SCC Online SC 309**. However, the said judgment did not deal with the *inter se* seniority between those



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appointed under Special Absorption Rules and those appointed on compassionate grounds. This issue had been specifically dealt with only by the Division Bench of this Court in their orders dated 03.04.2006 and 28.05.2015.

15. In both the cases, it had been held that *inter se* seniority between those appointed on compassionate grounds and those appointed through Special Absorption Rules by TNPSC should depend upon the date of their initial appointment. The later portion of paragraph 14 referring to TNPSC candidates, refers only to those who had been appointed by the special absorption examination, which was conducted pursuant to the order passed in 1988. Therefore, the re-fixation as done by the impugned G.O. is contrary to the judgment of the Division Bench of this Court.

16. The re-fixation being contrary to the directions given by the Division Bench of this Court and borne out of the confusion treating the case of the petitioner as one covered by *K.Parthasarathi's* case, the said Government Order has been issued. When the Division Bench has categorically held that the *inter se* seniority between those appointed under



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Special Absorption Rules and those who were appointed on compassionate grounds should be on the basis of their initial appointment, the Government Order passed contrary to the same, necessarily, has to be interfered with. Accordingly, the impugned order in G.O.(2D).No.38, School Education (R2) Department dated 23.07.2009, insofar as it is contrary to the judgment of the Division Bench, is set aside and the Writ Petition in W.P.(MD).No. 12523 of 2013 is allowed. The Government shall pass a fresh order fixing the *inter se* seniority of the persons, those who were appointed under Special Absorption Rules and those who were appointed under compassionate grounds, according to their initial appointment and after re-working the same, a fresh seniority list shall be issued. Consequently, the impugned order dated 10.05.2018 is set aside and the Writ Petition in W.P. (MD).No.12037 of 2018 is allowed.

17. The learned counsel for the petitioner reports that apart from gratuity, no other retirement benefits have been settled to the petitioner on account of the pendency of the Writ Petitions.

18. I fail to understand as to how one is connected to the other.



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Therefore, there shall be a direction to the respondents to disburse the retirement benefits due and payable to the petitioner, if not already paid.

19. In the result, the Writ Petitions are allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

22.12.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
cp/Lm

To

- 1.The Principal Secretary to Government,
School Education (R2) Department,
Secretariat,
Chennai – 9.
- 2.The Director of School Education,
Chennai – 6.
- 3.The Joint Director of School Education (Personal),
O/o. the Joint Director of School Education,
Nungambakkam,
Chennai.
- 4.The District Educational Officer,
O/o. the District Educational Office,
Ramanathapuram,



Ramanathapuram District.

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V.LAKSHMINARAYANAN,J.

cp/Lm

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