

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22/12/2016

C O R A M

THE HONOURABLE Mr.JUSTICE S.MANIKUMAR
A N D
THE HONOURABLE Mr.JUSTICE M.GOVINDARAJ

W.A.Nos.1072 and 1073 of 2010

P.Govindarajan ...Appellant in Both W.A s

Vs

1. The Director of Elementary Education
Chennai 6.
2. The District Elementary Educational Officer
Coimbatore District
Coimbatore.
3. The Additional Assistant Elementary
Educational Officer
Pongalur
Coimbatore District.
4. Tmt.R.Mariammal
Headmistress of Elementary School
Panchayat Union Elementary School
Kullampalayam
Pongalur Union
Coimbatore District. ...Respondents in both W.A s

Appeals filed under Clause 15 of Letters Patent against the orders made in W.P.Nos.6088 of 2009 and 46228 of 2006, dated 23/3/2010. Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of certiorari, calling for the records pertaining to the order passed by the 2nd respondent in his proceedings Na.Ka.No. 7546/Aa5/2008 dated 9.3.2009 and quash the same.

Writ petition filed under Article 226 of the Constitution of India, for issuance of a Writ of certiorarified Mandamus, calling for the records pertaining to the panel issued by the 3rd respondent in his proceeding No. Nil, dated 08/11/2006, as approved by the 2nd respondents 2 and 3 to temporarily promote the petitioner as Headmaster of Middle School till the regular panel is drawn for the year 2007 and counter all the consequential benefits.

For appellant ... Mr.P.Ganesan

For respondents ... Mr.V.Annandamoorthi
for R.R.1 to 3.

Mr.R.Muthukannu
for Mr.K.Thennan
for R.4

C O M M O N J U D G M E N T

(Judgment of the Court was made by S.Manikumar,J)

As both the appeals arise out of a common order made in W.P.Nos.6088 of 2009 and 46228 of 2006, dated 23/3/2010, they are taken up together and disposed of by a common judgment.

2. On 3/10/1996, appellant joined as a Secondary Grade Teacher. On 20/6/2003, he was promoted as Head Master of Elementary School. Next avenue of promotion is to the post of Head Master, Middle School, B.T. Grade. The minimum qualification required for the said post is B.A/B.Sc degree and B.Ed or B.Lit. He passed B.Lit in May 2006. A panel for promotion to the post of Head Master of Middle School was drawn for the year 2006. The crucial date was 1/1/2006. The panel consisted of six persons. It was approved on 6/6/2006. According to the petitioner, the panel is valid for one year from the date of approval. Since he did not possess the required qualification, as on 1/1/2006, he was not included in the panel.

3. The appellant has contended that all the six persons, who have been included in the panel were given promotion. On 23/11/2006, a post of Head Master of Middle School was sanctioned. He acquired the qualification in May 2006. As the above said six persons were already given promotion, as per Rule 39 (A) of the General Rules for Tamil Nadu State & Subordinate Services, the post had to be filled up by temporary promotion, promoting a person, as per seniority. He has further submitted that every year only one panel has to be prepared. No additional or second panel can be prepared.

4. According to him, when that be the rule position and when the appellant was fully qualified for the post of Headmaster of Middle School, name of the fourth respondent alone was forwarded to the District Elementary Educational Officer, Coimbatore, the second respondent herein, for promotion to the newly sanctioned post of Headmistress of Middle School. The Additional Assistant Elementary Educational Officer, Pongalur, Coimbatore District/third respondent, prepared another panel, dated 8/11/2006, and promoted the fourth respondent as

Headmistress of Middle School. The appellant, preferred a representation, dated 14/11/2006, challenging the panel, dated 8/11/2006.

5. Being aggrieved by the panel, dated 8/11/2016 of the Additional Assistant Elementary Educational Officer/third respondent and approved by the District Elementary Educational Officer, Coimbatore District/second respondent, appellant has filed W.P.No.46228 of 2006, praying for a writ of certiorarified mandamus, to quash the same, and for a further direction to the respondents 2 and 3 therein, to temporarily promote the appellant as Headmaster of Middle School, till a regular panel is drawn for the year 2007.

6. Record of proceeding shows that in the said writ petition, an interim order has been passed. Thereafter, interim stay was vacated, Mr.R.Mariamammal the fourth respondent has been promoted as Headmistress, Middle School. Taking note of the subsequent vacancy in the post of Middle School Headmistress, appellant was promoted. He joined duty on 5/6/2008, but he was reverted on 10/6/2008. Challenging the same, the appellant has filed W.P.No.14332 of 2008. Order of reversion was set aside on the grounds that no opportunity was given. Pursuant to the directions in W.P.No.14322 of 2008, the appellant was given an opportunity to submit his explanation.

7. After considering the explanation, the District Elementary Educational Officer, Coimbatore District/second respondent, vide proceedings, dated 9/3/2009, cancelled the promotion of the appellant and posted him as B.T.Assistant - Tamil. Challenging the same, the appellant filed W.P.No.6088 of 2009.

8. When both W.P.Nos.46228 of 2006 and 6088 of 2009 were taken up together, contention has been that on 1/1/2006, six names were included in the panel for promotion to the post of Head Master Middle School. Out of which, three persons have relinquished their promotion. Subsequently, three persons were included. Mrs.R.Mariamammal the fourth respondent herein made a representation, dated 28/8/2006, to include her name in the panel contending inter alia that she had necessary qualification for the post of Headmistress, Middle School. The District Elementary Educational Officer, considered her representation and included her in the panel for the year 2006. The official respondents have further contended that it cannot be construed as an additional panel. On the other hand, the name of Mariammal/fourth respondent was omitted to be included in the panel drawn, as on 1/1/2006. Mistake committed was rectified. The appellant was not qualified for inclusion of the panel on

the crucial date 1/1/2006 and thus the official respondents submitted that the panel prepared as on 1/1/2006 was correct.

9. Defending the order of the District Elementary Educational Officer, Coimbatore District, dated 9/3/2009, the official respondents have contended that as the appellant was junior most Headmaster in the Union, he had to be reverted to the post of B.T.Assistant (Tamil). Adverting to the rival contentions, writ Court, vide common order, dated 23/3/2010 in W.P.Nos.46228 of 2006 and 6088 of 2009, at paragraph Nos.9 and 10, ordered as hereunder:-

"9. It is the admitted case of both sides that as on the date of promotion, the validity period of one year has not been expired. According to the petitioner, if the promotion was pursuant to any proceedings by the appellate authority by including the name of the fourth respondent, the petitioner cannot have any grievance over the promotion of the fourth respondent. But, on the contrary, the fourth respondent was promoted by the second respondent by including her name in the panel dated 8/11/2006 based on her representation. Therefore, it cannot be construed that it was the rectification of the panel dated 1/11/2006 and it has to be construed only as an additional panel, which is not permissible under the Rules. Now, in view of the rival contention, the question that has to be considered in both the writ petitions is, whether the promotion of the fourth respondent is consequent to the additional panel or by way of rectification to the panel drawn on 1/1/2006. To answer this, it has to be remembered that there are certain factual aspects available in this case. Admittedly, as on 1/1/2006 i.e., the date on which panel was drawn, the fourth respondent has possessed the required qualification for promotion to the post of Headmistress of the Middle School and the writ petitioner did not have the required qualification at the time of drawing the earlier panel. Though six names were included in the panel, three persons out of six, already relinquished their promotion even prior to the panel was drawn. Therefore, it is apparent that the panel was

prepared inadvertently by including the names of the three persons who had already relinquished their promotion and also by omitting the name of the fourth respondent, who was qualified on the date of the panel. Hence, at the later point of time, on the representation made by the fourth respondent, her name was included by rectifying the inadvertent mistake crept in the panel drawn on 1/1/2006, that too, before the expiry of the validity of the panel. Further, it is not the case of the petitioner that on the crucial date, namely, 1/1/2006, the fourth respondent did not have the required qualification to the promotional post and also it is not the case of the petitioner that the fourth respondent qualified herself to the post of Headmistress of Middle School after 1/1/2006 and thereafter, her name was included in the panel. Considering these facts, I am of the opinion that the inclusion of the name of the fourth respondent in the panel was only a rectification of the inadvertent mistake which had crept in, in the panel drawn on 1/1/2006. Moreover, as per G.O.Ms.No.233 dated 23/11/2006, the panel was drawn and the proceedings of the first respondent dated 23/11/2006 would show that there was a direction to the second respondent to fill up the post by taking 1/1/2006 as the crucial date for seniority by conducting counselling on 25/11/2006 and 26/11/2006 and these proceedings and the said G.O also support the case of the respondents that the promotion of the fourth respondent was only consequent to the rectification of the panel drawn on 1/1/2006, which was not prohibited by any of the Rules. Therefore, I do not find that there was any illegality or impediment or impasse in giving promotion to the fourth respondent as Headmistress both on factual and legal grounds.

10. Similarly, I find that, pursuant to the order of this Court dated 23/10/2008, passed in W.P.No.14332 of 2008, after giving opportunity to the petitioner, the second respondent has passed the impugned order dated 9/3/2009 cancelling the promotion

temporarily given to the petitioner. I do not find any infirmity in the order dated 9/3/2009 passed by the second respondent, which is the subject matter of challenge in W.P.No.6088 of 2009."

10. Being aggrieved by the order made in W.P.Nos.6088 of 2009 and 46228 of 2006, W.A.Nos.1072 and 1073 of 2010, respectively have been filed.

11. Inviting the attention of this Court to the proceeding of the Director of Elementary Educational Officer, Chennai, dated 15/11/2001 and the gradewise panel, of those who were qualified for promotion, on the basis of seniority, as on 1/1/2006, Mr.P.Ganesan, learned counsel for the appellant submitted that Mr.P.Govindarajan, appellant herein was placed at S.No.42 in the seniority list, whereas Ms.R.Mariamammal the fourth respondent herein, was placed at S.No.52. He therefore, contended that the appellant was senior to the fourth respondent.

12. Referring to the panel of primary School Head Masters, as on 1/1/2006 eligible to be promoted as Middle School Head Masters, learned counsel for the appellant further submitted that in the panel, dated 6/6/2006, approved by the District Elementary Educational Officer, Coimbatore District, only six persons were empanelled and while granting approval, it is also categorically stated that no other eligible primary school Head Master has been omitted.

13. Reiterating the contention that there can be only one panel in a year, learned counsel for the appellant submitted that the additional panel prepared, on 8/11/2006 by the Additional Assistant Elementary Educational Officer, Pongalur, including the name of Ms.R.Mariamammal, for promotion to the post of Headmistress, is contrary to Rule 4 of the Tamil Nadu State and Subordinate Rules, in short called as the "General Rules". He also submitted that expecting the subsequent vacancy of a Middle School Head Master, which the Government ordered in G.O.Ms.No.223 School Education (C-2) Department dated 23/11/2006, additional panel, dated 8/11/2006 has been prepared and accordingly, promotion to the fourth respondent has been ordered, on 25/11/2016 by the District Elementary Educational Officer, Coimbatore District.

14. Mr.P.Ganesan, learned counsel for the appellant further submitted that the order of reversion, dated 9/3/2009, is erroneous. According to him, the writ Court, erred in dismissing both the writ petitions, on the premise that additional panel, dated 8/11/2006 is only a rectification. He also submitted that the writ Court proceeded on the wrong

footing that even in the case of temporary promotion under Rule 39 A, the same could be given only to those who were qualified, on the crucial date. He also contended that the official respondents ought to have included the appellant against a regular vacancy, in the subsequent year 2007.

15. Mr.Muthukannu for Mr.K.Thennan, learned counsel appearing for Mrs.R.Mariammal/respondent No.4, submitted that though she was fully qualified, as on 1/1/2006, her name was not included and therefore, a representation, dated 28/8/2006, was made. Representation was duly considered and accordingly by rectifying the mistake, her case was considered, for inclusion, in the panel of Primary School Headmistress, as on 1/1/2006 eligible to be considered for promotion as Headmistress in Middle Schools. He further submitted that the orders passed by the official respondents are in accordance with rules and the writ Court, after considering the rival submissions has rightly declined to accept the appellant's contention. For the above said reasons, he prayed to sustain the order made in 46228 of 2006, dated 23/3/2010.

16. In so far as the order made in W.P.No.6088 of 2009 is concerned, learned counsel appearing for the fourth respondent submitted that as the challenge relates to reversion of the appellant, it is a matter between the official respondents and the appellant.

17. On behalf of official respondents, Mr.V.Anandamoorthy, learned Additional Government Pleader, appearing for the respondents 1 to 3, reiterated the reasons for rectification of the panel and the consequential promotion. He also submitted that as the appellant was the junior most Middle School Head Master, among the Middle Schools Head Masters, working in Pongalur Panchayat, he had to be reverted. He further submitted that the well considered common order of the writ Court in W.P.Nos.46228 of 2006 and 6088 of 2009, dated 23/3/2010, does not require any interference.

18. Heard the learned counsel for the parties and perused the materials available on record.

19. Material on record discloses that the appellant was appointed as Secondary Grade Teacher, on 3/10/1996, in Panchayat Union Elementary School, Maniyampalayam. He was promoted as Headmaster of Panchayat Union Elementary School, Vavipalayam on 20/6/2003, whereas Mrs.R.Mariyammal/fourth respondent herein was appointed, on 6/8/1997, as Secondary Grade Teacher in Panchayat Union Primary School, Muthur. Therefore, appellant is senior.

20. The crucial date for inclusion of the primary School Head Masters for promotion to the post of Head Masters for Middle Schools is 1/1/2006. As per Rule 4 of the Tamil Nadu State and Subordinate Services Rules, if any panel for promotion to higher post is prepared, then the competent authority has to consider the candidature of those who are qualified, on the crucial date for inclusion in the panel. Qualifications prescribed for the post of Middle School Head Master are B.A./B.Sc degree with B.Ed/B.Lit. Mrs.R.Mariamammal/fourth respondent possessed the required qualification of a degree with B.Ed, as on 1/1/2006, whereas, the appellant has acquired the prescribed qualification of B.Lit/B.Ed only in May 2006.

21. Admittedly, the panel prepared by the Assistant Educational Officer, Pongalur and approved by the District Elementary Educational Officer, Coimbatore District/second respondent on 6/6/2006, contained six names. Though the appellant has contended that all those included in the panel drawn on 6/6/2006, were promoted as Middle School Head Masters, before the writ Court, a reply has been filed to the effect that out of six, three relinquished. When the fourth respondent was fully qualified as on 1/1/2006, her name was not included in the panel dated 6/6/2006. The fourth respondent has made a representation, dated 28/8/2006, to include her name in the panel for the year 2006. The District Elementary Educational Officer, Coimbatore, considered the representation, dated 28/8/2006 and another representation dated 6/11/2006 and found that the name of Mrs.R.Mariamammal was omitted to be included in the said panel and by rectifying the mistake crept in the panel drawn on 6/6/2006, has included her name, as eligible for promotion, to the post of Middle School Headmistress.

22. If any mistake was committed by the official respondents in not including the name of an eligible candidate for promotion to the post to which, he/she was qualified, as on 1/1/2006, i.e., the crucial date, then it cannot be contended that competent authorities are precluded from issuing a separate order by including the name of such person, who has been omitted to be included. Reading of the counter affidavit filed by the Additional Assistant Elementary Educational Officer, Pongalur in W.P.No.6088 of 2009 shows that the Department has initiated disciplinary proceedings against the erroneous construction and improper presentation of the panel, on 31/12/2007.

23. Admittedly, the appellant has acquired the qualification for the post of Middle School Head Master in May 2006. Though junior in the post of primary School Headmistress, the fourth respondent has acquired the required qualification, much earlier

than the appellant and before the crucial date i.e., 1/1/2006. As on 1/1/2006, she was qualified and therefore, when she made representations, by considering the same, she has been included in the panel. It is a well settled law that a person, who is ineligible for inclusion in a panel,

as on the crucial date, cannot question or challenge the inclusion of another person, fully qualified to be included in the panel, as on the crucial date.

24. Rectification of the mistake by the department, by addressing the grievance of the fourth respondent, against the omission to include her in the panel though she was fully qualified, as on 1/1/2006, cannot at any stretch of imagination, be termed as an additional panel or second panel, drawn in the same year.

25. Contention of the appellant that anticipating the issuance of G.O.Ms.No.233, School Education Department, dated 23/11/2006, fourth respondent was included in the panel, cannot be countenanced. Reading of G.O.Ms.No.233, School Education Department, dated 23/11/2006 shows that the Director of Elementary Education, Chennai, has addressed a letter, dated 25/8/2006, stating that during the year 2001 - 2002, to 2003 - 2004, Elementary Schools were upgraded as Middle Schools and Middle School Head Master, posts were allotted. Similarly, 1009 Elementary Schools were upgraded as Middle Schools during the academic year 2006 - 07. Therefore, vide letter, dated 28/8/2006, he has requested the Government to fill up the said upgraded post, by promotion, on seniority basis, from the post of Elementary School Head Masters.

26. Request of the Director has been accepted by the Government in G.O.Ms.No.233, School Education Department, dated 23/11/2006. At this juncture, it is noticed that even before the issuance of the Government Order, the fourth respondent has made a representation, on 28/8/2006.

27. In the light of the above discussion, the appellant has no right to seek for quashing of the panel dated 8/11/2006, by terming it as second panel or additional panel. W.A.No.1073 of 2010, filed against the order made in W.P.No.46228 of 2006, dated 23/3/2010, is dismissed.

28. In so far as W.A.No.1072 of 2010 is concerned, filed against the order made in W.P.No.6088 of 2009, filed against the order of reversion, dated 9/3/2009, passed by the District Elementary Educational Officer, Coimbatore, material on record discloses that earlier, when the appellant filed W.P.No.14332 of

2008, this Court set aside the said order and granted liberty to the second respondent to pass orders afresh, after due notice to the appellant and also to Mrs.R.Mariammal/fourth respondent herein. A show cause notice dated 21/1/2009 has been sent to the appellant. He has submitted an explanation dated 6/2/2009. After considering the said explanation, the Additional Assistant Elementary Educational Officer, Pongalur, in his order, dated 9/3/2009 has stated that there was no vacancy in Pongalur, Tiruppur District. Earlier, the appellant was temporarily promoted as Middle School Head Master in Pollikalipalayam Middle School. Unexpectedly, Government have issued orders, upgrading Panchayat Union Middle School, Pallikollipalayam as Government High School for the academic year 2008 - 2009. Hence the post of Middle School Head Master was included to the High School. The appellant did not give his option to the post of High School Graduate Teacher. Moreover, he was the junior most Middle School Head Master in Pongalur Union. There was no vacancy in the post of Middle School Head Master. Thus, in the above said circumstances, there was no other alternative, excepting to pass an order cancelling promotion.

29. For the above said reasons, the Assistant Elementary Educational officer, Pongalur/third respondent herein, has sought to justify the order, dated 20/6/2008, by which the appellant was posted as Tamil Teacher in the vacant post, Potheri, Panchayat Union Middle School, Pongalur Union. Reasons cannot be said to be arbitrary.

30. In the light of the above discussion, we find no infirmity in the order made in W.P.No.46228 of 2006 dated 23/3/2010, warranting interference.

31. In the result, both the Writ Appeals are dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

सत्यमेव जयते

Sd/-

Assistant Registrar

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Sub Assistant Registrar

mvs.

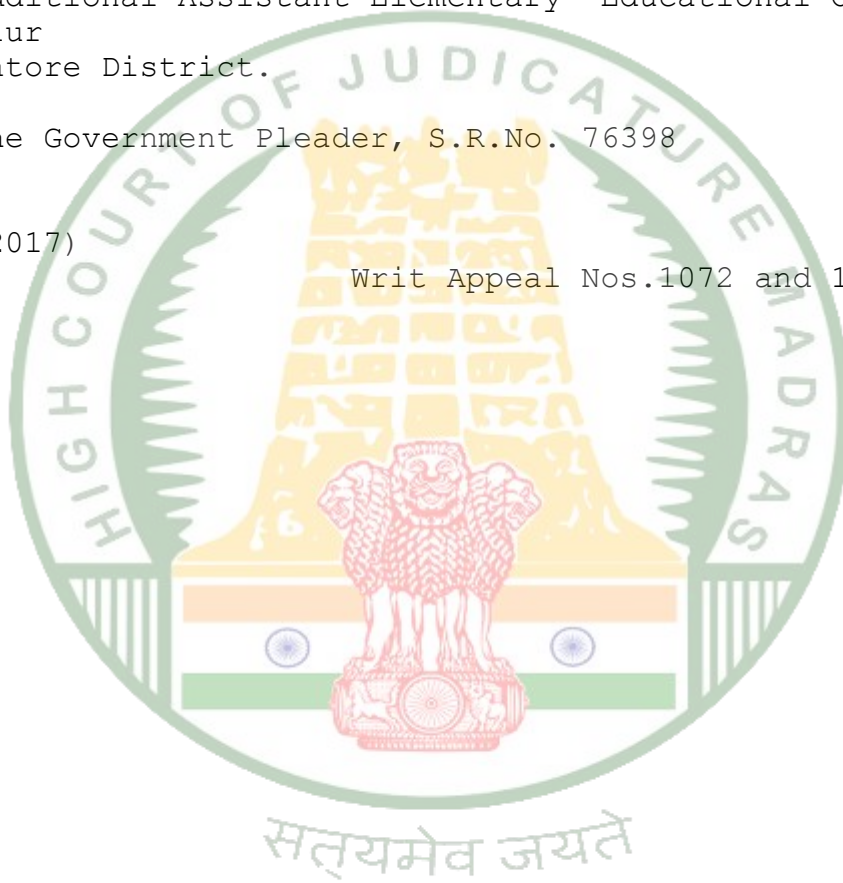
To

1. The Director of Elementary Education
Chennai 6.
2. The District Elementary Educational Officer
Coimbatore District
Coimbatore.
3. The Additional Assistant Elementary Educational Officer
Pongalur
Coimbatore District.

+1cc to the Government Pleader, S.R.No. 76398

SK(CO)
RS(24/01/2017)

Writ Appeal Nos.1072 and 1073 of 2010



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