

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.15381 of 2016

and W.M.P.No.13405 of 2016

A.Dhinakaran Koilmani Petitioner

vs.

1.The Director of Elementary Education,
DPI Campus,
College Road,
Chennai-600 006

2.The District Elementary Educational
Officer,
Krishnagiri.

3.The Assistant Elementary Educational
Officer,
Thalli Panchayat Union,
Krishnagiri District.

.... Respondents

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of mandamus directing the respondents 1 and 2 herein to consider and pass orders on the objection of the petitioners dated 9.3.2016 by including the name of the petitioner in the panel for promotion for Elementary School Headmaster, Thalli Union as on 1.1.2016, by reckoning the date of joining of the petitioners as on 14.12.2009 (the date of order of appointment issued by the second respondent in Na.Ka.No.2162/A2/2009) or the next day i.e. 15.12.2009, instead of 4.1.2010 and accordingly promote the petitioners to the post of Elementary School Headmaster in Thalli Union.

For Petitioner : Mrs.Dakshayani Reddy
For Respondents : Mr.S.Gunasekaran,
Addl. Govt. Pleader.

ORDER

The petitioner has come up with the present writ petition for a mandamus, directing the respondents 1 and 2 to consider and pass orders on his objection dated 9.3.2016 by including his name in the panel for promotion for Elementary School Headmaster, Thalli Union as on 1.1.2016, by reckoning his date of joining as on 14.12.2009 (the date of order of appointment issued by the second respondent in Na.Ka.No.2162/A2/2009) or the next day i.e. 15.12.2009, instead of 4.1.2010 and accordingly, promote him to the post of Elementary School Headmaster in Thalli Union.

2. The case of the petitioner, in brief, is as follows:-

(a) The petitioner belongs to Thuthukudi District. He was selected to the post of Secondary Grade Teacher vide proceedings of the Teachers' Recruitment Board, by applying the State-wide seniority for sponsorship from the employment exchange and was given with allotment order vide proceedings of the second respondent dated 14.12.2009 to join as Secondary Grade Teacher in Thally Panchayat Union.

(b) So far as the selection to the post of Secondary Grade Teacher is concerned, earlier the appointment was made through the District-Wide seniority. Subsequently, according to the directions of this Court, the Teachers' Recruitment Board issued notification for employment exchange seniority to be prepared on State-Wide seniority basis. Accordingly, the petitioner was called for counselling at Trichy and issued with the order of appointment dated 14.12.2009 to join in Anchetty Panchayat Union Primary School, Thally Union, Krishnagiri District.

(c) On the very next day, the petitioner reported to the office of the second respondent. But, he was orally informed that since there was a bye-election on 19.12.2009 in Thuthukudi District, he could not join duty till the results were declared. Thereafter, the results were declared on 23.12.2009 and when the petitioner again went on 24.12.2009 to join duty, he was informed that due to the half yearly vacation, he could join

duty only on the re-opening of the school. Accordingly, the petitioner could join duty only on 4.1.2010.

(d) So far as the seniority to the post of Secondary Grade Teacher is concerned, each panchayat union is an unit for reckoning the seniority. Accordingly, as per the seniority list which was prepared on 1.1.2011, the petitioner's place in the seniority list was assigned as per the rank assigned by the Teachers' Recruitment Board. Even for the year 1.1.2012, the seniority was prepared only based upon the rank assigned by the Teachers' Recruitment Board and not the date of joining. However, as on 1.1.2014, the seniority list was prepared for the first time based upon the date of joining. Further, in the seniority list as on 1.1.2016 prepared for promotion to the post of Elementary School Headmaster, the petitioner's juniors have been shown as senior to him. Hence, the petitioner approached the respondents to change his date of joining as on 14.12.2009 instead of 4.1.2010 since the delay in joining duty was not on account of his fault. However, the same was not considered so far. In this regard, the petitioner gave a representation dated 9.3.2016 to the respondents giving objections to the panel prepared for promotion to the post Elementary School Headmaster as on 1.1.2016 published on the notice board of the third respondent. But, the same was not considered so far. Hence, left with no other alternative, the petitioner has come up with the present writ petition for the relief set out earlier.

3. Today, when the matter was taken up for consideration, learned counsel appearing for the petitioner submitted that when the petitioner went to Anchetty Panchayat Union Primary School, Thalli Union, Krishnagiri, to join duty on 14.12.2009, he was orally informed that since there was a bye-election on 19.12.2009 in Thuthukudi District, he could not join duty till the results were declared. Thereafter, when the petitioner again went on 24.12.2009 after the election results were declared, once again he was informed that due to the half yearly vacation, he could join duty only on the re-opening of the school. Accordingly, the petitioner could join duty only on 4.1.2010. Learned counsel further submitted that originally, the seniority list was assigned as per the rank assigned by the Teachers' Recruitment Board and not based on the date of joining. But, subsequently, as on 1.1.2014, the seniority list was prepared for the first time based upon the date of joining. Now, the individuals, who joined duty on 14.12.2009, have been shown as seniors to the petitioner. The non-joining of the petitioner on 14.12.2009 is not due to his fault and he could join duty only on 4.1.2010 since he was instructed to join duty after the election results were declared and thereafter, after re-opening of the school. Thus, he seeks to include the name of

the petitioner in the panel for promotion for Elementary School Headmaster, Thalli Union as on 1.1.2016, by reckoning his date of joining as on 14.12.2009 or the next day i.e. 15.12.2009, instead of 4.1.2010. In support of his contentions, the learned counsel appearing for the petitioner relied upon the judgment of the Division Bench of this Court dated 31.3.2008 made in W.P.No.8131 of 2007 (Union of India v. The Registrar).

4. Learned Additional Government Pleader, appearing for the respondents, by filing counter affidavit, submitted that there was a bye-election in Thuthukudi District and since the petitioner belongs to Thuthukudi District, he was not issued with the appointment order. Further, the panel for the years 2011, 2012 and other years were prepared based on the rank number assigned by the Teachers' Recruitment board. But, in the case of the petitioner, when the mistake was found, the same was corrected and the date of joining was restored for fixing the seniority. Further, the appointment to the post of Secondary Grade Teacher was made purely on the employment exchange registration seniority and there is no routine examination assessment on merit or ranking. Therefore, as per rule 35(aa) of State Subordinate Service Rules, the date of joining will be the relevant criteria for fixation of seniority. Thus, he sought for dismissal of the writ petition.

5. Irrespective of the submissions made by the learned counsel on either side, this Court directs the first respondent to consider the representation / objections of the petitioner dated 9.3.2016 giving objections to the panel prepared for promotion to the post Elementary School Headmaster as on 1.1.2016 published on the notice board of the third respondent and pass appropriate orders, on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. It is made clear that this Court has not expressed any opinion with regard to the claim projected by the petitioner and it is for the first respondent to consider the claim of the petitioner strictly on merits and in accordance with law. The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1.The Director of Elementary Education,
DPI Campus,
College Road,
Chennai-600 006

2.The District Elementary Educational
Officer,
Krishnagiri.

3.The Assistant Elementary Educational
Officer,
Thalli Panchayat Union,
Krishnagiri District.

+1 CC to M/s. Dakshayini Reddy, Advocate Sr.No.54127

W.P.No.15381 of 2016

PPA (CO)
MD : 20/10/2016



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