



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.03.2016

CORAM

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P.(MD)No.20615 of 2015

and

M.P.(MD)No.1 of 2015

M.Balasubramani

.. Petitioner

Vs.

1.The District Elementary Educational Officer,  
Karur District, Karur.

2.The Additional Assistant Elementary  
Education Officer,  
Aravakurichi,  
Karur District.

3.S.Senthilkumar

.. Respondents

Writ petition is filed under section 226 of the Constitution of India for issuance of a writ of Certiorari calling for the records relating to the impugned order passed by the first respondent in his proceedings Na.Ka.No.2710/A4/2015 dated 09.11.2015 and consequential impugned order passed by the 2<sup>nd</sup> respondent in his proceedings Na.Ka.No.378/A1/2015 dated 13.11.2015 and to quash the same as illegal, arbitrary and in violation of Art.14 of the Constitution of India.

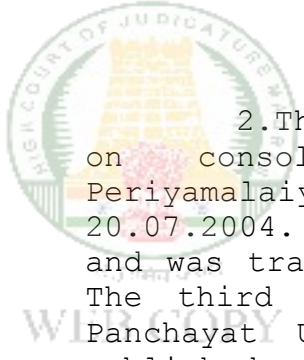
For Petitioner : Mr.B.Saravanan

For R1 and R2 : Mr.T.S.Md.Mohideen  
Additional Government Pleader

For R3 : Mr.M.Ajmalkhan  
Senior Counsel  
for  
Mr.B.Aanandan

ORDER

The petitioner seeks for issuance of a Writ of Certiorari to quash the impugned order of the first respondent, dated 09.11.2015 and the consequential impugned order passed by the 2<sup>nd</sup> respondent, dated 13.11.2015.



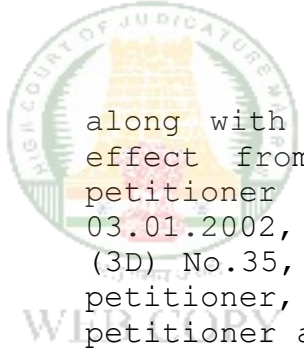
2. The writ petitioner was appointed as a Secondary Grade teacher on consolidated pay at panchayat union Primary School, Periyamalaiyandipatti, Krishnarayapuram Union, Karur District, on 20.07.2004. Thereafter, he was brought to time scale of pay on 01.06.2006 and was transferred to Aravakurichi Union, Karur District on 09.01.2006. The third respondent was appointed as Secondary Grade teacher in a Panchayat Union Primary School on 28.09.2004. The first respondent published a seniority list of Secondary Grade teacher for the promotion to the post of primary school Head Master on 01.01.2014, wherein the petitioner was placed at serial No.38. One another panel was published for promotion of Elementary School Head Master as on 01.01.2015, in which, the petitioner was at rank No.2, whereas the third respondent was placed at rank No.20.

3. Subsequently, the petitioner was promoted to the post of Head Master at Panchayat union primary school vide proceedings of the first respondent, dated 17.08.2015 and the petitioner also joined in the post of Head Master on 19.08.2015. While so, the third respondent had made a representation on 30.03.2015 to the respondents to regularise his services from 2002 and extend the benefit granted to one Kulandhai Rosary Jegan, who was junior to third respondent in the employment seniority and the date of appointment. The third respondent also had filed W.P.(MD) N.6177 of 2015 seeking issuance of writ of mandamus directing the authorities to regularise the services of the third respondent as Secondary Grade teacher with effect from 03.01.2002. The said writ petition was allowed directing the first respondent to consider the representation of the petitioner therein and pass appropriate orders on merits.

4. It is pertinent to mention that after the final orders were passed in W.P.(MD) No.6177 of 2015, this petitioner was promoted from the post of Secondary Grade teacher to the post of Head Master. While so, the first respondent passed the impugned order in his proceedings in Na.Ka.No.2710/A4/2015, dated 09.11.2015 stating that the petitioner had been reverted from the post of Elementary School Head Master to the post of Secondary Grade teacher at Panchayat Union Middle School, A.Venkatapuram, Aravakurichi Union, in compliance with the order passed in W.P.(MD) No.6177 of 2015. The said order is under challenge in the present writ petition.

5. The first respondent had filed his counter contending that the impugned order is passed pursuant to the order passed by this Court. The petitioner had to be reverted, as there was no vacancy to accommodate the third respondent as Head Master. It is also stated in the counter affidavit that the promotion order given to the petitioner on 17.08.2015 was subject to specific conditions mentioned thereunder. As per which, the promotion was only temporary and that as per Rule 8(a) of the Tamil Nadu Subordinate Service Rules, the promoted persons can always be reverted, in view of the upgradation of the school or for want of vacancy. As the petitioner had accepted the promotion agreeing to this condition, he was estopped from challenging the same, when he is reverted. Hence prayed for dismissal of this writ petition.

6. The third respondent also had filed his counter contending that he was not considered for appointment on the wrong premise that he did not belong to Karur District, though all other candidates, who registered



along with him in the employment exchange were given appointment with effect from 03.01.2002. According to the third respondent, the writ petitioner himself had asked for regularisation only with effect from 03.01.2002, though his claim was negatived by the respondent vide G.O. (3D) No.35, dated 10.04.2014. However, later on the representation of the petitioner, the first respondent revised the seniority list placing the petitioner ahead of the third respondent.

7.In the meanwhile, the said Kulandhai Rosary Jegan was regularised of her services with effect from 03.01.2002, pursuant to the order of this Court. Hence, the third respondent also claimed for the same, as he is also similarly placed. When the representation given by the third respondent was not considered, he was constrained to move this Court to seek a direction to the respondent to dispose of his representation. Based on that order only, the impugned order was passed.

8.Heard the learned counsel appearing for the petitioner; the learned Additional Government Pleader appearing for the respondents 1 and 2 and the learned Senior Counsel appearing for the third respondent.

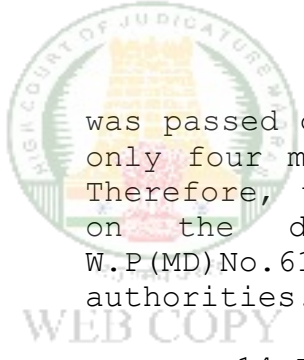
9.The first contention raised by the learned counsel for the petitioner is that the impugned order passed by the first respondent, is without jurisdiction, as he is not the competent authority, only the secretary is the competent authority to pass such order.

10.The second contention is that while passing the order in W.P. (MD)No.6177 of 2015, this Court had not expressed any opinion and it was a direction simplicitor directing the authorities only to dispose of the representation considering the case on merits. However, the authorities had misinterpreted the order to be a positive direction to promote the third respondent and pass the impugned order.

11.The third point of attack by the learned counsel for the petitioner is that when the substantial right, which had been crystallised into a civil right, cannot be taken away without issuing notice to him and it would amount to violation of principles of natural justice.

12.When the order in W.P.(MD)No.6177 of 2015 had specifically directed the Secretary, School Education Department to consider the representation of the third respondent, dated 30.03.2015, the first respondent had passed the order on 09.11.2015. Hence, it is said to be without jurisdiction. Insofar as the order passed in W.P.(MD)No.6177 of 2015 is concerned, it is specifically stated that it is passed without expressing any opinion on the merits of the issue involved. However, the impugned order is passed on a wrong assumption that this Court had directed the authorities to promote the third respondent. Therefore, the order of the first respondent is without application of mind, as the same is passed without considering the issue on merits, which is liable to be set aside.

13.When the authorities decided to revert the promotion given to the petitioner, they ought to have issued notice to him. Even assuming that it was pursuant to the direction given by this Court, it is seen that the order in W.P.(MD)No.6177 of 2015 was passed on 21.04.2014, whereas the order of promotion was on 17.08.2015 and the impugned order



was passed on 09.11.2015. The impugned order was given to the petitioner only four months after the order was passed in W.P.(MD)No.6177 of 2015. Therefore, the order impugned is certainly mischievous in the sense even on the date of issuing the promotion order, the order in W.P(MD)No.6177 of 2015 had been passed, but not considered by the authorities.

14.In fact, in the counter filed by the first respondent, the seniority of the petitioner has been admitted in paragraph Nos.3 and 4. The promotion order, dated 17.08.2015 specifically states that the promotion is subject to the final order of any writ petition that was pending on that day. As stated supra, very promotion order was passed only after the disposal of the W.P.(MD)No.6177 of 2015. Therefore, the impugned order passed, without notice to the writ petitioner, is without application of mind. Even assuming for a moment that the third respondent is senior to the petitioner, it is admitted in paragraph No.7 of the counter filed by the third respondent that the petitioner was placed ahead of the third respondent in seniority list based on the representation made by the petitioner and that was not challenged by the third respondent. It is only the regularisation of services of one Kulandhai Rosary Jegan that triggered of the third respondent to give representation to the first respondent for consideration of his promotion.

15.The learned counsel for the petitioner relied on a decision in STATE OF KARNATAKA v. C.LALITHA reported in 2006 (2) SCC 747, wherein the Hon'ble Supreme Court has held as follows:-

"29. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently. It is furthermore well settled that the question of seniority should be governed by the rules. ..."

16.There is no dispute with respect to the above proposition, however, each case has to be dealt with on its own merits. Justice demands that a person should not be allowed to derive any undue advantage over other employees. One should get what is due to him or her in law. The concept of justice cannot be stretched to hurt a person whose rights are otherwise crystallized.

17.Reliance was also placed on a decision of this Court in P.SENGUTTUVAN v. DIRECTOR OF SCHOOL EDUCATION reported in 2010 (5) M.L.J. 890, wherein it is stated that a writ petition challenging the consequential order alone is not maintainable. In this case, the prayer in the writ petition is challenging both the orders passed by the first respondent on 09.11.2015 and also by the second respondent on 13.11.2015. As it is stated that the so called parental order was not served on the petitioner, he could not have challenged and it is too technical an objection to consider.

18.In the light of the above discussions and for the reasons above mentioned, the order of the first respondent, dated 09.11.2015 and the



consequential order of the second respondent, dated 13.11.2015 are set aside and the writ petition is allowed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/  
Assistant Registrar(R)

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Sub Assistant Registrar.

To

1.The District Elementary Educational Officer,  
Karur District, Karur.

2.The Additional Assistant Elementary Education Officer,  
Aravakurichi, Karur District.

+1CC to Mr.B.Anand, Advocate, SR.No. 13886

+1CC to Mr.B.Saravanan, Advocate, SR.No. 13604

+1CC to the Special Government Pleader, SR.No. 13795

W.P. (MD) No.20615 of 2015  
and

M.P. (MD) No.1 of 2015  
10.03.2016

AM/AAL.MPA/14.03.2016/5P/6C