



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 25.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

WEB COPY

W.P. (MD) .No.818 of 2011

and

M.P (MD) No.2 of 2011

B.Rani

.. Petitioner

vs.

1.The District Elementary Education Officer,
Office of the District Elementary Education,
Virudhunagar,
Virudhunagar District.

2.The Additional Elementary Educational Officer,
Office of the Additional Elementary Education,
Sattur, Virudhunagar District.

3.The Assistant Elementary Educational Officer,
Office of the Assistant Elementary Education,
Sattur, Virudhunagar District.

4.V.M.Maheswari

5.A.Anthonysamy

6.Saraswathy

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records in connection with the impugned order, the seniority list, on the file of the 3rd respondent dated 01.01.2008 quash the same as illegal and consequently direct the respondents 1 to 3 to reconstruct a seniority list pertaining to Middle Grade Teachers, considering the case of petitioner according to law.

For Petitioner : Mr.Mohammed Imran
for M/s.Ajmal Associates

For Respondents : Mr.K.Guru (for R1 to R3)
Additional Government Pleader

O R D E R

<https://hcservices.ecourts.gov.in/hcservices/> The petitioner has filed this writ petition for the issuance of Writ of Certiorarified Mandamus to call for the records in connection with the impugned order, the seniority list, on the



file of the 3rd respondent dated 01.01.2008 quash the same as illegal and consequently direct the respondents 1 to 3 to reconstruct a seniority list pertaining to Middle Grade Teachers, considering the case of the petitioner according to law.

2.The case of the petitioner is that he joined as an Assistant Teacher in the Education Department on 01.08.1985. The petitioner was placed under suspension by the order of the 3rd respondent dated 31.03.2005 with effect from 22.12.2004. The order of suspension was passed while the petitioner was working as Middle Grade Teacher at Panchayat Union Primary School, Muthusampuram on the allegation of involvement in a criminal case registered against him in Cr.No.713 of 2004 dated 19.12.2004 for the offence punishable under section 120 (b), 107, R/w. 307 of IPC along with 5 others. The petitioner was acquitted from the above said criminal case in S.C.No.73 of 2005 dated 12.04.2007 on the file of the Learned Assistant Session judge, Sivakasi. After acquittal, the petitioner was reinstated into service by the proceedings of the 3rd respondent dated 02.11.2007.

3.The further case of the petitioner is that she should have been promoted as Head Mistress during the year 2005 itself which false during period of her suspension and therefore, after her acquittal in the criminal case, she sent a representation to the 1st respondent on 28.02.2008. Thereafter the petitioner was promoted as Headmistress by the proceedings of the 1st respondent dated 20.05.2008 and posted to Panchayat Union Primary School at Kammaipatti of Sattur Panchayat Union. In the said promotion order, the 1st respondent stated that the promotion given to the petitioner is as per the seniority list as on 01.01.2008.

4.The case of the petitioner is that her name should have been included in the seniority list as on 01.01.2005. Further the service of the petitioner ought to have been regularized by considering the period of suspension as being in regular service, since she was acquitted in the criminal case. The petitioner earlier made a representation to the 3rd respondent on 21.01.2008 requesting him to regularize her promotion and to re-fix her increment according to the seniority list of July 2005. But the same was returned by the 2nd respondent to the petitioner on 14.02.2008 with a direction to make another representation for fixation of increment along with government order. Hence, the petitioner made a representation on 28.02.2008 along with a copy of G.O.M.S.No.228 Personnel and Administrative Reforms (Personnel-J) Department dated 13.04.1989. But the 2nd respondent has returned the said representation also on 13.05.2008. Therefore the petitioner was constrained to file writ petition before this Hon'ble Court in W.P.No.1024 of 2009. The said writ petition was dismissed on the ground that the petitioner has not impleaded the alleged juniors to her. Therefore the present writ petition is filed to quash the impugned seniority list dated 01.01.2008 after

impleading the juniors of the petitioner.

5.The 1st respondent has filed counter affidavit and contented that the petitioner is a Government servant and she is governed by the Code of Conduct. Since the petitioner was involved in a criminal case in Cr.No.713 of 2004 she was placed under suspension from 22.12.2004 by the 1st respondent as per Rule.17 (e) of the Tamil Nadu Civil Services (Classification Control Appeal and Rules). Since the petitioner was under suspension facing the trial, a seniority list was prepared as on 01.01.2005 from the eligible Secondary Grade Teachers for the promotion of the Elementary School Head Masters and therefore the petitioner's name was not considered for promotion and as a result the respondents 4 & 5 who were junior to the petitioner's were promoted as Headmistress. In the meanwhile the petitioner was acquitted in the criminal case in S.C.No.73 of 2005 by the Learned Assistant Sessions Judge, Sivakasai on 12.04.2007. The seniority list as on 01.01.2005 was prepared by the respondent's in accordance with law and as per the Prevailing Rules and Regulations. After acquittal the petitioner was reinstated as Secondary Grade Teacher on 02.11.2007 and thereafter she was promoted as Head Mistress on 20.05.2008.

6.The respondents 1 to 3 further stated in the counter affidavit that the main grievance of petitioner is that she was not considered for promotion as on 01.01.2005. Regarding this the petitioner relying on G.O.M.S.No.228 Personnel and Administrative Reforms (Personnel-J) Department dated 13.04.1989. A close reading of G.O.Ms.No.228 would clearly reveals that it never says that the promotion should be accorded to the government servant retrospectively while she was in suspension period.

7.I have heard the arguments of Mr.H.Mohammed Imran, learned counsel appearing for the petitioner and Mr.K.Guru, learned Additional Government Pleader appearing for respondents 1 to 3. There is no appearance for the respondents 5 and 6. As against the 4th respondent the writ petition was dismissed for default by order of this Court dated 07.06.2012.

8.The main grievance of the petitioner is that while she was working as secondary grade teacher, she was placed under suspension for her involvement in a criminal case registered against her and other in Cr.No.713 of 2004 with effect from 22.12.2004. The petitioner was acquitted in the criminal case by order made in S.C.No.73 of 2005 on the file of the Assistant Session Judge, Sivaksai dated 12.05.2007. According to the petitioner as per G.O.M.S.No.228 dated 13.04.1989 Personnel and Administrative Reforms (Personnel-J) Department dated 13.04.1989 if a government servant is acquitted in a criminal case and reinstated into service, the period of suspension shall be treated as duty for all purposes and she shall be entitled to full pay and allowances which she would have been entitled to had she not been



under suspension.

9. The relevant portion of the G.O.Ms.No.228 is extracted here under for better appreciation of the case:

"Where a Government Servant is :-

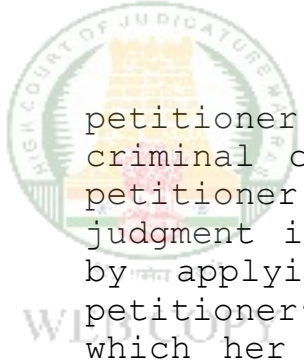
a) placed under suspension in view of the fact that a complaint against him of any criminal offences is under investigation or trial: or

b) dismissed or removed from service or compulsory retired on the ground of conduct which has led to his conviction on a criminal charge and

The Government servant is subsequently reinstated in service on his acquittal by the Court either on merits or on the ground that the charge has not been proved against him or by giving benefit of doubt or on any other technical ground, or on the ground that he has been pardoned by the Court as he turned approver based on his judicial confession, he must be regarded as having been prevented from discharging his duties and the period of his absence including the period of suspension shall be treated as duty for all purposes and he shall be paid full pay and allowances which he would have been entitled to had been under suspension, or dismissed, or dismissed or removed or compulsory retired from service."

10. This court has closely pursued the above said guidelines and as per the guidelines mention above, the petitioner is entitled to have the benefits including the seniority as claimed in this writ petition. According to the petitioner, after she was acquitted in the above said criminal case, she was given promotion on 20.05.2008 as Head Mistress. The said promotion was allowed to the petitioner according to the seniority list of the 1st respondent as on 01.01.2008. But the petitioner claims seniority as on 01.01.2005 while she was under suspension. Since the petitioner was acquitted of the criminal charges the 3rd respondent should have regularized the seniority list considering the period of her suspension as being in regular service as per G.O.Ms.No.228 dated 13.04.1989. The petitioner is coming within the ambit of the said G.O. and she is entitled to get promotion as on 01.01.2005. The contention of the respondents 1 to 3 that the above said G.O.Ms.No:228 dated 13.4.1989 is not said about the promotion can't be accepted and the same is not justified reason one. The respondents 1 to 3 have not understood the sphere of the government order properly.

11. In this regard the petitioner has relied upon a judgment made in W.P.No.21197 of 2015 in the case of the S.Thangaiarasu - Vs- The Director of Elementary Education and two others dated 15.07.2015 wherein this court has held that the suspension of the



petitioner from 02.07.2007 to 12.02.2014 was solely based on the criminal case. Therefore the Learned Judge held that since the petitioner was acquitted and she shall be promoted. The above judgment is squarely applicable to the facts of the present case by applying the ratio laid down in the above case, the petitioner's promotion should be as on 01.01.2005 the date on which her immediate Juniors namely the respondent 4s to 6 were promoted.

12. In view of the forgoing discussion the petitioner has made out a case to quash the impugned seniority list and she is entitled to consequential direction.

13. In the result:

(a) the writ petition is allowed and the impugned order, the seniority list dated 01.01.2008 passed by the 3rd respondent is quashed;

(b) the respondents 1 to 3 are directed to reconstruct the seniority list of the petitioner with effect from 01.01.2005 and promote her as Headmistress from the said date and to pay all attended and monetary benefits for the period the petitioner was placed under suspension;

(c) the respondents 1 to 3 shall comply the said exercise within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

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