

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2017

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.Nos.4695 and 4696 of 2017

F.Lawrence .. Petitioner in W.P.No.4695/17
D.Melchior Arockiasamy .. Petitioner in W.P.No.4696/17

Vs

- 1.The Director of Elementary Education,
DPI Campus, College Road,
Chennai - 6.
- 2.The District Elementary Educational Officer,
Krishnagiri District.
- 3.The Assistant Elementary Educational Officer,
Thally Panchayat Union,
Krishnagiri District. ... Respondents in both WPs

Prayer: Writ Petitions filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records of the second respondent in Na.Ka.49/A3/2017, dated 19.01.2017, quash the same and consequently direct the respondents herein to include the name of the petitioners in the panel for promotion to the post of Middle School Headmaster on 01.01.2016 in the Thalli Panchayat Union and consequently promote him.

For petitioners :Ms.Dakshayani Reddy
For Respondents :Mr.V.Jayaprakash Narayanan, Spl.GP

O R D E R

The present writ petitions are directed against the impugned proceedings dated 19.01.2017 of the second respondent / the District Elementary Educational Officer, Krishnagiri Distirct, in and by which, the second respondent has refused to include the names of the petitioners in the panel for promotion to the post of Middle School Headmaster on 01.01.2016 in Thalli Panchayat Union on the ground of their relinquishment on 22.02.2014 for a period of three years.

2. Heard the learned counsel appearing on either side.

3. The case of the petitioners is that they were

originally appointed as Secondary Grade Teacher on 12.11.1999 and 18.11.1999 respectively in the Thalli Panchayat Union. The petitioner in W.P.No.4695 of 2017 is presently working as Elementary School Headmaster in the Panchayat Union Primary School at Kamarajapuram, Thally Block, with effect from 13.10.2005, and another petitioner in W.P.No.4696 of 2017 is presently working in the Panchayat Union Primary School at Soppukuttai, Thally Block, with effect from 13.10.2005. While working in that School, the petitioners relinquished their promotion as on 01.01.2013 due to their family circumstances for three years, hence, they were dis-entitled for inclusion in the panel prepared as on 01.01.2013, 01.01.2014 and 01.01.2015, however, they were eligible to be included for inclusion in the panel which was prepared as on 01.01.2016. According to the petitioners, the crucial date for preparation of panel was on 01.01.2013 and therefore, three years period expired in the year 2015-2016 and hence, they are entitled to be considered for inclusion in the panel from 01.01.2016. It is their further grievance that since the panel for the year 2013 i.e. 01.01.2013 was prepared only in the year 2014, they have relinquished their promotion as on 22.02.2014. Therefore, she pleaded, now, they cannot say in the impugned order that they are not eligible to be included in the panel for 01.01.2016, for, the respondent had prepared the panel for the year 2013 only in the year 2014.

4. Reliance was also placed by the learned counsel for the petitioner a judgment of this Court passed in W.P.(MD). No.2649 of 2011, dated 15.03.2012, wherein it is held thus:

"3. The petitioners request was rejected by the impugned order dated 8.10.2010, wherein it is mentioned that the petitioners having submitted their relinquishment letter on 26.4.2006, three year period can be counted only from that date and not from 1.4.2006.

4. According to the learned counsel for the petitioners, the said stand taken by the respondents cannot be accepted in view of the Rule position as well as the relinquishment letter given by the petitioners. Petitioners have given up their right for promotion for 2006-2007, 2007-2008 and 2008-2009, i.e. from 1.4.2006. Three year period having been expired on 31.3.2009, the petitioners are entitled to get their names included in the panel for promotion in terms of Rule 47(2) of the Tamil Nadu State and Subordinate Service Rules. The said Rule reads as follows;

"Relinquishment of a right or

privilege for a temporary period shall be accepted if it is made for a period of not less than three years subject to the condition that after the expiry of the said period, the claim of the right or privilege relinquished will be with reference to the state of affairs that exist on the date of expiry of period of relinquishment and without restoration of original seniority. If relinquishment of right or privilege is made permanently and is accepted subsequent claim of the relinquished rights or privileges shall not be entertained."

5. Applying the said Rule, the impugned order is set aside and the second respondent is directed to consider the names of the petitioners for inclusion in the panel from 1.4.2009 and pass fresh orders. The revised order is directed to be passed by the second respondent within a period of six weeks from the date of receipt of a copy of this order.

6. With the above direction, this writ petition is disposed of. No costs."

In the above said case, the petitioners therein had given up their right for promotion for the years 2006-2007, 2007-2008 and 2008-2009 i.e. from 01.04.2006, which is crucial date and therefore, by way of impugned proceedings therein, the request of the petitioners therein was rejected stating that since the petitioners therein had given their relinquishment letter only on 26.04.2006, three years period can be counted only from that date, not from 01.04.2006, which is crucial date. This Court, in the above said order, by rejecting the said stand taken by the respondent therein, directed the authorities to include the names of the petitioners therein in the panel from 01.04.2006.

5. In the case on hand, since the respondents have prepared the panel for 01.01.2013 only in the year 2014, the petitioners have submitted their representation relinquishing their promotion for three years on 22.02.2014, but that does not preclude authorities for including the names of the petitioners in the panel for promotion as on 01.01.2016, as the three years period of relinquishment ended on 01.01.2015. Had the authorities prepared the panel as on 01.01.2013 in the same year, the petitioners would have submitted their representations in time seeking relinquishment for three years and the same would have ended as on 01.01.2015. However, since the panel as on 01.01.2013 was prepared only in the year 2014 with one year delay, the petitioners have submitted their representations only on 22.02.2014, therefore, the refusal by the second respondent

in the impugned proceedings to include the names of the petitioners for promotion in the panel as on 01.01.2016 is misconceived.

6. Thus, for the reasons stated above, the impugned order is set aside and the respondents are directed to include the names of the petitioners in the panel for promotion to the post of Middle School Headmaster from 01.01.2016 in the Thalli Panchayat Union, within a period of four weeks from the date of receipt of a copy of this order. Consequently, the writ petition is allowed. No Costs. Connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Director of Elementary Education,
DPI Campus, College Road,
Chennai - 6.
- 2.The District Elementary Educational Officer,
Krishnagiri District.
- 3.The Assistant Elementary Educational Officer,
Thally Panchayat Union,
Krishnagiri District.

+1cc to Mr.Dakshayani Reddy, Advocate, S.R.No.17015

+1cc to the Government Pleader, S.R.No.16719

nr(CO)
md(11/04/2017)

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