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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.09.2017

DELIVERED ON : 11.12.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.No..28581 of 2013
and M.P.No.2 of 2013

K.Manivannan

.. Petitioner

vs

1.The District Education Officer,
O/o The District Education Officer,
Mayiladuthurai,
Nagapatinam District,
Tamilnadu.

2.The Secretary,
Venkatesa Higher Secondary School,
Aayangudipallam,
Aanaikaran Chathiram Post,
Seerkazhi Taluk,
Nagapatinam District,
Tamilnadu.

3.J.Rekha

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus, calling for the records of the first respondent in O.Mu.No.4375/A3/2013, dated 19.09.2013 and quash the same, consequently, direct the first respondent to approve the petitioner's promotion and fix scale of pay for the post of Assistant Head Master in BT Assistant in the second respondent school.

For Petitioner : Mr.P.R.Thiruneelakandan
For Respondents : Mr.A.Rajaperumal
Addl. G.P. for R1



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For Petitioner : Mr.P.R.Thiruneelakandan
Mr.S.Sivashanmugam
for M/s.D.Kalaiselvi
for R3

No Appearance
for R2

ORDER

This writ petition has been filed seeking to quash the proceedings of the first respondent dated 19.09.2013 in O.Mu.No.4375/A3/2013 and to direct the first respondent to approve the petitioner's promotion and fix scale of pay for the post of Assistant Headmaster in BT Assistant in the second respondent school.

2. Briefly stated case of the petitioner is as follows:

The petitioner was appointed as BT Assistant in the second respondent school on 25.02.2006 on temporary basis. The third respondent was appointed as Junior Grade Teacher on 07.04.2004 on temporary. Both the petitioner and the third respondent services were regularised in their respective post as BT Assistant, Secondary Grade Teacher on 01.06.2006.

3. In the second respondent school, there was one post of Head Master (HM) and three posts of Assistant Head Masters (AHM)– One AHM for Secondary Grade Teacher cadre, which is meant for VI to VII standard; one AHM for BT Assistant Teacher cadre, which is meant for IX to X standard and one AHM for PG Assistant cadre, which is meant for XI to XII standard. The promotion for the post of HM and AHM are governed by the Tamil Nadu Recognised Private School Regulation Rules, 1974 and the general principles laid down in the Tamil Nadu Subordinate Service Rules.

4. On Jayabalam, who worked as AHM in BT Assistant got retired from service on 31.05.2013 and the said post fell vacant. For the above said post of AHM, one Bhuvaneswari, who was a senior most person in BT Assistant was considered for promotion, but she had forgone her promotion. The petitioner is the next senior most person in BT Assistant and was considered by the second respondent school for promotion. Upon consideration, the second respondent promoted the petitioner and appointed as AHM. On 18.07.2013, the second respondent sent a letter to the first respondent for approval of the promotion of the petitioner and fixation of pay.

5. The third respondent approached the District Collector and claimed promotion for the post of AHM claiming that she is



the senior. The District Collector, forwarded the claim of the third respondent to the first respondent. The first respondent, vide letter dated 24.07.2013, directed the second respondent to consider the third respondent for promotion to the post of AHM in accordance with law. Pursuant to the direction of the first respondent, the second respondent considered the request of the third respondent and sent reply to the first respondent stating that she will not be considered for promotion for the post of AHM BT Assistant. After receipt of the reply, the first respondent passed the impugned order dated 19.09.2013, directing the second respondent to promote the third respondent as AHM. Challenging the same, the petitioner has filed the writ petition.

6. Resisting the writ petition, the third respondent filed the counter stating that since she is the senior most in the BT Assistant cadre, the first respondent has rightly nominated her as AHM. Due to change of policy of the Government, the services of both the petitioner and the third respondent were regularised from 01.06.2006. The post of AHM is not a separate sanctioned higher post of the respective cadre. There are only administrative guidelines to nominate the senior person among the available respective cadres. It is further stated that for considering the seniority, the date of appointment alone is to be considered and the nomination of the petitioner as AHM is in violation of rules. The question of promotion of the petitioner does not arise as the post of AHM is not a promotion post and it is only a nomination of senior BT Assistant as AHM.

7. I heard Mr.P.R.Thiruneelakandan, learned counsel for the petitioner, Mr.A.Rajaperumal, learned Additional Government Pleader for the first respondent and Mr.S.Sivashanmugam for M/s.D.Kalaiselvi, learned counsel for the 3rd respondent and perused the materials available on record. There was no representation on behalf of the 2nd respondent.

8. Learned counsel for the petitioner assailed the impugned order on the following grounds:

(i) Though the services of the petitioner and the third respondent were regularized on 01.06.2006, the petitioner being age wise senior than the third respondent, he is entitled to promotion and the promotion given by the second respondent school to the petitioner is valid in law.

(ii) As per the Rules of the Tamil Nadu State and Subordinate Service, where more than one person was appointed on the same day their



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inter-se seniority will be fixed based on their age.

(iii) The third respondent was appointed on temporary basis on 07.04.2004 and her service was regularised on 01.06.2006. The service of the third respondent in the temporary post cannot be counted for seniority.

(iv) Even in considering the qualification and merit between the petitioner and third respondent, the petitioner is a meritorious candidate to be appointed as AHM.

(v) As per the Rules of the Tamil Nadu State and Subordinate Service, if the scales of pay of post in the feeder categories are different, the person holding post carrying higher scale of pay in the feeder category shall be considered first for promotion.

(vi) The third respondent is a graduate teacher and she was initially appointed as Junior Grade Teacher and then her service was regularised as BT Assistant for VI to VIII standard.

9. Per contra, the learned Additional Government Pleader appearing for the first respondent submitted that upon consideration of the service particulars, qualification and other criteria of the petitioner, third respondent and others, the first respondent has passed the impugned order recommending the appointment of the third respondent as AHM in the second respondent school.

10. The learned counsel appearing for the third respondent submitted that though the services of the petitioner and the third respondent were regularised on the same day, the third respondent is the senior to the petitioner appointed on 07.04.2004, whereas the petitioner was appointed on 25.02.2006. Considering the seniority, the first respondent has rightly appointed the third respondent as AHM in the second respondent school.

11. It is pertinent to point out that the petitioner was appointed as BT Assistant in the second respondent school on 25.02.2006, whereas the third respondent was appointed as Junior Grade Teacher in the second respondent school on 07.04.2004. Both were appointed on temporary basis and on consolidate pay. The services of the petitioner and the third respondent were



third respondent. It is to be noted that, the petitioner is a Post Graduate teacher and appointed as BT Assistant and was drawing salary of Rs.38,508/- per month. The third respondent is only a Graduate Teacher appointed as Junior Grade Teacher, then regularised as BT Assistant and drawing the salary of Rs.33,533/- per month.

18. Feeder category for the promotion post of Head Master/Assistant Head Master is BT Assistant. The petitioner being the Post Graduate Teacher drawing higher salary than the third respondent and also based on merit, promoted as AHM. As per rules applicable, if the scales of pay of post in the feeder categories are different, the person holding post carrying higher salary of pay in the feeder category shall be considered first for promotion and the second respondent school has rightly considered the candidature of the petitioner for promotion and appointed as AHM.

19. According to the petitioner, in the second respondent school, there are four Secondary Grade Teachers viz., (1)Rangaraja, (2)Ramalingam, (3)Poonguzhali, (4)Sheeladevi. As per the proceedings of the first respondent dated 21.03.2013, the person appointed in the Secondary Grade Teacher shall be as Secondary Grade Teacher till the last person in the junior grade teacher is replaced by the graduate teacher. As stated above, in the second respondent school, there are four Secondary Grade Teachers are working and they have not been replaced by the graduate teacher. The said position is not disputed by the third respondent. In the absence of any denial, it is to be presumed that the third respondent has to be treated as Secondary Grade Teacher as per the proceedings of the first respondent, referred supra. Further, the third respondent is entitled for promotion in the post of AHM in Secondary Grade Teacher cadre and she could not claim promotion as AHM in BT Assistant cadre as a matter of right.

20. On a perusal of the typed set of documents, I find that in the letter dated Nil (.09.2013), the Secretary, Venkatesa Higher Secondary School (second respondent) addressed to the first respondent, it has been clearly stated that a direction dated 21.03.2013 has been issued by the first respondent to the effect that till the last post of Secondary Grade Teacher is filled by Graduate Teacher, the post shall be treated as Secondary Grade Teacher. Therefore, the third respondent cannot be considered for promotion to the post of AHM for classes IX & X. While issuing the impugned order, the first respondent has not cited the said letter of the second respondent school. Without considering the said letter, the first respondent has passed the impugned order, which shows that the first respondent has not applied his mind properly.



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21. Coming to seniority, where more than one person appointed in the same date, their age will be considered for fixation of inter-se-seniority. The said position is not disputed by the official respondent. On that aspect also, the impugned order cannot be sustained.

22. It is well settled principle that while considering the eligibility for promotion, date of appointment in regular post in accordance with rule shall be taken into account and any service rendered temporarily, or ad-hoc shall not be taken into account. Therefore, the temporary service rendered by both the petitioner and the third respondent could not be counted for reckoning the seniority for promotion to the post of AHM - BT Assistant cadre.

23. The third respondent has not alleged any mala fide in promoting and appointing the petitioner as AHM in the second respondent school, whereas, her claim is being a senior, she should be promoted as AHM.

24. As stated supra, based on the qualification, age, merit and other criteria, the second respondent school found the petitioner suitable for promotion and accordingly, appointed the petitioner as AHM. Upon perusal of the entire materials available on record, I find that there is no illegality in the appointment of the petitioner as AHM in the second respondent school. Further, the third respondent has not challenged the promotion given to the petitioner by filing any writ.

25. For the foregoing reasons, the impugned order of the first respondent is liable to be quashed.

26. In the result:

(a) the writ petition is allowed and the impugned order in O.Mu.No.4375/A3/2013, dated 19.09.2013 passed by the first respondent is quashed;

(b) the first respondent is directed to approve the petitioner's promotion and fix the scale of pay for the post of Assistant Head Master in BT Assistant in the second respondent school;

(c) the said exercise shall be carried out by the first respondent 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 VIII)

//True copy//

Sub Assistant Registrar

vs



To

The District Education Officer,
O/o The District Education Officer,
Mayiladuthurai,
Nagapatinam District,
Tamilnadu.

+1cc to Mr.D.Kalai Selvi, Advocate SR.No.88812

W.P. No.28581 of 2013
and
M.P.No.2 of 2013

GN(13/04/2018)