

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.07.2017

CORAM

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

W.P.No.200 of 2013

E.Makkar

.. Petitioner

Vs.

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

2. The District Elementary Education Officer,
Coonoor, The Nilgiris District.

3. S.Murugesan, Headmaster,
Panchayat Union Primary School,
Mudumalai, Gudalur Block,
The Nilgiris District.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the order of the second respondent in Na.Ka.No.852/AA-2/2012, dated 29.06.2012, to quash the same and to direct the second respondent to follow the judgment of the Division Bench of this Court in W.P.Nos.19856 of 2004 and 21732 of 2005, dated 03.02.2009 in the matter of promotion to the post of Primary School Headmaster in Tamil Medium Schools and promote the petitioner to the post of Primary School Headmaster with effect from the date of the impugned order.

For Petitioner : Mr.P.Rajendran

For Respondents : Mrs.K.Bhuvaneswari Government
Advocate
for respondents 1 and 2

ORDER

The petitioner has filed this writ petition seeking issuance of a writ of Certiorarified Mandamus to call for the records relating to the order of the second respondent in Na.Ka.No.852/AA-2/2012, dated 29.06.2012, to quash the same and

to direct the second respondent to follow the judgment of the Division Bench of this Court in K.Gangadharan and others v. The District Elementary Educational Officer and others, reported in (2009) 5 MLJ 698, in the matter of promotion to the post of Primary School Headmaster in Tamil Medium Schools and promote the petitioner to the post of Primary School Headmaster with effect from the date of the impugned order.

2. The facts in a nutshell are as under: According to the petitioner, he was working as Secondary Grade Teacher at the Panchayat Union Middle School, Cherambadi, Gudalur Block and his initial appointment was on 23.03.1999. His probation was declared on 22.03.2001. The petitioner claims to be a Malayalam Medium Teacher and had also passed the Second Class Language Test in Tamil conducted by the Tamil Nadu Public Service Commission.

3. It is the plea of the petitioner that he is eligible and qualified for being promoted to the post of Primary School Headmaster in Tamil Medium Schools, however, the second respondent, vide the proceedings under challenge dated 29.06.2012, promoted the third respondent, who is junior to the petitioner, as Primary School Headmaster. Alleging that the said order passed by the second respondent runs counter the law laid down by a Division Bench of this Court in K.Gangadharan and others v. The District Elementary Educational Officer and others, supra, the petitioner sent a representation to the second respondent on 14.07.2012, but the same did not evoke any response.

4. Assailing the said order, the present writ petition is filed for the relief stated supra.

5. The learned counsel appearing on behalf of the petitioner contended that the practice of maintaining separate seniority list for Tamil, Malayalam and Kannada Teachers in the Gudalur Taluk in Nilgiris is contrary to the Rules and, therefore, the same is illegal.

6. He further contended that denial of promotion to the petitioner, who is a Malayalam Medium Teacher, in Tamil Medium Schools is contrary to the judgment of the Division Bench of this Court in K.Gangadharan and others v. The District Elementary Educational Officer and others, supra.

7. Per contra, the learned Government Advocate appearing on behalf of the respondent authorities submitted that since the petitioner is a Malayalam Medium Secondary Grade Teacher, he is eligible to be promoted only in minority Malayalam Medium Schools and bi-linguistic schools and mere passing of a second

language test in Tamil does not entitle the petitioner to be considered for teaching in Tamil Medium Schools.

8. I heard Mr.P.Rajendran, learned counsel appearing for the petitioner and Mrs.K.Bhuvaneswari, learned Government Advocate appearing for the respondents 1 and 2 and perused the documents available on record.

9. It is beyond any cavil that in the seniority list of Secondary Grade Teachers, the petitioner is placed at Serial No.41, whereas the third respondent is placed at Serial No. 68. It is also not in dispute that the petitioner has passed Second Class Language Test (Full Test) in Tamil conducted by the Tamil Nadu Public Services Commission.

10. Under identical facts and circumstances of the case, the Division Bench of this Court in K.Gangadharan and others v. The District Elementary Educational Officer and others, supra, after referring to the operative portion of the order of the Tamil Nadu Administrative Tribunal dated 09.10.1990 made in O.A.No.1953 of 1989, which reads as under:

"Therefore, Rule 5 of the Special Rules itself is quite clear in the matter. Further, it is conceded by the respondents that by virtue of the applicants having passed the second class language test (Full test) in Tamil, they can be posted to bilingual schools offering Malayalam and Tamil media of instruction where they can very well manage the administrative and academic functions. Under such circumstances, reliance placed by the respondents on Rule 5 of the Special Rules for maintaining separate seniority list is totally unfounded. The contention raised by the applicant that only a combined seniority list for Secondary Grade Teachers should be maintained and promotion effected for the post of Headmaster in the Primary Schools from the said combined Seniority List is in accordance with the Special Rules. No doubt, it is open to the respondents to prescribe any test qualifications for promotion as Headmaster, like passing the Second Class Language Test in Tamil. But the Rules do not contemplate maintenance of a separate seniority list among the Secondary Grade Teachers depending upon the media of instructions in which they were trained. We have, therefore, no hesitation to come to the conclusion that the practice of maintaining a separate Seniority list for Tamil, Malayalam and Kannada Teachers in the Gudalur Taluk in Nilgiris district is contrary to the Special Rules and is, therefore, illegal.

Consequently, we direct the respondents to maintain a common seniority list among the Secondary Grade Teachers and promote them as Headmasters in the Primary Schools whenever vacancy arises in accordance with their seniority in such a list, subject to the condition that they satisfy the other qualifications, if any, prescribed under the Rules. The order dated 30.9.1989 promoting the third respondent, a junior to the applicants, is also against the provisions contained in the Special Rules and is, therefore, quashed. Application allowed. No order as to costs."

held as under:

"Therefore, the above direction of the Tribunal was that the maintenance of the common seniority list among the language pundits including Malayalam, Tamil and Kannada, will not amount to any violation of Rule 5 of the Special Rules. If once the common seniority is maintained, there is no impediment for those persons to be promoted to the post of the Primary School Headmaster, if they had completed the second language test (Full test in Tamil). The respondent-State did not file any appeal against the said order. On the contrary, subsequent to the pronouncement of the said order, the Director of elementary Education issued a proceedings dated 20.5.2003 virtually nullifying the earlier orders passed by the Tribunal. It was stated by the department that the Malayalam Medium Headmaster cannot teach a Tamil Medium class and give correct pronouncement in Tamil and it is the same case of Tamil Medium Headmaster in respect of Malayalam Medium class and therefore in the circular dated 20.5.2003, which was brought into effect from 1.1.2003, it was stated that a Tamil Medium Headmaster will be appointed in a Tamil Medium school and Malayalam Medium person appointed as Headmaster of Malayalam Medium School but in respect of following common seniority, all language pandits will be considered for the post of Headmaster in bilingual schools. In the light of this instruction given by the Director of School Education, the Department was denying promotion to the petitioners on the ground that they are Pandits of Malayalam Medium Primary Schools and therefore, they cannot be appointed for vacancies in Tamil Medium Primary Schools in Gudalur District."

11. The Hon'ble Division Bench in the judgment, referred supra, ultimately held as under:

"3. In O.A.No.1953 of 1989, dated 10. 1990, the Tribunal examined the applicability of the Special Rule vis-a-vis, the desirability of appointing the language pandits in any school as Headmaster without the discrimination on the basis of the medium in which they are teaching. The Tribunal also held that such of those Malayalam teachers, who have passed Tamil alone have been provided the Headmaster Post and therefore, there is no difficulty in maintaining a common seniority list in respect of Gudalur district, wherein substantial number of malayalis are residing. In the absence of any challenge to the Tribunals order, the respondent-State is bound to implement the said order unless the Rules are amended by the State in terms of introducing amendment by exercising the power under Article 309 of the Constitution of India. In the present case, such a rule has not been brought in. Therefore, the respondent-State is bound to implement the orders of the Tribunal. Hence, W.P.No.19856 of 2004 stands allowed as prayed for."

12. Admittedly, the Hon'ble Division Bench judgment applies on all fours to the case on hand. Therefore, this Court does not propose to take any different view than that of the Division Bench.

13. For the foregoing reasons, this writ petition is allowed and the order of the second respondent in Na.Ka.No.852/AA-2/2012, dated 29.06.2012 is quashed. The second respondent is directed to follow the judgment of the Division Bench of this Court in K.Gangadharan and others v. The District Elementary Educational Officer and others, supra, in the matter of promotion to the post of Primary School Headmaster in Tamil Medium Schools and promote the petitioner to the post of Primary School Headmaster with effect from the date of the impugned order. Such order shall be passed by the respondent within six weeks from the date of receipt of a copy of this order. No costs.

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Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

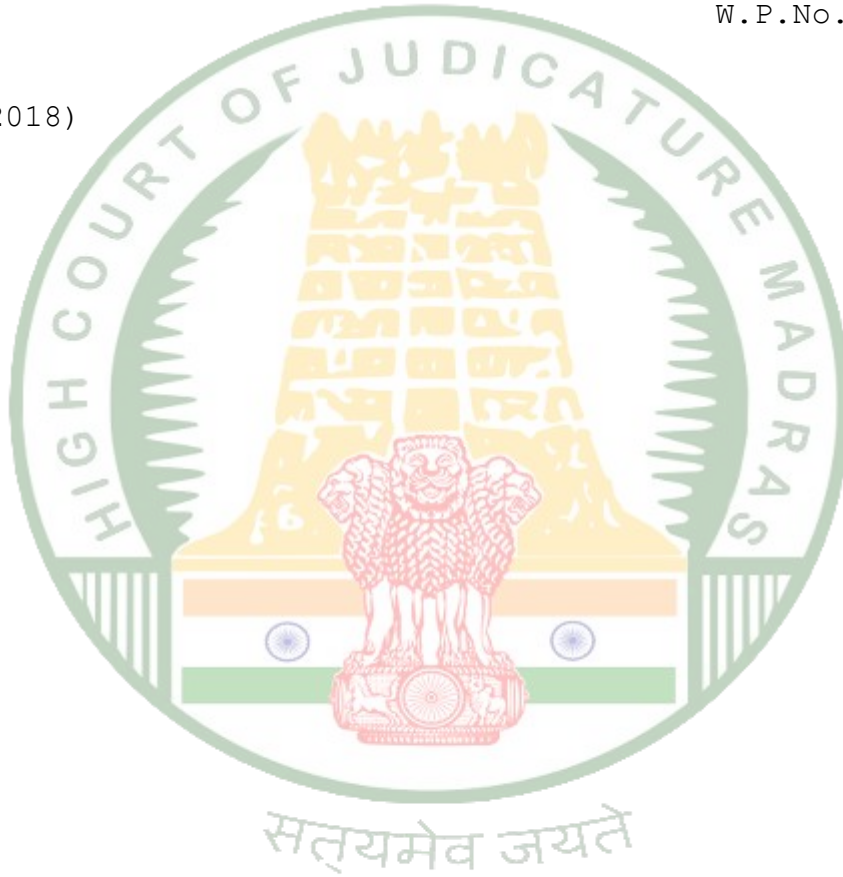
vs

To

1. The Director of Elementary Education,
College Road, Chennai - 600 006.
 2. The District Elementary Education Officer,
Coonoor, The Nilgiris District.
- + 1 cc to Mr. P. Rajendran, Advocate Sr.49644
+ 1 cc to Government Pleader SR.49880

W.P.No.200 of 2013

(CS-IX)
EU(12/07/2018)



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