

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2017

CORAM

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

W.P.No.10372 of 2013 and  
M.P.No.1 of 2013

R.Muthtamil

.. Petitioner

vs

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

2.The Chief Educational Officer,  
Salem District.

3.The District Elementary Educational Officer,  
Salem - 636 001,  
Salem District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus claling for the records relating to the proceedings in Oo.Mu.No.47327/A3Pirivu/E1/2012 dated 06.07.2012 on the file of the first respondent, quash the same and consequently direct the respondents to restore the seniority of the petitioner strictly in accordance with G.O.2(d) No.38, School Education (R2) Department, dated 23.07.2009.

For Petitioner : Mr.P.Ganesan  
for M/s.S.Vijayan

For Respondents : Mr.R.Govindasamy  
Spl. Government Pleader

ORDER

This writ petition has been filed by the petitioner to quash the impugned proceedings dated 06.07.2012 issued by the first respondent and to direct the respondents to restore the seniority of the petitioner in accordance with G.O.2(D) No.38, School Education (R2) Department, dated 23.07.2009.

2. The case of the petitioner is that she joined as typist on 15.06.1981 under Rule 10(a)(i) through employment exchange and was posted in the office of the Assistant Elementary Educational Officer, Pethanaickanpalayam. While the petitioner was working, the Government has taken a policy decision to bring all the 10(a)(i) appointees into regular time scale of pay. Pursuant to such policy decision, the Government issued G.O.(Ms) No.996, P & AR Department, dated 22.09.1984. By virtue of G.O. (Ms) No.996, dated 22.09.1984, the petitioner has been brought into time scale of pay on 25.06.1984 and her services were regularised from that date. Subsequently on 20.04.1994, the petitioner was promoted to the post of Assistant and in that cadre also, her services were regularised.

3. The Government issued G.O.(Ms) No.548, P & AR Department, dated 19.06.1987, as per which, it was ordered that the date of joining of the individual be reckoned for the purpose of fixing the seniority. As there were number of representations sent by the employees opposing and supporting such a decision taken by the Government, the issue could not be settled and it was decided that promotions could be given to those candidates on temporary basis.

4. On 15.03.2003, the petitioner was promoted to the post of Superintendent. Since the petitioner met with a major accident, she relinquished her promotion to the post of Superintendent for three years and ultimately, on 15.03.2008, she was given promotion to the post of Superintendent. The Government issued G.O.(2D) No.38 School Education Department, dated 23.07.2009 directing to fix the seniority based on the date of joining of the individual in the entry level. Based on the aforesaid G.O., the first respondent decided to draw a combined panel for promotion fixing the crucial date as 15.03.2012 and in that panel, the petitioner's name was included in Serial No.179.

5. According to the petitioner, in that panel, some juniors have been placed above her and they were also given promotion to her detriment. On 24.04.2012, the petitioner submitted a representation to the first respondent seeking to give notional promotion to her from the date on which her juniors have been promoted or to promote her as the last person in the panel dated 15.03.2012. On 06.07.2012, the first respondent rejected the claim/representation of the petitioner dated 24.04.2012, which is challenged in this writ petition.

6. Resisting the writ petition, the third respondent has filed the counter stating that in the revised panel, the petitioner's name was included in Serial No.179 based on the seniority which was prevalent on the date of expiry of the previous relinquishment period of three years i.e. 15.03.2008

without restoration of her original seniority. It is stated that since the petitioner had temporarily relinquished the promotion, the juniors who were promoted during the above 3 years period, were included in the revised panel in an appropriate place over and above the petitioner as per the rules. According to the respondent, the action of the respondents is in order. It is stated in the counter that the petitioner once relinquished promotion temporarily for a period of three years, could not claim the original seniority as per Rule 47 of the State and Subordinate Service Rules. The action of the respondents was legally maintainable and prayed for dismissal of the writ petition.

7. I heard Mr.P.Ganesan for M/s.S.Vijayan, learned counsel appearing for the petitioner and Mr.R.Govindasamy, learned Special Government Pleader appearing for the respondents. I have also perused the materials available on record.

8. The grievance of the petitioner is that since she met with a major accident, the petitioner relinquished her promotion to the post of Superintendent for three years and on 15.03.2008, she was given promotion to the post of Superintendent. According to the petitioner, the Government has issued G.O.(2D) No.38, School Education Department, dated 23.07.2009 pursuant to the order of this Court, whereby this Court was pleased to direct the educational authorities to fix the seniority based on the date of joining of the individual in the entry level. Based on the said G.O., the first respondent decided to draw a combined panel for promotion fixing the crucial date as 15.03.2012, wherein some of the juniors have been placed above the petitioner and they were given promotion to her detriment. Therefore, the petitioner has submitted a representation to the first respondent on 24.04.2012 requesting to give notional promotion to her from the date on which her juniors have been promoted or to promote her as the last person in the panel dated 15.03.2012. However, her representation dated 24.04.2012 was rejected by the first respondent on 06.07.2012, which is impugned in this writ petition.

9. According to the respondent authorities, in the panel for the year 2002 (15.03.2002), the petitioner was placed in Serial No.179 based on the seniority which prevailed on the date of the expiry of the previous relinquishment period of three years i.e., 15.03.2008 without restoration of her original seniority. Now the petitioner claimed that in the revised panel i.e., 15.03.2002 some of the juniors have been promoted and to promote her on a par with them is not acceptable as the petitioner already relinquished her promotion and lost her original seniority, which she held during the panel year 15.03.2003. Therefore, the claim of the petitioner is unsustainable.

10. It appears that the petitioner had relinquished her claim for promotion to the higher post during the year 2003 for three years and it came to an end during 2006. As far as fixation of seniority is concerned, the same was done on the basis of the order passed by this Court during the year 2012.

11. The case of the petitioner is that the criteria for fixation of seniority was the date of joining the post. Further, the petitioner claimed that her seniority has to be reckoned from the date on which she joined the post.

12. The claim of the petitioner was resisted by the respondent authorities by saying that after the expiry of the relinquishment period of three years, the petitioner's name was included in the panel prepared as on 15.03.2008 in Serial No.5 in the appropriate place and was promoted as Superintendent. Therefore, there is no question of giving notional promotion to the petitioner.

13. As stated supra, the name of the petitioner was included in the panel drawn on 15.03.2012, but that panel was not given effect to. When once the petitioner's name was included in the panel drawn on 15.03.2012, which has to be the basis for fixing the seniority of the petitioner, the first respondent was not right in passing the impugned proceedings.

14. The respondent authorities have not disputed the fact alleged by the petitioner that some of her juniors have been placed above the petitioner. That being the position, the respondent authorities ought to have considered the case of the petitioner for notional promotion from the date on which her juniors have been promoted or at least to promote her as the last person in the panel dated 15.03.2012.

15. In the result, the writ petition is allowed and the impugned proceedings of the first respondent dated 06.07.2012 is set aside and the matter is remitted to the first respondent to consider the case of the petitioner, in the light of the G.O.2 (D) No.38, School Education (R2) Department, dated 23.07.2009 and pass orders within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, M.P.No.1 of 2013 is closed.

Sd/-

Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

vs

To

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

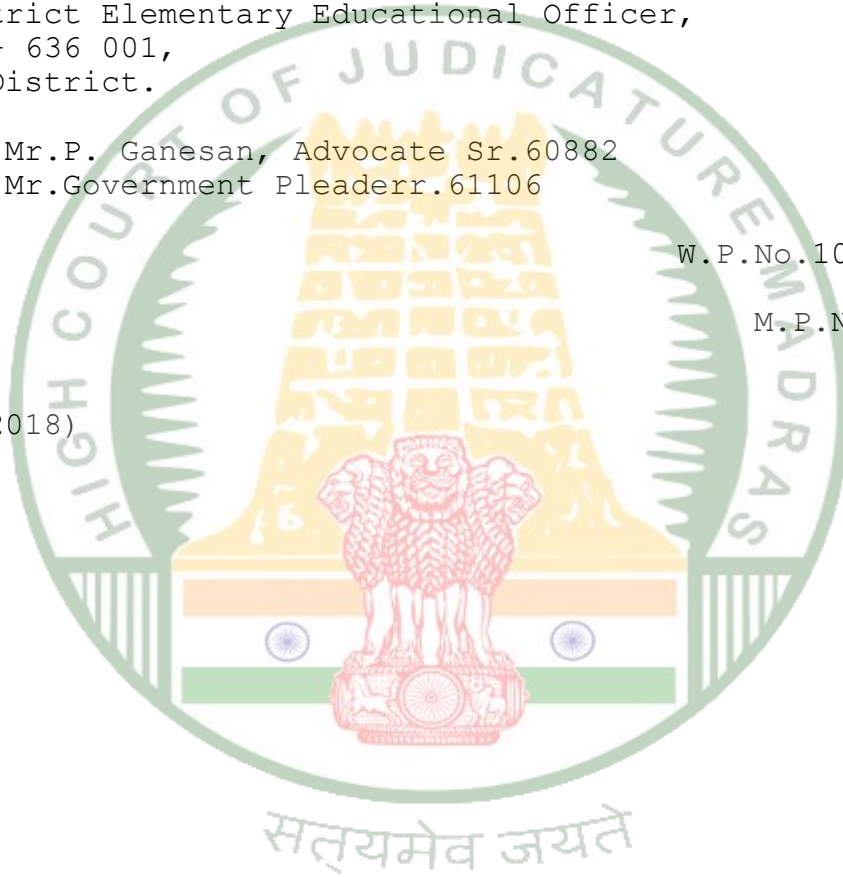
2.The Chief Educational Officer,  
Salem District.

3.The District Elementary Educational Officer,  
Salem - 636 001,  
Salem District.

+ 1 cc to Mr.P. Ganesan, Advocate Sr.60882  
+ 1 cc to Mr.Government Pleader.61106

W.P.No.10372 of 2013  
and  
M.P.No.1 of 2013

(CS-DR)  
EU(04/05/2018)



WEB COPY