

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2017

CORAM

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

W.P.No..23839 of 2008

A.Natarajan

.. Petitioner

vs

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

2.The District Elementary Educational Officer,
Villupuram, Villupuram District.

3.The Assistant Elementary Educational Officer,
Sankarapuram Block,
Sankarapuram, Villupuram District.

4.K.Vijayakumar

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus, calling for the records relating to the panel of Secondary Grade Teachers eligible for promotion to the post of Primary School Headmaster as on 1.1.2008 issued by the third respondent in Proceedings Na.Ka.No.257/A1/2008 dated 10.4.2008 and quash the same insofar as fixation of the petitioner's seniority is concerned and direct the third respondent to place the petitioner above the fourth respondent and grant all consequential benefits to the petitioner.

For Petitioner : Mr.P.Rajendran

For Respondents : Mrs.M.E.Raniselvam

AGP for R1 to R3

* * * * *

ORDER

The petitioner seeks to challenge the impugned proceedings of the third respondent dated 10.04.2008 and to quash the same insofar as fixation of the petitioner's seniority is concerned. He also sought direction on the third respondent to place him

above the fourth respondent and grant all consequential benefits to him.

2. Brief facts which led to the filing of the writ petition is as follows:

The petitioner was recruited for appointment to the post of Secondary Grade Teacher by the Teachers Recruitment Board (hereinafter referred to as "the TRB") in the year 1995 and accordingly, he was appointed as Secondary Trade Teacher in Panchayat Union Elementary School, Monnayampettai, Marakkanam Block, Villupuram District and he joined duty on 01.08.1995. His probation period was completed on 31.07.1997. Based on the request of the petitioner, he was transferred to Sankarapuram Block (Villupuram District) and posted at the Panchayat Union Elementary School, Mallapuram and joined duty in Sankarapuram Block on 09.07.1996.

3. According to the petitioner, his seniority among the Secondary Grade Teachers of Marakkanam Block and Sankarapuram Block was fixed with reference to his date of appointment i.e. 01.08.1995. The said seniority has been maintained for the past several years. In the seniority list of Secondary Grade Teachers of Sankarapuram Block as on 01.01.2007, the petitioner was assigned seniority with reference to the date of his appointment and the rank assigned by the TRB.

4. While so, by the impugned proceedings dated 10.04.2008, the third respondent issued a panel of Secondary Grade Teachers eligible for promotion to the post of Primary School Headmaster as on 01.01.2008, wherein the petitioner was placed at Serial No.13 and the fourth respondent, who was appointed on 01.08.1995 and had completed probation on 31.07.1997 similar to the petitioner, was placed at Serial No.1.

5. The case of the petitioner is that he was born on 23.09.1967, whereas the fourth respondent was born on 21.03.1969 and the petitioner was senior in age. The petitioner was placed below all those teachers, who were appointed in Sankarapuram Block prior to 09.07.1996, the date of transfer to Sankarapuram Block. The seniority has been fixed with reference to the date of his joining duty in Sankarapuram Block and that the petitioner's seniority and rank assigned by TRB with reference to the date of his appointment has been given a go-by and ignored.

6. On 14.04.2008 and 15.06.2008, the petitioner submitted his objections to the seniority list. Despite receipt of objections, no order has been passed. The first respondent vide his proceedings dated 11.06.2007 issued guidelines for fixation

of seniority of the Secondary Grade Teachers recruited by the TRB. Following the guidelines of the first respondent, the petitioner's seniority has been revised and the third respondent prepared the impugned panel, which is contrary to law, which is challenged in this writ petition.

7. The second respondent filed the counter stating that earlier the petitioner has challenged the proceedings of the first respondent dated 11.06.2007 by filing a writ petition being W.P.No.24772 of 2007 and the same was later withdrawn by the petitioner. Subsequent to the withdrawal of W.P.No.24772 of 2007, the petitioner was given promotion to the post of Primary School Headmaster and presently, the petitioner was working as B.T. Assistant. The fourth respondent has also filed W.P.No.34531 of 2007 seeking a writ of mandamus directing the respondents to revise the seniority list in the Secondary Grade post for promotion to the post of Primary School Headmaster. The said writ petition was disposed of by this Court on 17.12.2007. Pursuant to the direction issued by this Court, the seniority of the fourth respondent was fixed and he was included in the panel dated 10.04.2008. The petitioner has not disclosed all these facts in the present writ petition, which shows that he had suppressed all material facts. According to the second respondent, the impugned panel has been drawn based on the guidelines dated 11.06.2007 issued by the first respondent and at the time of drawal of panel, applying the proceedings dated 11.06.2007, the fourth respondent was placed at Serial No.1 and the petitioner was placed at Serial No.13 as per the prevailing seniority position.

8. I heard Mr.P.Rajendran, learned counsel for the petitioner and Mrs.M.E.Raniselvam, learned Additional Government Pleader appearing for the respondents 1 to 3. I have also perused the materials available on record.

9. The grievance of the petitioner is that he and the fourth respondent was recruited by the TRB and appointed as Secondary Grade Teacher on 01.08.1995 and had completed probation on 31.07.1997. However, the petitioner, who was senior in age was placed below the fourth respondent.

10. As per rule 35(a) of the Tamil Nadu State and subordinate Service Rules, the seniority of a person in a service, class or category or grade should be determined by the rank obtained by him from the list of approved candidates drawn up by the Tamil Nadu Public Service Commission or other appointing authority and in the case of the petitioner, which is the TRB.

11. On a perusal of the records, it is seen that after the recruitment made in the year 1995, since various teachers recruited in that selection could not be accommodated in their respective Districts or Panchayat Unions to which they belong, the State Government issued G.O.Ms.No.388, dated 19.06.1996, by which it was provided that if at their request such of those teachers, who were selected in 1995 by the TRB, who were initially posted in a different District, seek for posting in their native District, the same to be favourably considered and by virtue of such posting the seniority as determined in the year 1995 in the select list shall not be altered.

12. Subsequently, the first respondent issued a clarificatory dated 10.03.2000 and by way of clarification of the stipulation contained in G.O.Ms.No.388, dated 19.6.1996, it was stated that such of those Secondary Grade Teachers, who were appointed by the recruitment made by the TRB in the year 1995 can retain their seniority originally fixed if they seek for a transfer from one Panchayat to another Panchayat as a one time measure.

13. Challenging the proceedings of the first respondent dated 11.06.2007, one Karpagam has filed W.P.No.22326 of 2007 before this Court. By an order dated 10.04.2008, this Court allowed the said writ petition and set aside the proceedings of the first respondent dated 11.06.2007. In paragraphs 4 to 7, the learned Single Judge of this Court held thus:

"4. When the stipulation contained in G.O.Ms.No.388 dated 19.6.1996 is read along with the proceedings of the first respondent dated 10.3.2000 and 04.10.2001, it is clear to the effect that after the initial appointment made in the year 1995 irrespective of the place of posting at that point of time they are entitled to seek for transfer once and that on that occasion alone they are entitled to retain their seniority. In fact, in the proceedings dated 10.03.2000, the first respondent has stated the said position in the following words in paragraph 5:

5. எனவே தேர்வு, வாரியத்தின் மூலம் 1995ம் ஆண்டு இடைநிலை ஆசிரியர்களாக தேர்வு செய்யப்பட்டு ஒன்றிய பள்ளிகளில் நியமனம் செய்யப்பட்டவர்கள் அரசாணை நிலை எண்.388 கல்வித்துறை நாள் 19.09.96ன்படி முதல்முறை ஒரு ஒன்றியத்தில் இருந்து வேறு ஒன்றியத்திற்கு மாறுதலில் செல்லும் போது மட்டும் தேர்வு, வாரியம் வழங்கிய தர எண் படியான முன்னுரிமையை தக்க வைத்துக் கொள்ளலாம்.

5. The said set of expression contained in the proceedings dated 10.03.2000 if applied by referring to the statement found in the proceedings dated 4.10.2001 again in paragraph 5 of the said proceedings, it can be stated without any contradiction that as a one time measure, the teachers, selected and appointed in 1995 under the selection made by the Teachers Recruitment Board, are entitled to seek for transfer irrespective of their initial place of posting whether it be to their native district or native panchayat union. When the first respondent had stated the said position in such an uncontraverted manner the impugned proceedings dated 11.6.2007 containing a totally conflicting directions, vis-a-vis the G.O. and the subsequent proceedings dated 4.10.2001 will cause serious detriment to the interest of such of those teachers who seek for any transfer for the first time in their career after their initial appointment of 1995.

6. In the case of the petitioner though the initial appointment of the petitioner was in her native district of Tirunelveli but in a different Panchayat Union viz., Sankaran Koil panchayat Union and for the first time she has got a transfer to different union of the very same district viz., Vasudevanallur Union, having regard to the provisions contained in G.O.Ms.No.388 dated 19.6.1996 and also the proceedings of the first respondent dated 10.03.2000 and 04.10.2001, such a transfer will not in any way affect the retention of her original seniority that was assigned to her in the selection of the year 1995 by the Teachers Recruitment Board. When the said position can be thus clarified the impugned proceedings shall not in any way affect the right of the petitioner for retention of such seniority originally assigned to her.

7. As the petitioner's right for retention of her seniority is thus declared by applying the above referred two proceedings, the impugned proceedings dated 11.6.2007 cannot be applied to the case of the petitioner. The writ petition is therefore allowed and the impugned proceedings are hereby set aside in so far as the petitioner is concerned. Connected M.Ps. are closed."

14. There is no proof to show that as against the order made in the aforesaid writ petition, writ appeal has been filed and orders, if, passed thereon. In the absence of any proof to show that writ appeal is pending, this Court can very well follow the decision rendered in W.P.No.22326 of 2007. It is pertinent to note that the order made in W.P.No.22326 of 2007 and the impugned proceedings drawing the panel is on the same date i.e., 10.04.2008.

15. The filing of the writ petition and the order of this Court in W.P.No.22326 of 2007 are admitted by the second respondent in his counter. In the counter it is stated by the second respondent that the impugned panel was prepared as per the directions of the first respondent dated 11.06.2007. Particularly, in paragraph 10 of the counter, it is stated that the the impugned proceedings drawing the panel was prepared based on the directions issued by the first respondent dated 11.06.2007. It is also stated in the counter that the fourth respondent filed W.P.No.34531 of 2007, which was disposed of by this Court to consider his representation and based on such direction issued by this Court, the fourth respondent was placed in Serial No.1 of the panel, which clearly shows that pursuant to the direction issued by this Court, the seniority of the fourth respondent has been fixed. The second respondent also stated in the counter that he will abide by any order or direction that might be passed by this Court.

16. It is clear that after the initial appointment made in the year 1995 by the TRB, irrespective of the place of posting at that point of time, the concerned teachers are entitled to seek for transfer once and on that occasion alone, they are entitled to retain their seniority and their right for retention of seniority is declared by applying G.O.Ms.No.388 dated 19.06.1996 and the proceedings of the first respondent dated 10.03.2000 and 04.10.2001, the proceedings of the first respondent dated 11.06.2007, cannot be applied to them.

17. The petitioner is a similarly placed person recruited by the TRB in the year 1995 and the orders made in G.O.Ms.No.388 and the proceedings of the first respondent dated 10.03.2000 and 04.10.2001 are applicable to him. Therefore, the revision of the seniority of the petitioner following the proceedings of the first respondent dated 11.06.2007 cannot be sustained in law. As stated above, in his counter, the second respondent admitted that pursuant to the direction issued by this Court in W.P.No.34531 of 2007, the seniority of the fourth respondent has been fixed at Serial No.1. The respondent authorities have failed to produce records to show that after due notice only the panel was drawn. It is the say of the petitioner that no notice

was given to him before the revision of his seniority and no opportunity was given to show cause against the revision of his seniority. For the forgoing reasons, the impugned proceedings of the third respondent is liable to be quashed insofar as fixation of the petitioner's seniority.

18. In the result:

(a) the writ petition is allowed and the impugned proceedings of the third respondent dated 10.04.2008 is quashed insofar as the fixation of the petitioner's seniority is concerned;

(b) the respondent authorities are directed to consider the objections given by the petitioner to the seniority list prepared and pass orders considering the petitioner to place above the fourth respondent. No costs.

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 Educational Officer,
Villupuram,Villupuram District.
- 3.The Assistant Elementary Educational Officer,
Sankarapuram Block, Sankarapuram,
Villupuram District.

W.P.No.23839 of 2008

RRK(10/04/2018)

WEB COPY