

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2017

CORAM

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

W.P.No.14993 of 2013

K.Viram

.. Petitioner

Vs

1. The Director of Elementary Education  
College Road, Chennai - 6.
2. The District Elementary Education Officer  
Vellore - 632 004.
3. The Assistant Elementary Education Officer  
Gudiyattam, Vellore District - 632 013.
4. M.Nagalakshmi .. Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorari to call for the records relating to the impugned order passed by the second respondent in Na.Ka.No.1791/A5/2013, dated 29.5.2013 and quash the same.

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mr.A.Rajaperumal  
Addl. Government Pleader  
for Respondents 1 to 3

ORDER

The petitioner has filed this writ petition seeking issuance of a writ of certiorari to call for the records relating to the impugned order passed by the second respondent in Na.Ka.No.1791/A5/2013, dated 29.05.2013 and quash the same.

2. The petitioner was appointed as a Secondary Grade Teacher based on the employment seniority on 04.11.1996 at Poosarivalsai Panchayat Union Primary School, Gudiyatham Union. She was, on request, transferred to Municipal School on 14.09.2004 and posted as Secondary Grade Teacher at Gangadaraswamy Municipal

Middle School. The petitioner was also granted Selection Grade in the year 2006. Thereafter, by an order dated 09.11.2012, the petitioner was promoted to the post of Secondary Grade Headmistress and posted at Municipal Panchayat Primary School, Sunnampupettai, Gudiyatham.

3. It is averred that as on 01.01.2013, the petitioner's seniority was fixed at serial No.9 in the Secondary Grade Headmasters seniority and on 29.05.2013, a counselling was conducted for general/request transfer and promotion as Secondary Grade Headmaster/Middle School Headmaster and B.T. Assistant.

4. It is the case of the petitioner that the second respondent, by proceedings dated 29.05.2013, reverted the petitioner from the post of Secondary Grade Headmistress to the post of Secondary Grade Teacher and posted her at Gangadaraswamy Middle School on the ground that the seniority of one Nagalakshmi, who is arrayed as fourth respondent, has been revised based on the order passed by this Court on 08.10.2012 in W.P.No.15613 of 2012.

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

6. I heard Mr.S.N.Ravichandran, learned counsel for the petitioner and Mr.A.Rajaperumal, learned Additional Government Pleader for the Respondents 1 to 3 and perused the entire records.

7. The learned counsel appearing on behalf of the petitioner vehemently contended that the procedure adopted by the respondent authorities while reverting the petitioner violates the bare bones of the principles of natural justice, as no notice and/or opportunity was afforded to the petitioner before passing such order reverting him, and on this score alone, the order under challenge is liable to be set aside.

8. It is further contended that the fourth respondent's name finds place only at Serial No.26 as on 01.01.2013 and, therefore, the revision of the seniority of the fourth respondent without affording an opportunity of hearing to the petitioner or without any notice is clearly in violation of the service jurisprudence.

9. The learned Additional Government Pleader appearing on behalf of the respondent authorities reiterated the reasons that weighed with the authorities in passing the impugned order and submitted that the said order warrants no interference.

10. In the case on hand, the petitioner was promoted as Secondary Grade Headmistress with effect from 09.11.2012 and she discharged functions in the said capacity till the passing of the impugned order, i.e., on 29.05.2013. It is also not in dispute that at the time of admission of this writ petition, on 03.06.2013, this Court granted an order of stay of reversion. The said interim order was made absolute by order dated 06.02.2015. Therefore, as on date, the said order of reversion was not given effect to.

11. It is not the case of the respondent authorities that the petitioner has obtained promotion by misrepresentation or playing fraud. The petitioner was promoted by the proceedings of the respondent authorities, purely based on his seniority. When a civil right conferred on the petitioner is likely to be affected by reverting him to a lower cadre, in my considered opinion, it would be just and proper and in consonance with the principle of natural justice that such reversion should have been made only after giving a notice to the petitioner and after affording an opportunity of hearing.

12. The above view of this Court is fortified by a decision of the Hon'ble Supreme Court in Ram Ujarey v. Union of India [(1999) 1 SCC 685, wherein it is held that if an employee has to suffer civil consequences, ordinarily the principles of natural justice are required to be complied with. In the said decision, it was observed thus:

"17. There is yet another infirmity in the impugned order of reversion. The appellant had been allowed the benefit of service rendered by him as Coal Khalasi in the Loco Department from 1964 to 1972 as that period was counted towards his seniority and it was on that basis that he was called for the trade tests which the appellant had passed and was, thereafter, promoted to the posts of Semi-skilled Fitter and Skilled Fitter. If the benefit of service rendered by him from 1964 to 1972 was intended to be withdrawn and promotion orders were to be cancelled as having been passed on account of mistake, the respondents ought to have first given an opportunity of hearing to the appellant. The appellant having earned two promotions after having passed the trade tests, could not have been legally reverted two steps below and brought back to the post of khalasi without being informed that the period of service rendered by him from 1964 to 1972 could not be counted towards his seniority and, therefore, the promotion orders would be cancelled. In a situation

of this nature, it was not open to the respondents to have made up their mind unilaterally on facts which could have been shown by the appellant to be not correct but this chance never came as the appellant, at no stage, was informed of the action which the respondents intended to take against him."

13. Even in the case on hand, the petitioner has discharged her duties in the lawfully promoted post for certain period of time. When such benefit is being denied to the petitioner and she is being reverted to a lower post, certainly, the principles of natural justice should be strictly observed. The non compliance of the elementary principles of natural justice persuades this Court to set aside the impugned proceedings.

14. For the foregoing reasons, the writ petition is allowed and the order impugned in this writ petition is set aside and the matter is remanded to authority concerned for fresh consideration of the matter, of course after affording an opportunity to the petitioner to submit her explanation. Such orders shall be passed by the respondent authorities within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vs

To

- 1.The Director of Elementary Education,  
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- 2.The District Elementary Education Officer,  
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- 3.The Assistant Elementary Education Officer,  
Gudiyattam, Vellore District - 632 013.

W.P.No.14993 of 2013

SKV(CO)  
RRK(21/03/2018)