



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment Reserved On : 01.11.2017

Judgment Pronounced On: 08 .11.2017

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THE HON'BLE MR.JUSTICE M.VENUGOPAL

and

THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

W.A. (MD) No.1336 of 2017

and

C.M.P. (MD) No.9471 of 2017

1. The Secretary to Government of Tamil Nadu,
Education Department,
Fort St. George, Chennai - 9.
2. The Director of Elementary Education,
Chepauk, Chennai - 600 009.
3. The District Elementary Educational Officer,
Dindigul District.
4. The Assistant Elementary Educational Officer,
Shanarpatti,
Dindigul Taluk and District.

.. Appellants / Respondents

vs.

X.Roselin Jancy

... Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of the letters patent against the order dated 02.02.2017 made in W.P.(MD)No.4276 of 2009.

Prayer in WP(MD). 4276/ 2009 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling the entire records pertaining to the impugned seniority list dated 08/05/09 on the file of the 3rd respondent pursuant to the proceedings of reference Na.Ka.No. 6481/D1/09 dated 12/03/2009 of the 2nd respondent, with regard to secondary grade teachers appointed in the year 1995 and quash the same and to further direct the respondents to enforce the panel prepared and published on 01/01/2009 .



For Appellants : Mr.VR.Shanmuganathan
Special Government Pleader

For Respondent : Mr.M.Amjadkhan
for Mr.N.Ananthapadmanabhan

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J U D G M E N T

[Judgment of the Court was delivered by **M.VENUGOPAL, J.**]

The Appellants/Respondents have preferred the instant Intra-Court Writ Appeal before this Court, as aggrieved persons, as against the order, dated 02.02.2017 in W.P.(MD)No.4276 of 2009, passed by the Learned Single Judge.

2.Earlier, this Court, while passing the impugned order in W.P.(MD)No.4276 of 2009, on 02.02.2017 at paragraph Nos.10 and 11, had observed the following:-

"10.It is the duty of the Respondents to substantiate the allegation by furnishing legally acceptable evidence. It cannot be stated in air that the compact disc was introduced due to vide spread complaints in respect of bogus rank number. Moreover, it is shocking to note that the panel for promotion for the year 2008 to the post of primary school Head Master was prepared based on the incorrect number given by the Petitioner herself and she was placed secondary position. This contention is unacceptable and the same would show that the Respondents are lethargic in preparing in the panel. It is for their duty to prepare the panel as per the seniority list maintained by them. All of a sudden they cannot do through the Petitioner from the 2nd place to 10th position. Further, the Respondents are not justified the preparation of compact disc without prior notice to the concerns teachers. Moreover the Respondents are not able to substantiate the compelling necessity of the introduction of seniority list in the compact disc. Apart from that the seniority of the Petitioner is from the year 1995 that cannot be shuffled all of a sudden in the year 2008 that too without any prior notice to the Petitioner and the respective Teachers concerned.

11.In the light of the above discussion, this Court has no hesitation to hold that the Petitioner has substantiated their case by way of documentary evidence and the Respondents are not justify the case in the preparation of panel for seniority by way of compact disc.



The said exercise was nothing but arbitrary. Hence, the same would not stand in the way of the seniority of the Petitioner maintained till 2008."

and disposed of the Writ Petition with a direction to the Writ Petitioner (Respondent in Writ Appeal) to submit a fresh Representation to the Second Respondent (Second Appellant) in respect of including her name in the seniority list in the appropriate place by narrating all the facts, within a period of 15 days from the date of receipt of copy of the order. Also, a direction was issued to the Second Respondent (Second Appellant) to consider the Petitioner's case by giving personal opportunities and put her name in the seniority list pertaining to the order dated 08.05.2009. That apart, a direction was issued to the effect that after placing the Petitioner in the appropriate place in the seniority list, appropriate promotion be given, by granting all monetary benefits etc.

3. Assailing the correctness, validity and legality of the impugned order, dated 02.02.2017 in W.P.(MD)No.4276 of 2009 passed by the Learned Single Judge, the Appellants/Respondents have preferred the present Writ Appeal by taking a plea that the Learned Single Judge should have seen that as per Tamil Nadu Elementary Educational Subordinate Service Rules, each Union is a limit and the crucial date for the panel shall be First January of every year. Further, it is represented that only in respect of candidates selected during 1995 alone, the aforesaid Rule that each union is a writ was relaxed vide G.O.Ms.No.388, E,S&T Department, dated 19.06.1996.

4. The Learned Special Government Pleader for the Appellants submits that such Teachers selected in 1995, rank was assigned and since there was wide spread complaints, the ranks were fed in a 'Compact Disc' with correct number published by the Second Respondent and the same were followed.

5. The Learned Special Government Pleader for the Appellants points out that the Learned Single Judge had failed to consider that the proceedings of the Second Appellant dated 12.03.2009 is only an inter departmental communication and the same cannot be put to challenge. The Appellants take a stand that the 'Impugned Seniority List' is strictly in accordance with the afore stated Rules and in fact, the panels were prepared and similarly placed Teachers were promoted only on the basis of the rank in Compact Disc throughout State.

6. Advancing his arguments, the Learned Special Government Pleader for the Appellants proceeds to point out that due to <https://hcmr.ces.ports.gov.in/cesarkces/> given to the Respondent/Petitioner, she was placed in No.2 in the panel till the year 2008 and after getting correct rank numbers displayed in the Compact Disc, the Petitioner's name



was placed at the right place in the panel for promotion as Head Masters of Primary Schools for the year 2009.

7. The Learned Special Government Pleader for the Appellants takes a plea that the selection of Secondary Grade Teachers for appointment during 1995 was unique, as the selected Teachers were given rank for their promotion irrespective of their date of joining. Lastly, it is projected on the side of the Appellants that the Learned Single Judge, should have issued necessary direction to consider the Petitioner's request and ought not to have issued further directions to place her in an appropriate place and give appropriate promotion and pay all monetary benefits.

8. In response, it is the submission of the Learned Counsel for the Respondent that the Respondent/Petitioner was placed in 10th position from the second place and further, in the list published by the third and fourth Appellants, the seniority rank is totally confused and the entries number 6, 7, 11 and 12th entries are clear example for non application of mind.

9. The Learned Counsel for the Respondent/Petitioner contends that the Respondent/Petitioner's seniority from the year 1995 cannot be altered with issuance of any prior notice to her and the concerned Teachers. The Learned Counsel for the Respondent/Petitioner proceeds to point out that the 'Publication of Panel' for seniority by way of Compact Disc is nothing but an arbitrary one.

10. It comes to be known that in the seniority list dated 08.05.2009 (as on 01.01.2009), the Respondent/Petitioner's rank was mentioned as 10234 and it appears that the Respondent had stated in the said form that she should be placed in serial No.2 and affixed her signature to that effect.

11. Before the Writ Court, the Third Appellant/Third Respondent had filed a counter stating that the panel for promotion for Primary School Head Master for the year 2008 was prepared by the 'Incorrect Rank' number furnished by the Respondent/Petitioner herself and she was placed in the second position. Also, it is averred on behalf of the Appellants that after the release of Compact Disc containing correct numbers of the Secondary Grade Teacher, who got selected by the Teachers Recruitment Board in the year 1995, the Respondent/Petitioner was placed as 10th position in the panel for 2009 and one Avesha Sithika was given first rank in the panel for 2009 based on the interim order of this Court.

12. Apart from that, in the counter to W.P.(MD)No.4276 of 2009, <https://hcmv.judges.apn.madras.gov.in/services/1> had stated that only successful candidates, who are selected by the Teachers Recruitment Board in the year 1995 were given rank and those rank numbers were displayed in the Compact



Disc released by the Second Respondent and accordingly, many Teachers were promoted as Primary School Head Masters during 2009 based on the rank contained in the Compact Disc and except the Petitioner, no complaints were received from any one.

13. It is the categorical stand of the Appellants that Rule 47 of the Tamil Nadu State and Subordinate Service Rules, does not contemplate any separate order for each candidate for promotion and in fact, the act of the Appellants are based on Rules and Regulations in force and that the Respondent/Petitioner was placed in the right place in the panel for promotion for the year 2009 and nearly 75 persons mentioned in paragraph No.10 of the affidavit of the Writ Petitioner have no grievance in regard to the promotion procedure adopted by the Department.

14. It is to be noted that the Government of Tamil Nadu have issued Special Rules for the Tamil Nadu Elementary Educational Subordinate Services to govern the former Panchayat union Teachers as per G.O.Ms.No.1383, Education (Pus-I) Department, dated 23.08.1988.

15. Rule 8 of the Special Rules for Tamil Nadu State and Subordinate Service Rules speaks of 'Preparation of annual list of approved candidates' and the same runs as under:-

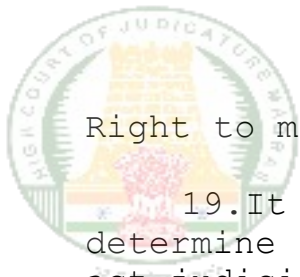
"For the purpose of drawing up of the annual list of approved candidates for appointment to that post in the service by promotion, the crucial date on which the candidates should be qualified shall be the 1st January of every year".

16. Rule 9 of the Act, enjoins as under:-

"For the purpose of appointment State shall be the unit. In respect of all other categories in the service, appointment as full member, re-appointment or discharge in category 1 of class I, the Union of each Panchayat shall be an Unit".

17. It is to be borne in mind that the term 'Natural Justice' is a form of Justice in its abstract moral sense as distinct from a Legislation or Statue or a decision by a Court of Law. As a matter of fact, 'Natural Justice Principles' are not edicts of a Statue. Undoubtedly, its absence gives a sense of feeling of 'Injustice' be it before a Judicial forum or a quasi Judicial body and also before an 'Administrative Authority'.

18. It may not be out of place for this Court to make a <https://hcservicescourts.gov.in/hcservices> statement that no decision shall be taken without hearing the concerned aggrieved/affected party. Indeed, the salient features of the first hearing are (1) Prior notice; (2)



Right to make Representation and (3) Right to be heard.

19. It is to be remembered that if there is a power to determine and decide to the prejudice of a person, then, a duty to act judicially is implicit in exercise of such power.

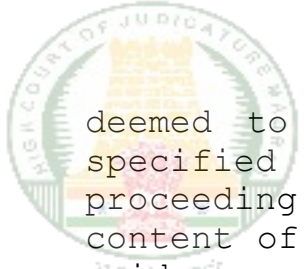
20. Coming to the aspect of 'Compact Disc', it is a digital optical disc data storage. Originally the format was developed to store and play only sound recordings. Subsequently, it was adopted for the storage of data.

21. In reality, the real best evidence requires a party to produce the best possible evidence to establish his/her case. As per Section 65B of the Indian Evidence Act, 1872, electronic documents are adequate enough to establish what the original could legally prove without the production of original, when a Computer print out relates to the period when the Computer was regularly used to or process information, with a view to carry out routine business by an individual, who has a Lawful control of the Computer.

22. More importantly, the Indian Evidence Act, 1872, creates presumptions in Law, in regard to the electronically signed records, Messages and use of secure electronic signatures. In terms of Section 11 of the Information Technology Act, 2000, an electronic record is attributed to the 'Originator' if it was sent by the Originator or by a person authorised to act on behalf of the Originator or by an information system, which is automatically programmed by the Originator.

23. Section 85 B of the Indian Evidence Act, 1872, says that in any legal proceedings, the Court shall presume unless it is rebutted that the secure electronic record has not been modified or changed, since the time it was electronically signed. The authenticity of an electronic document indicates that the document is what it appears to be (McCormic C., Handbook of the Law of Evidence, 3rd Edition, E Cleary, 1984 Pages 684-86).

24. It cannot be gainsaid that the document that is established as an authentic one is admissible as evidence in legal proceedings, before a Court of Law. Every electronic record, which is 'Secure Electronic Record' as defined under Section 14 of the Information Technology Act, 2000, will carry a presumption in its favour that such document is an authentic one unless the same is rebutted. Section 65A of the Indian Evidence Act, 1872, points out that the electronic records can be proved in evidence by the parties in accordance with the Provisions of Section 65B (which would be considered as Secondary evidence). Section 65B of the Indian Evidence Act, 1872, provides that 'any information as contained in an electronic record, which is printed on a paper, stored, recorded or copied in an optical or Magnetic Media produced by a Computer shall be



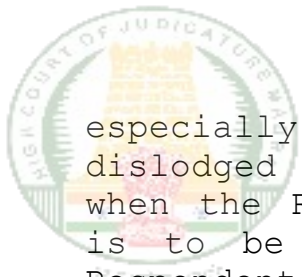
deemed to be also a document', if it satisfies the conditions specified in Section 65B and the same shall be admissible in any proceeding without further proving the original as evidence of any content of the original or fact mentioned in it, for which, direct evidence would be admissible. Section 65B(4) of the Indian Evidence Act, 1872, refers to the method to establish the electronic evidence. Whenever a statement is to be produced in evidence, a certificate identifying the electronic record that contains the statement and explaining the manner/method, in which it was produced is required to be submitted before the Court. Really speaking, the certificate must contain also details of any device used for production of electronic record, viz., the electronic record was produced by a Computer and added further, the certificate should also contain the statements required by Section 65B(2) of the Indian Evidence Act, 1872 and signed by an individual occupying position for the operation of the Computer concerned or the management of relevant activity. Also it provides that it shall be sufficient for a matter to be explained to the 'best of knowledge and belief' of an individual, who makes the statement.

25.It cannot be brushed aside that Section 79A of the Information Technology Act (After amendment) has empowered the Central Government to appoint an 'Examiner of Electronic Evidence' to provide expert opinion of 'Electronic Evidence' before any Court or Authority. As per ingredients of Section 79A of the Information Technology Act, Electronic form of evidence means any information of 'probative value that is either stored or transmitted in electronic form and includes Computer evidence, digital audios, digital video, cell phones, digital fax machines'.

26.Besides the above, the definition of the word 'evidence', as per Section 3 of the Indian Evidence Act, 1872 was amended to include 'or document including electronic records produced for the inspection of the Court' and such documents are called documentary evidence. The word 'Electronic Record' was introduced in Sections 34 and 35 of the Indian Evidence Act, 1872 in regard to the maintaining of 'Books of Account' in an Electronic format.

27.To put it succinctly, the term 'Electronic Record' was introduced by means of Section 92 of the Information Technology Act, 2000 r/w, schedule II thereto with effect from 17.10.2000.

28.Be that as it may, on a careful consideration of respective contentions, in view of the divergent stand taken by the respective parties and also this Court, on an over all assessment of the facts and circumstances of the instant case in a conspectus manner, comes to a resultant conclusion that the Respondent/Petitioner and other concerned teachers, cannot prepare a 'Compact Disc' (in regard to the panel for seniority),



especially when the Respondent/Petitioner was purportedly dislodged from the serial No.2 to 10th position. In this regard, when the Respondent/Petitioner's position from Serial No.2 to 10 is to be dislodged by the Appellants, in such an event, the Respondent/Petitioner has a right to make a Representation and also she may be heard by the concerned authority before finalising the preparation of panel for the seniority in question (ofcourse in the form of disc).

29. In the upshot of detailed qualitative and quantitative discussions and inasmuch as the Appellants/Respondents had prepared the panel for seniority by means of 'Compact Disc' without issuing any prior notice to the Respondent/Petitioner and other concerned teachers, this Court, quashes (i) the impugned proceedings of the Second Appellant/Second Respondent in Na.Ka.No.6481/D1/09, dated 12.03.2009 and (ii) the impugned seniority list, dated 08.05.2009 of the Third Appellant/Third Respondent, to prevent an aberration of justice and remits back the entire subject matter in issue for fresh consideration by the Second Appellant/Second Respondent in a fair, just, impartial and dispassionate manner (ofcourse after providing adequate opportunity to the Respondent/Petitioner and other concerned Teachers to make their oral/written Representations, if need be/situation so warrants) and to consider their objections and to pass necessary orders on merits, within a period of three months from the date of receipt of a copy of this order, ofcourse in the manner known to Law and in accordance with Law. Further, based on the orders passed by the second respondent, the third respondent is directed to prepare a revised seniority list, as the case may be.

30. With the aforesaid Observation(s) and Direction(s), the Writ Appeal stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

To:

1. The Secretary to Government of Tamil Nadu,
Education Department,
Fort St. George, Chennai - 9.

<https://hcservicecourtdirectoriesofelementaryeducation.com/>
Chepauk, Chennai - 600 009.



3. The District Elementary Educational Officer,
Dindigul District.

4. The Assistant Elementary Educational Officer,
Shanarpatti,
Dindigul Taluk and District.

+1cc to Mr.N.Ananthapadmanabhan, Advocate Sr.No.85922

RJ2

VB/KP/SAR2/20.11.2017/9P/6C

**Judgment made in
W.A. (MD) No.1336 of 2017
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C.M.P. (MD) No.9471 of 2017
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