



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.03.2017

Pronounced on : 05.06.2017

CORAM :

THE HONOURABLE MR. JUSTICE R. SUBRAMANIAN

Writ Petition (MD) No. 3992 of 2013

and

M.P (MD) Nos. 2 of 2013, 1 and 2 of 2014

1. A. Sanjeevi

2. M. Chinna Pandey

3. A. Kalaiselvi

... Petitioners

Vs.

1. The Director of Most Backward Classes,
Denotified Welfare Commissioner,
Chepauk, Chennai 600 005.

2. The Joint Director,
Kallar Reclamation,
Old Ramnad Collectorate Office,
Office of the District Collector,
Madurai 625 020.

3. K. Subramaniam
now working as Headmaster,
Government Kallar High School,
Nellur, Dindigul.

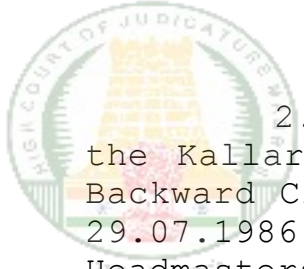
... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of a Writ of Certiorari to Mandamus, to call for the records pertaining to the proceedings in Na. Ka. Se. Mu B2 4903/2011, dated 04.02.2013 on the file of the 1st respondent herein and quash the same and consequently direct the respondents 1 and 2 to revise the seniority list of the petitioners as per proceedings of the 1st respondent in accordance with the Service Rules.

For Petitioners	: Mr. C. Jegannathan
For Respondents 1 & 2	: Mrs. S. Bharathi, Government Advocate.
For 3 rd Respondent	: Mr. J. Imran Khan for Mr. M. Mohanasundaram

ORDER

The challenge in this writ petition is to the rejection of the request of the petitioners to readjust the seniority list relating to the promotion of Headmasters of High Schools under the service rules of respondents 1 and 2 for the year 2006-2007 as per the common order passed by this Court in W.P. (MD) Nos. 6604 to 6609 of 2006, dated 11.04.2007.



2.The petitioners joined as Secondary Grade Teachers in the Kallar Reclamation Schools run by the Backward Classes, Most Backward Classes and Minorities Welfare Department, on 03.04.1985, 29.07.1986 and 07.02.1986 respectively. They were promoted as Headmasters of High School on 09.02.2008 and 11.02.2008. The next avenue of promotion for the petitioners is to the post of Headmaster of Higher Secondary School under the first and second respondents.

3.The third respondent who was working as a warden in the Government Most Backward class Hostel, Chinnalapatti, which is run by the Social Welfare Department, sought for transfer from the said Department to the Kallar Reclamation School under the respondents 1 and 2. The said request has been accepted by the respondents 1 and 2 and he was posted as warden in the Backward Classes Hostel attached to the Kallar Reclamation school in the equivalent post of B.T.Assistant on 30.05.1997. The proceedings of the second respondent dated 15.05.1997 regarding the transfer makes it clear that the third respondent will be placed as the junior most in the B.T.Assistant category in the seniority. On 12.05.2003, a seniority list was prepared for promotion as Middle School Headmasters from among the Primary School Headmasters in the said seniority list. The petitioners were placed at Sl.Nos.8, 9 and 10, the third respondent was placed as 11. Thereafter, by an order dated 08.07.2006, the third respondent was promoted as Headmaster of the High School at Kamupillai Chattiram. Aggrieved by the said promotion, the petitioners had made several representations to the respondents 1 and 2 pointing out that the third respondent who is junior to them has been promoted.

4.By the proceedings, dated 24.07.2006, the Special Deputy Collector, Kallar Reclamation, Madurai cancelled the promotion of six individuals including the third respondent and reverted them from High School Headmaster to Middle School Headmaster. This order came to be challenged in W.P.(MD)Nos.6604 to 6609 of 2006.

5.The third respondent herein was the petitioner in W.P (MD)No.6609 of 2006. This Court, by an order dated 11.04.2007 allowed the said writ petition along with other cases on the ground that the petitioners therein were not heard before the reversion orders were passed and the matter was remanded back to the respondent department with a direction to decide the issue afresh by providing reasonable opportunity to the parties concerned and following the procedure contemplated under the relevant rules and fill up the vacancies in the posts of High School Headmasters.

<https://hcservices.ecourts.gov.in/hcservices/> 6.No further proceeding was taken pursuant to the said order of this Court in W.P(MD)Nos.6604 to 6609 of 2006. On 24.09.2007, a new seniority list was drawn up for promotion as



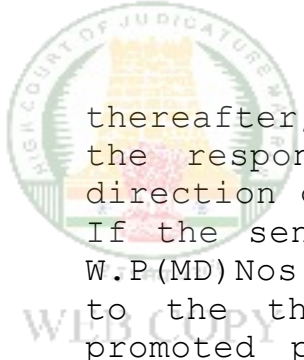
High School Headmasters from among the graduate teachers (B.T.Assistants) and Middle School Headmasters wherein the petitioners were shown in position 2,3 and 4 respectively.

7.It is not in dispute that consequent upon such fixation the petitioners were promoted as High School Headmasters on 09.02.2008 and 11.02.2008. This again was challenged by the Tamil Nadu Secondary and Higher Secondary Schools, B.T.Assistant Association, Kallar Reclamation Schools Branch represented by the District Secretary by filing W.P.(MD)No.8472 of 2007.

8.Though originally an order of interim stay was granted subsequently, by order dated 01.02.2008, this Court had dismissed the said writ petition holding that the association has no *locus standi* to challenge the seniority fixation. Thereafter, the petitioners were promoted as Headmasters of High School Schools. However, the petitioners had time and again represented to the authorities namely, the respondents 1 and 2 pointing out that promotions have been given to six individuals who are juniors to them on 08.07.2006 and no further action has been taken as per the decision of this Court in W.P(MD)Nos.6604 to 6609 of 2006.

9.The second petitioner, namely, M.Chinnapandi has sent a representation dated 12.01.2008 and he has followed it up with another representation dated 16.08.2011. Subsequently, in the year 2012, the Department had published the seniority list of candidates eligible for promotion as Higher Secondary School Headmaster/Headmistress. In the said seniority list, based on the temporary promotion as High School Headmasters in the year 2006, the third respondent was shown at Sl.No.4 whereas the petitioners were shown at Sl.Nos.5,6 and 7. The petitioners objected to the same and claimed that since the third respondent had given up his service in the parent Department, namely, Social Welfare Department, for the purposes of seniority, he cannot be treated as senior to them in the 1st respondent Department. The said requests of the petitioners were rejected by the second respondent by the proceedings which is impugned in this writ petition.

10.Mr.C.Jegannathan, learned counsel for the petitioners would vehemently contend that the third respondent was transferred to Kallar Reclamation Schools only on the condition that he would be fitted at the junior most position among the B.T.Assistants in Kallar Reclamation Schools. Drawing my attention to the seniority list prepared in the year 2003 wherein the third respondent was placed junior to the petitioners at No:11, learned counsel for the petitioners would submit that the promotion of the third respondent as Headmaster of the High School was only temporary and the same was cancelled and he was reverted by the proceedings of the second respondent dated 24.07.2006. The order of reversion passed by the second respondent was set aside by this Court with a direction to give opportunity to the reverted candidates and



thereafter, fill up the posts of Headmasters of High Schools. But the respondents 1 and 2 did not take any action as per the direction given by this court in W.P.(MD)Nos.6604 to 6609 of 2006. If the seniority is re-fixed as per the orders of this Court in W.P.(MD)Nos.6604 to 6609 of 2006, the petitioners would be seniors to the third respondent and therefore, they should have been promoted prior to the third respondent as Headmasters of High Schools and consequently, the promotion as Headmaster of Higher Secondary Schools should also be advanced at least with effect from the date of on which the third respondent was promoted as Headmaster of the Higher Secondary School.

11.The second respondent namely, the Joint Director, Kallar Reclamation schools has filed counter affidavit on behalf of the first and second respondents. The sum and substance of the said counter affidavit is as follows:-

It is admitted that the petitioners who entered into service as Secondary Grade Teachers during 1986 and promoted as Tamil Pandits during 1994. The post of Tamil Pandit was included as a feeder category for promotion to the post of Middle School Headmaster. Therefore, while preparing a combined seniority list, the petitioners were placed at Sl.Nos.8, 9 and 10 and the third respondent was placed at No:11. By proceedings dated 12.05.2003, all the four persons namely, the petitioners and the third respondent were promoted as Middle School Headmasters. The fact that the third respondent was promoted as High School Headmaster on 08.07.2006 and his reversion on 24.07.2006 are also admitted. It is also admitted that this Court had set aside the orders of reversion and directed the Department to reconsider the issue after giving opportunity to all the parties concerned. Regarding the direction issued by this Court in W.P.(MD)Nos.6604 to 6609 of 2006, the reply of the third respondent in the counter affidavit at paragraph 9 reads as follows:-

"I submit that it seems thereafter, there was no inquiry and inter-se seniority of the three writ petitioners and the third respondent was not re-fixed."

12.It is further stated that since the third respondent continued as the High School Headmaster, his name was not included in the panel prepared for promotion to the post of High School Headmaster which was prepared on 24.09.2007. Based on the said panel and after the dismissal of W.P.(MD)No.8472 of 2007 by this Court on 01.02.2008, the petitioners were promoted as High School Headmasters with effect from 11.02.2008. It is further stated that while preparing the panel for promotion from High School Headmasters to Higher Secondary School Headmasters in the year 2012, the petitioners were placed below the third respondent. However, the petitioners did not challenge the said fixation and they were promoted as Higher Secondary School Headmasters. The first petitioner has also retired from service now. In paragraph 15 of the counter affidavit, the second respondent would state as



follows:-

"I submit that thus the third respondent was promoted as High School Headmaster overlooking the seniority of these writ petitioners way back 2006. The same was never challenged by the petitioners. In fact, the third respondent was reverted back by the Department on other grounds and was successfully challenged by him and order of reversion was set aside."

13. It is also further averred that the writ petitioners, though were parties to the said decision of this Court, did not challenge the same. It is also further claimed that the writ petitioners having accepted the promotions of High School Headmaster in 2008 are now estopped from questioning the seniority which is already settled. Similarly, on 23.09.2009, the panel for promotion from High School Headmasters to Higher Secondary School Headmasters was published and the petitioners were promoted as Higher Secondary school Headmasters on 05.08.2014 along with the third respondent. The said proceedings have also not been questioned by the petitioners. The petitioners are now questioning the order rejecting their request for re-fixation of seniority as per the order of this Court in W.P(MD)Nos.6604 to 6609 of 2006. It is also claimed that the petitioners are challenging the panel belatedly and therefore, they are not entitled to the relief sought for in this writ petition.

14. The third respondent also filed counter affidavit stating that the petitioners are not entitled to claim by making repeated representations inviting fresh orders for creating a new cause of action. It is further stated that having accepted the panel for the year 2006-2007, the petitioners cannot now contend that the promotion of the third respondent is illegal and incorrect.

15. I have considered the submissions made on behalf of the respective parties.

16. The present situation has been created because of the inaction on the part of the Department in not complying with the order passed by this Court in W.P(MD)Nos.6604 to 6609 of 2006. From the order of reversion which was the subject matter of challenge in the said writ petitions, it is seen that reversion was made on the sole ground that the rules framed for the services in the Kallar Reclamation schools do not provide for promotion of Middle School Headmasters as High School headmasters and therefore, the promotions given to the third respondent and others were cancelled. This Court while setting aside those orders of reversion had observed that the respondents 1 and 2 shall reconsider the matter afresh after giving sufficient opportunity to the parties concerned and following the procedure contemplated under the relevant rules and to fill up vacancies in the post of



High School Headmasters.

17. The claim of the petitioners herein who were respondents in the said writ petitions was not rejected outright. Without complying with the directions of this Court, the respondents seem to have gone ahead with the promotion of the petitioners as High School Headmasters in the year 2007. The said promotion was challenged by the association and the same was also rejected by this Court. In the counter affidavit filed on behalf of the respondents 1 and 2, there is a candid admission that the petitioners are seniors to the third respondent. The claim of the petitioners was denied only on the ground of delay. It is seen from the records that the second petitioner, Chinnapandi has made representation even in the year 2008 pointing out the orders passed by this Court in W.P.(MD)Nos.6604 to 6609 of 2006 and sought for compliance of the said directions but those representations have not been considered by the authorities. It is not as if the petitioners have suddenly woken up and have made the complaint dated 16.08.2011 based on which the present impugned order has been passed. Therefore, I do not think that the petitioners should be denied relief on the ground of delay alone. If at all any one could be blamed for the delay, it is the official respondents whose inaction has paved way for the present situation. It is for them to rectify the anomaly. Therefore, the writ petition is allowed and the impugned order rejecting the request of the petitioners for re-fixation of the seniority dated 04.02.2013 is hereby quashed. Rule nisi is made absolute. The respondents 1 and 2 are directed to take a re-look into the whole situation and grant notional promotions with attendant monetary benefits to the petitioners by re-fixing their seniority as per the directions of this Court in W.P(MD)Nos.6604 to 6609 of 2006. The respondents shall also bear in mind the fact that the third respondent's transfer to the Kallar Reclamation School itself was with a condition that he will be fitted as junior most person which he had accepted. Therefore, the respondents 1 and 2 shall re-fix the seniority of the petitioners above the third respondent. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. The first petitioner having retired would be entitled to notional promotion and monetary benefits as per the prevailing rules. No costs. Consequently, M.P(MD)Nos.2 of 2013, 1 and 2 of 2014 are closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar



To

1.The Director of Most Backward Classes,
Denotified Welfare Commissioner,
Chepauk, Chennai- 600 005.

2.The Joint Director,
Kallar Reclamation,
Old Ramnad Collectorate Office,
Office of the District Collector,
Madurai- 625 020.

+1cc to M/s. N.MOHANA SUNDARAM Advocate in SR. No.58359

+1cc to VEERA ASSOCIATES in SR. No.58430

SMS

JS/KP/SAR.3/13.6.2017/7P-5C

Pre-delivery Order made in
Writ Petition (MD) No.3992 of 2013
and
M.P (MD) Nos.2 of 2013, 1 and 2 of 2014
05.06.2017