

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2018

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH
and
THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

W.A.No.1042 of 2013

P.Radhakrishnan

... Appellant

Vs.

- 1.The Director of Elementary Education,
College Road, Chennai-6.
- 2.The District Elementary Educational officer,
Trichy District, Trichy.
- 3.The Additional Assistant Elementary
Educational officer,
Thottiam Panchayat Union, Thottiam,
Trichy District.
- 4.R.Rathinakodi
- 5.Kl.Prasanna Venkatachalam
- 6.S.Gomathi
- 7.Sivagamisundari
- 8.R.Balasubramaniam
- 9.M.Manuneethi
- 10.P.Chinnaiyar
- 11.P.Manokaran
- 12.M.Uma
- 13.Kl.Govindha Raj
- 14.J.Rajeswari
- 15.Kl.Indumathi

... Respondent

Writ Appeal is preferred under Clause 15 of the Letters Patent against the order dated 05.01.2009 made in W.P.No.15828 of 2007 filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus , to quash the proceedings of First Respondent in Respondent not appearing either in person or by an Advocate for the respondent in Na.Ka.No. 9683/T/2004 dated 3.5.04 and the seniority list of the year 2005 and 2006 issued in proceedings N Nil by the respondents No. 2 and 3 and consequetnial order of promotion issue dby the Disrict Elementary Educaitoal officer in Na.Ka.No. 3210/R3/2006 dated 24./6/2006 and quash the same in so far as the Petitioner is concerned and issue a consequential direction

to the Respondents to restore the seniority of the Petitioner determined in the year 2002 for secondary Grade Teachers of Thottiam Panchayat Union, Trichy District and place the Petitioner above the Respondents 3 to 15 in the Seniority List for the year 2005 of Secondary Grade Teachers of Thottiam Panchayat Union, Trichy District and promote the Petitioner as primary school Headmaster from the date on which his juniors were promoted with service and monetary benefits.

For Appellant : Mr.R.Saseetharan

For respondents : Mr.A.Rajaperumal,
Addl. Government Pleader (Edn.)
for R1 to R3

Ms.Swadhi Subramanian for R4 to R15

JUDGMENT

(Judgment of the Court was made by M.M.SUNDRESH, J.)

The writ appeal has been filed against the order of the learned single Judge, who after considering the submissions made, passed a very reasoned order dismissing the writ petition, which was filed challenging the guidelines issued by the respondent followed by the seniority list prepared in the year 2006.

2. The appellant was appointed as Secondary Grade Teacher on 10.10.1996. The appointment was based upon Communal Roster System. On the basis of the Communal Roster System, he has given Roster No.280. The appointment was made based upon the registration in the Employment Exchange.

3. At the time of preparation of seniority list in the year 1999, the private respondents 4 to 15 were placed before the appellant on the ground that they joined earlier. There was a proceeding issued by the Director of School Education dated 15.11.2001, which gave an impression that the seniority of the Secondary Grade Teachers has to be prepared as per roster serial number assigned by the District Employment Exchange. However, the proceeding dated 15.11.2001 was modified by the subsequent proceeding dated 15.04.2002. It is to be noted that over the years except for the year 1995, for fixing the seniority as per proceeding dated 15.04.2002, the Teachers Recruitment Board shall consider the date of joining for fixing the seniority.

4. Ignoring the subsequent proceeding dated 15.04.2002, Thottiam Panchayat Union, by mistake, fixed the seniority based on roster. This was continued till the year 2005. It was accordingly rectified by procuring the seniority list based upon the date of joining in the year 2005. The appellant accepted the revised panel in the year 2006 by signing it. However, he did raise objection. Therefore, in the year 2008, he filed the writ petition challenging the guideline issued in the year 2004 and the seniority list.

5. The learned single Judge, after holding that what is applicable is Rule 35(aa) of Tamil Nadu State and Subordinate Service Rules and Rule 35(a) has got no application, was pleased to dismiss the writ petition.

6. The learned counsel appearing for the appellant would submit that Rule Rule 35(aa) of Tamil Nadu State and Subordinate Service Rules does not have an application. Even assuming that Rule 35(aa) of Tamil Nadu State and Subordinate Service Rules is not applicable, the seniority list prepared earlier cannot be changed unilaterally. There cannot be any seniority based upon the date of joining. Therefore, the order of the learned single Judge requires interference. To buttress his submissions, reliance has been made on the following decisions of the Apex Court.

- (1) State of Punjab and others V. Dalbir Kaur Kalyan ((2006) 6 Supreme Court Cases 516); and
- (2) State of UP. Vs. Dinkar Singh ((2007) 10 Supreme Court Cases 548).

7. We do not find any merit in this appeal. There was no merit list prepared as contended by the appellant. The appointments have been made merely based upon the registration in the Employment Exchange. Rule 35(aa) of Tamil Nadu State and Subordinate Service Rules does not have an application as we are not dealing with a case involving assignment of rank. Therefore, we do not find any error in the order of the learned single Judge.

8. As discussed above, the appellant was quite aware of the position in the seniority list drawn in the year 1999. The appellant was placed before the respondents 4 to 15. He did not raise any objection. The proceedings dated 15.11.2001 was clarified with subsequent proceedings dated 15.04.2002. The subsequent clarification proceeding was also not challenged. Therefore, any seniority list drawn by mistake based upon the earlier one cannot give a right to the appellant. The seniority list drawn based upon the proceedings dated 15.11.2001 also resulted in the revision of the seniority drawn in the year 1999. Therefore, the

contention of the appellant with respect to the panel having been drawn taking away his vested right cannot be sustained as on the same logic, first seniority was drawn in the year 1999. More so, it is a mistake, which got corrected. The appellant was aware of the rectification of the mistake by accepting it. Thereafter, he filed the writ petition in the year 2008. Hence, we are of the view that the appellant has also estopped from claiming the relief on the principle of delay, laches and acquiescence.

9. The judgment relied upon by the learned counsel for the appellant are not applicable to the case on hand. In State of Punjab and others V. Dalbir Kaur Kalyan ((2006) 6 Supreme Court Cases 516), the Apex Court was dealing with the issue governing specific instructions vis-a-vis general instructions. Similarly, the other decision rendered by the Apex Court in State of UP. Vs. Dinkar Singh ((2007) 10 Supreme Court Cases 548) has got no application as it involves a case, in which, the State was exercising the execution power. The facts involved before us are totally different. Right from day one, the appellant was placed before the respondents 4 to 15 except a small period which happened because of the proceeding dated 15.11.2001, which is no longer in force as the same is clarified by the subsequent proceedings dated 15.04.2002. The appellant has not made out a case on law especially with respect to the rule based upon which he is entitled to place above the private respondents. Accordingly, the order of the learned single Judge is confirmed and the writ appeal stands dismissed. No costs.

raa

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

- 1.The Director of Elementary Education,
College Road, Chennai-6.
- 2.The District Elementary Educational officer,
Trichy District, Trichy.
- 3.The Additional Assistant Elementary
Educational officer,
Thottiam Panchayat Union, Thottiam,
Trichy District.
- 4.The Secretary to government of Tamil Nadu,
School Education Department,
Fort.st.George, Chennai. 9.

+1cc to Mr.A.Prem Narayan , Advocate SR.No. 84098

+1cc to Mr. R.Seetharaman, Advocate SR.No.84649

+1 CC TO GOVERNMENT PLEADER SR.NO. 85064

W.A.No.1042 of 2013

A.SK(07/02/2019)