

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 26.10.2018

CORAM:

THE HONOURABLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.26830 of 2009

and

M.P.1 of 2009

P. Valarmathi

... Petitioner

Vs

1.The Director of Elementary Education,
Office of the Director,
D.P.I. Complex,
College Road, Chennai 600 006.

2.The District Elementary Education Officer,
Salem District.

3.The Additional Assistant Educational Officer,
Mechery,
Salem District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus to call for the records pertaining to the proceedings of the second respondent in his proceedings No.Na.Ka.No.1194/Aa3/2009 dated 20.03.2009 and quash the same as illegal and direct the respondents to fix the seniority of the petitioner by taking into account of her original appointment in the post of craft teacher.

For Petitioner : M/s.A.Arulmozhi

For Respondents : K.Karthikeyan
Government Advocate (Education)

O R D E R

The Writ Petition has been filed for issuance of Certiorarified Mandamus to call for the records pertaining to the proceedings of the second respondent in his proceedings No.Na.Ka.No. 1194/Aa3/2009 dated 20.03.2009 and direct the respondents to fix the seniority of the petitioner by taking

into account of her original appointment in the post of craft teacher.

2. The case of the petitioner is that the petitioner was originally appointed as Part time Craft Teacher vide proceedings of the District Educational Officer Sangagiri, in Na.Ka.No.10647 B2/84 dated 02.10.1984 and She joined duty on 17.10.1984 as part time Craft Teacher. On 08.11.1984, the post of part time Craft Teacher was declared as full time post and the petitioner was appointed as full time craft teacher, with effect from her original appointment, i.e., 17.10.1984.

3. While in the service as craft teacher, the petitioner has undergone Secondary Grade teacher training and obtained Diploma in Teacher Education in the year 1997 and obtained Bachelor of Education (B.Ed) in the year 2000.

4. The learned counsel for the petitioner would contend that she was appointed as Secondary Grade teacher by transfer of service from craft teacher by the proceedings of the District Elementary Education Officer in Ni.Mu.7334/01/Aa3 dated 16.01.2001 and posted at Aranganur Panchayat Union Middle School as Secondary Grade Teacher by the orders of Additional Assistant Educational Officer dated 22.11.2001. She was further promoted as Graduate Assistant by the District Elementary Educational Officer, Salem in Na.Ka.No.2969/Aa2/2006 dated 26.11.2006 and posted at Karacharayanaur Panchayat Union Middle School by the order of A.A.E.O., Mechery dated 27.11.2008. The petitioner had also acquired M.A. Degree on 24.11.2008.

5. The learned counsel for the petitioner would further contend that even though she was a senior most teacher in the Graduate Assistant in Mechery Union and though she was appointed on transfer of service from the post of craft teacher to the Secondary Grade Teacher, her seniority for promotion has been fixed only based on the date of joining in the Secondary Grade Teacher post. Therefore, the petitioner was treated as junior to the teachers, who were appointed in the year 2006 and got their probation declared in the year 2008.

6. The petitioner would also contend that even though her name was found in seniority No.1 in the panel for promotion to the post of Middle School Headmaster, it was brought down to seniority No.9, because of the inclusion of those teachers appointed on the consolidated pay in the year 2006 and declared probation in the year 2008. The petitioner has challenged the same by filing Writ Petition No. 25079 of 2009 and it is pending.

7. The learned counsel for the petitioner would also submit that if her seniority has been fixed from the original date of

appointment, she would have got promotion as the Headmaster of Elementary School and further promotion in the same year as Graduate Assistant and would have got promotion to the post of Middle School Headmaster in the year 2007.

8. The learned counsel for the petitioner would further contend that as per Rule 35B of the Tamil Nadu State and Subordinate Service Rules, the transfer of a person from one class or category of a service to another class or category carrying the same pay or scale of pay shall not be treated as first appointment to the later for the purpose of seniority and the seniority of a person so transferred shall be determined with reference to the rank in the class or category from which he was transferred.

9. The learned counsel for the petitioner would also contend that since she is entitled to count her seniority from the date of appointment in the post of craft teacher, she submitted a representation to the third respondent on 05.02.2009 through proper channel and the same was returned by the third respondent with an endorsement that the seniority panel has been prepared as per the instruction of the Director of Elementary Education made in Na.Ka.No.3679/D3/2008 dated 18.12.2008 and the second respondent has also rejected the representation by his proceedings in Na.Ka.No.1194/Aa3/2009 dated 20.03.2009 by confirming the same reason.

10. The learned counsel for the petitioner would further submit that she has rendered 17 years of service and denying the benefits of seniority to her is contrary to the principles of service jurisprudence. She would also submit that if her seniority is fixed from the original date of her appointment in the post of craft teacher, she would be entitled for more retirement benefits. Hence the petitioner filed this Writ Petition praying for refixation of her seniority.

11. The third respondent has filed counter affidavit stating that the petitioner was absorbed as secondary Grade Assistant from Craft Instructor, by the District Elementary Educational Officer, Salem and posted at Panchayat Union Middle School, Aranganur, Mecheri Union and joined duty on 23.11.2001 and she was promoted as Graduate Assistant on 29.10.2006.

12. The learned counsel for the respondents would further contend that During the year 2003, to improve the standard of education from standard VI to VIII, the Government of Tamil Nadu issued G.O. M.S.No.100 dated 27.06.2003 for appointment of B.Ed qualified teachers in the place of Secondary Grade Teacher vacancy and they were designated as Junior Grade BT Assistants. Accordingly, B.Ed teachers were selected by the Teachers

Recruitment Board, Chennai and their pay was fixed at Rs.4,000/- under consolidated pay scheme and the Tamil Nadu Government had taken a decision to cancel the consolidated pay scheme and the same was regulated in the regular time scale of pay Rs.5500-175-9000 with effect from 01.06.2006, which is higher than that of Secondary Grade scale of pay Rs.4500-125-7000 and they were re-designated as B.T. Assistants. For the purpose of appointment, Junior Grade Teacher was re-designated as B.T. Assistant, which is equivalent to Secondary Grade promotive post. For the purpose of appointment, promotion and transfer, each panchayat Union shall be treated as a Unit. Eventhough, the Teachers Recruitment Board selected the candidates, appointment order was issued by the Appointing Authority, the District Elementary Educational Officer, Salem and the seniority shall be fixed with reference to the date of joining duty in the concerned category in the block and other block transfer, they shall be placed as junior most among probationers / approved probationers as the case may be.

13. The learned counsel for the respondents would further contend that as per G.O.Ms.No.510 Education, dated 26.05.92 with modification order, when vacancies arise in the posts of Headmasters of Middle School, such vacancies shall be filled up by promotion from among B.T. Assistant / Tamil Pandits appointed prior to 01.06.1988 and if qualified persons are not available, then it shall be filled up from among the senior most of the following categories by drawing a combined seniority list:-

- (i) B.Ed., Grade Teacher appointed in the Middle Schools,
- (ii) Tamil Pandits appointed in the Middle Schools; and
- (iii) Primary School Headmaster qualified for B.Ed. or Tamil Pandits.

As per the said guidelines, the panel was drawn, and the petitioner stands at Sl.No.9 in the seniority list of 2009. The petitioner was promoted as B.T. Teacher on 27.11.2008, whereas regular B.T. Teachers were appointed on 01.06.2006 and hence the petitioner cannot claim her seniority from the date of appointment in the post of craft teacher.

14. The learned counsel for the respondents would further contend that Craft Teacher post is entirely different from Secondary Grade Teacher post. Qualification for Craft Teacher Post is SSLC with Tailoring course, whereas the qualification for Secondary Grade Teacher post is SSLC/+2 with Diploma in Teacher Education. The petitioner was absorbed as Secondary Grade Teacher after possessing Diploma in Teacher Education and hence, Rule 35B of Tamil Nadu State and Subordinate Service Rules are not applicable to the present case. Even though, the Craft Teachers and Secondary Grade Teachers are handling different subjects, their scale of pay is equal, since they are

handling same class students. According to their qualifications, the consolidated pay Junior Grade Teachers were upgraded as B.T.Assistants with effect from 01.06.2006 and the petitioner was promoted as Graduate Assistant on 29.10.2006 and as B.T. Assistant on 27.11.2008. B.T.Assistant post differs from Secondary Grade Teacher Post, which is not a transferable post, but a promotive post. The Secondary Grade Teachers, by virtue of their seniority, may be appointed as Primary School Headmaster and there is no higher qualification prescribed. But, for the post of B.Ed., Graduate Teachers and Tamil Pandits, requisite qualifications are prescribed. Secondary Grade Teacher post is a feeder category for Primary School Headmaster. Primary School Headmaster is a feeder category for Middle School Headmaster and the Primary School Headmaster qualified with B.Ed. or Tamil Pandit may be promoted as Middle School Headmaster. Hence, the respondents contend that the petitioner is not eligible for absorption from the date of appointment in the post of craft teacher.

15. The petitioner, even though had sought two prayers in the above Writ Petition, had filed the rejoinder stating that she had given up one prayer of Certiorari challenging the impugned order of the third respondent dated 20.03.2009 as the seniority in the post of B.T. Assistant was fixed based on the proceedings of the first respondent dated 18.12.2008. The petitioner restricted her prayer only to the extent of directing the respondents to count her seniority in the post of Secondary Grade Assistant from the date of her joining the duty as craft teacher in the Mecheri Union on 31.12.1992 and grant attendant benefits.

16. In her rejoinder, the Petitioner has also pointed out Rule 35-B of the Tamil Nadu State and Subordinate Service Rules, which reads as follows:

"The transfer of a person from one class or category of a service to another class or category carrying the same pay or scale of pay shall not be treated as first appointment to the later for the purpose of seniority and the seniority of a person so transferred shall be determined with reference to the rank in the class or category from which he was transferred."

17. The petitioner would submit that based on the above Rule, she is entitled for seniority for promotion from the cadre of Secondary Grade Teacher based on her date of joining in the Mecheri Union as Craft Teacher, i.e., 31.12.1992 for the reason she was transferred and joined duty as craft teacher in the Macheri Union on 31.12.1992 and as stated in the counter

affidavit of the 3rd respondent that for the purpose of appointment, promotion and transfer each panchayat Union shall be treated as one Unit and also for the reason that her service from the original date of appointment as craft teacher on 17.10.1984 has been taken in to account for the purpose of awarding selection grade as craft teacher on 17.10.1994 and the petitioner was awarded special grade in the post of Secondary Grade Teacher with effect from 17.10.2004 by counting her services in the post of craft teacher. The petitioner would further submit that since the service in the post of Craft Teacher was taken into account for the purpose of awarding Special Grade in the post of Secondary Grade Teacher, she is entitled for the seniority based on the same length of service in the equal scale of pay, as this seniority is making her eligible for promotion to the post of Elementary School Headmaster.

18. The petitioner in the rejoinder, would further submit that since she was appointed as craft teacher on 17.10.1984 and transferred to Mecheri Union on 31.12.1992 and absorbed as Secondary Grade Assistant on 22.11.2001 and the pay scale of the post of craft teacher and the post of Secondary Grade Assistant was one and the same i.e, 4500-125-7000, differentiation is not permissible under Rule 35-B of the Tamil Nadu State and Subordinate Service Rules.

19. Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials available on record and also the order dated 18.06.2018 made in W.P.No.25079 of 2009.

20. From the perusal of the rejoinder, it could be seen that the relief has been moulded for the reasons that for the purpose of appointment, promotion and transfer, each panchayat Union shall be treated as one unit and also for the reason that her date of appointment as craft teacher on 17.10.1984 was taken into account for the purpose of awarding selection grade in the post of craft teacher on 17.10.1994 and special grade in the post of Secondary Grade Assistant on 17.10.2004. She would further submit that she was working as a Craft Teacher in the Mechari Union from 31.12.1992 and promoted as Secondary Grade Assistant on 23.11.2001 in the said Union and when the date of appointment i.e., 17.10.1984 as Craft Teacher was taken into account for the purpose of awarding selection grade and special grade, she is entitled for getting seniority for promotion from the cadre of Secondary Grade Assistant in Mecheri Union from the date of joining in the said union as Craft Teacher i.e., 31.12.1992, since the petitioner's scale of pay as craft teacher was the same as that of Secondary grade teacher.

21. The above said contention of the petitioner cannot be accepted. Even though the date of appointment as craft teacher is taken into account for the purpose of awarding selection grade and special grade, she is not entitled for getting seniority for promotion from the cadre of Secondary Grade Teacher based on her date of joining by transfer i.e., 31.12.1992 in Mecheri Union as Craft Teacher for the following reasons:-

(i) The respondents' contention is that the petitioner is not eligible for absorption as Secondary Grade Teacher from the date of her appointment in the post of craft teacher, since she obtained Diploma in Teacher Education in the year 1997 and obtained B.Ed., in the year 2000. Even though the above said two posts carrying the same scale of pay, the educational qualification prescribed for the above two posts are not equal. Moreover, B.T.Assistant post differs from Secondary Grade Teacher Post, which is not a transferable post, but a promotive post for Secondary Grade Teachers. The Secondary Grade Teachers, by virtue of their seniority, may be appointed as Primary School Headmasters and there is no higher qualification prescribed. But, for the post of B.Ed., Graduate Teachers and Tamil Pandits, requisite qualifications are prescribed. Secondary Grade Teacher post is a feeder category for Primary School Headmaster. Primary School Headmaster is a feeder category for Middle School Headmaster and the Primary School Headmaster qualified with B.Ed. or Tamil Pandit may be promoted as Middle School Headmaster. Apart from that, the scale of pay for the Secondary Grade Teacher is Rs.4500-125-7000, but the scale of pay for B.T.Teacher is Rs.5500-175-9000, which is higher than the scale of pay for the Secondary Grade Teacher. The above said facts are not disputed by the petitioner.

(ii) For granting selection grade/special grade, the criteria is to work for ten years in the same post or in the posts carrying equal scale of pay, but it is not necessary to work in the same unit;

(iii) For fixing seniority in a particular post, the seniority shall be fixed with reference to the date of joining duty in the concerned category, in the block; and for other block transfer, they shall be placed as junior most among probationers/approved probationers as the case may be. The said fact is also accepted by the petitioner. Hence, the petitioner claims seniority from the date of her joining in the Mecheri Union.

(iv) From the reading of the rejoinder filed by the petitioner, it is clear that the intention of the petitioner is,

if she is granted seniority w.e.f. 1992, then her seniority in the Secondary Grade Teacher is raised to the higher level and thereby she ought to have been appointed in the B.T.Teacher Post prior to 2006 and thereby she has to be fixed in higher seniority than the directly appointed B.T.Assistants.

(v) "Rule 35 (b) of the Tamil Nadu State and Subordinate Service Rules, is once again extracted as follows:-

"The transfer of a person from one class or category of a service to another class or category carrying the same pay or scale of pay shall not be treated as first appointment to the latter for purpose of seniority and the seniority of a person so transferred all be determined with reference to the rank in the class or category from which he was transferred; where any difficulty or doubt arises in applying this sub-rule, seniority shall be determined by the appointing authority." (emphasis applied)

On perusal of the typed set of papers filed by the petitioner, particularly from the proceedings of the District Elementary Educational Officer, Salem-7 in Ni.Mu.7334/01/A3 dated 16.11.2001, which is enclosed at page 3 and 3A of the typed set, it could be seen that on the request of the petitioner, she was appointed as Secondary Grade Teacher by transfer. In the said proceedings, it is clearly stated that the seniority of the individual, petitioner herein, has to be fixed from the date of her joining as Secondary Grade Teacher as per G.O. It is not mentioned in the said proceedings that her seniority is fixed from the date of her initial appointment as Craft Teacher in the said Mecheri Unit. The said order dated 16.11.2001 fixing her seniority from the date of her joining as Secondary Grade Teacher is not yet challenged till date. Based on the above said seniority in the Secondary Grade Teacher, the petitioner was promoted as B.T.Teacher on 27.11.2006. Hence, the above Rule 35(b) of the Tamil Nadu State and Subordinate Service Rules is not applicable to this case. Moreover, the petitioner has not challenged the seniority and panel prepared for promotion from the eligible B.T.Teachers to the post of Middle School Headmasters/Headmistress as on 01.01.2007 and 01.01.2008. But she has challenged only the panel prepared during the year 2009 stating that the B.T.Teachers, who are juniors to her and were appointed on consolidated pay and then confirmed in the regular time scale of pay w.e.f 01.01.2006 and their probation declared w.e.f. 01.01.2008, were placed in higher seniority than her, which is not acceptable to this Court.

(vi) Apart from the above, it is stated in this Writ Petition that the petitioner had filed W.P.No.25079 of 2009 before this Court, which is pending. On perusal, it came to know that the petitioner had filed the said Writ Petition for the following relief:-

"to issue a writ of Certiorari and Mandamus calling for seniority list of the integrated cadres of graduate teachers dated 01.01.2009 issued by the second respondent Na.Ka.9660/A2/08, dated 11.04.2009 and quash the same as illegal and direct the respondents 1 to 3 not to alter the seniority of the petitioner in the panel for promotion for the post of middle school Headmaster as on 1.1.2008 and pass orders."

The said Writ Petition, on the submission and endorsement made by the learned counsel for the petitioner, viz., Mr.A.Arulmozhi, who is appearing in this case also for the petitioner, was dismissed as withdrawn on 18.06.2008. But the dismissal of the said Writ Petition was not brought to the knowledge of this Court by the learned counsel for the petitioner. Even in that Writ Petition, the petitioner had neither challenged the proceedings of the District Elementary Educational Officer, Salem-7 in Ni.Mu.7334/01/A3 dated 16.11.2001, fixing the seniority of the petitioner from the date of her appointment as Secondary Grade Teacher, nor challenged the subsequent panels prepared for promotion to the post of Middle School Headmaster. But the petitioner had challenged only the seniority list of the integrated cadres of graduate teachers dated 01.01.2009 issued by the second respondent in Na.Ka.9660/A2/08, dated 11.04.2009 and also prayed to direct the respondents 1 to 3 therein not to alter the seniority of the petitioner in the panel for promotion for the post of middle school Headmaster as on 1.1.2008.

22. Hence, in the above facts and circumstances of the case and also considering the relief sought for in W.P.No.25079 of 2009, which was dismissed as withdrawn on 18.06.2018, the request of the petitioner as moulded in the rejoinder, i.e, for counting her seniority from the date of her joining in Macheri Union as Craft Teacher, viz., from 31.12.1992, cannot be granted. In the rejoinder, the petitioner had already given up her prayer of Writ of Certiorari to quash the proceedings of the second respondent in his proceedings No.Na.Ka.No.1194/Aa3/2009 dated 20.03.2009.

23. Based on the above facts and circumstances, the Writ Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

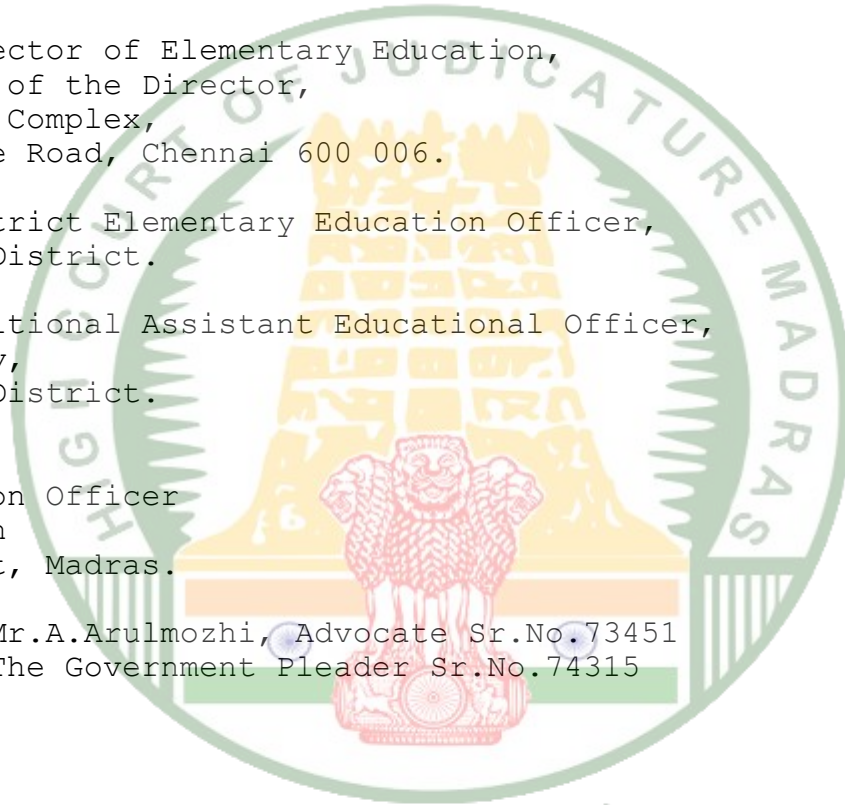
MRA/dss/pgs

To

- 1.The Director of Elementary Education,
Office of the Director,
D.P.I. Complex,
College Road, Chennai 600 006.
- 2.The District Elementary Education Officer,
Salem District.
- 3.The Additional Assistant Educational Officer,
Mechery,
Salem District.

Copy To:
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+1 cc to Mr.A.Arulmozhi, Advocate Sr.No.73451
+1 cc to The Government Pleader Sr.No.74315



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W.P.No.26830 of 2009

VG-II(CO)
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