

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 04-04-2018

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.28423 of 2011

N.Vijayalakshmi

.. Petitioner

versus

1. The Director of Elementary Education,
College Road, Chennai-600 006.

2. The District Elementary Educational Officer,
Dharmapuri District.
Dharmapuri.

3. The Assistant Elementary Educational Officer,
Dharmapuri Panchayat Union,
Dharmapuri.

4. V.Mangammal

5. BI.Nirmala

.. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the Respondent Nos.1 & 2 issued in Na.Ka.No.24310/L1/09 dated 31.07.2009 by the 1st respondent and in Na.Ka.No.2055/A4/2007 dated 22.07.2007 and Na.Ka.No.857/A1/2008 dated 02.03.2011 issued by the 2nd respondent and quash the same and issue consequential direction to the respondents 1 to 3 to promote the petitioner as Primary School Headmaster from 23.07.2007 on par with Respondent Nos.4 & 5 with service and monetary benefits.

For Petitioner : Mr. R.Saseetharan

For Respondents: Ms.P.Kavitha, GA for R1toR3

ORDER

The petitioner has approached this Court, seeking the following relief:

"To issue of Writ of Certiorarified Mandamus,
to call for the records of the Respondent Nos.1 & 2
issued in Na.Ka.No.24310/L1/09 dated 31.07.2009 by

the 1st respondent and in Na.Ka.No.2055/A4/2007 dated 22.07.2007 and Na.Ka.No.857/A1/2008 dated 02.03.2011 issued by the 2nd respondent and quash the same and issue consequential direction to the respondents 1 to 3 to promote the petitioner as Primary School Headmaster from 23.07.2007 on par with Respondent Nos.4 & 5 with service and monetary benefits."

2. The petitioner was initially appointed as a Secondary Grade Teacher on 8.8.1997 by the second respondent. She joined the post at Panchayat Union Elementary School, Chinna Thandangam, Dharmapuri Panchayat Union, Dharmapuri District. Her services as Secondary Grade Teacher came to be regularized on 8.8.1997 and her period of probation was declared successful on 7.8.1999 as per the orders of the third respondent dated 11.12.2000. The petitioner became eligible for promotion to the post of Primary School Headmaster as per the Tamil Nadu Elementary Educational Subordinate Service Rules. She came within the zone of consideration for the said promotion from 2000 onwards. As per the relevant provisions of the Rules, every year, panel has to be prepared on 1st January of each year for promotion to the post of Primary School Headmaster .From 2000, the seniority position of the petitioner meant for promotion to the post of Primary School Headmaster vis-à-vis respondents 4 and 5 has been shown as under:

Year	Rank of petitioner	Rank of 4th respondent	Rank of 5th respondent
2000	154	166	184
2001	107	118	132
2002	90	104	112
2003	87	100	108
2004	77	90	98
2005	62	75	83
2006	36	48	55
2007	46	57	63

3. In the panel prepared for the year 2007, the petitioner was shown as rank No.38 as against the 4th respondent who was shown as rank No.49 and 5th respondent has not even been included in the panel. While so, surprisingly, the second respondent promoted 4th and 5th respondents as Primary School Headmaster by order dated 2.8.2007 overlooking the claim of the petitioner. In the above circumstances, the petitioner submitted a representation to the respondents on 8.8.2007. Since no reply was forthcoming, the petitioner approached this Court in WP No.9884 of 2008 and this Court by order dated 23.4.2008, disposed of the writ petition with a direction to the

respondents to consider the representataion of the petitioner and pass orders within a period of eight weeks. Since the direction was not complied with, the petitioner was constrained to file a contempt petition in Cont.P.No.598 of 2009. When the Contempt Petition was taken up for hearing, the first respondent passed an order dated 31.7.2009 rejecting the claim of the petitioner on the ground that the 4th and 5th respondents' period of probation was declared on 6.10.1998 and as far as the petitioner was concerned, her probation was declared only on 7.8.1999 and therefore, they became seniors to the petitioner for the promotion to the post of Primary School Headmaster and hence, they have been promoted as such ahead of the petitioner.

4. In the meanwhile, by order dated 10.10.2009, the second respondent promoted the petitioner as Primary School Headmaster and posted her at Panchayat Union Elementary School, Oduhalli in Dharamapuri Panchayat Union. Though the petitioner had been promoted as Primary School Headmaster on 10.10.2009, her promotion which actually due in the year 2007, was denied to her and despite the fact that admittedly, the petitioner was shown senior to the respondents 4 and 5. In the post of the secondary grade teacher, the seniority is maintained at the Union level. The respondents 4 and 5 were admittedly transferred from other Unions, namely, Pennagaram and Karimangalam panchayat unions and joined the posts in Dharamauri Union on 19.8.1998 and 25.8.1998 respectively and therefore, they ought to have been given seniority only after the petitioner as admittedly, the petitioner was already working in Dharmapuri Union ever since her appointment on 8.8.1997. Therefore, the respondents 1 to 3 have rightly shown the petitioner as senior to the respondents 4 and 5 in all the seniority lists as extracted above. However, only in the matter of promotion to the post of Primary School Headmaster, suddenly, the official respondents took the stand that the probation of the respondents 4 and 5 had been declared earlier to the petitioner and therefore, they were construed to be seniors for the purpose of promotion to the post of Primary School Headmaster. According to the petitioner, the seniority list showing the respondents 4 and 5 as seniors to the petitioner was never circulated, but it was for the first time such reason has been spelt out in the rejection order issued by the first respondent. According to the petitioner, when both the respondents 4 and 5 were transferred to the Dharmapuri Union, they were unapproved probationers like the petitioner herein and therefore, they were rightly shown as juniors to the petitioner. That situation had not undergone any change and the petitioner was at a loss to understand as to how suddenly the respondents 4 and 5 can be shown to be seniors only for the purpose of promotion as Primary School Headmaster ahead of the petitioner in 2007. In the above circumstances, the petitioner has challenged the promotion of the 4th and 5th respondents as well as the rejection order also.

5. Mr.R.Saseetharan, learned counsel appearing for the petitioner would submit that it is an admitted case the petitioner was the senior to respondents 4 and 5 in all years from 1997 onwards till the crucial year 2007 when surprisingly respondents 4 and 5 had been given promotion overlooking the claim of the petitioner. Although the probation was declared ahead of the petitioner in respect of respondents 4 and 5 on 6.10.1998 as against the petitioner on 7.8.1999, yet the fact remains that the respondents 4 and 5 were transferred from different unions to Dharmapuri Union only on 19.8.1998 and 25.8.1998 respectively and they became unapproved probationers at that point of time and therefore, their seniority was rightly fixed below the petitioner who was already working in Dharmapuri union. This is particularly so, when admittedly the probation of the respondents 4 and 5 was declared only on 6.10.1998 i.e. subsequent to the date when the said respondents were transferred to Dharmapuri union. That being the case, according to the petitioner, it is clear case of mala fide action on the part of the official respondents in having denied the promotion to the petitioner on one hand, and having promoted the respondents 4 and 5 on the other hand in 2007. The reason as set forth by the first respondent in the rejection order in the facts and the records as would disclose in the present case, cannot be countenanced both in law and or on facts. Therefore, the promotion of the petitioner has to be granted.

6. Upon notice, Ms.P.Kavitha, learned Government Advocate entered appearance and filed a detailed counter affidavit.

7. In the counter affidavit, it is stated in para 11 as to how the seniority has to be prepared for promotion to the post of Primary School Headmaster and in paragraph 12, the service details of the writ petitioner as well as the respondents 4 and 5 had been mentioned in the tabular column. For the purpose of clarity, the contents both paragraphs in the counter affidavit are extracted herein below:

"11. While preparing seniority list for promotion as Primary School Headmaster from the post of Secondary Grade Teacher,

(i) the approved probationers in the same union should be place first & the approved probationers of other union come on Unit to Unit transfer should be placed then.

iii) as well as the probationers in the same union should be placed after the approved probationers &

iv) the probationers of other union came on Unit to Unit transfer should be placed after the names of the probationers in the same union.

as per the instructions issued by the Director of Elementary Education, Chennai in Rc.No.5939/ED1/2001 dated 15.11.2001 (copy enclosed). According to the principle, every year panel for promotion of Primary School Headmasters from Secondary Grade Teacher is

being prepared by the Assistant Elementary Educational Officer, Dharmapuri in respect of Dharmapuri Union and got approved from the District Elementary Educational Officer, Dharmapuri.

"12. It is submitted that as per the above rules and regulations, in the seniority list prepared for the panel year 2007 by the Assistant Elementary Educational Officer, Dharmapuri, the petitioner's name and the 4th and 5th respondents name found place as found below:

Promotion Panel for year	Petitioner Tmt.N.Vijayalakshmi	4th respondent Tmt.V.Mangammal	5th respondent Tmt.V.Nirmala
2007	Rank 38	Rank 49	Rank 63
Union in which first appointed	Dharmapuri Union	Pennagaram	Karimangalam
Date of Birth	1.5.1970	30.6.1970	23.5.1968
Date of Appt. & Union	8.8.1997 F.N.	7.10.1996 F.N.	7.10.1996 F.N.
Date of regularization in S.G.Post	8.8.1997 F.N.	7.10.1996 F.N.	7.10.1996 F.N.
Date of Probation declared	7.8.1999 A.N.	6.10.1998 A.N.	6.10.1998 A.N.
Date of transfer to Dharmapuri Union	working in the same Union from the date of first appointment i.e.from 8.8.1997 F.N.	Transferred from Pennagaram Union to Dharmapuri Union and joined on 19.8.1998 F.N.	Transferred from Karimangalam Union to Dharmapuri Union and joined on 25.8.1998 F.N.

Promotion Panel for year	Petitioner Tmt.N.Vijayalakshmi	4th respondent Tmt.V.Mangammal	5th respondent Tmt.V.Nirmala
	The Petitioner is senior to respondents 4 and 5 in respect of date of joining (i.e.8.8.1997) in the Dharmapuri Union. But shw as a probationer. While giving promotion to next cadre post, probationers has to be considered next to approved probationers	Respondents 4 and 5 are juniors to writ Petitioner in date of joining in respect of date of joining (i.e19.8.1998 respectively) in Dharmapuri Union on Unit to Unit Transfer. But they were approved probationers. While giving promotion to next cadre post approved probationers has to be considered first.	

13. The learned Addl.Government Plader would submit that in view of declaration of probation of the respondents 4 and 5 in October 1998 itself as against the petitioner's declaration of probation in August 1999, the said respondents were considered for promotion as Primary School Headmasters ahead of the petitioner in 2007. Therefore, the petitioner cannot have legitimate grievance against the promotion of the private respondents as the first respondent has rightly rejected the claim of the petitioner on the above stated reasons. Therefore, the learned Government Advocate would impress upon this Court to reject the Writ Petition as devoid of merits.

14. The arguments put forth by the learned Government Advocate appearing for the official respondents, are per se invalid and unacceptable for the simple reason that by their own admission, the facts were brought out that both the respondents 4 and 5 when they were transferred to Dharmapuri Union, they were unapproved probationers like the petitioner. In which event, Clause (iv) of the seniority Rule as extracted above, will have to be pressed into service for the purpose of fixation of inter se seniority, but instead of that, the administration had invoked Clause (i) and had placed respondents 4 and 5 above the petitioner only for the purpose of promotion to the post of Primary School Headmaster. The said respondents were unapproved probationers on the dates when they were transferred to Dharmapuri Union. As rightly contended by the learned counsel for the petitioner, once the respondents 4 and 5 were also unapproved probationers on the dates when they were transferred to Dharmapuri Union, i.e. 19.8.1998 and 25.8.1998 respectively, they were to take the seniority below the petitioner who was already working in Dharmapuri Union and that all three of them

were unapproved probationers at that particular point of time. Since the facts regarding to appointment of the petitioner vis-a-vis respondents 4 and 5 and also the declaration of probation have been admitted and not disputed, this Court has to necessarily accept the entire contentions put forth by the learned counsel for the petitioner.

15. Moreover, even in the counter affidavit, as stated by the petitioner, the seniority position of the petitioner vis-a-vis respondents 4 and 5 from 2000 to 2007 had been clearly admitted in para 10 of the counter affidavit by way of a tabular column confirming the statement of fact in this regard. While on one hand, the official respondents had admitted the factual position of the petitioner's seniority above respondents 4 and 5 from 2000 to 2007. This Court does not see as to on what factual and legal basis, the official respondents had suddenly changed their stand and promoted respondents 4 and 5 in 2007 overlooking the claim of the petitioner merely on the basis of the fact that the probation of respondents 4 and 5 was declared ahead of the petitioner. Such stand of the official respondents is clearly questionable and as rightly contended by the learned counsel appearing for the petitioner that the action of the official respondents in promoting respondents 4 and 5 in 2007 overlooking the claim of the petitioner is clearly arbitrary and the same is a colourable exercise of power and such action therefore, cannot be sustained in law.

16. On behalf of the respondents 4 and 5, no representation was made in spite of service on them and their names were also printed in the cause list. However, in view of the factual position that respondents 4 and 5 have been promoted as Primary School Headmaster in 2007 and they were allowed to act as such for over 10 years, this Court is of the considered view that their appointment at this distant point of time, need not be disturbed. However, at the same time, the right of the petitioner being considered for promotion to the post of Primary School Headmaster in 2007 along with respondents 4 and 5 has to be upheld and protected since the petitioner has made out a clear case for grant of relief both on factual as well as on legal basis. In such circumstances, this Court is of the view that without setting aside the order of promotion of the respondents 4 and 5, the petitioner can be ordered to be promoted from the date on which, he is entitled to.

17. Accordingly, the Writ Petition is allowed and the impugned order, viz., in Na.Ka.No.24310/L1/09 dated 31.07.2009 by the 1st respondent and Na.Ka.No.857/A1/2008 dated 02.03.2011 are hereby set aside. Consequently, the respondents 1 to 3 are directed to grant promotion to the petitioner as Primary School Headmaster on the date when respondents 4 and 5 were promoted,

i.e. 23.7.2007 with all attendant benefits including pay fixation, arrears of salary and fixation of seniority, etc. The direction of the Court shall be complied with by the respondents 1 to 3 within a period of eight weeks from the date of receipt of a copy of this order. No costs.

suk

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Director of Elementary Education,
College Road, Chennai-600 006.

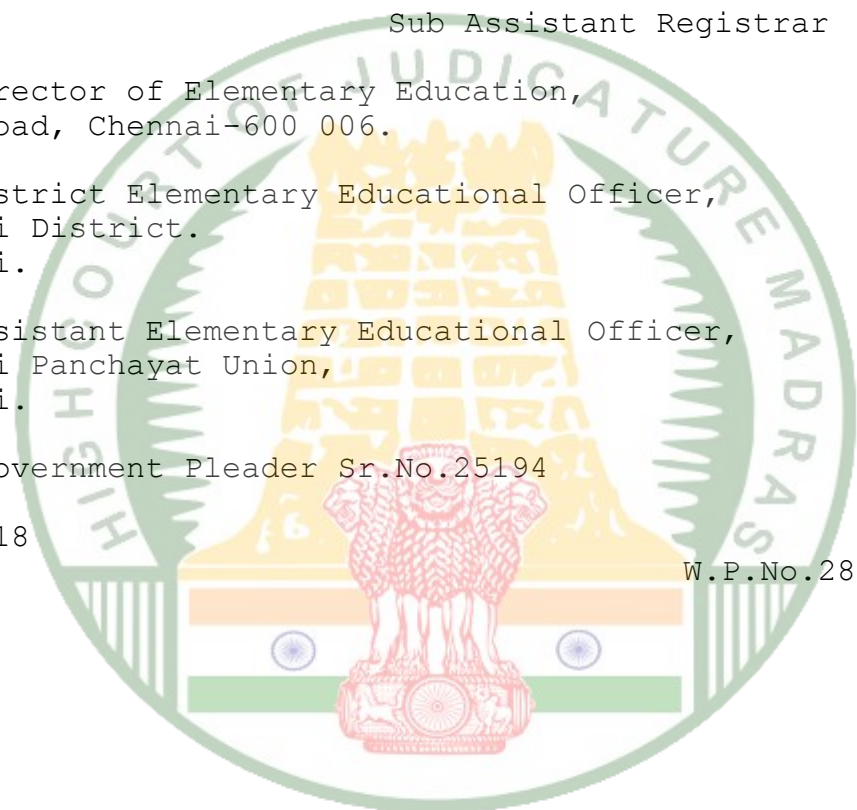
2. The District Elementary Educational Officer,
Dharmapuri District.
Dharmapuri.

3. The Assistant Elementary Educational Officer,
Dharmapuri Panchayat Union,
Dharmapuri.

+1cc to Government Pleader Sr.No.25194

sm:4.5.2018

W.P.No.28423 of 2011

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. Below the lion capital is a red wheel (Chakras) and a red lotus. The entire emblem is set against a green background with a white border. The words 'HIGH COURT OF JUDICATURE MADRAS' are written in a circular path around the emblem. Below the emblem, the motto 'सत्यमेव जयते' (Satyameva Jayate) is written in Devanagari script.

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