

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.32364 of 2012

and

M.P.No.1 of 2012

D.Kalyanasundaram

...Petitioner

Vs

1.The Director of School Education,
D.P.I. Complex,
Chennai - 600 006.

2.The Chief Educational Officer,
Cuddalore.

3.The District Educational Officer,
Villupuram.

4.The District Educational Officer,
Tindivanam.

5.M.Subramani

.... Respondents

Petition is filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus calling for the records relating to the order passed by the first respondent dated 14.8.2012 in Proceedings No.Mu.Mu.No.38182/A4/E1/2012 and quash the same and consequently direct the first respondent to pay all monetary and pensionary benefits by granting notional promotion on par with his junior, the 5th respondent within a time frame that may be prescribed by this Court.

For Petitioner : Mr.S.Saravanan

For Respondents : Mr.R.Govindasamy
Special Government Pleader
for respondents 1 to 4

R5 - No Appearance

O R D E R

This writ petition has been filed by the petitioner seeking a writ of certiorarified mandamus calling for the records of the first respondent in Proceedings No.Mu.Mu.No.38182/A4/E1/2012, dated 14.08.2012 and to quash the same and also consequently direct the first respondent to pay all monetary and pensionary benefits by granting notional promotion on par with his junior, the 5th respondent.

2. According to the petitioner, he was appointed as a Record Clerk at Government Boys High School, Thirukovilur, Villupuram Education District by the Chief Educational Officer, South Arcot District on 10.02.1973 and he had joined duty on 15.02.1973. After completion of two years of service, his probation was declared on 14.02.1975. The South Arcot District comprised of four Educational Districts viz., Cuddalore, Villupuram, Tindivanam and Virudhachalam, which were under the control of the Chief Educational Officer, Cuddalore. Due to administrative reason, by the proceedings of the Chief Educational Officer dated 02.08.1975, the petitioner was transferred to Ananthapuram Government High School under Tindivanam Educational District and had joined duty on 07.08.1975. According to the petitioner, since he was transferred due to administrative ground, his seniority in the post of Record Clerk remained unaltered. The petitioner worked at Ananthapuram Government High School till 30.07.1980.

3. The case of the petitioner is that while he was holding the post of Record Clerk at Ananthapuram Government High School in the year 1979, he was the senior most Record Clerk in Tindivanam Education District. Though he was senior most Record Clerk and qualified to be promoted as Junior Assistant in the year 1979, the fourth respondent, without considering the petitioner for promotion, promoted the 5th respondent, who was appointed as Record Clerk only on 26.10.1973 as Junior Assistant. According to the petitioner, the promotion given to the 5th respondent is contrary to law and that the impugned order of the first respondent dated 14.08.2012, rejecting the request of the petitioner for promotion is against the proceedings dated 04.03.1985.

4. The case of the respondents is that the respondent was originally appointed as a Record Clerk in the Government Boys High School, Tirukoilur on 15.02.1973 and had served there till 07.08.1975 and transferred to the Government High School, Ananthapuram in Tindivanam Education District. He joined in the new station on 07.08.1975 itself. Thereafter, the petitioner was posted as Laboratory Attender and Record Clerk in various

schools situated in Tindivanam Education District. Later, the petitioner was transferred to the Government Higher Secondary School, Kallakurichi in Virudachalam District and joined duty on 11.04.1984. After that the petitioner got transfer to the Government Higher Secondary School, Rishivandiyam as Laboratory Attender and back to the Government Boys Higher Secondary School, Kallakurichi. The petitioner was in service as Record Clerk and Laboratory Attender till 06.11.1987 and then he was promoted as Junior Assistant and posted at Government High School, Eduthavainatham in Virudhachalam Educational District. Again the petitioner was promoted as Assistant by the Joint Director of School Education, Chennai and posted to the office of the Assistant Elementary Educational Officer, Vallam and had served as Assistant in various offices as Assistant and retired from service on 31.12.1996.

5. The further case of the respondents is that the 5th respondent was originally appointed as Record Clerk in Tindivanam Educational District on 26.10.1973, whereas the petitioner had joined in Tindivanam Education District by transfer only on 07.08.1975 and on the date of joining as Record Clerk, the 5th respondent was the senior and so he was promoted as Junior Assistant by the Chief Educational Officer, Cuddalore. According to the respondents, the impugned order has been passed based on the rules and regulations.

6. I heard Mr.S.Saravanan, learned counsel for the petitioner and Mr.R.Govindasamy, learned Special Government Pleader for the respondents 1 to 4 and also perused the materials available on record. No representation on behalf of the fifth respondent.

7. It appears that on 15.02.1973 the petitioner joined as Record Clerk at Government Boys High School, Tirukovilur in Villupuram Education District and on an administrative grounds, on 02.08.1975, the petitioner was transferred to Ananthapuram Government High School, Tindivanam Education District. The petitioner had joined in the Government High School, Ananthapuram till 30.07.1980.

8. The grievance of the petitioner is that the 5th respondent, who was appointed as Record Clerk on 26.10.1973 subsequent to the petitioner was promoted as Junior Assistant without considering the petitioner, who is senior most Record Clerk in Tindivanam Education District and also qualified to be promoted as Junior Assistant in the year 1979.

9. On 06.03.1981, the petitioner submitted a representation to the second respondent to promote him on par with his junior, the 5th respondent. By an order dated 27.03.1981, the 2nd respondent informed the petitioner that his name has been

included in the list for promotion as Junior Assistant, but his request to be promoted on par with the 5th respondent cannot be considered. Aggrieved by the said order, the petitioner preferred an appeal to the Joint Director of School Education (Personnel).

10. While things stood thus, on 14.10.2011, the petitioner submitted a representation to the first respondent to consider his appeal dated 18.11.1998 and grant monetary benefits by granting notional promotion as Junior Assistant with effect from May, 1979, when his junior i.e., the 5th respondent was promoted. Since no order was passed on the representation, the petitioner filed W.P.No.11979 of 2012 before this Court.

11. By an order dated 27.04.2012, this Court directed the first respondent to consider the petitioner's representation dated 14.10.2011 within a period of eight weeks. Thereafter, by the impugned order, the first respondent rejected the request of the petitioner on the ground that the petitioner was transferred from the Villupuram Education District to Tindivanam Education District and his seniority in Tindivanam Education District will be taken on the date when he had joined i.e., on 07.08.1975. Accordingly, his seniority will be fixed. In such situation, according to the date of joining as Record Clerk both by the petitioner and the 5th respondent, the 5th respondent was the senior and he was promoted as Junior Assistant.

12. It is to be noted that the 5th respondent was originally appointed as Record Clerk in Tindivanam Education District on 26.10.1973, whereas the petitioner had joined in Tindivanam Education District only on 07.08.1975. According to the date of joining as Record Clerk in Tindivanam Education District, admittedly, the 5th respondent was senior and he was promoted as Junior Assistant by the Chief Educational Officer, Cuddalore.

13. According to the petitioner, since he was transferred on administrative grounds, his seniority in the post of Record Clerk remained unaltered. The said plea of the petitioner is not acceptable. Whenever a person is transferred from one Unit to another Unit, his name will be placed in the seniority list of the transferred Unit as junior most person as the case may be in the respective category.

14. It is true that the seniority has a definite connotation in service jurisprudence. The seniority is a civil right, which is determined from the date of initial appointment of an employee to a service on substantive basis. In other words, an employee enjoys seniority from a date, when he became member of the service as per rules.

15. A Constitution Bench of the Hon'ble Supreme Court in

Prafulla Kumar Das and others v. State of Orissa & others, reported in (2003) 11 SCC 614 held as under:-

"44. Seniority is not a fundamental right but is merely a civil right. The right of seniority in this case was also not a vested or accrued right."

16. Thus, seniority is neither fundamental nor constitutional right, it is merely a civil right. This right permits the employees to count his service from the date of appointment. None has a legal right to a particular number in the seniority list. Thus, this Court is unable to hold that if petitioner is transferred from one seniority unit to another seniority unit, it amounts to loss of his seniority. In the considered opinion of this Court, there will be no loss of seniority because when an employee is transferred due to administrative exigency, he carries his seniority with him and enjoys it at the transferred place from the same date, on which he was enjoying it before transfer. There may be change in the position in the gradation list depending upon the cadre, strength of that particular seniority unit and number of senior employees above him. Sometimes, it may be beneficial to the employee. when he is transferred to a unit where senior employees are less in number qua some other seniority unit. Meaning thereby, one has a right only to the extent of a particular date of seniority and not a particular number in a particular seniority list.

17. In the case on hand, the peculiar thing is, the petitioner was transferred to Tindivanam Education District on 07.08.1975 and for the first time, he made a representation on 06.03.1981 stating that he was not promoted though he was eligible for being promoted as Junior Assistant.

18. As per rules existing at the relevant point of time and as per G.O.Ms.No.1140, Personnel and Administrative Department, dated 02.12.1983, any appeal for the change in the seniority list should be made to the Appellate Authority within three years from the date of promotion of his junior. Admittedly, in the case on hand, the petitioner has preferred an appeal belatedly. However, the Joint Director of School Education (Personnel), Chennai, had given necessary instructions to the concerned District Educational Officer to place the name of the petitioner in the appropriate place in the seniority list. Accordingly, the petitioner was placed in the appropriate place. It was not the case of the petitioner that he was placed in Tindivanam Education District at the bottom of seniority list in the cadre of Record Clerk.

19. It is pertinent to point out that by the proceedings of the District Educational Officer, Vridhachalam dated 04.11.1987,

the petitioner was promoted as Junior Assistant and posted at Government High School, Eduthavainatham in Vridhachalam Education District and accordingly, the petitioner joined in the said school on 07.11.1987. Thereafter, he was promoted as Assistant by the proceedings of the Joint Director of School Education (Personnel), dated 01.08.1996 and posted as Assistant in the office of the Assistant Elementary Educational Officer, Vallam and he had joined on 19.08.1996. It is seen that the petitioner had served as Assistant in various places and finally, retired from service on superannuation on 31.12.1996. After getting superannuated only, the petitioner is questioning the promotion given to the 5th respondent stating that being a senior, he ought to have been promoted first and now prayed for notional promotion in the cadre of Junior Assistant. If the grievance of the petitioner is accepted at this belated stage, the entire seniority list viz., in the cadre of starting from Record Clerk, Junior Assistant and Assistant will be changed and the persons who were given promotion will also be affected. Moreover, it shall not possible for the Department to do that exercise because of lapse of time. If such an order is passed, it would also amount to the order passed behind the back of the employees who worked at the relevant point of time. Thus, the writ petition is liable for dismissal due to delay and laches.

20. Viewed from any angle, I am of the view that the impugned order was passed by the 1st respondent only after going through the relevant records. Even though the petitioner was appointed by the 2nd respondent, his seniority would have been maintained by the District Educational Officer concerned in which Education District, the petitioner was served. There is no provision in the Rules for reckoning the service rendered in the previous Unit along with the service rendered in the transferred Unit even though the transfer is effected on administrative grounds. I do not find any arbitrariness in passing the impugned order passed by the 1st respondent and the writ petition is liable to be dismissed.

21. In the result, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

vs

To

1.The Director of School Education,
D.P.I. Complex,
Chennai - 600 006.

2.The Chief Educational Officer,
Cuddalore.

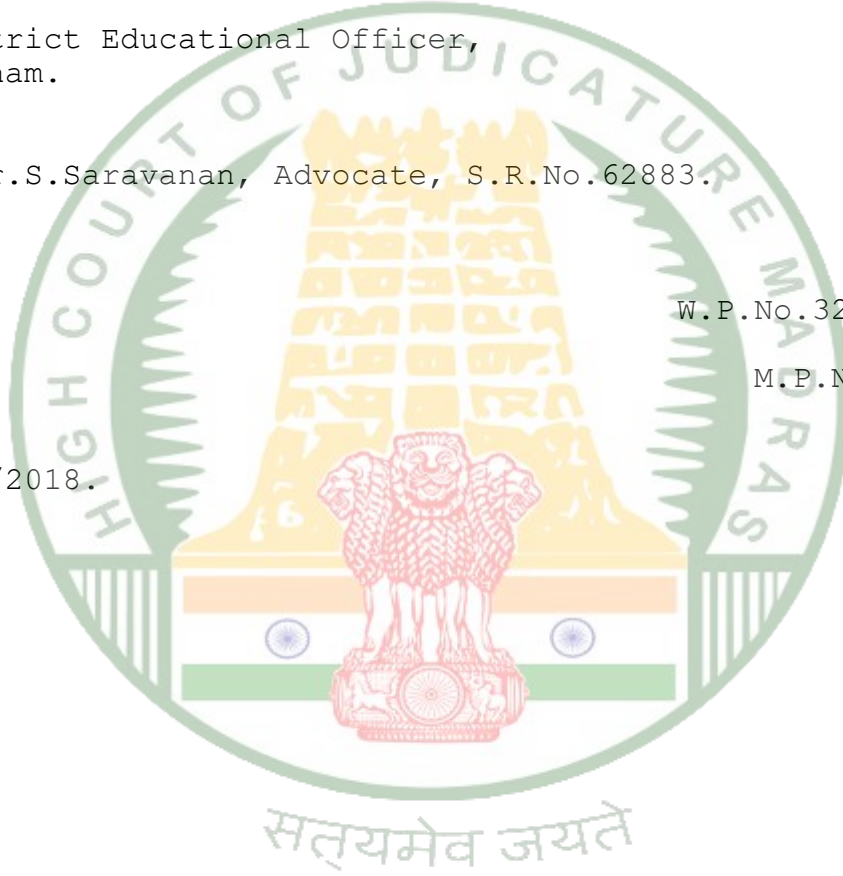
3.The District Educational Officer,
Villupuram.

4.The District Educational Officer,
Tindivanam.

+1cc to Mr.S.Saravanan, Advocate, S.R.No.62883.

W.P.No.32364 of 2012
and
M.P.No.1 of 2012

rrs 24/09/2018.



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