

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 05.09.2018
CORAM:
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
W.P.No.34211 of 2012

P.Saroja

... Petitioner

Vs

1. The Director of School Education,
College Road,
Chennai - 600 006.
2. The Chief Educational Officer,
Namakkam - 637 001.
3. The District Elementary Educational Officer,
Namakkal,
Namakkal District.

... Respondents

Petition is filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus calling for the records in Na.Ka.No.8956/A2/2012, dated 18.10.2012 on the file of the second respondent, quash the same and consequently direct the respondents to promote the petitioner to the post of B.T. Assistant (History) in any one of the vacancies exist in the municipal schools within Namakkal Municipality based on her educational qualification and seniority.

For Petitioner : Mr.P.Ganesan

For Respondents : Mr.Digvijayapandian
Addl. Government Pleader

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 second respondent in Na.Ka.No.8956/A2/2012, dated 18.10.2012 and to quash the same and consequently direct the respondents to promote the petitioner to the post of B.T. Assistant (History) in any one of the vacancies exist in the municipal schools within Namakkal Municipality based on her educational qualification and seniority.

2. Brief facts are that the petitioner was appointed as Secondary Grade Assistant in Erumaipatti Panchayat Union and posted to work at Panchayat Union Elementary School, Kasthuriptti on 03.10.1996 and subsequently, she was transferred

to Namakkal Union and posted to work at Panchayat Union Elementary School, Emapuram on 03.07.1998. Subsequently, the petitioner was relieved from the Panchayat Union service and joined in the Municipal service and posted to work at Namakkal Municipal Elementary School, Fort, Namakkal on 18.10.2000. Thus, she became a member of Municipal service and her service conditions are governed by Municipal Educational Rules.

3. It is alleged that the State Government framed Special Rules for the Tamil Nadu School Educational Subordinate Service (Municipal and Township Schools) to govern the teaching staff working in the Municipal and Township Schools. Municipalities are having number of Elementary Schools, Middle Schools, High Schools and Higher Secondary Schools. As per the Special Rules, all the Schools within the municipal limits are construed to be one Unit for the purpose of promotion etc., from Secondary Grade Assistant to P.G. Assistant. Wherever vacancies arose within the municipal limits, the senior most persons, subject to possessing requisite qualification or without any adverse remarks, shall be considered for further promotion based on seniority.

4. The case of the petitioner is that she was working as Secondary Grade Teacher and also acquired requisite qualification for considering her for promotion to the post of B.T. Assistant (History). In spite of vacancies in the municipal limit, the petitioner was not considered for such promotion. On 29.03.2012, the petitioner submitted a representation to the respondents 2 and 3. Despite receipt of the representation, the respondents have not considered the petitioner. Therefore, the petitioner filed W.P.No.16643 of 2012 to direct the second respondent to promote her to the post of B.T. Assistant (History) in the Namakkal Municipal High School or in any other vacancy in the Municipality Schools by considering her representation. By an order dated 06.08.2012, this Court directed the second respondent to consider her representation in accordance with law. Pursuant to the direction, the second respondent passed the impugned order dated 18.10.2012 rejecting her request. Challenging the same, the petitioner has filed the present writ petition.

5. Refuting the averments made in the affidavit filed in support of the writ petition, the second respondent filed counter stating that the middle schools are coming under the administrative control of the Director of Elementary Education and the High and Higher Secondary Schools are coming under the administrative control of the Director of School Education. It is stated that promotion, transfer and condition of service was entirely different for a Secondary Grade Teacher working under the two different Directorates. Under Directorate of Elementary Education, the seniority was maintained as one municipality one

unit and in Directorate of School Education the seniority is maintained under State level.

6. According to the second respondent, as and when vacancy available and as per seniority, the petitioner will be promoted and the promotions were given as per seniority and not as per the requirements of the petitioner. It is stated that separate seniority for the Municipal teachers was maintained qua the teachers who have joined before 31.05.1986. The petitioner was appointed in the Panchayat Union and subsequently joined in the Municipal service after 1986 and therefore, she cannot claim promotion to the post of B.T. Assistant (History) as a matter of right.

7. I heard Mr.P.Ganesan, learned counsel for the petitioner and Mr.Dig Vijayapandian, learned Additional Government Pleader for the respondents and also perused the materials available on record.

8. The learned counsel for the petitioner submitted that the impugned order has been passed by the second respondent in violation of principles of natural justice without hearing the petitioner. He would submit that the legitimate expectation of the petitioner to get promoted to the higher post, especially after putting in nearly a decade of service, has been unreasonably denied by the second respondent, which is liable to be interfered with by this Court. He would submit that the impugned order has been passed contrary to Clause 4(b) of the Tamil Nadu School Educational Subordinate Service (Municipal and Township Schools). The learned counsel further submitted that by virtue of the impugned order, the petitioner's right to get promoted to the higher post was denied by the second respondent and therefore, prayed for setting aside the impugned order.

9. Per contra, the learned Additional Government Pleader submitted that promotions are given strictly as per the seniority and not as per the averments made by the petitioner in her petition. He would submit that merely acquiring qualification alone will not entail any right for the petitioner for promotion, but the subject vacancy and seniority is to be followed for promotion from one lower post to higher post. A vacancy alone is not a matter of right for the petitioner to be promoted without following the rules, seniority and available vacancy etc. The learned Additional Government Pleader submitted that separate seniority for the municipal teachers has been maintained for those who have joined before 31.5.1986 and since the petitioner joined the municipal service after 1986, she cannot claim promotion as a matter of right. Therefore, there is no illegality in the impugned order and prayed for dismissal of the writ petition.

10. The State Government framed Special Rules for the Tamil Nadu School Educational Subordinate Service (Municipal and Township Schools) to govern the teaching staff working in Municipal and Township schools. Rule 3 deals with appointing authority of various posts in the Municipality schools, while Rule 4 deals with qualification to be possessed by the teachers working in Municipal schools. Clause (b) of Rule 4 deals with Unit for appointment, discharge etc.

11. The grievance of the petitioner is that she was working as Secondary Grade Teacher in municipal service and also acquired requisite qualification for the purpose of considering her for promotion to the post of B.T. Assistant (History). According to the petitioner, inspite of vacancies in the Municipal limit, her claim for promotion was not considered by the respondents.

12. Merely acquiring qualification alone will not entail any right for the petitioner for promotion, but the subject vacancy and seniority are to be followed for promotion from one lower post to higher post. In the Department of School Education, vacancies are filled through promotion and by new appointment. Thus, a vacancy alone is not a matter of right for the petitioner to be promoted without following the rules, seniority and vacancy available.

13. It is to be noted that earlier petitioner has filed W.P.No.16643 of 2012 seeking a writ of mandamus directing the second respondent to promote her to the post of B.T. Assistant (History) in Namakkal Municipal High School or in any other vacancy in the Municipality Schools. By an order dated 06.08.2012, this Court directed the second respondent to consider the representation of the petitioner dated 29.03.2012 in accordance with law and on merits within a period of three months. Pursuant to the direction of this Court, the second respondent has passed the impugned order dated 18.10.2012, rejecting the claim of the petitioner.

14. On a reading of the impugned order, I find that the second respondent rejected the request of the petitioner mainly on the ground that those who were appointed in Municipal service before 30.05.1986 alone will be governed by the Municipal Service Rules and those who were appointed after 30.05.1986 will not be governed by the Municipal Service Rules for the purpose of seniority and promotion.

15. Admittedly, the appointment of the petitioner is on 03.10.1996 at Panchayat Union Elementary School, Kasthuripatti and subsequently, she was transferred to Namakkal Union and posted to work as Secondary Grade Teacher at Panchayat Union Elementary School, Emapuram on 03.07.1998. While she was

working as Secondary Grade Teacher in Panchayat Union service, the petitioner sought for transfer to Municipal Educational Subordinate Service and accordingly, she was relieved from the Panchayat Union service and joined the Municipal service and posted to work at Namakkal Municipal Elementary School, Namakkal on 18.10.2000. Thus, the petitioner joined the Municipal service after 1986. Therefore, as rightly argued by the learned Additional Government Pleader, the petitioner is not entitled to seek promotion.

16. It is the say of the petitioner that she acquired requisite qualification for the purpose of considering her for promotion to the post of B.T. Assistant (History). But the fact remains that promotion will be awarded only as per strict seniority and not as per the requirement of the petitioner. As rightly argued by the learned Additional Government Pleader, merely acquiring qualification alone will not entail any right for the petitioner for promotion, but the subject vacancy and seniority are to be followed for promotion. According to the respondent authorities, as and when vacancy available and as per seniority, the petitioner will be promoted. This Court finds that there is some force in the aforesaid submission of the learned Additional Government Pleader.

17. It is settled that seniority has to be decided on the basis of rules in force on the date of appointment and no retrospective promotion or seniority can be granted from a date when an employee has not even been born in the cadre. It is also settled that date of occurrence of vacancy is not relevant for the determination of seniority. In the Department of Education, vacancies are filled through promotion and by new appointment. A vacancy alone is not a matter of right for the petitioner to be promoted without following the rules, seniority and available vacancy.

18. On a reading of the impugned order, this Court that the second respondent has clearly stated since the petitioner was appointed after 31.05.1986 and now working in Municipal service and the rule does not give power to include the name of the petitioner in the seniority list. Therefore, the request of the petitioner was rejected by the second respondent.

19. It was argued on behalf of the petitioner that without giving an opportunity of hearing, the second respondent has passed the impugned order and the same is in violation of principles of nature justice. It is to be noted that the petitioner has not produced a copy of the order passed by this Court in W.P.No.16643 of 2012. From the averments of the affidavit filed in support of the present petition, it is seen that this Court only directed the second respondent to consider the representation of the petitioner dated 29.03.2012 and to

pass orders thereon in accordance with law. This Court has not directed the second respondent to afford an opportunity of hearing while passing the impugned order.

20. It is seen that pursuant to the direction issued by this Court in W.P.No.16643 of 2012, the second respondent has passed the impugned order. If really, the petitioner is aggrieved by the order of the second respondent, she has remedy to file an appeal before the appellate authority. But the petitioner has failed to do so. In fact, in the counter filed by the second respondent, it has been stated that without exhausting the appeal remedy vested with the first respondent, the petitioner has filed this writ petition. The said position has not been disputed by the petitioner. Therefore, it is to be held that the petitioner had approached this Court without exhausting her appeal remedy before the first respondent.

21. For the foregoing reasons, I am of the view that the petitioner had approached this Court without exhausting the appeal remedy. More over, the second respondent has passed the impugned order only based on the existing rule position and there is no illegality in the order. In such view of the matter, I am of the opinion that there is no merit in this writ petition and the same is liable to be dismissed.

22. In the result:

(a) the writ petition is disposed of by directing the petitioner to file an appeal against the order of the 2nd respondent in Na.Ka.No.8956/A2/2012, dated 18.10.2012 to the 1st respondent within a period of three weeks from the date of receipt of a copy of this order;

(b) on receipt of the said appeal within the time stipulated by this Court, the 1st respondent namely, the Director of School Education, College Road, Chennai-600 006 is hereby directed to dispose of the said appeal within a period of eight weeks thereafter, by giving personal opportunity to the petitioner. No costs.

Sd/-
Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

vs

To

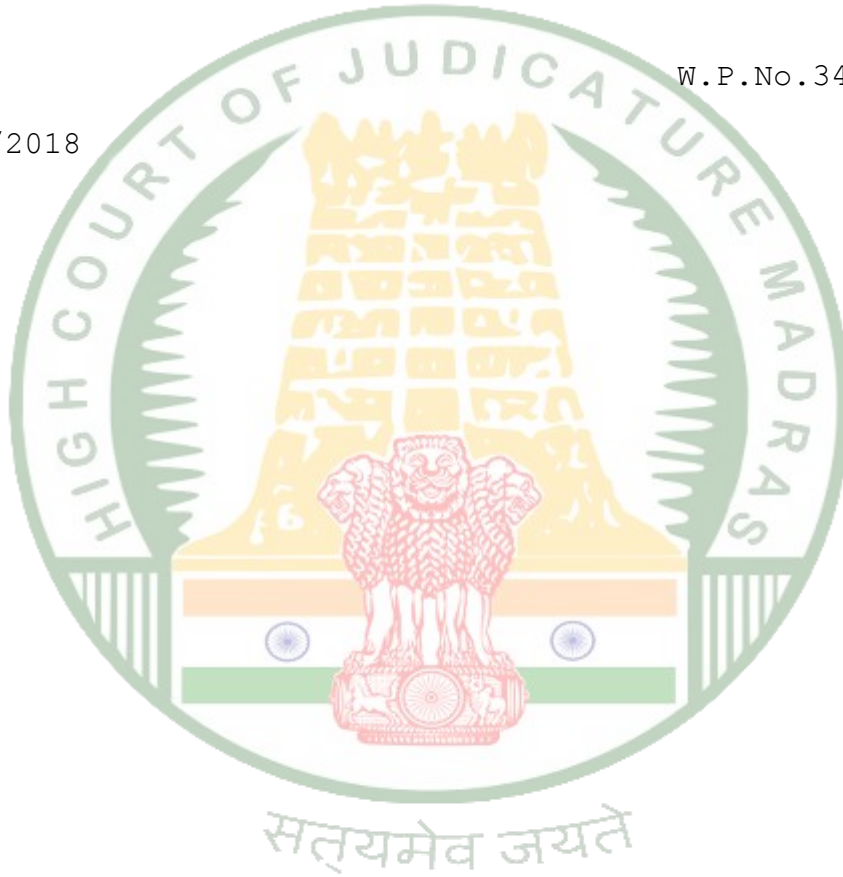
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3.The District Elementary Educational officer,
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W.P.No.34211 of 2012

rrs 12/09/2018



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