



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Special Original Jurisdiction)

Tuesday, the Twelfth day of June Two Thousand Eighteen

PRESENT

The Hon`ble Mr.Justice R.SURESH KUMAR

WMP(MD) No.11314 of 2018

IN

WP(MD) No.12453 of 2018

J.JEYATHA

... PETITIONER/ PETITIONER

Vs

1 THE STATE OF TAMILNADU,
REP. BY ITS SECRETARY,
SCHOOL EDUCATION DEPARTMENT,
FORT.ST.GEORGE, CHENNAI 600 009

2 THE DIRECTOR OF SCHOOL EDUCATION,
DPI CAMPUS, COLLEGE ROAD,
CHENNAI 600 006.

3 TEACHERS RECRUITMENT BOARD
REP. BY ITS MEMBER SECRETARY,
DPI CAMPUS, COLLEGE ROAD,
CHENNAI 600 006

... RESPONDENTS/ RESPONDENTS

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to grant an Ad-Interim stay of operation of the impugned order passed by the 2nd respondent in his proceedings ந.க.எண்.92510/ டபிள்யு.1/2017 dated 06.06.2018 in so far as the candidates placed in the serial No.378 onwards are concerned pending disposal of the above WP.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.M.AJMAL KHAN, Senior Counsel for M/S.AJMAL ASSOCIATES, for the petitioner and of Mrs.S.SRIMATHI, Special Government Pleader on behalf of the Respondents, While admitting the WP, the court made the following order:-

Heard Mr.M.Ajmal Khan, learned senior counsel appearing for the petitioner and Mrs.S.Srimathi, learned Special Government Pleader appearing for the respondent.

2.When the main writ petition came up for hearing yesterday, this court passed the following order:
<https://hcservices.ecourts.gov.in/hcservices/>



"Mr.S.Srimathy, learned Special Government Pleader, who takes notice for the respondent, wants to get instructions about the discrepancies pointed out by the petitioner's side in the impugned list of PG Assistant throughout the State, fit for promotion to the post of Higher Secondary School Headmaster. Hence, the learned Special Government Pleader wants the matter to be heard tomorrow.

2.Post the matter on 12.06.2018 as the first item in the motion list.

3.It is made clear that since State vide Counselling for the promotion to the post of Higher Secondary School Headmaster is scheduled to be conducted on 13.06.2018, the needful by way of instructions to be obtained by the learned Special Government Pleader by tomorrow itself. Otherwise, the case will be considered for interim order tomorrow."

3.Pursuant to the said order, today, the learned Special Government Pleader appearing for the respondents, on instructions, would submit that, the preparation of seniority list, fit for promotion to the post of Higher Secondary School Headmaster, which is impugned in this writ petition, is based on the method so far have been adopted by the respondents and she would further submit that whatever list of candidates supplied by the selection authorities i.e. TRB has been in toto accepted by the respondent department and accordingly, a list of seniority has been fixed through the impugned order.

4.The learned Special Government Pleader would further submit that, based on the said impugned seniority list, counselling for promotion to the post of Headmaster of the Higher Secondary School is scheduled to be conducted on 13.06.2018, which is a one day counselling to be undertaken for the whole State of Tamil Nadu at various centres, for which, all arrangements have been made and proper information and intimation have been given to all stakeholders. Therefore, the learned Special Government Pleader would submit that, in view of the said arrangement having been made, if in the last minute, any interim order is passed stalling this counselling process, that will create lot of confusion and entire exercise will become a mess as the academic year has already commenced. Therefore, number of Higher Secondary School Headmaster posts which are vacant to be filled up by way of promotion and therefore, neither the counselling can be deferred nor it can be stalled.

5.Per contra, the learned senior counsel appearing for the petitioner would submit that, it is a settled legal proposition that, once selection is over based on the communal reservation/rotation and based on which selection and appointment is



made by way of fitment of candidates, then the purpose of communal reservation and rotation is served. Thereafter, for the purpose of seniority, the merit alone shall be the criteria and in this regard, number of judgments have been passed.

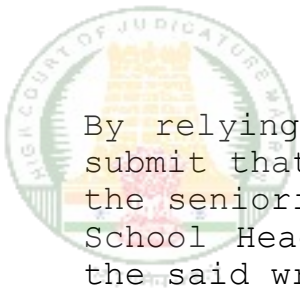
6. The learned senior counsel, in this regard, would rely upon the judgment of the Apex Court reported in (2003) 5 Supreme Court Cases 604 in Bimlesh Tanwar Vs. State of Haryana and Others and the Division Bench judgment of this Court in the matter of N.Santhosh Kumar and Others Vs. The Tamil Nadu Public Service Commission, rep. by its Secretary, Government and Others in Writ Appeal Nos.2705 of 2012 and etc. batch dated 31.03.2015. The learned senior counsel has very much relied upon the following paragraph in Bimlesh Tanwar's case, which reads thus:

"40. An affirmative action in terms of Article 16(4) of the Constitution is meant for providing a representation of a class of citizenry who are socially or economically backward. Article 16 of the Constitution of India is applicable in the case of an appointment. It does not speak of fixation of seniority. Seniority, is, thus, not to be fixed in terms of the roster points. If that is done, the rule of affirmative action would be extended which would strictly not be in consonance of the constitutional schemes. We are of the opinion that the decision in P.S.Ghalaut does not lay down a good law."

7. The learned senior counsel would rely upon the following paragraph in N.Santhosh Kumar case, which reads thus:

"67. Therefore, the clear dicta of the Supreme Court is that a reserved category candidate getting accommodated against the general turn, should not be made to suffer on account of being more meritorious. But what was happened in the cases on hand is that meritorious reserved category candidates, whom the Supreme Court chose to call by the acronym "MRCs" got allotted by virtue of their merit against the roster points intended for general turn (merit) and consequently got placed lower than their counter parts, who are less meritorious and who were accommodated against roster points high in the order. This is why the learned Judge could not reject the claim of the appellants as devoid of merit. Hence, the first contention of the respondents that they gained seniority on the basis of a judgment that held the field at that time, is unacceptable."

8. The learned senior counsel would rely upon a recent order passed by the learned Judge of this Court in W.P.No.13112 of 2018 in R.Madhesan Vs. The State of Tamil Nadu, represented by its Principal Secretary, School Education Department and others dated 30.05.2018.



By relying upon the said order, the learned senior counsel would submit that apprehending this kind of unlawfulness in preparation of the seniority list fit for promotion to the post of Higher Secondary School Headmaster, one of the teacher already moved this Court in the said writ petition, where the following direction was given:

WEB COPY

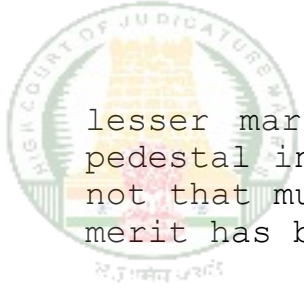
"3.Recording the said submissions made by the learned Government Advocate, this writ petition is disposed of, directing the respondents to consider and pass orders on the representations of the petitioner dated 10.07.2017, 11.01.2018 and 22.01.2018 and the objection of the petitioner dated 14.05.2018, within a period of three weeks from the date of receipt of a copy of this order, in the light of the judgment passed in W.A.Nos.2705, 2730 & 2731 of 2012 and 2394 & 1033 of 2013 dated 31.03.2015 and also the judgment passed in W.A.(MD) No.1360 of 2014 dated 17.03.2017. No costs. The connected miscellaneous petition is closed."

9.Therefore, the learned senior counsel would submit that, inspite of a direction was issued by this Court as referred to above to consider the law laid down by this Court in W.A.Nos.2705 of 2012 etc. batch dated 31.03.2015 i.e. in N.Santhosh Kumar case, unmindful of the said direction, the respondents have issued the impugned seniority list. Therefore, it is a colourable exercise of power on the part of the respondents in preparing the impugned seniority list. Therefore, the same shall not be permitted to be acted upon.

10.The learned senior counsel would further submit that, insofar as the petitioner is concerned, she secured 79.50 marks in TRB exam. However, in the impugned seniority list, she has been assigned the seniority position as 791, whereas the persons, who got lesser marks than the petitioner, have been placed in the higher pedestal in the seniority list. Illustratively, the petitioner has submitted that the candidate one S.Tamil Selvi, who secured 77.50 marks has been placed at Sl.No.444 in the seniority list. Like that, another candidate one R.Revathi, who secured 77.00 marks has been placed at Sl.No.508 in the impugned seniority list. Like that, several candidates, who secured lesser marks have been placed in the higher pedestal in the seniority list. Therefore, the persons, like the petitioner, who secured higher marks, have been placed at lower ebb in the seniority list, which is totally against the law declared by the Hon'ble Apex Court and the judgment referred to above of this Court. Therefore, the learned senior counsel would submit that the entire counselling scheduled for tomorrow i.e. on 13.06.2018 should be stayed.

11.I have heard the said submissions made by both sides.

12.No doubt, the petitioner has made out a prima facie case to state that, though she secured higher marks i.e. 79.50, she has been placed at Sl.No.791, whereas, atleast two persons, who secured



lesser marks than the petitioner, have been placed in the higher pedestal in the seniority i.e. Sl.Nos.444 and 508. Therefore, it is not that much difficult to come to a prima facie conclusion that the merit has been the casualty in preparing the seniority list.

13.However, the learned Special Government Pleader would submit that, this is the method being adopted by the respondent department for several years in fixing the seniority and so far, the same have not been questioned.

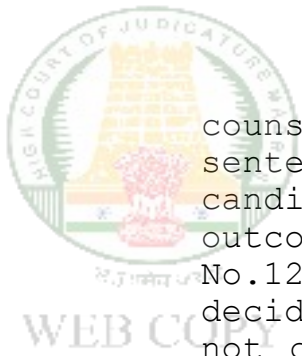
14.Be that as it may, once the issue has been brought to the notice of this Court, questioning the method adopted by the respondent in fixing the seniority merely based on the communal rotation and not based on the merits, in violation of the law declared by the Apex Court in this regard, certainly, the Court can take a judicial notice. However, since all preparation have been made for conducting the one day counselling for promotion by tomorrow, i.e. 13.06.2018 and the said counselling to be held in various centres for the whole State of Tamil Nadu, for which, all preparation have been completed and also taking into account the fact that only one affected person i.e. the present petitioner has come to this Court and no other writ petitions so far have been filed before this Court, challenging the impugned seniority list, this Court, in order to strike out the balance wants to make some interim arrangements.

15.In view of the above, the following interim orders are passed, which would meet the ends of justice at the present scenario.

"(i) The petitioner shall be permitted to participate in the counselling to be held tomorrow i.e. on 13.06.2018. During the participation of the counselling, that claim to be made by the petitioner about her seniority and ranking based on her marks she secured i.e 79.50 marks, shall alone to be taken into account as the criteria to accept the candidature of the petitioner based on seniority and accordingly, she shall be permitted to claim her right of promotion and if such a claim is made, the same shall be objectively considered and accordingly, orders to be passed with regard to the promotion of the petitioner, provided if she comes to the zone of consideration based on her claim (based on marks i.e.79.50).

(ii) Insofar as the other candidates, who would participate in the counselling, if ultimately number of candidates are given promotion based on the seniority list, which is impugned hereon, all such promotions including the promotion to be given to the petitioner shall be subject to the outcome of this writ petition.

<https://hcservices.ecourts.gov.in/hcservices/> (iii) It is further directed that the respondents shall place this order in the Notice Board of all the



counselling centres conspicuously and also must add a sentence in the order to be given for promotion to various candidates that, such promotion shall be subject to outcome of the decision to be made in writ petition No.12453 of 2018 and also must state that once the Court decide otherwise, the person, who got such promotion shall not claim any equity on the basis of the promotion given now.

16. With the above direction, this miscellaneous petition is disposed of. No costs. This Court feel that this interim order would substantially meet the ends of justice.

sd/-
12/06/2018

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE SECRETARY,
THE STATE OF TAMILNADU,
SCHOOL EDUCATION DEPARTMENT,
FORT.ST.GEORGE, CHENNAI 600 009
- 2 THE DIRECTOR OF SCHOOL EDUCATION,
DPI CAMPUS, COLLEGE ROAD,
CHENNAI 600 006.
- 3 TEACHERS RECRUITMENT BOARD
REP. BY ITS MEMBER SECRETARY,
DPI CAMPUS, COLLEGE ROAD,
CHENNAI 600 006.

+1. C.C. to M/S.AJMAL ASSOCIATES Advocate SR.No.10138
+1CC TO SPECIAL GOVERNMENT PLEADER, SR NO.10160

ORDER IN
WMP(MD) No.11314 of 2018
IN
WP(MD) No.12453 of 2018
Date :12/06/2018

MS/PN/RNB/12.06.2018/6P.6C