



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 14.03.2018

Pronounced on : 04.06.2018

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CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.16637, 24218 of 2017 and 2395 of 2018

and

WMP(MD)Nos.13239, 13240, 20329 & 20330 of 2017

and WMP(MD)Nos.2309, 2611 & 2612 of 2018

WP(MD)No.16637 of 2017 :

M.Jesudasandian

... Petitioner

Vs.

1.The Secretary to Government,
School Education Department,
Secretariat, Chennai.

2.The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.

3.The Joint Director of School Education /
Personnel,
DPI Campus, College Road,
Chennai - 600 006.

...Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order in Na.Ka.No.92931/C1-E1/15 dated 22.12.2015 and the consequential order in Na.Ka.040397/w2/E2/2016 dated 21.07.2016 issued by the second respondent, and quash the same as illegal and consequently for a direction, directing the respondents to prepare panel for promotion to the post of Headmaster of High School, from and among the BT Assistants/Tamil Pandit working in High Schools and confer all the consequential benefits.

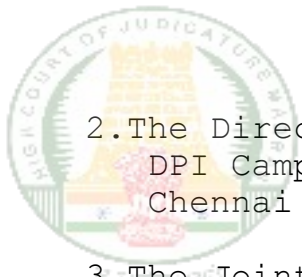
WP(MD)No.24218 of 2017 :

D.Rajan

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep.by its Secretary,
School Education Department,
St.George Fort, Chennai - 9.



2.The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.

3.The Joint Director (Higher Secondary),
DPI Campus, College Road,
Chennai - 600 006.

4.M.Lingeswari

5.K.Sivabala

6.A.Marimuthu

7.C.Jeyarani

8.C.Paneer Selvam

9.G.Natarajan

10.M.Krishnamoorthy

11.M.Paramasivam

12.N.Murugesan

13.A.Muniappan

14.K.Dhivyanathan

15.P.Mukilan

16.V.Muthukumaran

17.R.Jeyakumar

18.A.Ramesh

19.S.Arockia Raja

20.D.Srinivasan

21.G.Kannan

22.S.Bharathi Raja

23.S.Dhanababukumar

24.K.Santhanakumar



26.V.Rangasamy

27.B.Revathi

28.R.Ramesh

29.T.Tamilselvi

30.K.Palanisamy

31.A.Sakthivel

32.A.John Wilfare Ponraj

33.C.Muthukumar

34.K.Kannan

35.R.Perumalsamy

36.K.Thirumuruganantham

37.M.Palanichamy

38.P.Karnan

39.P.Kesavapandian

...Respondents

(Respondents 30 to 39 are
impleaded as per order dated
14.03.2018 in WMP(MD)No.5359 of 2018)

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records relating to the impugned order passed by the second respondent herein in Na.Ka.No.92931/C1/E1/2015 dated 21.12.2017 and quash the same as illegal insofar as it includes the P.G.Assistants working in that cadre for a period of beyond 5 years and who have not related to B.T Assistant and served for a period of one year.

WP(MD)No.2395 of 2018 :

1.V.M.Vinayagamoorthy

2.V.Velmurugan

3.A.Chelladurai

4.S.Johnraja

... Petitioners



1.The Secretary to Government,
School Education Department,
Secretariat, Chennai.

2.The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.

3.The Joint Director (Higher Secondary),
DPI Campus, College Road,
Chennai - 600 006.

4.The Chief Educational Officer,
Madurai.

5.The Chief Educational Officer,
Sivagangai.

...Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the Circular in Na.Ka.No.92931/C1-E1/2015 dated 21.12.2017 issued by the second respondent, and quash the same, and direct the respondents to prepare panel for promotion to the post of Headmaster of High School, from and among the BT Assistants/Tamil Pandit working in High Schools and confer all the consequential benefits.

In WP(MD)No.16637 of 2017 :

For Petitioner	: Mr.T.Lajapathi Roy
For Respondents	: Mr.Chellapandian, Addl., Advocate General Asst.by Mrs.S.Srimathy Spl.,Govt.Pleader for R1 to R3

In WP(MD)No.24218 of 2017 :

For Petitioner	: Mr.Ajmal Khan, Senior Counsel for M/s.Ajmal Associates
For Respondents	: Mr.Chellapandian, Addl., Advocate General Asst.by Mrs.S.Srimathy Spl.,Govt.Pleader for R1 to R3

Mr.R.Subramanian for RR 6 and 8

Mr.F.Deepak for R16



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Mr.Isaac Mohanlal, Senior Counsel
for M/s.Isaac Chambers
for RR19 and 30 to 39

No appearance for RR5, 7, 10 to 15
17 and 18.

WP(MD)No.2395 of 2018 :

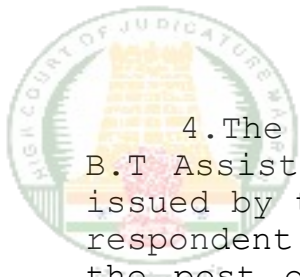
For Petitioners	: Mr.V.Panneer Selvam
For Respondents	: Mr.Chellapandian, Addl., Advocate General Asst.by Mrs.S.Srimathy Spl.,Govt.Pleader for R1 to R5

COMMON ORDER

The petitioner in WP(MD)No.24218 of 2017 is working as B.T. Assistant (History) in the Government High School, Karanthaneri, Nanguneri Taluk, Tirunelveli District. He joined as Secondary Grade Teacher on 28.07.1995. He was promoted as B.T.Assistant (History) on 27.07.2008. According to the petitioner, the person who is holding the post of B.T.Assistant has two avenues of promotion. One is to the post of High School Headmaster while the other is to the post of P.G.Assistant.

2.His grievance is that persons appointed as P.G.Assistants from the cadre of B.T. Assistants are also being considered for promotion to the post of High School Headmaster. Hence, he filed WP (MD)No.12656 of 2016 questioning the proceedings dated 22.12.2015 issued by the Director of School Education, Chennai permitting the P.G Assistants hailing from the grade of B.T.Assistants to be appointed as Headmasters of High Schools. In respect of the said proceedings, interim stay was initially granted. Thereafter, stay was vacated and the matter was referred to a larger bench. Questioning the order vacating the stay, WA(MD)No.1468 of 2017 has been filed. It is said to be still pending. In the meanwhile, the Director of School Education issued proceedings dated 21.12.2017 containing the tentative seniority list and once again proposing to consider the P.G.Assistants who were erstwhile B.T Assistants for the post of High School Headmasters through recruitment by transfer.

3.The contention of the petitioner is that those P.G. Assistants who worked for a period beyond five years will have to return to the post of B.T Assistant and work in the cadre of B.T Assistant for a period of one year. According to the petitioner, it is the mandate of the proviso to Rule 9 of the Tamil Nadu State and Subordinate Service Rules. Since the impugned list is not in consonance with this requirement, he has filed the present writ petition.

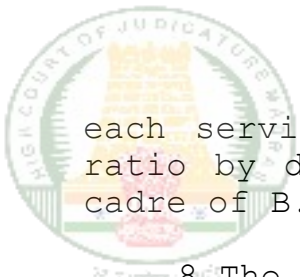


4.The petitioners in WP(MD)No.2395 of 2018 are also working as B.T Assistants. They also challenge the circular dated 21.12.2017 issued by the second respondent. They would contend that the second respondent should be directed to prepare the panel for promotion to the post of Headmaster of High school only from and among the B.T Assistants/Tamil Pandits working in high schools. To the same effect, WP(MD)No.16637 of 2017 has been filed.

5.Heard the learned Senior Counsel on either side and the learned counsel for the petitioners and the learned counsel for the private respondents and also the learned Additional Advocate General assisted by the learned Special Government Pleader appearing for the official respondents.

6.Shri.Ajmal Khan, the learned Senior Counsel appearing for some of the petitioners pointed out that this Court need not be deferred by the fact that a reference was made to a larger Bench on 30.11.2017 in WP(MD)No.12656 of 2016. He would submit that till date no orders have been passed by her lordship the Hon'ble Chief Justice constituting a larger Bench or even referring the matter to the larger Bench. Therefore, this Court can very much hear the submissions and adjudicate these three writ petitions. He placed heavy reliance on the order dated 19.07.2011 passed by the learned Judge of this Court in WP.No.7920 of 2011. The learned Judge noted that appointment to the post of Headmaster is to be made by way of promotion from the post of B.T Assistant. In Paragraph 13 of the order, the learned Judge observed that as per the statutory rule, the post of P.G Assistant is not the feeder category and that therefor a P.G Assistant is not eligible. It was further observed that the Director of School Education could not have issued proceedings stating that the B.T Assistants who were promoted as P.G. Assistants could also be considered promotion as High School Master when the statutory rule is to the effect that only B.T. Assistants are eligible for promotion. The proceedings dated 24.12.2008 issued by the Director of School Education was held to be bad to the extent it is contrary to the statutory rule.

7.But, as rightly pointed out in the order dated 30.11.2017 in WP(MD)No.12656 of 2016, Rule 9 of the Tamil Nadu State and Subordinate Service Rules was not placed for consideration before the learned Judge. Respectfully concurring with the said observations, this Court is of the view that the issue on hand cannot be said to have been conclusively decided by order dated 19.07.2011 in WP.No.7920 of 2011. It is an admitted fact that the Tamil Nadu Elementary Education Subordinate Service governs standards 1 to 8th. Tamil Nadu Educational Subordinate Service governs standards 6th to 10th. Higher Secondary Educational Service governs standards 11th and 12th. The post of B.T Assistant and High School Headmaster fall within Tamil Nadu Educational Subordinate Service. The post of P.G. Assistant and Higher Secondary School Headmaster fall within Higher Secondary Educational Service. There are separate statutory rules governing



each service. The post of P.G. Assistant is filled on 50 : 50 ratio by direct recruitment and recruitment by transfer from the cadre of B.T. Assistant.

8. The dispute that has arisen for consideration and which is pending adjudication for more than a decade is whether P.G. Assistants who were recruited by transfer from the cadre of B.T. Assistant are entitled to be considered for promotion to the post of High School Headmaster. It must be clarified that the post of P.G. Assistant is not a feeder category for the post of High School Headmaster. But then, as rightly pointed out by the learned Senior Counsel appearing for some of the private respondents, that was never their claim. Their contention was that Rule 9 of the Tamil Nadu State and Subordinate Service Rules confers such an entitlement. Rule 9 reads as under :

"9. Members absent from duty.- The absence of a member of a service from duty in such service, whether on leave, or on foreign service or on deputation or for any other reason and whether his lien in a post borne on the cadre of such service is suspended or not, shall not, if he is otherwise fit, render him ineligible in his turn.

(a) for re-appointment to a substantive or officiating vacancy in the class, category, grade or post in which he may be probationer or an approved probationer;

(b) for promotion to a lower category in such service;

(c) for appointment to any substantive or officiating vacancy in another service for which he may be an approved candidate, as the case may be, in the same manner as if he had not been absent. He shall be entitled to all the privileges in respect of appointment, seniority, promotion and appointment as full member which he would have enjoyed, but for his absence, subject to his completing satisfactorily the period of probation on his return;

(d) for appointment to any substantive or officiating vacancy in another service, if according to the provisions governing appointment to such other service-

(i) he is entitled to such appointment; and

(ii) the normal method of recruitment to such other service is by transfer from the service of which he is a member of any class or category thereof."

9. The contention of the respondents is that the expression "for any other reason" occurring in Rule 9 is significant. A member of a service may be absent from duty on leave, or on foreign service or on deputation or for any other reason. The expression "for any other reason" cannot be understood by applying the rule of ejusdem generis. It has to be given an expansive and wide meaning. In fact, the private respondents are not seeking to steal a march over



their erstwhile seniors in the cadre of B.T. Assistants. Their contention is that their appointment as P.G. Assistants by way of recruitment by transfer from the cadre of B.T. Assistant would not render them ineligible when their turns come. In other words, there is no snapping of relationship with Tamil Nadu Educational Subordinate Service Rules merely because they were appointed as P.G. Assistants. There is an object behind the incorporation of such a rule and the same will have to be given its fullest effect.

10.The learned Senior Counsel appearing for the petitioner would contend that the scope of current debate is more on the proviso to Rule 9 of Tamil Nadu State of Subordinate Service Rules. The proviso reads as under :

"Provided that a member of a service who has been appointed to another service outside his regular line and is continuing in that service beyond five years, shall not be considered for promotion or for appointment by recruitment by transfer to a higher post in his regular line even though he is otherwise qualified under the rules for which promotion or appointment, unless he returns to the former service and puts in a fresh service for a period of not less than one year in the former service."

In this case, it is beyond dispute that the private respondents were appointed to another service. Many of them have been continuing in that service beyond five years. Therefore, they will have to return to the cadre of B.T Assistant and put in a fresh service for a period of not less than one year and then, then alone they can be considered for promotion to the post of High School Headmaster.

11.The learned Senior Counsel for the petitioner drew the attention of this Court to the counter affidavit filed by the department in this regard in the previous writ petitions. In Paragraph 15 of the counter affidavit filed by the Director of School Education in WP(MD)No.20534 of 2016, it has been stated as follows :

"It is further submitted that in view of the position stated in the provision to clause (d) of Rule 9 of the Tamil Nadu State and Subordinate Service Rules the B.T.Assistant who have been promoted as P.G.Assistant and continued in the post of P.G.Assistant less than five years can be included in the panel for promotion as Headmaster of High Schools. But for those who have continued in the post of P.G.Assistant for more than five years if they want to become Headmaster of Government High School under Tamil Nadu School Education service, then they have to return to the post of B.T.Assistant for one year after that only they will be considered for promotion as Headmaster of Government High School."



12. The petitioners' grievance is that the impugned order dated 21.12.2017 has been passed in contravention of the stand set out above. Placing reliance on the decision of the Hon'ble Supreme Court reported in (2009) 4 SCC 700 (State of Rajasthan vs. S.N.Tiwari), the learned Senior Counsel for the petitioners submitted that the private respondents cannot have any lien over the post of B.T Assistant the moment they were appointed as P.G Assistants.

13. On the other hand, the learned Senior Counsel appearing for the private respondents submitted that for filling up the post of High School Headmaster and P.G Assistant, a combined seniority of P.G Assistants is maintained. The qualification for the post High School Headmaster is a bachelor degree with B.Ed with five years teaching experience. A B.T Assistant on acquiring P.G degree will be eligible to be appointed as P.G Assistant in the Higher Secondary School. It is his contention that the post of High School Headmaster and P.G Assistant are inter changeable. Scale of pay in both the posts is same. Right from the year 1978, it has been a practice to consider the P.G Assistants appointed from the post of B.T Assistant for the post of High School Headmaster by continuing them in the B.T panel. He also demonstrated that it would cause hardship to the P.G Assistant if their erstwhile juniors in the B.T Assistant grade are promoted to the post of High School Headmaster. He also pointed out that whenever writ petitions were filed against the P.G Assistants, interim orders are originally granted and then subsequently vacated.

14. The learned Senior Counsel and the learned counsel appearing for the private respondents pointed out that the very filing of these writ petitions is that an abuse of legal process. The issue on hand is covered within the scope of WP(MD)No.12656 of 2016. The order vacating the interim stay has been taken on appeal in WA(MD) No.1468 of 2017. The Registry has been directed to place all the connected writ petitions before the Hon'ble Chief Justice for referring the matter to a larger Bench. He would submit that the private respondents have been rightly included in the B.T Assistant panel, because the cut of date is 31.12.2002.

15. He would contend that by their mere appointment as P.G Assistant from the cadre of B.T Assistant by way of transfer by recruitment, they have not lost their lien in the post of B.T Assistant. The private respondents pointed out that the post of P.G Assistant is not a promotion post for the post of B.T Assistant. A B.T Assistant is appointed to the post of P.G Assistant by way of transfer and that therefore he is very much eligible to be appointed as a High School Headmaster. It has been contended that P.G Assistant as well as the B.T Assistant are both in educational service and coming under the same department and that therefore, the proviso cannot be made applicable to them.



16. Since for over 40 years, this practice has been followed, this Court would not be justified in upsetting the same at this point of time. Shri. Isaac Mohanlal, learned Senior Counsel appearing for some of the private respondents took this Court through the legal contentions raised in the counter affidavit filed by the 19th respondent in WP(MD)No.24218 of 2017. Likewise, Shri.R.Saseetharan and Mr.G.Sankaran made elaborate arguments and also filed their written submissions.

17. The learned counsel for the respondents 20 to 29 in WP(MD) No.24218 of 2017 placed reliance on the following decisions. 2012 (5) MLJ 314 (R.Sundaramoorthy V. Registrar of Co-operative Societies, Chennai), 2005 Writ L.R 389 (Tamilaga Asiriyar Koottani v. The Government of Tamil Nadu), (1976) 2 SCC 844 (State of Haryana vs. Shri Des Raj Sangar), (1983) 2 SCC 473 (M.Karunanidhi vs. H.V.Hande), AIR 2001 SC 3424 (Govt. of A.P v. Mohd. Ghouse Mohinuddin), (1983) 2 SCC 217 (Ajit Singh v. State of Punjab) and AIR 1983 SC 303 (Dalchand v. Municipal Corpn. Bhopal) .

18. This Court bestowed its anxious consideration to the rival contentions. The issues that have been pointedly projected in these writ petitions can be bifurcated into two.

(i) Whether a B.T Assistant who has been appointed as P.G Assistant is entitled to be considered for promotion to the post of High School Headmaster when his turn comes ?.

(ii) Whether such a P.G.Assistant who has continued in that capacity for a period beyond five years has to return to the B.T Assistant cadre and put in a fresh service for a period of not less than one year for being considered for the promotion to the post of High School Headmaster.

19. It is proposed to take up the second issue first for consideration. The emphatic submission of the learned Senior Counsel for the petitioners is that the proceedings impugned in these writ petitions stand vitiated, because the requirement to put in fresh service for a period not less than one year has not been taken into account. In other words, according to him, the P.G Assistants in question who have worked in that capacity for more than five years must work as B.T.Assistant for a period not less than one year. Only then they can be considered for promotion to the post of High School Headmaster.

20. It is not in dispute that the post of B.T Assistant falls within the Tamil Nadu Educational Subordinate Service and the post P.G.Assistant falls within the Higher Secondary Educational Service. Before testing the correctness of the submission of the learned Senior Counsel appearing for the petitioners, for better understanding the proviso can be broken down as follows :



(i) a member of a service is appointed to another service.

(ii) Such appointment is outside his regular line and he is continuing in the new service for a period beyond five years.

(iii) He must return to the former service and put in fresh service for a period of not less than one year in his former service. Otherwise, he shall not be considered for promotion or for appointment by recruitment by transfer to a higher post in his regular line even if he is otherwise qualified for such promotion or appointment.

21. This Court is of the view that the key to understanding the correct import of this proviso lies in the expression "regular line". The expression "regular line" is very much in use in common parlance. There is nothing technical about it. At the same time it is capable of bearing more than one meaning. "Regular" in the present context can only mean "usual" or "permanent" or "ordinary". The expression "regular line" can partake of several meanings. This Court is of the view that in this case the expression "line" would mean "activity". In Oxford Advanced Learner's Dictionary (9th Edition), it is defined as "a type or area of business, activity or interest : My line of work pays pretty well. You can't do much in the art line without training".

22. A court of law grappling with an interpretative challenge will have to proceed on the premise that there is a purpose behind the provision that is sought to be construed. This Court poses a question as to why the requirement of putting in a fresh service for a period of not less than one year has been incorporated. The said condition will acquire meaning only if expression "regular line" is understood as "usual activity". If a member of a service is appointed to another service which is wholly unrelated to his usual activity and he has continued in the new post for a period beyond five years, unless he comes back and acclimatizes himself for a period of one year, then and then alone he will be fit to be promoted or appointed by way of recruitment by transfer for a higher post in his regular line. Such cases are not unknown. For instance, the parties to the litigation that was a subject matter of the Full Bench decision reported in 1998 Lab IC 1650 (FB) (Balakrishnan Nair & Ors vs. State & Ors) were originally appointed as Village Extension Officers in the Rural Development Department. Some of them were subsequently selected for appointment in the Kerala Co-operative Subordinate Service as Junior Auditor and Junior Special Inspector. Invoking the rule that is somewhat similar to Rule 9, the persons who joined in the Cooperative Department claimed that they still have a lien in the Rural Development Department and got promotion as Village Extension Officers. This example is referred to only to show that persons working in Rural Development Department can get appointment in cooperative department. The nature of activity of these two departments is completely different. The observations made by the Hon'ble Supreme Court, of course in an entirely different context



in The State Of Orissa vs Sudhansu Sekhar Misra_reported in (AIR 1966 SC 647) can also shed some light. The Hon'ble Supreme Court observed as follows :

"In February 1965, the High Court took a policy decision to the effect that as a general rule, judicial officers working in special posts whether cadre or non-cadre, outside their regular line, should be recalled to the regular line after the completion of three years. in the interest of the service as well as the officers, so that "Officers may not deteriorate by remaining out of touch from regular judicial work for continuously long periods and the service will not suffer by being deprived of the services of senior and experienced officers in manning the posts in the regular judicial line." It is of utmost importance that judicial officers should not be kept away from judicial work for a long time lest they should lose touch with judicial work and even more than that should become indifferent to judicial approach."

23. Drawing inspiration from the said observations, this Court is of the view that only if the expression "regular line" is understood in this sense of usual activity, the proviso will sound meaningful. Though the post of P.G Assistant and that of B.T Assistant fall under different services, the fact remains that both come under the department of School Education. The type of work is one and the same. Both are teaching posts. A B.T Assistant teaches students from class 8th to 10th. A P.G. Assistant teaches students in class 11th and 12th. Therefore, a B.T Assistant who is appointed as P.G Assistant does not go outside his regular line. In other words, though he is appointed to another service, it is not outside his regular line. The proviso can be invoked only if the appointment must be to another service and it is also outside his regular line. Since in this case this Court has come to the conclusion that the private respondents herein have not been appointed outside their regular line, this Court is of the view that the impugned proceedings cannot be quashed by invoking the proviso to Rule 9 of the Tamil Nadu State and Subordinate Service Rules.

24. But, that would not be the end of the matter. The proviso cannot be divorced from the main part of the rule. Rule 9 will apply only in the case of those members of a service who are absent from duty in such service whether on leave, or on foreign service or on deputation or for any other reason. Therefore, the fundamental requirement is that the person invoking the benefit of Rule 9 must show that he continues to be a member of such service. These expressions have been already defined.

25. As per Rule 2(10) of the Tamil Nadu State and Subordinate Service Rules, "Member of a service" means a person who has been appointed to that service and who has not retired or resigned, has been removed or dismissed, been substantively transferred or reduced



to another service or been discharged otherwise than for want of a vacancy. He may be a probationer, an approved probationer or a full member of that service. Rule 2(1) defines the expression "appointed to a service". The explanation to the said rule reads as under :

Explanation : The appointment of a person holding a post borne on the cadre of one service to hold additional charge of a higher post in the same service or a post borne on the cadre of another service or to discharge the current duties thereof does not amount to appointment to the latter service.

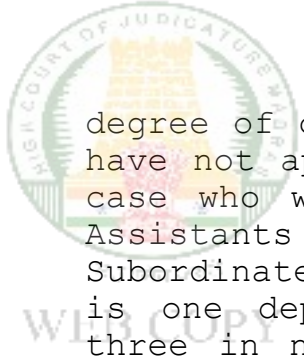
26. This explanation may to some extent strengthen the case of the private respondents herein. Rule 31 talks about appointment of full member. The learned Senior Counsel for the petitioners placed considerable reliance on the decision of the Hon'ble Supreme Court reported in (2009) 4 SCC 700 (State of Rajasthan v. S.N.Tiwari). Paragraph Nos.17 to 19 of the said decision are particularly relevant and they read as under :

17. It is very well settled that when a person with a lien against the post is appointed substantively to another post, only then he acquires a lien against the latter post. Then and then alone the lien against the previous post disappears. Lien connotes the right of a civil servant to hold the post substantively to which he is appointed. The lien of a government employee over the previous post ends if he is appointed to another permanent post on permanent basis. In such a case the lien of the employee shifts to the new permanent post. It may not require a formal termination of lien over the previous permanent post.

18. This Court in Ram Lal Khurana Vs. State of Punjab observed that : (SCC p.102, para 8) 8.....Lien is not a word of art. It just connotes the right of a civil servant to hold the post substantively to which he is appointed.

19. The term "lien" comes from the Latin term "ligament" meaning "binding". The meaning of lien in Service Law is different from other meanings in the context of contract, common law, equity, etc. The lien of a government employee in service law is the right of the government employee to hold a permanent post substantively to which he has been permanently appointed. [See Triveni Shankar Saxena Vs. State of U.P. (1992 Supp (1) SCC 524)].

27. Therefore, this Court will have to see whether the private respondents have completely snapped their umbilical cord with Tamil Nadu Educational Subordinate Service Rules or it still remains intact. This is not a pure question of law but more a question of fact. It has to be decided on a case to case basis. Materials have not been placed before this Court to pronounce any opinion with any



degree of certainty. It is also seen that the official respondents have not applied the mind as to whether the P.G Assistants in this case who were appointed by way of transfer from the post of B.T Assistants still remain a member of Tamil Nadu Educational Subordinate Service. It is a matter of record that even though it is one department namely Education Department, the Services are three in number, Tamil Nadu Elementary Educational Service, Tamil Nadu Educational Subordinate Service and Tamil Nadu Higher Secondary Educational Service. That is why appointment of a B.T Assistant to the post of P.G Assistant is not a promotion post as erroneously projected by the writ petitioners. It is an appointment to a higher post by recruitment by way of transfer.

28. Therefore, the proceedings impugned in these writ petitions are not quashed. However, it has already been clarified that the proviso to Rule 9 of Tamil Nadu State and Subordinate Service Rules cannot be invoked in this case. However, the official respondents will examine each individual case to see if the P.G Assistants in question can still be considered as a member of Tamil Nadu Educational Subordinate Service. If the answer to this question is in the affirmative there can be absolutely no impediment for appointing them as Headmaster of High Schools based on the impugned proceedings. The first respondent shall pass orders within four weeks as to whether the private respondents continue as member of Tamil Nadu Educational Subordinate Service and based on the outcome of the said exercise implement the orders impugned in these writ petitions accordingly.

29. All these writ petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
School Education Department, Secretariat, Chennai.

2. The Director of School Education,
DPI Campus, College Road, Chennai - 600 006.

3. The Joint Director of School Education /Personnel,
DPI Campus, College Road, Chennai - 600 006.

4. The Joint Director (Higher Secondary),
DPI Campus, College Road, Chennai - 600 006.



5.The Chief Educational Officer, Madurai.

6.The Chief Educational Officer, Sivagangai.

+1cc to M/S.T.Lajapathi Roy, Advocate SR.No. 66704
+1cc to M/S.Ajmal Associates, Advocate SR.No. 66670
+1cc to M/S.F.Deepak, Advocate SR.No. 66554
+1cc to M/S.R.Subramanian, Advocate SR.No. 66685
+1cc to Special Government Pleader, SR.No. 66824
+1cc to M/S.Isaac Chambers, Advocate SR.No. 66826
+1cc to M/S.V.Panneer Selvam, Advocate SR.No. 66743

Order in
W.P(MD)No.16637, 24218 of 2017
and 2395 of 2018
04.06.2018

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