

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 22.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.25277 of 2007

U.Abdul Salam

.. Petitioner

Vs.

1. The Director of Elementary Education,
College Road, Nungambakkam,
Chennai - 600 0006.

2. The District Elementary Education Officer,
Vellore, Vellore District.

3. The Additional Assistant Elementary
Educational Officer,
Wallajapettai (West Circle),
Vellore District.

.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, for a Writ of Certiorarified Mandamus, calling for the records pertaining to the District Elementary Education officer, Vellore, in his proceeding Na.Ka.No.4255/A4/2006 dated 09.11.2006 and quash the same and further direct the respondents to promote the petitioner as Elementary School Headmaster with effect from the date of promotion of his junior with all consequential benefits and to grant all the consequential benefits.

For Petitioner : Mr.K.Thennan

For Respondents : Mr.K.Karthikeyan,
Govt Advocate.

O R D E R

The petitioner was appointed as a Higher Grade Teacher (Urdu) on 12.11.1973 in Walajah Panchayat Union Unit, Vellore District. He was promoted to the post of Secondary Grade Assistant with effect from 01.09.1998. The petitioner states that he is the only senior most person in Walajah Panchayat Union Unit, Vellore District. He further states that due to a vacancy in the post of Headmaster, he was posted as a Elementary School Headmaster which continued up to 10.01.2001. He submits that the 2nd respondent without preparing a

seniority panel for promotion, directly promoted one Tmt.Nazeema Sultana as Elementary School Headmaster on 10.01.2001.

2. The petitioner states that the said Tmt.Nazeema Sultana is 4 years junior to him in Walajah Panchayat Union Unit, (category of Secondary Grade Assistant). The petitioner gave a representation to the respondents. The petitioner filed WP.No.28643 of 2006. This Court in WP.No.28643 of 2006 dated 05.09.2006, directed the first respondent to dispose of the representation of the petitioner and pass orders in accordance with law within a period of 4 weeks. On receipt of the order of the Court, the 2nd respondent rejected the petitioner's claim and issued the impugned order in Na.Ka.No.4255/A4/2006 dated 09.11.2006. Challenging this impugned order, the petitioner filed this instant writ petition.

3. The learned counsel for the petitioner contends that the impugned order is against the principles of natural justice. The learned counsel for the petitioner place reliance on a judgment of the Hon'ble Supreme Court, in the case of R.S.Kannan Vs. State of Tamil Nadu, (Civil Appeal No.994 of 1980 dated 01.03.1989), in which the Hon'ble Supreme Court held that the post of Elementary School Headmaster should be given based on Secondary Grade seniority. The counsel submitted under Rule 9 of the Special Rules for the Tamil Nadu Elementary Educational Subordinate Service, each Panchayat Union shall be a separate Unit. The counsel contends that Tmt.Nazeema Sultana should not have been considered for the promotion since she was posted by way of a request transfer. Furthermore, in accordance with Rule 8 of the Special Rules, the competent authority ought to have prepared a seniority list of persons fit for promotion. Passing the impugned order without preparing the seniority list is contrary to law.

4. On the other hand the learned counsel for the respondents contends that the petitioner had not passed SSLC. The counsel placed reliance on proceedings No.2583 dated 06.02.2001, which states that the minimum qualification for the appointment of the Headmaster in the Elementary School is SSLC. The counsel states that the order was communicated to the petitioner. The counsel further submits that the petitioner is only 8th standard and he has neither completed nor passed SSLC examination and therefore his claim is not sustainable.

5. Heard the counsel for the parties.

6. The learned counsel for the petitioner has placed reliance on Rule 9 of the Special Rules for the Tamil Nadu Elementary Educational Subordinate Service Rule, which states that each Panchayat Union should be a separate Unit. It is

therefore contended that Tmt.Nazeema Sultana, Secondary Grade Teacher has come by way of request transfer and her appointment in Walajah Panchayat Unit should be only from the day she joined the unit and not anterior to her date of joining the unit. It is therefore the contention that Tmt.Nazeema Sultana would be junior to the petitioner. The petitioner therefore claims that he is fit to join only on the basis of total length of service as Secondary Grade Teacher.

7. The learned counsel for the petitioner also placed reliance on the judgment of the Hon'ble Supreme Court in the case of R.S.Kannan Vs. State of Tamil Nadu, in Civil Appeal No.994 of 1980 dated 01.03.1989. The said judgment has no application in the facts of the case. The said judgment deals with Rule 22(A) of the Tamil Nadu Panchayat Union Councils Establishment Rules and the issue came up for consideration before the Hon'ble Supreme Court is as to whether the Teachers who were under the Government orders from time to time would acquired a vested rights for such posts are not. The Hon'ble Supreme Court ultimately held as under:-

"10. The proposition of law de hors the facts of this -case, is unexceptionable. There are no accrued or vested rights in any of the parties in this case. From 1970 until 1979 there has been continuous his between the Headmasters who were holding the posts on 1st October, 1970 through Junior in seniority and the others way were claiming those posts on the basis of higher seniority. There were several rounds of litigation in the Madras High Court and as a consequence number of Government Orders were Issued from time to time. The rights of the parties were never crystalised. Finally, as a result of the directions of the High Court Government Order No:784 dated 14th May 1979 was issued which settled the controversy for ever. It is thus incorrect to say that any rights got vested in any of the parties prior to the date of the impugned Government Order. The Government order has been upheld by the Madras High Court and we find no infirmity in the judgement of the Division Bench. Far from being Arbitray, the Government order is fair and does justice to all the parties. The Government have provided pay protection to the junior teachers who have been reverted or are facing reversion by application of the rule of seniority. They would continue to get the pay admissible to the head masters of middle schools even after reversion to the post of teacher. There Is thus no force in the argument advanced by the learned counsel. The appeal and the writ petition are dismissed.

There will be no order as to costs."

8. In fact the judgment actually held that there is no vested right or accrued right by holding the post of Headmaster. In any event, the petitioner in his affidavit does not deny that the educational qualification required for the post of Headmaster is 10th standard. In this view of the matter, when the petitioner does not hold the minimum qualification, he cannot claim any right.

9. The respondents are categorically rely on G.O.Ms.No.319, dated 13.08.1998 and the proceedings Naka 19387 dated 20.08.1998, wherein it is stated that the minimum qualification for being appointed as Headmaster in Walajah Panchayat Elementary School is 10th standard. There is yet another infirmity in the writ as much as the petitioner's claim is against Tmt.Nazeema Sultana, who has not been made as a party in the writ petition. Order 1 Rule 9 of Civil Procedure Code reads as under:-

"Misjoinder and non-joinder.-no suit shall defeated by reason of the misjoinder or non-joinder of parties, and the court may in every suit deal with the matters of controversy so far as the regards the rights and interests of the parties actually before it."

"Provided that nothing in this rule shall apply to NonJoinder of a necessary party."

The proviso of Order 1 Rule 9 provides that any proceeding which does not implead necessary parties to the proceedings is bad for the reason of non-joinder of parties.

10. In view of the fact that it was necessary to implead Tmt.Nazeema Sultana, since her rights will be directly affected by the result of the writ petition. The Writ petition is bad for non-joinder of parties. In view of the fact the petitioner does not possess required qualification to be appointed as a Headmaster and also because the writ petition is clearly hit by non-joinder of necessary party. Writ petition is dismissed. No Costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Pkn.

To

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Chennai - 600 0006.

2. The District Elementary Education Officer,
Vellore, Vellore District.

3. The Additional Assistant Elementary
Educational Officer,
Wallajapettai (West Circle),
Vellore District.

+1cc to Mr.K.Thennan , Advocate SR.No. 88402

W.P.No.25277 of 2007

A.SK(22/11/2019)



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