

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P. No.21609 of 2009

V.Rajammai

.. Petitioner

-vs-

1.The Director of School Education,
College Road, Chennai-600 006.

2.The Chief Educational Officer,
Tirunelveli District,
Tirunelveli.

3.The District Educational Officer,
Tirunelveli, Tirunelveli District.

4.Thothathri,
Personal Assistant to the
District Educational Officer,
Cheranmadevi Educational District
at Tirunelveli, Tirunelveli District.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records of the first respondent issued in Moo.Moo.No.03198/W.1/ E1/09 dated 22.05.2009 and quash the same and issue the consequential direction to the respondents to promote the petitioner as Higher Secondary School Headmaster with effect from 27.06.2008, when the petitioner's juniors were given promotion, with service and monetary benefits together with the benefit of pay fixation under FR 22-B for the purpose of last drawn emoluments for the purpose of pensionary benefits.

For Petitioner : Mr.R.Saseetharan

For Respondents : Mr.K.Karthikeyan,
Government Advocate
for R1 to R3
No appearance for R4

ORDER

The writ has been filed challenging the correctness of the impugned proceedings in Moo.Moo.No.03198/W.1/E1/09 dated 22.05.2009 issued by the first respondent and seeking a direction to the respondents to promote the petitioner as Higher Secondary School Headmaster with effect from 27.06.2008, when the petitioner's juniors were given promotion, with service and monetary benefits together with the benefit of pay fixation under FR 22-B for the purpose of last drawn emoluments for the purpose of pensionary benefits.

2.Learned counsel appearing for the petitioner submitted that the petitioner was appointed as B.T. Assistant on 10.10.1974 in the Tamil Nadu Municipal Educational Service and her service was regularised from 10.09.1975. Subsequently, the petitioner was promoted as High School Headmaster on 15.12.2003 and posted at Kancheepuram Annadurai Municipal Girls High School. According to the learned counsel appearing for the petitioner, the Teachers working in the Municipal Schools, became Government Servants with effect from 01.06.1986 and the Teachers in the Municipal School in the State of Tamil Nadu from 01.06.1986 were brought under the control of the State Education Department. As the petitioner was eligible for promotion to the post of Higher Secondary School Headmaster by way of recruitment by transfer, she submitted her particulars for inclusion of her name for the post of Higher Secondary School Headmaster on 31.03.2008 to the District Educational Officer, Tirunelveli District. After coming to know that the counselling for the post of Higher Secondary School Headmaster would be held on 27.06.2008 at Government Higher Secondary School, Ashok Nagar, Chennai through newspaper, the petitioner immediately approached the office of the Chief Educational Officer, Tirunelveli District to find out as to whether her name has been included for the post of Higher Secondary School Headmaster in the panel for the year 2008. As the Chief Educational Officer was not available, she approached the Section Superintendent, who informed the petitioner that her name has not been included in the panel. Subsequently, the petitioner retired from service on 30.06.2008 on attaining the age of superannuation and she was re-employed from 01.07.2008 to 31.05.2009 as per the policy of the Government.

3.According to the learned counsel appearing for the petitioner, when the petitioner was in the re-employment period, she received an order of promotion dated 02.07.2008 from the Director of School Education by way of recruitment by transfer. Since she attained the age of superannuation and she was under the re-employment period, she could not join in the post of Higher Secondary School Headmaster. Therefore, she made a

representation to the Director of School Education as well as to the Joint Director of Secondary Education, Chennai on 31.07.2008, 30.03.2009 and 15.11.2008 stating that she was informed that her name has not been included in the panel for the post of Higher Secondary School Headmaster in Municipal Service for the year 2008 by the Superintendent of the office of the Chief Educational Officer. According to the learned counsel for the petitioner, as the panel has not been circulated to her and she was not called to attend the counselling which was held on 27.06.2008, she could not attend the counselling and could not get the posting order of Higher Secondary School Headmaster and thereby, deprived of her promotion to the post of Higher Secondary School Headmaster.

4.Learned counsel appearing for the petitioner would submit that when there is no fault on the part of the petitioner, she cannot be put to face any prejudice as there was no black mark or negative remarks or disqualification put against her. Though the petitioner's name was included in the panel for the post of Higher Secondary School Headmaster in the proceedings dated 14.05.2008, the order of promotion was issued to her only after her retirement, i.e., on 02.07.2008. When the fault on the part of the respondents in not properly issuing the promotional panel to the petitioner, the petitioner could not reap the benefit of order of promotion as the juniors of the petitioner were given promotion to the post of Higher secondary School Headmaster and were given pay fixation under FR 22-B. As the petitioner was in the re-employment period received an order of promotion dated 02.07.2008 from the Director of School Education by way of recruitment by transfer, which resulted in loss of emoluments and pensionary benefits, the impugned proceeding is liable to be quashed and a direction be issued to the respondents to promote the petitioner as Higher Secondary School Headmaster with effect from 27.06.2008, when the petitioner's juniors were given promotion, with service and monetary benefits together with the benefit of pay fixation under FR 22-B for the purpose of last drawn emoluments for the purpose of pensionary benefits.

5.Reiterating the averments made in the counter affidavit filed by the first respondent, learned Government Advocate appearing for respondents 1 to 3 would submit that when the panel for the post of Higher Secondary School Headmaster by way of recruitment of transfer was prepared showing the name of the petitioner, for the reasons best known to her, she has not chosen to participate in the promotional counselling. Therefore, when the petitioner was not willing to take part in the promotion counselling held on 27.06.2008, she cannot claim the benefit of promotion to the post of Higher Secondary School Headmaster.

6.The contention made by the learned Government Advocate

appearing for respondents 1 to 3 that as the petitioner failed to participate in the promotional panel held on 27.06.2008, there was no necessity on the part of the respondents to issue the promotional order, is wholly un-acceptable. When the respondents are proceeded to give promotion to the post of Higher Secondary School Headmaster to the petitioner, they should have issued the promotional order well within the date of retirement, namely before 30.06.2008 as the petitioner was at the verge of retirement. When she was working as Headmaster during the re-employment period from 01.07.2008 to 31.05.2009 after reaching the age of superannuation, the respondents should not have issued the promotional order on 02.07.2008. The non issuance of the promotional order dated 02.07.2008 in favour of the petitioner well within the time clearly shows that there was a total non application of mind on the part of the respondents and the same also prevented the petitioner from taking part in the promotional panel held on 27.06.2008, which enables all the promotees to take part in the promotional counselling. Besides, it is not in dispute that the petitioner was found eligible for promotional post of Higher Secondary School Headmaster well within the date of her retirement, but the respondents have issued the promotional order only on 02.07.2008. Therefore, this Court finds no justification on the part of the respondents in not issuing the promotional order to the petitioner before the date of retirement, when the petitioner's juniors were promoted.

7. Accordingly, the writ petition stands allowed and the impugned order refusing the request of the petitioner for promotion to the post of Higher Secondary School Headmaster is quashed. The respondents are directed to re-fix her last drawn salary in the promotional post of Higher Secondary School of Headmaster with effect from 27.06.2008 and pay the pensionary benefits applying Rule FR 22-B, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

सत्यमेव जयते Sd/-

Assistant Registrar(Insp.cell)

//True Copy//

Sub Assistant Registrar

vga

To

1.The Director of School Education,
College Road, Chennai-600 006.

2.The Chief Educational Officer,
Tirunelveli District,
Tirunelveli.

3.The District Educational Officer,
Tirunelveli, Tirunelveli District.

+1 cc to Mr.R.Saseetharan, Advocate, Sr.No. 29293

+1 cc to The Government Pleader, Sr.No. 29117

W.P. No.21609 of 2009

SAI (CO)
CSL/29.04.2019



WEB COPY