

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 30.10.2019

CORAM :

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.17562 of 2015

K.M.Periyasamy

... Petitioner

Vs

1. State of Tamil Nadu,
rep. by its Secretary to Government,
Department of Adi Dravidar & Tribal Welfare,
Fort St. George,
Chennai - 9
 2. The Director of Adi Dravidar & Tribal Welfare,
Chennai - 5
- ... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari Mandamus to call for the records of the 1st respondent in connection with the proceedings in Letter No.11978 /ADW!/2014-1 dated 11.08.2014 and quash the same and further direct the first respondent to re-fix the seniority of the petitioner with all consequential service and pensionary benefits as per the order passed in WP No.3044 of 1980 dated 17.07.1986.

For Petitioner : Mr.S.Karthikei Balan

For Respondents: Mr.A.Shrijayanthi,
Special Government Pleader

O R D E R

The instant writ petition is for writ of certiorari to call for the records of the 1st respondent in connection with the proceedings in Letter No.11978/ADW1/2014-1 dated 11.08.2014 and quash the same and consequently, to direct the 1st respondent to re-fix the seniority of the petitioner with all service and pensionary benefits as per the order passed in WP. No.3044 of 1980 dated 17.07.1986.

2. The petitioner was appointed as a Tutor-cum-Warden with the respondent. He was promoted as Head Master of Government Adi-Dravidar Welfare High School on 24.03.1975 and the pay scale fixed at 450-25-750 with effect from 01.08.1973. While he was working as a Head Master, the Government passed G.O.No.464 S.W.Department dated 27.02.1979 stating that the

petitioner's appointment was not in order and therefore, they passed an order of recovery to the time scale of pay of Rs.300-15-420-20-500. Challenging the said Government Order, the petitioner filed WP No.3044 of 1980 and this Court set aside the G.O.No.464 by observing as under :-

"5. The third-respondent has been impleaded subsequent to the filing of the writ petition and he is being represented by Mr.PRPK.Venkatasubramanian. The third respondent through her learned counsel would claim that she was a senior to the petitioner and the rule of seniority alone should govern in making the appointment and since it was breached, the impugned order must be sustained. First of all, it must be pointed out that Rule 2 (b) of the Special Rules does not say 'seniority' as the sole criterion and it speaks that 'promotion to the posts shall be made only on merit and ability, seniority being considered only when merit and ability are approximately equal'. I did not bar any plea put forth on behalf of the third respondent that as per the norms of this Rule, she ought to have been preferred at the time when the petitioner was originally appointed, even as early as 1973. Even otherwise, when the inter se seniority was fixed on 25.09.1978, giving the third respondent, the third rank below the petitioner, the third respondent had chosen to keep quiet and it is too late in a day for her to raise a voice of protest at this juncture, when the petitioner alone has come to this Court expressing a grievance of his own, basing his case on the principle of equitable estoppel, which I have sustained as above. The writ petition is allowed. No costs.

3. A perusal of the above mentioned order shows not only this Court set aside the G.O.Ms.No.464 but also stated that the petitioner is entitled to be placed senior to those persons, who had been promoted during the period when the petitioner was reverted. The Government has implemented an order of this Court dated 17.07.1986 by issuing G.O.Ms.No.65 dated 08.01.1987, Social Welfare Department by observing as under:-

4. The Government accordingly direct that the orders issued in G.O.Ms.No.464, Social Welfare Department, dated 27.02.1979 be cancelled and all the further proceedings taken with reference to the said order dropped.

5. The Director of Adi Dravidar and Tribal Welfare has informed that the petitioner Thiru K.M.Periaswamy has since become senior enough to be considered for promotion as Head master of a Higher secondary school. Hence, the Government direct that Thiru K.M.Periaswamy be given postings immediately as Headmaster of Adi Dravidar Welfare Higher

Secondary School, by reverting the junior-most without affecting Thiruvalargal P.Shanmugam and S.Samuel Pandian, as they have been given postings as Headmasters of Higher Secondary Schools in pursuance of judgments of the High Court, Madras in Writ petition Nos.4601/83 and 4363 /83 and cannot therefore, be reverted.

4. A perusal of the above said Government order would show that the petitioner was fit to be considered for promotion as Head Master of a Higher Secondary school and therefore, orders have been passed appointing the petitioner as Head Master of Adi Dravidar Welfare Higher Secondary School by reverting the junior most person without affecting Thiruvalargal P.Shanmugam and S.Samuel Pandian, who had been given postings as Headmasters of Higher Secondary Schools in pursuance of judgments of the High Court, Madras in Writ petition Nos.4601/83 and 4363 /83. The petitioner attained the age of superannuation in the year 1996. The petitioner has given repeated representation for implementing the order dated 17.07.1986 stating that his juniors viz., G.Jaganathan, G.Subramanian has been appointed as Assistant Director (Education) and Deputy Director (Education) and therefore, the petitioner is entitled to the pay given to his juniors. The representations dated 27.01.2011, 15.12.2011 and 18.11.2013 of the petitioner has been rejected by an order dated 11.08.2014 stating that the promotion of G.Jaganathan and G.Subramanian could be treated as temporary and cannot be regular and therefore, any temporary promotion does not confer any benefit and the petitioner request to fix his pay on par with his juniors cannot be complied with. Challenging the said rejection order, the petitioner filed this writ petition.

5. The respondent have filed a counter affidavit stating that the writ petition is hit by laches, inasmuch as the petitioner was retired way back in the year 1996 and this writ petition which is filed after 19 years cannot be entertained. It is also stated that the earlier representations was as early in the year 2011.

6. This Court is not inclined to enter into the question of delay at this juncture for the reason that this writ petition also involves fixation of pensionary benefits of the writ petitioner. Admittedly G.O.Ms.No.464 has been set aside and therefore, this Court has found reversion of the petitioner from from payscale Rs.450-25-750 to 300-15-420-20 is bad in law. The order of this Court has been implemented by G.O.Ms.No.65 dated 08.01.1987. When the Government had agreed to implement the order of this Court by passing the G.O. wherein, it has been specifically found that the petitioner was entitled to be appointed as Head Master of the School, there is no reason as to why the petitioner could not be promoted. The reason given by the respondent while passing the

impugned order that the petitioner cannot be treated on par with G.Jaganathan and G.Subramaniam for the reason that the two persons have only be temporarily promoted and temporary promotion cannot confer any benefit. The question that has to be considered by the respondents was to re-work his promotion as if the petitioner had not been reverted till date and then fix his pensionary benefits. In view of the above, the impugned order is set aside and matter is remanded back to the 2nd respondent to rework and recalculate the retrial benefits by giving the petitioner the notional promotion to which he is entitled to. However, the petitioner is not entitled to any arrears of pay and the relief is restricted to pensionary and retrial benefits.

7. This writ petition is disposed of accordingly. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
State of Tamil Nadu,
Department of Adi Dravidar & Tribal Welfare,
Fort St. George,
Chennai - 9

2. The Director of Adi Dravidar & Tribal Welfare,
Chennai - 5

+1 cc to Government Pleader Sr.No.90396

+1cc to Mr.S.Karthikei Balan , Advocate SR.No. 90853

W.P.No.17562 of 2015

A.SK(17/12/2019)

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