



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.11.2019

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P. (MD)No.1184 of 2011

and

M.P. (MD)No.1 of 2011

WEB COPY

K.Amutha

... Petitioner

vs.

1.The Commissioner,
Adi Dravidar Welfare Department,
Chennai.

2.The District Adi Dravidar and Tribal Welfare Officer,
Thanjavur. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the first respondent in Na.Ka.No.Oa3/19457/09, dated 28.07.2009 confirming the order of the second respondent in Na.Ka.No.28405/2008 Ma5, dated 09.07.2008 and quash the same and consequently, to direct the respondents to give due seniority to the petitioner in the cadre of Secondary Grade Assistant, taking into account the date of entry into service, ie., 20.12.1997 and confer all consequential benefits, including further promotion.

For Petitioner

:Mr.Panneerselvam

for M/s.C.S.Associates

For Respondents

:Mr.M.Jeyakumar

Additional Government Pleader

O R D E R

This Writ Petition is filed to quash the order passed by the first respondent, dated 28.07.2009, confirming the order of second respondent, dated 09.07.2008 and to direct the respondent to give seniority to the petitioner in the cadre of Secondary Grade Assistant and confer all consequential benefits and further promotion.

2.The petitioner was appointed as Secondary Grade Assistant through Employment Exchange on 20.12.1997, as per G.O.(Ms)No.133, School Education, dated 15.04.1997. It is stated that the petitioner was posed at Adi Dravidar Welfare Primary School, Koonathaloor, Nagapattinam District and her service was also regularised. Subsequently, the petitioner was transferred to Pudukottai District, with effect from 15.09.2003 on the ground of surplus, along with 19 other teachers and the petitioner got



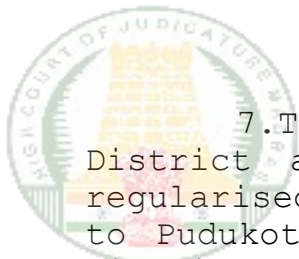
posting at Government Adi Dravidar Higher Secondary School, Mullankurichi.

3.The petitioner was once again transferred from Government Adi Dravidar Welfare High School, Thanjavur, on the ground of surplus. It is stated that the petitioner was relieved only on 28.06.2004 from Pudukottai District to enable her in joining the School in Thanjavur district. The petitioner has no grievance against the petitioner being transferred on the ground of surplus. She raised an issue about the drawal of seniority list in the cadre of Secondary Grade Teachers in 2005 ignoring the date of her appointment. It is stated that the petitioner was given seniority only from 02.07.2004, ie., from the date of joining in the present district, namely, Thanjavur district and that her original appointment was ignored, while fixing seniority.

4.In this regard, the petitioner made representation to the second respondent on several occasions. The second respondent, by order, dated 09.07.2008, rejected the petitioner's request on the ground that if a teacher has been transferred from one district to another district, she has to forego her seniority in the district, from which, she was transferred and that she will be placed as the junior most in the District to which she was transferred. Challenging the said order, the petitioner has preferred an appeal before the first respondent and the first respondent also dismissed the appeal by impugned order, dated 28.07.2009, confirming the order of second respondent. Challenging the same, the present Writ Petition is filed.

5.The learned Counsel for the petitioner submitted that the petitioner's transfer from one district to another district was not on her own and that she was transferred only on the ground of surplus. The reasons stated by the respondents in the impugned order to place her junior in the new district on account of transfer, is not applicable to a case of transfer on the ground of surplus. The learned Counsel also relied upon the proceedings, dated 02.08.2017, issued by the Adi Dravidar and Tribal Welfare Officer, Thiruvarur district and contended that others, who have been transferred along with the petitioner on the ground of surplus, were promoted and allowed to retain their seniority from the date of their appointment and that therefore, the petitioner has been discriminated by the respondents.

6.Though the proceedings relied upon by the learned Counsel for petitioner is shown to the learned Additional Government Pleader, he could not explain, how this could happen. Hence, this Court accept the case of the petitioner that she has been discriminated.



7.The petitioner was appointed on 20.12.1997 in Nagapattinam District and it is not in dispute that her service was also regularised. Though she was transferred from Nagappattinum District to Pudukottai District and then she was transferred to Pudukottai District to Thanjavur District in 2003, the transfers of petitioner are not at the request of the petitioner. It was only on the ground of surplus, the petitioner was compelled to join in other districts. In such incidents, the petitioner cannot be asked to forego her seniority, as it would affect her service conditions. The transfer on the ground of surplus was not after getting consent from the petitioner. Any order of transfer, that can be passed by the respondents, shall not prejudice the interest of concerned teachers, when it is for the administrative convenience of department. Hence, this Court find that the impugned order is unsustainable.

8.Accordingly, this Writ Petition is allowed and the impugned order passed by the first respondent, dated 28.07.2009, confirming the order of second respondent, dated 09.07.2008 is set aside. The respondents are directed to restore the seniority of petitioner from the date her appointment in Nagapattinam district, ie., on 20.12.1997 and to maintain such seniority for all purposes. For convenience, the respondents are also directed to pass appropriate orders within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

cmr
To

1.The Commissioner,
Adi Dravidar Welfare Department,
Chennai.

2.The District Adi Dravidar and Tribal Welfare Officer,
Thanjavur.

+1 CC to M/s.SPL GP (SR-102964[F] dated 02/12/2019)
+1 CC to M/s.C.S.ASSOCIATES, Advocate (SR-103029[F]

W.P. (MD)No.1184 of 2011
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SMA/26/12/2019/3P/5C