



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.11.2019

CORAM

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

W.P. (MD)No.9499 of 2012 and

M.P. (MD)Nos.2 and 3 of 2012

WEB COPY

M.S.Sekar

... Petitioner

vs.

1.The Director of Elementary Education,
Office of the Directorate of Elementary Education,
Chennai.

2.The District Elementary Education Officer,
Office of the District Elementary
Educational Office,
Theni District.

3.The Additional Assistant Elementary
Education Officer,
Office of the Assistant Elementary
Education Office,
Uthamapalayam, Theni District.

4.S.A.Vetriselvan

... 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 proceedings made in Ref.No.Na.Ka.303/A1/2012, dated 22.06.2012 on the file of the third respondent and quash the same and to direct the respondents to promote the petitioner as Middle School Headmaster based on the counselling conducted on 27.06.2012 in any of the Panchayat Union Middle Schools' vacant place of the third respondent, Uthamapalyaam Panchayat Union, Theni District.

For Petitioner :Mr.P.M.Vishnuvarthanan

For R1 to R3 :Mr.N.Shanmugam Selvan

Additional Government Pleader

ORDER

This Writ Petition is filed by the petitioner to quash the order passed by the third respondent, dated 22.06.2012 fixing seniority of the petitioner below the fourth respondent and others and to direct the official respondents to promote the petitioner as Middle School Headmaster based on the counselling conducted on



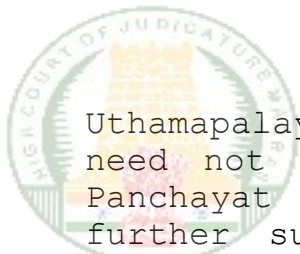
27.06.2012 in any one of the Panchayat Union Middle Schools' vacant place of the third respondent Panchayat.

2.The petitioner was appointed as Assistant Teacher in Kadamalai-Mayiladumparai Panchayat Union Elementary School. The petitioner's service was regularised with effect from 18.09.1987 and he also completed his probation on 17.09.1989. It is stated by the petitioner that the fourth respondent was appointed on consolidated pay in Sedapatti Union only on 10.12.1990 and that he was appointed on regular basis only on 01.09.1992. It is stated that the fourth respondent was transferred from Sedapatti Union to Uthamapalayam Panchayat Union on 03.09.1992. Whereas, the petitioner was transferred from Kadamalai-Mayiladumparai Panchayat Union to Uthamapalayam Panchayat Union on 16.06.1993.

3.It is the specific case of the petitioner that the fourth respondent completed probation only on 01.10.1994 and his service was regularised, of course, by taking into account his date of joining, ie., 01.09.1992. These facts are seen from the proceedings of the third respondent himself, dated 10.02.2009, wherein, the petitioner was shown as Senior to the fourth respondent not only with reference to the date of appointment, but also, for the reasons that the fourth respondent completed probation only on 01.10.1994.

4.Though the third respondent earlier prepared a seniority list for the post of Primary School Headmaster on 01.01.2009, based on the objection raised by the petitioner before the third respondent, questioning the seniority list, an order was passed by the third respondent, dated 10.02.2009 wherein, the petitioner was placed senior before the fourth respondent on the basis of the date of entry into service and the date, on which the respective teachers completed their probation. However, another seniority list has been prepared once again, placing the petitioner below the fourth respondent by impugned proceedings, dated 01.01.2012. As per the impugned order, the seniority fixed as on 01.01.2012 has been justified by referring to the fact that the petitioner though completed probation much earlier, the petitioner was promoted as Primary School Headmaster only on 28.06.2006. Even though the fourth respondent was promoted on 04.07.2005, the fourth respondent's date of probation has been wrongly given in the impugned order, as if the fourth respondent completed probation on 09.12.1992. Challenging the same, the present Writ Petition is filed.

5.The learned Counsel for the petitioner submitted that the fourth respondent completed probation only on 01.10.1994 and that seniority has been prepared, as if the fourth respondent completed probation, even on 09.12.1992. The learned Counsel for the petitioner then submitted that seniority cannot be fixed based on the entry into service to the particular Panchayat Union, as the transfer of the petitioner and the fourth respondent to



Uthamapalayam Panchayat Union was for the first time and that they need not forego their seniority upon getting transfer from one Panchayat Union to another Panchayat Union. The learned Counsel further submitted that the third respondent has not given any opportunity to the petitioner before passing the impugned order. Since the impugned order is on a wrong assumption of facts, it is further stated that the impugned order suffers from legal *mala fides*.

6.The learned Special Government Pleader appearing for the official respondents, however, relied upon the impugned order and submitted that the fourth respondent completed probation in 1992 and that the petitioner joined in Uthamapalayam Panchayat School only on 16.06.1993, much later to the fourth respondent. It is further stated that the petitioner was promoted as Primary School Headmaster only on 28.06.2006, whereas, the fourth respondent was promoted on 04.07.2005.

7.From the facts narrated, it is seen that the third respondent, who accepted the petitioner's seniority in 2009, has no reasons to differ or alter the seniority list in 2012. First of all, it is admitted before this Court that the fourth respondent completed probation in 1994, whereas, the petitioner has completed his probation even in 1989. Since the fourth respondent has not completed his probation, his entry in Uthamamapalaym Panchayat Union prior to the petitioner will have no consequences. It is also admitted that the petitioner's service was regularised on 19.09.1989, whereas, the fourth respondent's service was regularised much later.

8.Merely because, the fourth respondent was promoted to the post of Primary School Headmaster on 04.07.2005, the mistake or irregularity committed by the third respondent cannot be the basis to sustain the impugned order, which is not supported by any reason. This Court is unable to sustain the order of third respondent fixing seniority of petitioner below the fourth respondent. Hence, the petitioner is entitled to succeed. It is now represented before this Court that the fourth respondent is no more and he died during the pendency of this Writ Petition.

9.In the above circumstances, this Writ Petition is allowed and the impugned order passed by the third respondent, dated 22.06.2012 is set aside and the official respondents are directed to promote the petitioner as Middle School Headmaster based on the counselling conducted on 27.06.2012 and treat the petitioner as senior to the fourth respondent. Since the fourth respondent is no more, the petitioner may also be posted in his place, if the post is still vacant or any other vacant place and treat the petitioner as senior to the fourth respondent, even in the promotional post, while preparing the seniority list. The petitioner is also entitled to all monetary benefits and the entire exercise shall be done by



the official respondents within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Director of Elementary Education,
Office of the Directorate of Elementary Education,
Chennai.

2.The District Elementary Education Officer,
Office of the District Elementary
Educational Office,
Theni District.

3.The Additional Assistant Elementary
Education Officer,
Office of the Assistant Elementary
Education Office,
Uthamapalayam, Theni District.

+1 CC to M/s.K.APPADURAI, Advocate (SR-103082[F] dated 03/12/2019)

+1 CC to M/s.P.M.VISHNUVARTHANAN, Advocate (SR-103090[F] dated
03/12/2019)

+1CC TO SPL.GP. Sr.No.102980

W.P.(MD)No.9499 of 2012

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sma/17/12/19/4p/7c