



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.10.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD) Nos.22238 of 2018 and 1422 of 2019

and

W.M.P. (MD)No.20172 to 20174 of 2018 and 1209 of 2019

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A.Mala

... Petitioner
in both Writ Petitions

-Vs-

- 1.The Director of School Education,
Directorate of School Education Department,
D.P.I. Campus, College Road,
Chennai-600 006.
- 2.The Joint Director of School Education (Personnel Division),
Directorate of School Education,
D.P.I.Campus, College Road,
Chennai-600 006.
- 3.The Chief Educational Officer,
Tirunelveli.
- 4.The District Educational Officer,
Tirunelveli District.
- 5.The District Educational Officer,
Sankarankovil, Tirunelveli District.
- 6.The Block Educational Officer,
Palayamkottai (Rural),
Tirunelveli District.

7.K.Mohammed Bhurai

... Respondents
in W.P. (MD)No.22238 of 2018

- 1.The Director of School Education,
Directorate of School Education Department,
D.P.I. Campus, College Road,
Chennai-600 006.
- 2.The Joint Director of School Education (Personnel Division),
Directorate of School Education,
D.P.I.Campus, College Road,
Chennai-600 006.

3.The Chief Educational Officer,
Tirunelveli.



4.The District Educational Officer,
Tirunelveli District.

5.The District Educational Officer,
Sankarankovil, Tirunelveli District.

6.K.Mohammed Bhurai

... Respondents
in W.P. (MD)No.1422 of 2019

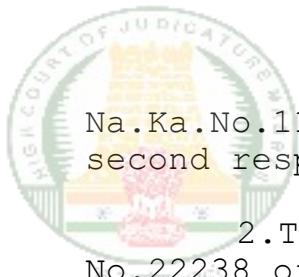
PRAYER in W.P. (MD)No.22238 of 2018: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings of the second respondent in Na.Ka.No.014520/A3/E1/2018, dated 23.10.2018 and quash the same and consequently, direct the second respondent to grant promotion to the petitioner to the post of Personal Assistant to District Educational Officer by fixing the petitioner's seniority as per proceedings in Na.Ka.No.111246/A3privu/E1/2010, dated 29.11.2010 issued by the second respondent within a time limit fixed by this Court.

PRAYER in W.P. (MD)No.1422 of 2019: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings of the second respondent in Na.Ka.No.014520/A3/E1/2018, dated 08.01.2019 and quash the same and consequently, direct the second respondent to grant promotion to the petitioner to the post of Personal Assistant to District Educational Officer by fixing the petitioner's seniority as per proceedings in Na.Ka.No.111246/A3privu/E1/2010, dated 29.11.2010 issued by the second respondent within a time limit fixed by this Court.

For Petitioner : Mr.A.L.Kannan
(in both Writ Petitions)
For R1 to R6 : Mr.A.Thiagarajan,
Government Advocate.
For R7 : Mr.R.Murali
(in W.P.(MD)No.22238 of 2018)
For R1 to R5 : Mr.A.Thiagarajan,
Government Advocate.
For R6 : Mr.R.Murali
(in W.P.(MD)No.1422 of 2019)

COMMON ORDER

These Writ Petitions are filed to quash the orders of the second respondent dated 23.10.2018 and 08.01.2019 and consequently, direct the second respondent to grant promotion to the petitioner to the post of Personal Assistant to District Educational Officer by fixing the petitioner's seniority as per proceedings in



Na.Ka.No.111246/A3privu/E1/2010, dated 29.11.2010 issued by the second respondent, within a time limit fixed by this Court.

2.The parties are referred to as per their rank in W.P.(MD) No.22238 of 2018.

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3.The petitioner was appointed as Junior Assistant in Education Department on 12.11.1986 on compassionate ground. Her service was regularised with effect from the date of appointment by G.O.2D.No.46, Education, Science and Technology (M1) Department, dated 11.03.1994. Subsequently, she was promoted as Assistant with effect from 20.10.1995 and further promoted as Desk Superintendent with effect from 15.10.2009, by the proceedings dated 29.11.2010 issued by the second respondent. The 7th respondent has joined as Junior Assistant on 15.12.1986, who was appointed on compassionate ground. He was promoted as Assistant with effect from 20.10.1995 and the same was regularised by the proceedings dated 27.09.2000. The petitioner made a representation to the Joint Director of School Education (Personnel), Chennai, the second respondent herein that her service as Assistant should be regularised with effect from 20.10.1995 from the date on which her junior / 7th respondent became Assistant. The second respondent, by the proceedings dated 25.10.2010, regularised the services of the petitioner as Assistant with effect from 20.10.1995 and she was placed in Serial No.188(a) above the 7th respondent, who was placed in Serial No.189. Subsequently, both the petitioner and the 7th respondent were promoted as Desk Superintendent from 15.10.2009. The petitioner was shown as senior to the 7th respondent, when the panel was drawn for promotion to the post of Personal Assistant to District Educational Officer. However, the petitioner's name was not included in the said panel, but the 7th respondent's name was included in the said panel. Therefore, the petitioner gave representation dated 13.07.2018 to include her name in the said panel. The official respondents did not pass any order on the representation. Therefore, the petitioner filed W.P.(MD)No.15716 of 2018, seeking for a direction to include her name over and above the 7th respondent to the post of Personal Assistant to District Educational Officer, by considering the representation of the petitioner dated 13.07.2018. This Court, by the order dated 19.07.2018, directed the official respondents to consider the representation of the petitioner and pass appropriate orders thereon. The second respondent without disposing of the said representation, has recommended the name of the 7th respondent and promoted him as Personal Assistant to District Educational Officer, by the proceedings dated 23.10.2018, which is impugned in W.P.(MD)No.22238 of 2018. After promoting the 7th respondent, the second respondent, by the proceedings dated 08.01.2019, has rejected the representation of the petitioner, which is impugned in W.P.(MD)No.1422 of 2019.



4.The learned counsel appearing for the petitioner contended that having revised the date of promotion of the petitioner as Assistant with effect from 20.10.1995 and having placed the petitioner above the 7th respondent in the seniority list, the second respondent is not entitled to revise the date of promotion of the 7th respondent as Assistant with effect from 15.04.1994. In any event, the second respondent ought to have placed the petitioner over and above the 7th respondent, revising her promotion as Assistant with effect from 13.04.1994. The petitioner and the 7th respondent were promoted as Desk Superintendent on 15.10.2009. The seniority of the petitioner maintained above the 7th respondent and without notice to the petitioner, the seniority of the 7th respondent was revised and the seniority was modified as 108(a). At the time of admission of the Writ Petition in W.P.(MD)No.22238 of 2018, this Court, by the order dated 31.10.2018, in W.M.P.(MD)Nos.20173 and 20174 of 2018 in W.P.(MD)No.22238 of 2018, held as follows:-

"Any promotion made will be subject to the result of the Writ Petition.

This will not preclude the respondents from considering the case of the petitioner in the available existing vacancy, if the petitioner is otherwise eligible."

5.The second respondent without complying with the said order of this Court, has rejected the representation of the petitioner on the ground that she passed the departmental test, subsequent to the 7th respondent passing the said test and he was promoted earlier. The said rejection order is contrary to the earlier order, whereby the petitioner's promotion to the post of Assistant was revised on par with the date of promotion granted to the 7th respondent. For the above reason, the learned counsel appearing for the petitioner has prayed for allowing both the Writ Petitions.

6.The learned counsel appearing for the 7th respondent contended that the 7th respondent passed the departmental test earlier to the petitioner and the 7th respondent was promoted earlier and he became senior to the petitioner. On the representation given by the 7th respondent, the promotion to the post of Assistant was revised with effect from 15.04.1994, when his junior Mallika was promoted. Based on the said revision, the 7th respondent's seniority in the post of Desk Superintendent was revised and he was placed as Serial No.108(a) above Mallika and he became eligible for being promoted as Personal Assistant to District Educational Officer. The petitioner has not come within the zone of consideration for being promoted as Personal Assistant to District Educational Officer and her promotion to the post of Personal Assistant to District Educational Officer, will be considered, when she comes within the zone of consideration.

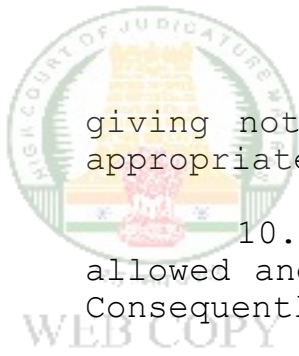


7. Heard the learned counsel appearing for the petitioner, the learned Government Advocate appearing for the respondents 1 to 6 and the learned counsel appearing for the 7th respondent and perused the materials available on record carefully.

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8. From the materials on record, it is seen that the petitioner was appointed as Junior Assistant on 12.11.1986 earlier than the 7th respondent. The 7th respondent was promoted as Assistant earlier than the petitioner and he had passed departmental test earlier than the petitioner. When the petitioner was passed all the departmental test, she was also promoted as Assistant and she was placed below the 7th respondent. On the representation given by the petitioner, her date of promotion to the post of Assistant was revised on par with the 7th respondent and she was placed above the 7th respondent in the seniority list. When both the petitioner and the 7th respondent were promoted as Desk Superintendent, again, the petitioner was shown as senior to the 7th respondent.

9. From the materials on record, it is seen that the date of promotion of the 7th respondent to the post of Assistant was revised on 15.04.1994, when his junior Mallika was promoted. When such is the case, the date of promotion of the petitioner as Assistant also ought to have been revised on 15.04.1994 and placed above the 7th respondent. Again when on representation of the 7th respondent, his seniority was revised from 189 to 108(a) and placed above Mallika. The petitioner is also entitled to such a revision and she ought to have been placed above the 7th respondent. Further, this Court, by the order dated 31.10.2018, while considering the Writ Petition, in the interim order held that the respondents can consider the petitioner for promotion in the available existing vacancy, if she is otherwise eligible. From the order dated 08.01.2019, impugned in W.P.(MD)No.1422 of 2019, it is seen that the second respondent has not considered whether the petitioner is entitled to be promoted as Personal Assistant to the District Educational Officer. The request of the petitioner was rejected on the ground that the 7th respondent passed the departmental test earlier to the petitioner and he was promoted earlier to the petitioner. The second respondent having revised the date of promotion on par with the 7th respondent and placed her above the 7th respondent, ought to have revised the date of promotion of the petitioner on par with the 7th respondent. In such circumstances, the impugned order dated 08.01.2019 is set aside and the second respondent is directed to consider the petitioner for promotion to the post of Personal Assistant to the District Educational Officer in the existing vacancy, if she is otherwise eligible as per the earlier order dated 31.10.2018 in W.M.P.(MD) Nos.20173 and 20174 of 2018 in W.P.(MD)No.22238 of 2018. If the petitioner is eligible for promotion to the post Personal Assistant to the District Educational Officer in the existing available vacancy, her seniority shall be fixed by the second respondent after



giving notice to the petitioner as well as the 7th respondent and appropriate orders will be passed.

10. With the above direction, W.P.(MD)No.1422 of 2019 is allowed and W.P.(MD)No.22238 of 2018 stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

Myr
To

1. The Director of School Education,
Directorate of School Education Department,
D.P.I. Campus, College Road,
Chennai-600 006.
2. The Joint Director of School Education (Personnel Division),
Directorate of School Education,
D.P.I. Campus, College Road,
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5. The District Educational Officer,
Sankarankovil, Tirunelveli District.
6. The Block Educational Officer,
Palayamkottai (Rural),
Tirunelveli District.

+2 CC to Mr.AL.KANNAN, Advocate (SR-91995, 91996[F] dated 15/10/2019)

+1cc to SPL.GP.SR.NO.91905

+1cc to Mr.M.Suresh Kumar, Advocate Sr.No.92013

W.P. (MD) Nos.22238 of 2018 and 1422 of 2019

14.10.2019

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