

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILU

WRIT PETITION No.1362 of 2019

ORDER:

This writ petition is filed seeking the following relief :-

“....(a) to call for the records pertaining to memo dated 31.10.2018 issued by the 1st respondent through which the claim of the petitioner for proper fixation of seniority in the category of Principal was rejected and to set aside the consequential proceedings dated 28.12.2018 of R2 promoting the Respondent No.3 as Assistant Director as bad, illegal, arbitrary, discriminatory and unconstitutional and

(b) direct the respondents to treat the petitioner as Principal with effect from March 2009 from the date of availability of vacancies which were not filled up despite his eligibility and entitlement being at Sl.No.7 in the panel prepared by the duly constituted DPC conducted in January 2009 and accordingly consider him as senior most for being considered for the post of Assistant Director and promote him as such with all consequential benefits by setting aside the proceedings dated 28.12.2018 issued by the 2nd respondent posting the 3rd respondent as Assistant Director holding it as bad illegal and unconstitutional

(c) by holding the action of the respondents in not considering the claim of the petitioner in the teeth of the admitted fact that there were vacancies of Principal in March 2009 which was not filled up for no good reason and not answering the said claim on baseless and untenable grounds as bad, illegal arbitrary, discriminatory and unconstitutional”.

Heard Mr.J.Sudheer, learned counsel for the petitioner, learned Government Pleader for Employment and Training appearing for respondents 1 and 2 and Sri Rangarajula Rajasekhara Rao, learned counsel appearing for the 3rd respondent.

It has been contended by the petitioner that he was appointed as Assistant Training Officer on 06.01.1989 and subsequently he was promoted as Deputy Training Officer and

further promoted as Training Officer on 27.06.2002 and the next promotional post is the Principal. It is contended that the respondents have conducted DPC in the month of January, 2009 for filling three regular vacancies and five anticipated vacancies, wherein the case of the petitioner, who was placed at Sl.No.7, along with others was considered by DPC. Pursuant to the conducting of the said DPC, three persons were promoted and while the petitioner was expecting posting orders in the promotional post of Principal in the anticipated vacancies, the State Government has issued G.O.Ms.No.81 dated 02.03.2009, wherein 38 additional posts of Principal were sanctioned and the respondents have conducted another DPC on 23.05.2009, wherein the name of the petitioner once again figured and the petitioner was given promotion order on 08.06.2009. Since the petitioner could not join in the promotional post immediately for not getting the relieving orders from his earlier post, the petitioner sought extension of time for reporting to duty in the promotional post and accordingly permission was granted and thereafter, the petitioner was permitted to join duty in the promotional post.

Now the issue is, whether the petitioner is entitled for seniority in the next promotional post pursuant to DPC conducted in the month of January, 2009 or from the date of consideration of his name in the Second DPC conducted on 23.05.2009.

The petitioner further contended that when once his name has been considered by DPC In January, 2009, the action of the respondents in subjecting him to the second DPC, which was held on 23.05.2009 is an arbitrary exercise, as his case should have been

considered for promotion to the post of Principal in the anticipated vacancies as and when they arise, without subjecting him to second DPC.

Learned counsel for the petitioner contended that the petitioner be given seniority from the date of arising of the vacancy pursuant to DPC held in the month of January, 2009. When the respondents have not given seniority pursuant to DPC conducted in January, 2009, the petitioner preferred an appeal before the appellate authority on 24.01.2018 against the final seniority list dated 03.10.2017 and when the said appeal was not being disposed of, the petitioner has filed W.P.No.15673 of 2018 and the said writ petition was disposed of by order dated 27.04.2018 directing the respondents therein to dispose of the appeal preferred by the petitioner on 24.01.2018 within a period of four weeks from the date of receipt of a copy of the said order. Pursuant to such direction given by this Court, the respondents have considered and rejected the case of the petitioner vide proceedings dated 31.10.2018. Challenging the same, the present writ petition is filed.

Learned counsel for the petitioner further contended that appropriate orders be passed in the writ petition directing the respondents to grant seniority to the petitioner by duly taking into account the fact that the petitioner's name was figured in the DPC conducted in January, 2009 and as and when 7th vacancy arises, pursuant to DPC conducted in the year 2009, the case of the petitioner should be considered for promotion in the 7th vacancy

and from that date onwards, the petitioner should be given seniority in the cadre of Principal with all consequential benefits.

Learned Government Pleader appearing for the respondents contended that the DPC conducted in January, 2009 was for three existing vacancies and five anticipated vacancies and as the five anticipated vacancies have not arisen and it is only with the sanction of 38 additional posts of Principal vide G.O.Ms.No.81 dated 02.03.2009, the respondents have conducted second DPC on 23.05.2009 and in the said DPC, the name of the petitioner was figured and he was given posting orders, but he has requested for grant of time for reporting to duty vide representation dated 27.06.2009 and accordingly, the case of the petitioner was considered and the petitioner was given revised posting orders on 29.06.2009. Since the petitioner has reported to duty only on 29.06.2009, the petitioner was given seniority at appropriate place based upon his reposting orders and the petitioner has given an undertaking that he will not claim any seniority over and above the individuals, who were promoted pursuant to the panel dated 23.05.2009 and in view of the said undertaking, the petitioner is not entitled for seniority from any date prior to 29.06.2009. Therefore, there are no merits in the writ petition and the same is liable to be dismissed.

This Court, having considered the rival submissions made by the learned counsel for the respective parties, is of the considered view that when the respondents have conducted DPC in the month of January, 2009 for three existing vacancies and five anticipated vacancies, the action of the respondents in subjecting the

petitioner to second DPC, which was held on 23.05.2009, is not in accordance with law. Since the petitioner was placed at S.No.7 in the DPC held on January, 2009, the petitioner is entitled for promotion in the 7th vacancy as and when it arises only in the anticipated vacancies or additional vacancies which have been created vide G.O.Ms.No.81 dated 02.03.2009. Therefore, the petitioner is entitled for seniority pursuant to the figuring of his name in the DPC held in the month of January, 2009. Though the name of the petitioner was figured in the DPC held in January, 2009, if the vacancies have arisen pursuant to sanction of additional posts of Principal vide G.O.Ms.No.81 dated 02.03.2009, the petitioner may not be entitled to get the post of Principal from the date of sanction and he is entitled for seniority from the date on which the respondents have decided to fill up those vacancies. Admittedly, the respondents have decided to fill up the vacancy of Principal on 23.05.2009 and on that day, the second DPC was conducted, that means the 7th vacancy was sought to be filled up on 23.05.2009. When the respondents have taken steps to fill up the 7th vacancy of Principal, the case of the petitioner ought to have been considered in the said 7th vacancy. The petitioner is entitled for 7th vacancy of Principal with effect from the date on which the respondents have decided to fill up the post of Principal i.e., on 23.05.2009. Therefore, assigning any date to the petitioner after 23.05.2009 is not permissible and the same is not in accordance with law. Hence, the respondents shall assign the date of promotion to the petitioner in the cadre of Principal with effect from 23.05.2009 i.e., the day on which the respondents have decided to fill up the 7th vacancy of

Principal. Since the name of the petitioner was already figured at 7th place in the DPC conducted in January, 2009, the impugned rejection order dated 31.10.2018 is liable to be set aside and it is accordingly set aside.

Accordingly, the writ petition is allowed and the petitioner is entitled to reckon his seniority in the cadre of Principal from the date the respondents have decided to fill up the 7th vacancy i.e., with effect from 23.05.2009 with all consequential benefits. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVIL, J

Date: 04-09-2019
Prv



