

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE :29.09.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 17482 of 2013

E.MUTHAZHAGU

..Petitioner

- Vs -

1. The state of Tamil Nadu
rep. by its Secretary to Government
Education Department,
Fort St. George , Chennai-9
2. The Director
Tamil Nadu Elementary School Directorate
College Road, Chennai-6.
3. Teachers Recruitment Board
rep by its Secretary.
7th floor, EVK Sampath Maligai College Road
Chennai-6.
4. The District Elementary
Educational Officer,
the District Elementary
Education Office Fort Vellore
Vellore District-632 004.

...Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Mandamus, directing the respondents to implement the terms of G.O.Ms. No.388 dated 19.6.1996 by retaining state wide seniority of the Secondary Grade Teachers in Panchayat Union Elementary Schools fixed by the Teachers Recruitment Board for preparing the panel of eligible candidates for promotion as Headmistress/ Headmasters in the Panchayat Union Elementary Schools and promote the petitioner as Headmistress in the Panchayat Union Elementary School based on the said panel.

For Petitioner : Mrs.Nalini Chidambaram for
M/s. Uma

For Respondent : Mr.C.Munusamy, Spl.G.P for (Edn) for R3
: Mr.S.Sureshkumar, G.A.,
(Edn) For RR1,2 & 4

ORDER

This petition has been filed by the petitioner to direct the respondents to implement the terms of G.O.Ms. No.388 dated 19.6.1996 by retaining state wide seniority of the Secondary Grade Teachers in Panchayat Union Elementary Schools fixed by the Teachers Recruitment Board for preparing the panel of eligible candidates for promotion as Headmistress/ Headmasters in the Panchayat Union Elementary Schools and promote the petitioner as Head Mistress in the Panchayat Union Elementary School based on the said panel.

2.The case of the petitioner is that the petitioner was selected and appointed as Secondary grade teacher by the Teachers Recruitment Board in October 1994 and posted at Melappazhantai, Thimiri Union, Arcot Taluk, Vellore District which is her native district. In the year 1996, the 1st respondent issued G.O.Ms.No.388 School Education dated 19.06.1996 wherein it was stated that teachers were entitled to seek transfer once from one Panchayat Union school to another Panchayat Union school in any district and on such transfer, they were entitled to carry their original seniority and rank given by the Teachers Recruitment Board. The petitioner was transferred to Katpadi Union, however, her seniority was not carried to the said Union and, therefore, to retain her seniority as per G.O.388, the petitioner wrote a letter dated 12.9.2006 to the respondents. The grievance of the petitioner is that the 2nd respondent issued proceeding dated 11.6.2007 in and by which it was stated that the teachers are not entitled to carry their seniority and rank on transfer and would be ranked junior in the school to which the transfer is sought and the said seniority list should be prepared immediately for approval. In this backdrop, revision of seniority was made by respondents 3 to 5 by lowering the rank of the petitioner on account of the transfer already effected from one Panchayat Union school to another. On account of this, the petitioner has lost her seniority as well as she would lose the opportunity of being promoted as Headmistress in the Panchayat Union Elementary School not withstanding the fact that G.O.Ms.No.388 dated 19.06.1996 is in her favour. As against the 2nd respondent proceeding dated 11.06.2007, the petitioner has filed this petition with the above said prayer.

3. Learned senior counsel appearing for the petitioner submits that though the petitioner is entitled to retain her seniority allotted by the Teachers Recruitment Board on her transfer based on G.O. No.388, however, without reference to the same, vide the impugned proceedings, the seniority of the petitioner has been refixed, which is unsustainable and against

the above Government Order. In support of her submission, learned senior counsel appearing for the petitioner relied on the decision of this Court in R.Dhanalakshmi & Anr. - Vs - Director of Elementary Education (W.P. No.12476/08, etc. Batch - Dated 18.10.2010).

4. Per contra, learned Special Government Pleader appearing for the respondents, while denying the averments of the petitioner, referred to various portions of the counter affidavit and submitted that it was at the request of the petitioner she was transferred and, therefore, she is not entitled to claim the benefit under G.O. No.388. It is the further submission of the learned Special Government Pleader that the transfer of the petitioner from one Union to another Union at her behest makes her ineligible to claim the benefit under G.O.Ms.No.388 and that the seniority should be redrawn, as has been done by the respondents and, therefore, no interference is called for with the order impugned. Learned Special Government Pleader placed reliance on the decision of the Hon'ble Supreme Court in 2007(7) Scale, 8, [State of UP - Vs- Dinkar Shinha]. Accordingly he prays for dismissal of the petition.

5. This Court considered the rival contentions advanced by either side and perused the materials available on record and also perused the decision on which reliance has been placed by the learned counsel on either side.

6. This Court in Dhanalakshmi's case (supra) in identical facts and circumstances has considered similar issue and on appreciation, has held as under :-

"6. In the case of the petitioner though the initial appointment of the petitioner was in her native district of Tirunelveli but in a different Panchayat Union viz., Sanikaran Koil Panchayat Union and for the first time she has got a transfer to different union of the very same district viz., Vasudevanallur Union, having regard to the provisions contained in G.O.Ms.No.388, dated 19.06.1996 and also the proceedings of the first respondent dated 10.03.2000 and 4.10.2001, such a transfer will not in any way affect the retention of her original seniority that was assigned to her in the selection of the year 1995 by the Teachers Recruitment Board. When the said position can be thus clarified the impugned proceedings shall not in any way affect the right of the petitioner for retention of such seniority originally assigned to her.

7. As the petitioner's right for retention of her seniority is thus declared by applying the above referred two proceedings, the impugned proceedings dated 11.06.2007 cannot be applied to the case of the petitioner. The writ petitioner is therefore allowed and the Impugned proceedings are hereby set aside in so far as the petitioner is concerned. Connected M.Ps. are closed."

7.A careful perusal of the materials reveal that the facts in the present case are identical to the one decided by the learned single Judge of this Court in Dhanalakshmi's case (supra).

8.In such view of the matter, the present writ petition is allowed and the relief granted in Dhanalakshmi's case (supra) shall stand extended to the petitioner herein. Accordingly, the respondents are directed to refix the seniority of the petitioner on the basis of the above decision and also on the basis of G.O. Ms. No.388.

9.This writ petition is allowed with the aforesaid observation and direction. However there shall be no order as to costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

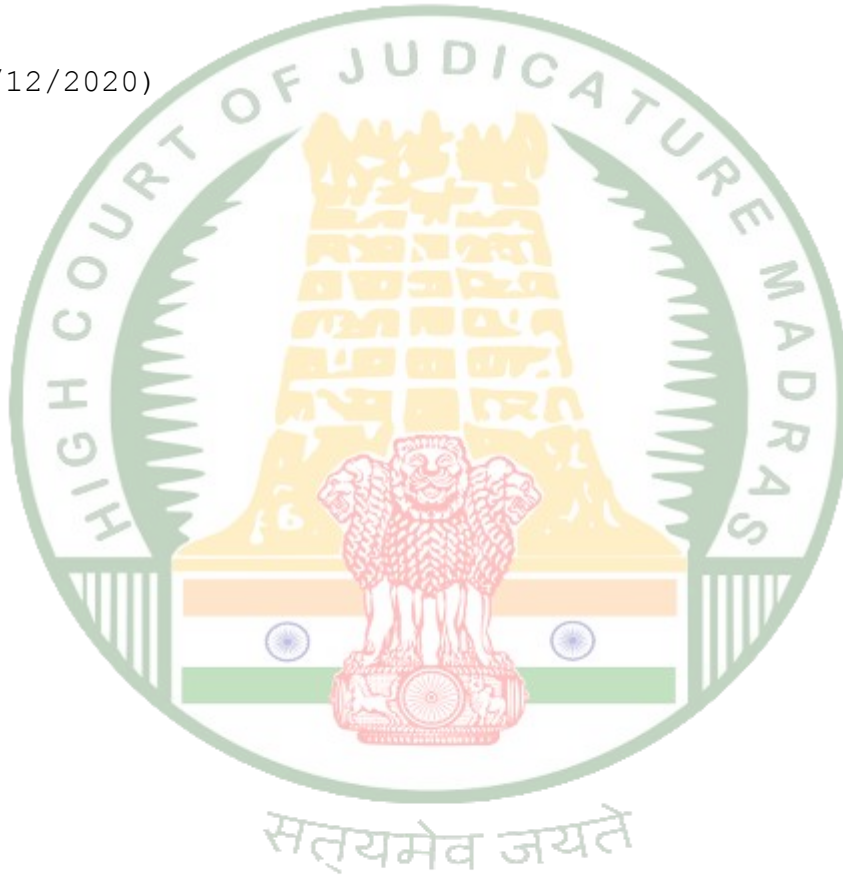
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+2cc to the Government Pleader, Sr.No.32142 & 32139
+1cc to M/s.c.Uma, Advocate, Sr.No.31973

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