

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2020

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THE HON'BLE Mr. JUSTICE M.GOVINDARAJ

W.P.No.14918 of 2005

K.Palanisamy

... Petitioner

.Vs.

1. The Director of Elementary Education,
College Road, Chennai - 600 006.
2. The District Elementary Educational Officer,
Namakkal District,
Namakkal.
3. The Asst.Elementary Educational Officer,
Puduchatiram Panchayat union,
Puduchatram,
Namakkal District Educational Officer.
4. M.Gowri
5. C.Valarmathi
6. M.Ramalingam

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of writ of certiorarified mandamus, to call for the records of the third respondent in relation to the seniority list of Secondary Grade teachers dated 24.03.2004 prepared as on 01.01.2004 for Puduchathiram Panchayat Union and Panel dated 24.03.2004 issued in proceedings No.Nil meant for promotion to the post of Primary School Head Master as on 01.01.2004 for Puduchatiram Panchayat Union, Namakkal District and the proceedings issued in Na.Ka.No.2634 of 2004 dated 08.09.2004 by the second respondent and quash the same in so far as the petitioner is concerned and issue a consequential direction to the respondents to place the petitioner at the appropriate place in the above said seniority list and panel as per the date of appointment and issue a consequential direction to the respondent to promote the petitioner as Primary School Head Mistress with effect from 08.09.2004 when the respondent no.4 was promoted with service and monetary benefits.

For Petitioner : Mr.R.Saseetharan

For Respondents: Mr.P.Raja

Government Advocate [RR1 to 3]

No Appearance [for R4]

O R D E R

The petitioner was appointed as a Secondary Grade teacher and joined service on 07.10.1996 along with respondents 4 to 6. When a seniority list was prepared on 01.01.2004 for the post of Secondary Grade teachers, the petitioner was shown at serial No.28 as junior to the respondents 4 to 6. Aggrieved over the same, the petitioner has filed the above writ petition.

2. According to the petitioner, the qualification and date of joining are one and the same. When the qualification is approximately equal, the seniority shall be fixed based on the basis of date of birth. The petitioner's date of birth is 21.05.1965, whereas the respondents 4 and 5 were born on 19.02.1969 and 10.06.1969 respectively. In that view of the matter, the petitioner claiming that he should have been considered as senior to the respondents 4 and 5 and should have been given promotion to the next higher post. Since the petitioner was over looked in promotion to the post of Primary School Head Master, he challenges the said seniority list and seek for consequential direction to promote him as Primary School Head Master with effect from 08.09.2004 the date on which, the 4th respondent was promoted.

3. The learned Government Advocate appearing for the respondents 1 to 3 reiterate the statement in the counter affidavit and contend that the petitioner has not made any objection to the seniority within a period of three years from the date of his joining. Having kept quite, the objection made now, after a period of 10 years cannot be entertained to unsettle the settled seniority position for Secondary Grade teachers. Further, the seniority was fixed on the basis of communal roster and therefore, the petitioner cannot claim seniority over and above the respondents 4 to 6.

4. On consideration of the materials placed before me, it is seen that the seniority list was prepared on the basis of date of appointment. However, the 6th respondent who had joined on 14.10.1996 was shown as senior to the petitioner, who had joined on 07.10.1996. Insofar as the education qualification is concerned, it is noticed that those who have higher educational qualifications had joined on an earlier date. The petitioner and

the contesting respondents were shown as juniors in the seniority list. I cannot get clarification from the respondents as to the rationale followed in preparing such seniority list. The Communal Roster followed by the respondents at the time of appointment is also not produced. In the absence of any clarification as to the rationale followed by the respondents, this Court is not in a position to interfere with the settled seniority.

5. However, in similar circumstances, concerning the promotion of the 6th respondent, this Court in W.P.No.15305 of 2005 dated 05.03.2019, has ordered notional promotion to the petitioner therein from the date of promotion given to the immediate junior. I concur with the view taken in the above judgment. The relevant portion reads as under:-

"7. In the light of the foregoing discussions, the petitioner is granted liberty to make appropriate application to the 2nd respondent seeking for notional promotion from the date when the respondents 4 to 6 were promoted as Head Mistress respectively and on receipt of such an application, the 2nd respondent shall pass appropriate orders by notionally promoting the petitioner to the post of Head Mistress from the date on which the respondents 4 to 6 came to be promoted."

6. Accordingly, the petitioner is directed to make another representation. On receipt of such representation, the respondents are directed to consider the same and pass appropriate orders, in the light of the order passed in W.P.No.15305 of 2005 dated 05.03.2019 within a period of twelve weeks from the date of receipt of the representation made by the petitioner.

7. With the above direction, the present Writ Petition stands allowed. No costs.

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Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

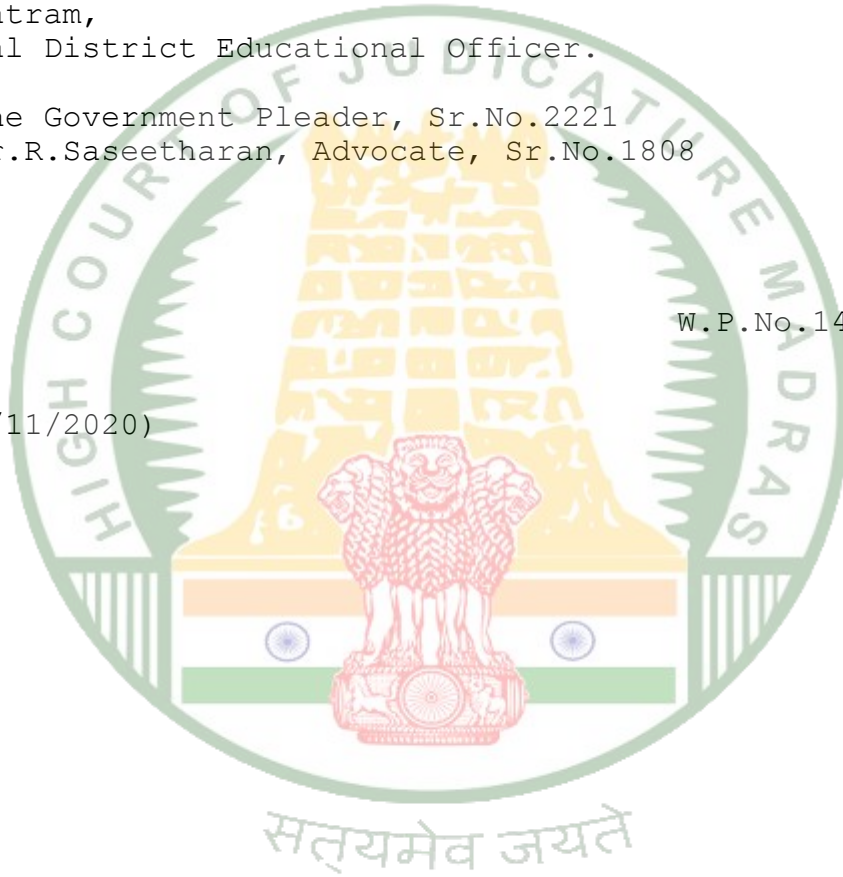
To

1. The Director of Elementary Education,
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2. The District Elementary Educational Officer,
Namakkal District,
Namakkal.
3. The Asst.Elementary Educational Officer,
Puduchatiram Panchayat union,
Puduchatram,
Namakkal District Educational Officer.

+1cc to the Government Pleader, Sr.No.2221
+1cc to Mr.R.Saseetharan, Advocate, Sr.No.1808

W.P.No.14918 of 2005

ajs (co)
rr ii (03/11/2020)



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