

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE :23.09.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOS. 27674 & 27675 OF 2013
and
M.P.Nos.1,1, 2 & 2 of 2013

R.Lakshmidevi ... Petitioner in WP.NO.27674/2013

P.Selvi ... Petitioner in WP.NO.27675/2013

- Vs -

- 1.The Government of Tamil Nadu rep by
its Secretary to Government,
School Education Department,
Fort. St. George, Chennai 600 009.
- 2.The Director of Elementary Education,
college Road, Chennai 600 006.
- 3.The District Elementary Educational Officer,
Tiruppur District, Tiruppur.
- 4.The Additional Asst. Elementary Educational Officer,
Palladam Panchayat Union,
Tiruppur District. ... Respondents 1 to 4 in both WPs.
- 5.Tmt.P.Chithra ... 5th Respondent in WP.27674/2013
- 6.Tmt.K.Banulatha ... 5th Respondent in WP.27675/2013

Writ petitions filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorarified mandamus, calling for the records of the 1st and 3rd respondent in relation to Para 3 and 4 of Order passed in G.O.(1D) No.129 School Education (E1) Department dated 9.5.2013 and quash the same in so far as it permits transfer on promotional post from one District to another District and from one Panchayat Union to another Panchayat Union and in so far as the petitioner is concerned and quash the consequential order passed in Na.Ka. No.182/A5/ 2013 dated 20.6.2013 and 12.06.2013 respectively and issue a consequential direction to the respondents 1 to 4 to promote the petitioner as B.T.Assistant (Maths) in Palladam

Panchayat Union as per the panel prepared as on 1.1.2013 with consequential service and monetary benefits.

In Both WPs.

For Petitioner :Mr.R.Saseetharan

For Respondents:Mr. S.Sureshkumar, G.A (Edn)

:M/S.P.Saravanan for R5 in WP.27675/2013

COMMON ORDER

As the relief sought for in both the petitions are similar, they are disposed of by this common order.

2. These writ petitions are filed by the petitioners to call for the records of the 1st and 3rd respondent in relation to Para 3 and 4 of Order passed in G.O.(1D) No.129 School Education (E1) Department dated 9.5.2013 and quash the same in so far as it permits transfer on promotional post from one District to another District and from one Panchayat Union to another Panchayat Union and in so far as the petitioner is concerned and quash the consequential order passed in Na.Ka. No.182/A5/ 2013 dated 20.6.2013 and 12.06.2013 respectively and issue a consequential direction to the respondents 1 to 4 to promote the petitioner as B.T.Assistant (Maths) in Palladam Panchayat Union as per the panel prepared as on 1.1.2013 with consequential service and monetary benefits.

3. According to the petitioners, both were appointed as Secondary Grade Teachers in Palladam Panchayat Union in the year 2004. On 15.09.2006, the State Government prescribed a ratio of 50:50 for the post of B.T.Assistant in Maths, Science and English to teach VI to VIII standards, for direct recruitment and promotion of existing secondary grade teachers. Though the petitioners were possessed of eligible qualifications for promotion to the post of B.T.Assistant (Maths) in the Palladam Panchayat Union and were in the seniority list of Secondary Grade Teacher their names were shown at ranks No.45 and 55 respectively. Though three persons relinquished their right for promotion, instead of promoting the petitioners, by impugned proceedings the District Elementary Educational Officer filed up two posts by transferring the respective 5th respondents namely Tmt.P.Chithra and Tmt.K.Banulatha by depriving the petitioners of their promotional opportunities. Hence the present petitions have been filed by the petitioners.

4. Learned counsel appearing for the petitioners submitted that as per the Tamil Nadu Elementary Educational Subordinate Service Rules, under Rule 9, each Panchayat Union is the unit for appointment and under Rule 10, the Director of Elementary Education alone has jurisdiction to transfer a teacher from one

Revenue District to another Revenue District. In this case the transfer from Erode District to Tiruppur District i.e., from one Revenue to another Revenue District has been effected by the District Elementary Educational Officer, Tiruppur, which is against the statutory prescription. Therefore the order of transfer is liable to be set aside. He further submitted that though persons with requisite and eligible qualifications were available in one unit, viz., the petitioners, however, to their detriment, persons from another unit have been transferred, which is wholly against the rules. In this regard, learned counsel for the petitioners relied on the decision of this Court in W.P.No. 17040 & 17041 of 2014 which was held against the respondents and on appeal in W.A.No.1164 & 1205 of 2019, the Division Bench of this Court approved the order of learned Single Judge. Hence the learned Counsel appearing for the petitioners requested this Court to extend the benefits in favour of the petitioners.

5. Though notice was ordered on the 5th respondent in WP.No.27674 of 2013, when the matter is taken up, there is no representation for the 5th respondent in WP.No.27674 of 2013. However, in view of the order, which this Court proposes to pass, the absence of the counsel for the 5th respondent would be in no way detrimental to the case of the respondents.

6. In WP.No.27675/2013, learned counsel appearing for the 5th respondent namely K.Banulatha, appeared before this Court and submitted that, by invoking the Government Order(1D) No. 129 dated 12.06.2010, the petitioner was transferred from Pudukotai District to Tirupur District. In view of the above said G.O., the petitioner's transfer was made. However, it would suffice if the petitioners seniority is considered in accordance with rules for grant of promotion vis-a-vis the respective 5th respondent herein on the basis of unit-wise seniority.

7. On the above contention, this Court heard the learned Government Advocate as well as other counsel appearing for the respondents. Learned counsel appearing for the 5th respondent, viz., Chitra in WP.No.27675/2013 submitted that the 5th respondent would not have any grievance if she is transferred to Coimbatore District and be considered in the vacancies that arise for promotion and the case of the 5th respondent is considered in accordance with law.

8. It is submitted by the respondents that insofar as the 5th respondent, viz., Chitra is concerned, she has already been transferred to some other place. As already stated, it is submitted that the 5th respondent, viz., K.Banulatha, in WP.

No.27675/2013, is ready and willing to go and join in the Coimbatore District.

9. It is not in dispute that persons with the requisite qualifications were available in the unit to which the respective 5th respondent has been transferred. Further, considering the facts and circumstances, in view of the above undisputed position with regard to the rule and also the fact that the respective 5th respondents are ready and willing to be transferred without detriment to their seniority for further promotion, this Court following the order of the Division Bench in W.A. No.1164 & 1205 of 2019, grants liberty to the 5th respondent in both petitions, to make written request to the concerned authorities for their transfer from Tiruppur District to Coimbatore District, if not already transferred. If any such request is made, the 5th respondent shall be re transferred to their respective union from which they have been transferred or other unions by the concerned official respondents without detriment to their seniority in their parent union. The said exercise shall be completed by the respondents within a period of three months from the date of receipt of a copy of this order.

10. In the result, these writ petitions are allowed with the aforesaid observations and directions. In the circumstances of the case, there shall be no order as to costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Government of Tamil Nadu rep by its Secretary to Government, School Education Department, Fort. St. George, Chennai 600 009.
2. The Director of Elementary Education, college Road, Chennai 600 006.
3. The District Elementary Educational Officer, Tiruppur District, Tiruppur.
4. The Additional Asst. Elementary Educational Officer, Palladam Panchayat Union, Tiruppur District.

+1cc to the Government Pleader, S.R.No.31272
+1cc to the Government Pleader, S.R.No.31275

W.P. NOS. 27674 & 27675 OF 2013

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