

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Judgment Reserved on : 20-08-2020

Judgment pronounced on : 25-09-2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR. JUSTICE C. SARAVANAN

Writ Appeal No. 2153 of 2019

(Heard through Video-conferencing)

P. Valarmathi .. Appellant

Versus

1. The Director of Elementary Education
Office of the Director
DPI Complex, College Road
Chennai - 600 006
2. The District Elementary Education Officer
Salem District
3. The Additional Assistant Education Officer
Mechery
Salem District .. Respondents

Appeal filed under Clause 15 of The Letters Patent against the Order dated 26.10.2018 passed in WP No. 26830 of 2009 on the file of this Court.

Prayer in WP No. 26830 of 2009:

Writ Petition filed under Article 226 of the Constitution of India Praying for issuance of a Writ of Ceritorarified Mandamus to call for the records pertaining to the proceedings of the second respondent in his proceedings No.Na.Ka.No.1194/Aa3/2009 dated 20.03.2009 and quash the same as illegal and direct the respondents to fix the seniority of the petitioner by taking into account of her original appointment in the post of craft teacher.

For Appellant	:	Ms. A. Arulmozhi
For Respondents	:	Ms. Narmadha Sampath
		Additional Advocate General
		assisted by Mr. A. Raja Perumal
		Additional Government Pleader

JUDGMENT

R. SUBBIAH, J

The appellant has come up with this intra-court appeal aggrieved by the order dated 26.10.2018 passed by the learned single Judge dismissing the Writ Petition No. 26830 of 2009 filed by her.

2. The appellant has filed WP No. 26830 of 2009 before the learned single Judge praying to issue a Writ of Certiorarified Mandamus to quash the proceedings dated 20.03.2009 of the second respondent and to issue a consequential direction to the respondents to re-fix her seniority by taking into account her original appointment in the post of Craft Teacher.

3. The appellant was appointed as a Part Time Craft Teacher by proceedings dated 02.10.1984 of the District Educational Officer, Sankagiri. The appellant joined the post as Craft Teacher on 17.10.1984 in Vaikundam Panchayat Union Middle School. Subsequent to her appointment, by proceedings dated 08.11.1984 of the District Educational Officer, Sankagiri, the post of Part Time Craft Teacher was declared as Full Time Craft Teacher and therefore, the benefit of the same was extended to the appellant and her appointment in the post of Part Time Craft Teacher was treated as Full Time Craft Teacher with effect from her original date of appointment namely 17.10.1984. During the course of her employment, the appellant had undergone Secondary Grade Teacher Training and obtained a Diploma in Teacher Education in the year 1997. She also obtained a Degree in Bachelor of Education (B.Ed.,) during 2000. On the basis of the qualification and experience of the appellant, by proceedings dated 16.11.2001 of the District Elementary Educational Officer, she was appointed as Secondary Grade Teacher by transfer of service from Craft Teacher and posted at Aranganur Panchayat Union Middle School, by proceedings dated 22.11.2001 of the Additional Assistant Educational Officer. Subsequently, the appellant was promoted as Graduate Assistant by proceedings dated 26.11.2006 of the District Elementary Educational Officer, Salem. When the appellant was working as Graduate Assistant, by proceedings dated 27.11.2008 of the Additional Assistant Elementary Educational Officer, Mechery, she was transferred and posted as Graduate Assistant at Karcharayanaur Panchayat Union Middle School. In the meantime, on 24.11.2008, the appellant acquired M.A. Degree and therefore, she asserts that she is fully qualified and the senior most person in the cadre of Graduate Assistant in Mechery Panchayat Union. It is her contention that even though she was appointed by transfer of service from the post of Craft Teacher to Secondary Grade Teacher, her seniority for promotion has been fixed only based on her date of joining the post of Secondary Grade Teacher. However, the appellant has been treated as junior to those teachers who were appointed in the year 2006 and got their probation declared in the year 2008. It is also contended that even though the name

of the appellant was included in Serial No.1 in the panel for promotion to the post of Middle School Headmaster, it was unceremoniously scaled down to Serial No.9 owing to the inclusion of the teachers who were appointed in the year 2006 and whose probation was declared only during the year 2008. In such circumstances, challenging the scaling down of the seniority of the appellant in the panel for promotion to the post of Middle School Headmaster for the year 2009, the appellant has filed WP No. 25079 of 2009 before this Court. According to the appellant, if her seniority has been fixed from the date of her initial appointment as Craft Teacher and further promoted in the same year as Graduate Assistant, she would have been promoted to the post of Headmaster of Elementary School and subsequently would have got promotion to the post of Middle School Headmaster.

4. The appellant would vehemently contend that as per Rule 35 B of The Tamil Nadu State and Subordinate Service Rules, the transfer of a person, from one class or category of a service to another class or category carrying the same pay or scale of pay shall not be treated as first appointment to the latter for the purpose of determining seniority and the seniority of a person so transferred shall be determined with reference to the rank in the class or category from which he was transferred. By applying Rule 35B, the appellant would contend that she is entitled to count her seniority from the date of appointment in the post of Craft Teacher. The appellant also submitted a representation reiterating her claim for counting her seniority from the date of her initial appointment, but it was rejected by the second respondent by proceedings dated 20.03.2009. Therefore, challenging the proceedings dated 20.03.2009, the appellant has filed the aforesaid Writ Petition No. 26830 of 2009 before the learned single Judge.

5. Opposing the writ petition, the respondents have filed a counter affidavit contending that the qualification prescribed for Craft Teacher is pass in SSLC with Tailoring Course, whereas the qualification for holding the Secondary Grade Teacher Post is SSLC/+2 with Diploma in Teacher Education. The appellant was absorbed as Secondary Grade Teacher only after she possessed Diploma in Teacher Education, therefore, Rule 35B of Tamil Nadu State and Subordinate Service has no application to the case of the appellant. It is further stated that during the year 2003, in order to improve the standard of education from Standards VI to VIII, the Government issued G.O. Ms. No.100 dated 27.06.2003 for appointment of B.Ed., qualified Teachers in the place of Secondary Grade Teachers and they were designated as Junior Grade BT Assistants on consolidated pay. Subsequently, the Government had taken a policy decision to cancel the consolidated pay scheme, instead, regulated their pay in the regular time scale of pay of Rs.5500-175-9000 with effect from 01.06.2006, which is higher than that of the Secondary Grade scale of pay of Rs.4500-125-7000 by re-designating them as B.T. Assistants.

6. On the other hand, the appellant was appointed as Craft Instructor on 17.10.1984. On 31.12.1991, she was transferred from Tharamangalam Union to Mecheri Panchayat Union while she was working as Craft Instructor. On 17.10.1994, the appellant was conferred Selection Grade in the cadre of Craft Instructor. While she was working as Special Grade Craft Instructor, she was absorbed as Secondary Grade Assistant and posted at Panchayat Union Middle School, Aranganur, Mecheri Union with effect from 23.11.2001. According to the respondents, the scale of pay for the post of Craft Instructor and Secondary Grade Assistant are one and the same and that is the reason why, the appellant was conferred with Special Grade in the cadre of Craft Instructor on 17.10.2004. While so, as mentioned above, even in the year 2003, the Consolidated pay Junior Grade B.T. Assistants were appointed and they were subsequently brought into regular time scale of pay of Rs.5500-175-9000 and re-designated as B.T. Assistants with effect from 01.06.2006. The scale of pay fixed in favour of those re-designated B.T. Assistants was higher than that of the Secondary Grade scale of pay of Rs.4500-125-7000. Therefore, the appellant cannot seek parity on par with the Junior Grade B.T. Assistants appointed in the year 2003 and who were subsequently designated as B.T. Assistants in the regular time scale of pay. It is also stated that for the purpose of appointment, promotion and transfer, each panchayat union shall be treated as a unit. Even though the Teachers Recruitment Board selected the candidates, appointment orders or transfer orders were issued by the District Elementary Educational Officer, Salem. Therefore, for the purpose of seniority, the date of joining duty in the concerned category in the block alone will be the criteria and on transfer, the transferred person will be placed as the junior most among the Probationers/approved Probationers as the case may be. In such circumstance, the respondents would contend that the fixation of seniority and the promotion conferred to the B.T. Assistants cannot be questioned by the appellant and therefore prayed for dismissal of the writ petition.

7. The learned counsel for the appellant would contend that the learned single Judge did not consider Rule 35 B of The Tamil Nadu State and Subordinate Service Rules in the proper perspective. As per Rule 35 B, the appellant's service from 17.10.1984 in the cadre of Craft Teacher has to be taken into account for the purpose of reckoning her seniority. When the appellant was conferred with selection grade and special grade in the cadre of Craft Teacher, she is entitled for reckoning her seniority from the date of her initial appointment. Even though the appellant's name was included in Serial No.1 in the panel for promotion to the post of Middle School Headmaster, without any notice, the panel was altered and the appellant was scaled down to Serial No.9 purportedly to accommodate those teachers who were appointed only in the year 2006 and whose probation was declared only during the year 2006. The appellant was transferred to Mecheri Union as Craft Teacher on 31.12.1992 and absorbed as Secondary Grade Assistant on 22.11.2001. The scale of pay for the post of Craft Teacher

and Secondary Grade Assistant was one and the same, while so, the respondents ought to have considered the claim of the appellant for counting her services from the date of original appointment as per Rule 35 (f) immediately after her appointment as Secondary Grade Teacher. The respondents, having conferred the service benefits as per Rule 35 (b), ought to have granted seniority to the appellant. It is also contended that as per Elementary Education Service Rules, the unit for seniority and promotion of Elementary School Teachers is the Union in which the Teacher is transferred or working. Therefore, the appellant is entitled to count her seniority from the date of her transfer from Tharamangalam Union to Mechery Union on 31.12.1992 and in such event, the appellant is entitled to get promoted to the post of Elementary School Headmaster. The learned single Judge did not consider the above aspects and therefore, the learned counsel for the appellant prayed this Court for allowing this writ appeal.

8. Per contra, Ms. Narmada Sampath, learned Additional Advocate General would contend that the appellant was appointed as Craft Teacher on 17.10.1984 and subsequently she was absorbed as Secondary Grade Assistant and posted in Panchayat Union Middle School, Aranganur, Mecheri Union from 23.11.2001. Subsequently, the appellant was conferred with promotion to the post of Graduate Assistant on 26.11.2006. While so, the appellant submitted a representation dated 20.02.2009 requesting to take into account the original date of her appointment to grant her seniority in the post of Secondary Grade Assistant. The representation was rejected by the second respondent on 20.03.2009 by stating that her seniority has been rightly fixed as per the proceedings dated 18.12.2008 of the first respondent. Challenging the same, the appellant has filed the instant petition in WP No. 26830 of 2009 before this Court.

9. The learned Additional Advocate General would submit that in the order dated 16.11.2001 appointing the appellant as Secondary Grade Assistant by transfer, it was clearly stated that the seniority of the appellant would be fixed from the date of her joining as Secondary Grade Teacher. However, this order has not been challenged by the appellant till this date. Therefore, the appellant is estopped from claiming that her seniority has to be fixed from the date of her initial appointment as Craft Teacher. Furthermore, based on the seniority of the appellant in the cadre of Secondary Grade Assistant, she was promoted to the post of B.T. Assistant on 27.11.2006. In such circumstances, according to the learned Additional Advocate General, Rule 35 B of the Tamil Nadu State and Subordinate Service has no application to the case of the appellant. The learned Additional Advocate General also placed reliance on the decision of the Honourable Supreme Court in the case of (K. Meghachandra Singh and others vs. Ningam Siro and others) reported in 2019 SCC Online SC 1494. In that case, the Honourable Supreme Court had an occasion to consider the inter se seniority between the promotees and direct recruits of Manipur Police Service Grade II Officers. The promotees in

that case before the Honourable Supreme Court contended that they entered the MPS Grade II Cadre on 01.03.2007, but the direct recruitees entered into such service between 14.08.2007 and 24.11.2007 and therefore, the promotees must be considered for the purpose further promotion by placing them over and above the direct recruitees. The Honourable Supreme Court held that seniority in the service shall be determined based on the date of appointment to the service. By referring to the above decision, the learned Additional Advocate General would contend that the post of Secondary Grade Assistant is the feeder category post for promotion as B.T. Assistant. The appellant was appointed in the post of Secondary Grade Assistant only on 26.11.2001 after she obtained Diploma in Teacher Education. While she was working as Secondary Grade Assistant, based on her qualification and seniority in the post of Secondary Grade Assistant, she was appointed to the post of B.T. Assistant on 26.11.2006. On the other hand, the direct recruitees were appointed to the post of Junior Grade B.T. Assistant even on 27.06.2003 and subsequently, they were re-designated as B.T. Assistant and brought under the time scale of pay. Therefore, the claim of the appellant for fixing her seniority from the date of her initial appointment cannot be countenanced. The learned single Judge, considering the aforesaid facts, has rightly dismissed the writ petition and it calls for no interference by this Court.

10. We have heard the learned counsel for the appellant as well as the learned Additional Advocate General appearing for the respondents. Admittedly, the appellant was appointed as Part Time Craft Teacher on 02.10.1984 and she joined duty on 17.10.1984 at Vaikundam Panchayat Union. Subsequently, the District Educational Officer, Sangagiri, in his proceedings dated 08.11.1984 informed the appellant that the post of Part Time Craft Teacher, in which she was appointed, has been declared as a full time craft teacher and therefore, the benefit thereof was extended to the appellant from the date of her initial appointment namely 17.10.1984. Thus, the appellant was appointed as a Full Time Craft Teacher from 17.10.1984. During the course of such employment, the appellant was transferred from Vaikundam Panchayat Union, within Tharamangalam Block to Mecheri Block on 31.12.1991. As the appellant had acquired certain educational qualification during the course of her employment, which are morefully described above, by proceedings dated 16.11.2001 of the District Educational Officer, Salem, she was appointed as Secondary Grade Teacher by transfer of service and posted in the same school namely at Aranganur Middle School, Mecheri Union where she was working by then. It is pertinent to note that in the proceedings dated 16.11.2001 it was specifically stated that the seniority of the appellant will be calculated from the date of joining Secondary Grade Teacher as per the Government Order. Useful reference can be made to the proceedings dated 16.11.2001 as under:-

Secondary Grade Teacher. The Seniority of the said teacher will be calculated from the date of joining Secondary Grade Teacher as per the Government Order. Required entry will be made in the register of office and concerned school and the same be informed to the Additional Assistant Elementary Educational Officer."

12. Admittedly, the appellant did not challenge the order dated 16.11.2001, whereby, it was specifically stated that the seniority of the appellant will be determined only on the basis of her joining the Secondary Grade Teacher. Further, based on the seniority of the appellant, admittedly, she was conferred with promotion to the post of B.T. Assistant on 26.11.2006.

13. The grievance of the appellant is that her probation was declared on 17.10.1984 itself, however, those, whose probation was declared only on 01.06.2006 were given seniority in the post of B.T. Assistant, in the seniority list drawn for the year 2009, instead of placing her in serial No.1 thereof. This contention of the appellant cannot merit acceptance. Admittedly, only on 16.11.2001, the appellant was appointed to the post of Secondary Grade Teacher by transfer of service. The post of Secondary Grade Teacher is the feeder category post for promotion to the post of B.T. Assistant. Whereas, as per G.O. Ms. No.100 dated 27.06.2003, some of the teachers who have passed B.Ed., were appointed directly to the post of Junior Grade B.T. Assistants in the year 2003 on consolidated pay basis. When they were working as such, the Government had taken a policy decision and cancelled the consolidated pay employment and re-designated them as B.T. Assistants and they were brought into regular time scale of pay as on 01.06.2006. When those B.T. Assistants were appointed directly as Junior Grade B.T. Assistants in the year 2003, the appellant was only working as Secondary Grade Teacher. In such view of the matter, the fixation of seniority of the appellant by the respondents is in order. The appellant, for the purpose of fixing her seniority, cannot seek to take into account her original date of joining in the post of Craft Instructor on 17.10.1984. In such view of the matter, Rule 35 B of The Tamil Nadu State and Subordinate Service Rules has no application to the claim of the appellant. The fixation of seniority of the appellant, in and by the proceedings dated 20.03.2009, by the second respondent, which was impugned in the writ petition, is proper. While so, we see no reason to interfere with the order of the learned single Judge. The writ appeal filed by the appellant, therefore, deserves only to be dismissed.

13. In the result, we confirm the order dated 26.10.2008 passed by the learned single Judge in WP No. 26830 of 2009. Resultantly, the writ appeal fails and it is dismissed. No costs.

Sd/-

Assistant Registrar(CS)

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Sub Assistant Registrar

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To,

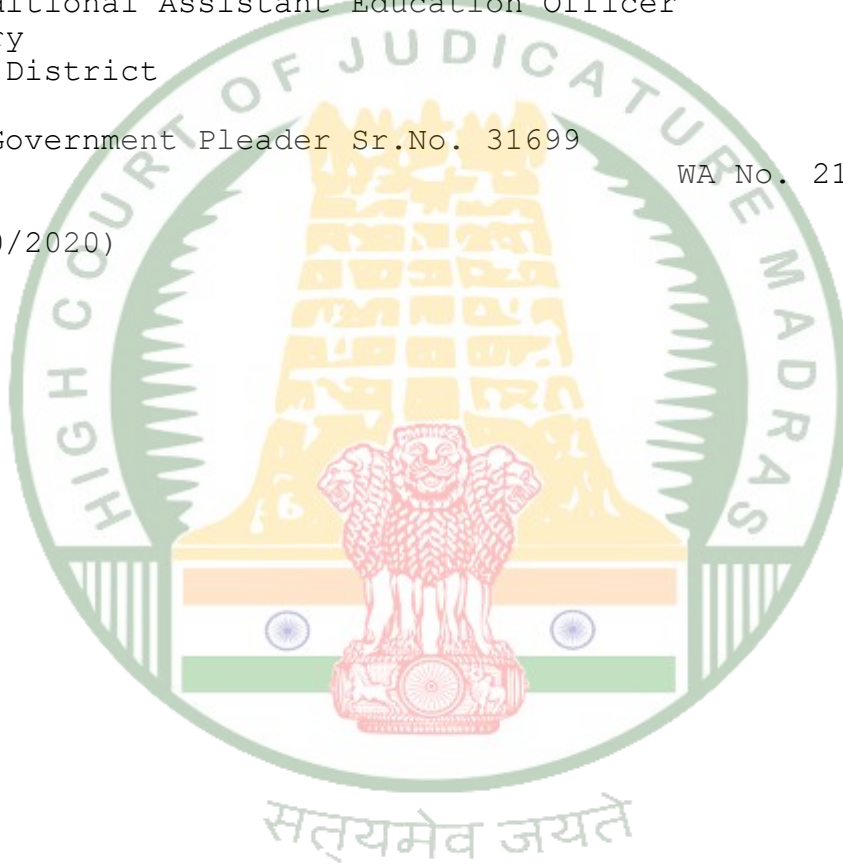
1. The Director of Elementary Education
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2. The District Elementary Education Officer
Salem District
3. The Additional Assistant Education Officer
Mechery
Salem District

+1 cc to Government Pleader Sr.No. 31699

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