IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2020

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THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P.NO.39451 OF 2016

N.Kanniah ..Petitioner

Vs

1. The Director of School Education,
DPI Campus, College Road,
Chennai – 600006.

2. The District Elementary Educational Officer,
Madurai District.

.. Respondents

Prayer:
Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the first respondent herein to include the name of the petitioner in the panel for Higher Secondary School Headmaster as on 01.01.2016 and consequently notionally grant with promotion to the petitioner to the post of Higher Secondary School Headmaster on the date when his immediate junior was promoted and consequently refix the pension of the petitioner in the post of Higher Secondary School Headmaster.

For Petitioner : M/s.Dakshayani Reddy

For Respondents : Mrs.P.Kavitha, GA

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O R D E R

The prayer sought for in the Writ Petition is to direct the first respondent herein to include the name of the petitioner in the panel for Higher Secondary School Headmaster as on 01.01.2016 and consequently notionally grant with promotion to the petitioner to the post of Higher Secondary School Headmaster on the date when his immediate junior was promoted and consequently refix the pension of the petitioner in the post of Higher Secondary School Headmaster.

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2. Heard the learned counsel for the petitioner and learned Government Advocate appearing for the respondents and perused the documents available on record.

3. The learned counsel for the writ petitioner has submitted that the writ petitioner was appointed as PG Assistant by the Teachers Recruitment Board in the year 1998 and joined as PG Assistant (Zoology) in T.S.S. Government Higher Secondary School at Papparapatti, Dharmapuri District w.e.f. 18.10.1998. At the time of appointment his seniority was fixed at 178. After serving in various places, the writ petitioner retired from service on superannuation on 31.05.2016, while he was serving at Government Higher Secondary School, Thiruvadavoor, Madurai District.

4. It is further submitted that the first respondent preapred a panel list for promotion as on 01.01.2015, in which the petitioner's name was not included for the reason insufficient vacancies. Subsequently, the writ petitioner's name was included in the panel for promotion as on 01.01.2016. Since the crucial date for preparation of panel was on 01.01.2016, the first respondent vide proceedings dated 30.12.2015 sought for names for inclusion in the panel for promotion to the post of Higher Secondary School Headmaster as on 01.01.2016. Accordingly, the petitioner gave his application for inclusion on 19.01.2016.

5. It is the contention of the respondent that as per G.O.Ms.No.368, dated 18.10.1993, the panel has to be prepared much in advance to the crucial date by taking into account the vacancies that are likely to arise in the coming year and the past vacancies, but the respondents have prepared the panel only in the month of August'2006 . Due to the said delay on the part of the respondents, he retired from service on superannuation on 31.05.2006 without getting promotion as Higher Secondary School Headmaster. Challenging the same, the present writ petition is filed.

6. On the other hand, the learned Government Advocate appearing for the respondents submitted that though the seniority list was prepared by considering the available vacancy as on 01.01.2016, the promotion will be given as on August of every year. Admittedly the petitioner retired before the month of August 2016 i.e before publishing the approved panel for the post of Higher Secondary Headmaster. Therefore, he is not entitled for promotion to the post of Higher Secondary Headmaster.

7. On considering the submissions made by the learned counsels appearing for the parties concerned and on perusal of

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records, this Court with no hesitation, has come to the conclusion that the writ petition is liable to be rejected on the following grounds;

(i). As on the date of finalisation of approved panel for promotion to the post of Higher Secondary Head Maser, the writ petitioner was not in service, therefore, the name of the writ petitioner was not included in the said panel by the respondent.

(ii) Further, the Proviso to Rule 27(17) of Fundamental Rules relying upon the writ petitioner is applicable only to the persons whose names were deferred for inclusion in the panel for promotion to higher post due to pendency of charges, but subsequently included in the same panel on exoneration of the charges after the date of their retirement on superannuation on appeal or review. But in the instant case, the writ petitioner's name was not included in the approved panel as he retired from service before the finalisation of approved panel.

In view of the above, this Court finds no force on the contentions raised by the learned counsel for the writ petitioner and therefore, the writ petition is liable to be dismissed.

In the result, the writ petition is dismissed as devoid of merits. No costs.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

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To

1. The Director of School Education,
   DPI Campus, College Road, Chennai - 600006.

2. The District Elementary Educational Officer,
   Madurai District.

+1cc to the Government Pleader, S.R.No.7178

W.P.No.39451 of 2016

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