

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 01.12.2020

Delivered on: 11.12.2020

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.Nos.14946 & 14948 of 2020

and

W.M.P.Nos.18581 & 18583 of 2020

D.Sasikumar ...Petitioner in W.P.No.14946/2020

V.Kalaiarasi ...Petitioner in W.P.No.14948/2020

Vs

1. The Director,
Elementary Education,
DPI Campus,
Nungambakkam,
Chennai- 600 006.
2. The District Education Officer,
Perundurai District,
Perundurai. ...Respondents in both the W.Ps.

Common Prayer:

Writ Petitions filed under Article 226 of the Constitution of India praying Writ of Certiorari Mandamus to call for the records relating to the proceeding issued by the 2nd respondent in Na.Ka.No.3205/Aa1/2018 dated 25.04.2019 and consequential order passed by the 2nd respondent Na.Ka.No.461/A4/2018 dated 23.09.2020 and quash the same and for a consequential direction to the respondents to give notional promotion to the petitioners as BT Assistant - English with effect from 19.06.2014 with all other attendant benefits.

For Petitioners : Mr.N.G.R.Prasad
for Ms. L.Parvin banu

For Respondents: Mr.C.Munusamy
Special Government Pleader

C O M M O N O R D E R

The matter is taken up through web hearing.

The grievances of the writ petitioners herein are one and the same and the issues that arise for consideration for this Court is also the same and identical. Therefore, both the writ petitions are disposed of by a common order as under.

2. The facts in W.P.No.14946/2020 are stated hereunder in order to understand the backdrop that gave rise to the filing of the present writ petitions by both the petitioners and ultimately, the conclusion to be arrived at by this Court will hold good for both the writ petitions.

3. The petitioner herein was appointed as Secondary Grade Teacher on 04.12.2006. After successfully completing his probation, he joined Chennimalai Union on 02.06.2009. The petitioner was a graduate in English and also obtained B.Ed. Degree. He was therefore, qualified for promotion to the post of B.T. Assistant (English). According to the petitioner in 2013, he came within the zone of consideration for promotion and his name was also included in the seniority list in the year 2013 in Chennimalai Union.

4. For the year 2013, one Ms.S.Vidya was assigned Serial No.1, the petitioner herein as Serial No.2 and the other petitioner, Mrs.V.Kalaiarasi as Serial No.3 for promotion to the post of B.T.Assistant (English). The promotion counselling for the said year was conducted. It appears that the 1st candidate, Ms.S.Vidya was promoted with effect from 19.06.2014. At that time, a Writ Appeal was pending in W.A.No.529/2013 before this Court on an issue whether the degrees obtained by certain candidates could be considered as valid for promotion to the post of B.T.Assistant. Learned single Judge who originally heard the matter observed that the Secondary Grade Teacher who had obtained one year degree will not be eligible for promotion and only those teachers who possess three years degree in the concerned subject and B.Ed. were eligible for such promotion. The appeal, which was filed, was heard by the Division Bench and on the basis of the interim orders granted by the Division Bench, the Government was permitted to go ahead with the counselling for promotions. Pending disposal of the said Writ Appeal, the authorities have resorted to promoting the candidates from other Union at the cost of promotional prospects of these writ petitioners in their Union. In view of the action of the authorities by promoting candidates and posting them in Chennimalai Union, the petitioners herein were not granted promotion though they were eligible in 2013 itself.

5. The writ appeal was finally dismissed on 05.02.2014. These petitioners who were overlooked at that time in view of the pendency of the Writ Appeal and also promotion of candidates

from other Union unjustly and contrary to the Rules, have approached this Court in W.P.Nos.17040 and 17041 of 2014, challenging the transfer and posting of B.T. Assistant from other Union. The teachers who were posted from the Union concerned were arrayed as the respondents in the writ petitions. The writ petitions were heard by a learned Judge of this Court and by order dated 04.06.2018, the writ petitions were allowed by directing the respondents to promote the petitioners herein as B.T. Assistant (English) in Chennimalai Union and while giving such direction, the Court has also directed, if necessary, to create two supernumerary posts in order to accommodate these two writ petitioners. As against that, the respondents had filed W.A.Nos.1164 and 1205/2018. In the meanwhile, the petitioners were granted promotion as B.T. Assistant (English) vide order dated 25.04.2019.

6. The writ appeals came to be disposed of on 26.04.2019 by making some observation that the petitioners herein ought to have been granted promotion from 2013, instead of 25.04.2019. But however, it was left open to these petitioners to pursue their appropriate remedy before the concerned forum in accordance with law.

7. The petitioners herein have also filed Contempt Petition Nos.99 & 100/2019 complaining violation of the order passed by the learned Single Judge of this Court in W.P.Nos.17040 and 17041/2014 dated 04.06.2018 namely, that promotion was given to them only with effect from 25.04.2019. However, the learned Judge closed the Contempt Petitions on the ground that the order passed by the learned single Judge have merged with the Writ Appeal order and therefore, no Contempt Petition could lie before the Single Judge. These petitioners thereafter, approached this Court once again in W.P.No.25905 & 25908/2019 seeking a direction to dispose of their representation dated 06.05.2019 for the relief of promotion with effect from the due date as given to their colleague one Ms.S.Vidya with effect from 19.06.2014. The writ petitions were disposed of by the learned Judge of this Court on 04.09.2019, directing the authorities to pass orders within the time stipulated therein. In pursuance of the direction, the 2nd respondent, by his proceedings dated 23.09.2020, rejected the claim of the petitioners for retrospective promotion on the ground that the posts for which, the claim is made by these petitioners had been occupied by incumbents during the period and therefore, there was no question of granting any retrospective promotion from the year 2013 or so. In the aforesaid circumstances, these petitioners are before this Court challenging their promotion order dated 25.04.2019 and the rejection order dated 23.09.2020 insofar as granting them promotion only with effect from 25.04.2019.

8. Notice was issued in the writ petitions and on behalf of the respondents, Mr.C.Munusamy, learned Special Government has entered appearance and detailed counter affidavits have also

been filed in both the writ petitions.

9. Learned Advocate Mr.N.G.R.Prasad, appearing for these petitioners submitted that promotion order dated 25.04.2019 and the rejection order dated 23.09.2020 are contrary to the spirit of the order passed by the Single Judge as well as the Division Bench in favour of these petitioners. He would particularly refer to the succinct observation of the learned Single Judge in paragraph No.8 of the judgment dated 04.06.2019 in W.P.Nos. 17040 & 17041/2014.

8. Therefore, in all fairness of the things the transfers made during the pendency of the writ appeal should have been revisited and the private respondents should have been transferred from the fourth respondent Union to any other Union and against the vacancies cause, the petitioners should have been promoted on counselling as their eligibility for promotion is not in dispute and vacancies were also there to accommodate them after such transfer. The same is more so in view of the order passed by this Court in the W.P.No.9127 of 2014 and batch inasmuch as therein this Court had clearly observed that vacancies that occurred in the post of B.T.Assistant in a particular subject from 01.01.2013 to 31.12.2013 are required to be filled up by the candidates eligible on the crucial date of that year i.e., 01.01.2013.

10. According to the learned counsel, when the learned Judge has observed that after disposal of W.A.No.529/2013, the Government should have revisited the entire promotional exercise which meant that whatever action that was taken in 2013, namely, inclusion of candidates from other Unions and not promoting these petitioners as B.T. Assistant in that panel year, should have been revisited to the advantage of these petitioners.

11. Learned counsel therefore, would submit that unfortunately despite these petitioners being successful all along, ultimately, they have been granted promotion which was admittedly due to them in 2013, only from 25.04.2019. Learned counsel would also refer to certain observations of the Division Bench of this Court, while disposing the Writ Appeals in W.A.Nos.1164 and 1205/2019 dated 26.04.2019 wherein in one of the hearings the Division Bench has made observation as under.

"We have already indicated that the Appellants were not justified in transferring the teachers in the post of B.T. Assistants from other Unions thereby denying the chances of promotion to the respective first respondent in the intra-Court appeals."

12. The above observation of the Division Bench has only

strengthened the claim of the petitioner for retrospective promotion. Therefore, the learned counsel would submit that in all fairness the petitioners should have been granted promotion with effect from the date when the first candidate was promoted for the panel year 2013, namely Ms.S.Vidya. According to the learned counsel, she was promoted as B.T.Assistant (English) with effect from 19.06.2014. In the said circumstances, learned counsel would submit that grave injustice has been done to these petitioners and despite they being successful before this Court, but yet ultimately, lost out in not being granted promotion when the same was due to them along with their colleague Ms.S.Vidya.

13. Learned counsel would also submit that the 2nd respondent's reason for not granting retrospective promotion to these petitioners cannot be countenanced in law for the simple reason that the posts that were occupied by the earlier incumbents who were illegally transferred and posted which was ultimately found to be invalid. In that case, the status quo ante ought to have been restored so far as the petitioners were concerned. Otherwise, the very challenge by these petitioners of the transfer and posting of the teachers from other Unions has ultimately ended in futile exercise without any benefit to them in material terms, despite they being successful before this Court. Therefore, he would submit that the impugned orders are liable to be set aside and the direction as prayed for may be granted by this Court.

14. Per contra, the learned Special Government Pleader for the respondents would strongly object to the relief being granted to these petitioners that they were in fact, directed to be accommodated only against supernumerary posts and after the Writ Appeals in W.A.Nos.1164 & 1205/2019 were disposed of on 09.04.2019, the two B.T. Assistants who were occupying the posts meant for these petitioners were sent back to their respective Union. He would therefore, submit that only when those two teachers had been transferred back to their respective Union, by proceedings of the 2nd respondent dated 25.04.2019, the petitioners could be accommodated in the resultant vacancies with effect from 25.04.2019. Therefore, these petitioners cannot claim any retrospective promotion as no vacancies were available from the date on which these petitioners were seeking promotion. In any case, according to the learned counsel, no juniors to the petitioners have been promoted, in the meanwhile. Therefore, there are no merits in the writ petitions and that the same may be dismissed.

15. Upon consideration of the pleadings, the materials placed on record and also the arguments of the learned counsel for the petitioners Mr.N.G.R.Prasad and the learned Special Government Pleader this Court finds that the issue that emerges for appreciation is whether these petitioners are entitled to be granted promotion as B.T.Assistant (English) on par with Ms.S.Vidya from 19.06.2014, in the facts and circumstances of

the case or not.

16. The factual narrative as above would indisputably disclose that the posts which were available for promotion of these petitioners for the panel year 2013, namely B.T. Assistant (English) in the Chenniamalai Union, had been filled up unjustly by transferring two teachers from outside the Union. Ultimately, their transfers were held to be invalid and when the Division Bench of this Court in the above Writ Appeals mandated authority to re-transfer them to their respective Union, the authority has passed orders on 25.04.2019 transferring those two teachers from other Union and promoting these writ petitioners on the same day.

17. As rightly contended by the learned counsel Mr.N.G.R.Prasad that the learned Single Judge of this Court has observed that the whole promotional exercise should have been revisited after the disposal of the earlier W.A.No.529/2013 on 05.02.2014. The pendency of litigation for some time before this Court had in fact enured to the advantage of the unjust and illegal promotees at the cost of legitimate claim for promotion of these petitioners. These petitioners who have been agitating their rights before this Court and ultimately, having been successful in their legal challenge, cannot be placed in a worse position than what they could have suffered even without the challenge.

18. This Court finds that when two teachers who had been transferred from other Union during the pendency of litigations before this Court, in exclusion of the rightful claim of these petitioners, when the litigations have reached finality in favour of the petitioners, in all fairness, the status quo ante ought to have been restored in respect of the claim of these petitioners. In the absence of such restoration, the petitioners succeeding before this Court would have no meaning at all in terms of their career prospects, at the end of the day.

19. The only reason that is set forth in the rejection order is that the posts were occupied by the earlier incumbents/transferees from other Union and therefore, the question of accommodating these petitioners from earlier date was not administratively possible. Such contention on the part of the respondents is without any justification and the same is opposed to fair play and good conscience. No doubt, factually the posts were occupied by the two teachers from outside the Chennimalai Union, yet, while their transfers and posting were ultimately held to be invalid, those teachers who occupied the two posts during the relevant period had become squatters on the posts till 25.04.2019. In that circumstances, the authorities who had earlier committed administrative lapse in transferring and posting of candidates from other Unions cannot hold the same lapse against these petitioners' claim. The fairness demands that when an administration takes an erroneous decision, the authorities are required to salvage that infraction by

reviewing their decision in favour of the petitioners. Instead they cannot pass on the adverse consequence of their incorrect action on the petitioners which was set aside by this Court. Therefore, for securing the ends of justice, the only option to the authorities is to grant promotion to these petitioners from the date when their colleague, Ms.S.Vidya was promoted with effect from 19.06.2014, any other conclusion by this Court would only result in gross miscarriage of justice, particularly, in the face of the fact that these petitioners, have been fighting before this Court for enforcing their right and have also been successful all along.

20. It is unfortunate that the authorities exhibiting pedantic understanding in a situation like this have taken a simplistic decision to reject the petitioner's claim on the ground that the posts were not vacant during the relevant period. In the considered opinion of this Court, such a stereo type stand of the authorities is to be rejected outright in the facts and circumstances of the case.

21. For the above said reasons, both the Writ Petitions are allowed. The other impugned order in Na.Ka.No.3205/Aa1/2018 dated 25.04.2019 is set aside insofar as it grants promotion to the petitioners with effect from 25.04.2019 and the other impugned order in Na.Ka.No.461/A4/2018 dated 23.09.2020 of the 2nd respondent is hereby quashed as illegal and void.

22. The respondents are directed to grant promotion to these petitioners as B.T. Assistant in Chennimalai Union with effect from 19.06.2014 and grant them all notional benefits including seniority etc. The respondents are directed to pass appropriate orders within the period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

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vsi

Sub Assistant Registrar

To

1. The Director,
Elementary Education,
DPI Campus,
Nungambakkam,
Chennai- 600 006.

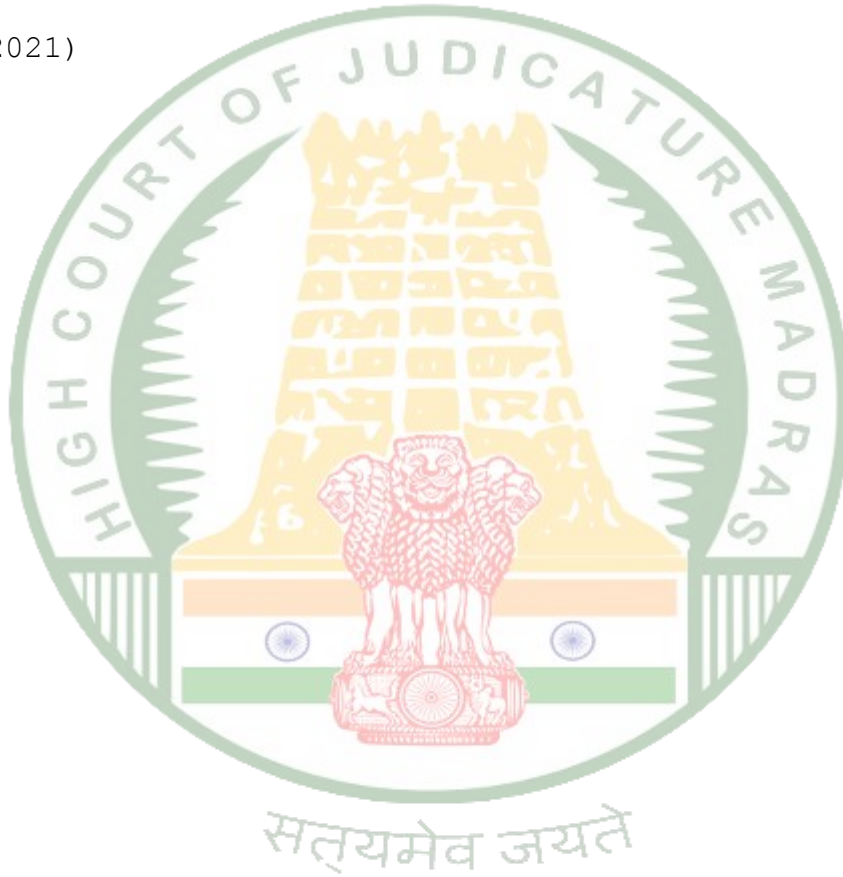
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2. The District Education Officer,
Perundurai District,
Perundurai.

+1cc to M/s.Row & Reddy, Advocate, S.R.No.40253
+1cc to the Government Pleader, S.R.No.40704

Pre-delivery order made in
W.P.Nos.14946 & 14948 of 2020

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