

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SUBRAMONIUM PRASAD

W.A.No.2859 of 2019

and

C.M.P.Nos.18364 and 20291 of 2019

- 1.The Chief Educational Officer,
Salem District, Salem.
 - 2.The District Educational Officer,
Salem Rural, Salem District.
 - 3.The Secretary,
Velasamy Chettiar Higher Secondary School,
Omalar - 636 401,
Salem District. ... Appellants
- vs-
- R.Raja ... Respondent

Appeal filed under Clause 15 of the Letters Patent against the order dated 26.06.2019 passed in W.P.No.14096 of 2019 on the file of this Court.

WP.No. 14096 of 2019:- Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records relating to the impugned orders issued by the first respondent in Na.Ka.No.18677/B3/2018 dated 11.02.2019 and the consequential impugned order issued by the second respondent in Na.Ka.No.330/Aa2/2019, dated 11.02.2019 and further impugned order issued by the 3rd respondent in Na.Ka.No.7/2019, dated 22.04.2019 and to quash the same and consequently direct the respondents to allow the petitioner to continue to work in the post of BT Assistant (Science) in the 3rd respondent school with all consequential and other attendant benefits.

For Appellants	: Mr.C.Munusamy Spl.G.P.
For Respondent	: Mr.G.Sankaran

JUDGMENT
(Delivered by The Hon'ble Chief Justice)

Heard learned Special Government Pleader for the appellants and learned counsel for the respondent.

2.The respondent petitioner claims that he was entitled to be promoted as a P.G. Assistant (Physics) teacher in the Institution known as Velasamy Chettiar Higher Secondary School, Omalur, Salem District, appellant no.3 in this writ appeal. It is the case of the respondent that in spite of he having been entrusted with the task of teaching higher classes, had not been considered for promotion on account of the management being superseded in the Institution since 2013. The management has now been restored in March 2019. In between, treating the respondent to be surplus in the Institution as B.T. Assistant teacher, he was commanded to join in some other Institution. This gave rise to the writ petition that was filed and has been allowed, against which the present appeal has been preferred by the State.

3.Learned counsel for the appellants/State contends that it is for the management to have considered his claim for promotion in the event the vacancy was available and to send a proposal to the authorities for their consideration. But, so long as he remains as a B.T. Assistant Teacher, he falls within the category of surplus teacher in the Institution, hence, the proposal to send him to another Institution does not suffer from any infirmity and therefore, the impugned judgment deserves to be set aside.

4.Responding to the same, learned counsel for the respondent petitioner contends that the right for consideration of promotion in the same Institution as a P.G. Assistant teacher in Physics cannot be taken away in spite of the fact that the post is available, the students are available whom the respondent petitioner is still teaching and he is otherwise eligible for the post. The non-consideration for the past several years on account of the management having been superseded cannot denude the respondent petitioner of such rights of promotion, which is now sought to be taken away by the appellants by forcing him out of the Institution. He, therefore, submits that the learned Single Judge rightly intervened and quashed the order of his adjustment in some other Institution, with a further direction to consider the claim of promotion of the respondent petitioner.

5.We have considered the submissions raised and the right of consideration of the respondent petitioner for being promoted either on the ground of availability of vacancy or eligibility

does not appear to be disputed. It is on account of the inaction on the part of the management and a proposal to that effect that has led the appellants to treat the respondent petitioner to be in excess of staff strength. We do not find this to be a justified ground, so as to take away the right of the respondent petitioner for consideration of promotion in the same Institution, which was very much available to him and for which he is eligible.

6. In the said circumstances, the direction given by the learned Single Judge does not suffer from any legal or factual infirmity. We, therefore, uphold the judgment of the learned Single Judge and dismiss this writ appeal. An interim order was passed on 27.08.2019, which is also hereby discharged. We, further, direct the management of the Institution, where the respondent petitioner is working as a B.T. Assistant teacher, to consider his claim for promotion as a P.G. Assistant (Physics) teacher within a period of fifteen days and in the event the management proposes such a promotion, the same shall be considered by the appellant in accordance with law and appropriate order shall be passed within fifteen days thereafter.

The Writ Appeal stands dismissed with the said observations. No costs. Consequently, C.M.P.Nos.18364 and 20291 of 2019 are closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

sra

To

1. The Chief Educational Officer,
Salem District, Salem.

2. The District Educational Officer,
Salem Rural, Salem District.

3. The Secretary,
Velasamy Chettiar Higher Secondary School,
Omalur - 636 401, Salem District.

+1cc to Mr.G.Sankaran, Advocate, S.R.No. 14504

W.A.No.2859 of 2019

AD(CO)

GN(26/02/2020)