



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.03.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.16935 of 2013

and

M.P(MD)Nos.2 & 3 of 2012

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S.Meenambika

... Petitioner

vs.

1.The Secretary to the Government,
Department of School Education,
Secretariat, Chennai-600 009.

2.The Director of Elementary Education,
DPI Complex, College Road,
Chennai.

3.The District Elementary Educational Officer,
Thanjavur.

4.The Assistant Elementary Educational Officer,
Peravoorani,
Thanjavur District.

... Respondents

PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the fourth respondent pertaining to the integrated seniority list prepared for the post of Middle School Headmaster at Peravoorani Union as on 01.01.2013, quash the same and consequently direct the fourth respondent to appoint the petitioner as a Middle School Headmaster at Panchayat Union Middle School, Valasakadu, Peravoorani Union, Thanjavur District.

For Petitioner : Mr.T.Pon Ramkumar

For Respondents : Mr.N.Shanmuga Selvam

Additional Government Pleader

ORDER

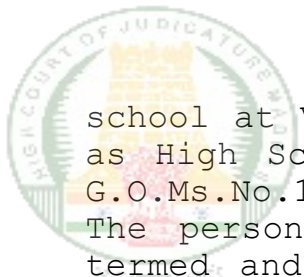
This Writ Petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the fourth respondent pertaining to the integrated seniority list prepared for the post of Middle School Headmaster at Peravoorani Union as on 01.01.2013, quash the same and consequently direct the fourth respondent to appoint the petitioner as a Middle School Headmaster at Panchayat Union Middle School, Valasakadu, Peravoorani Union, Thanjavur District.

2. The learned counsel appearing for the petitioner would submit that the petitioner, after completing the diploma in Teacher Education, has been selected and appointed as a Secondary Grade



Teacher on 20.07.1988. After completing more than 12 years of service in the post of Secondary Grade Teacher, she has been appointed as Headmistress of Panchayat Union School on 16.06.2003. In the meantime, during her service, she has shown interest to acquire higher qualification. Hence, she sought for permission from the respondent authorities to study B.Ed., degree Course by Sastra University, Thanjavur. After obtaining necessary permission, She joined and completed B.E., degree in April, 2009 and the same was also entered in the Service Book. However, the respondents did not consider her name for the future promotion nor for the payment of incentive, increment which she legally entitled for as per the Government Orders issued by the respondents time to time. Even though she attained the seniority in the post, she was not considered for the promotion to the post of B.T.Assistant. The petitioner has understand that the persons, who have obtained B.Ed., degree from Sastra University were not considered for promotion. Being aggrieved by the said action of the respondents, the petitioner has filed a writ petition before this Court seeking to enter the higher qualification in the service register and grant all other consequential benefits by following G.O.Ms.No.42, School Education Department, dated 10.01.1969 as amended from time to time. The said writ petition was allowed and directed the respondents to enter the petitioner's name in the service register as well as directed to issue incentives and increments. Aggrieved the said order, the respondents filed an appeal in W.A(MD)Nos.2506 to 2508 of 2010 and W.A.Nos.486 to 492 of 2011. However, the writ appeals came up for final hearing, the respondents agreed with the contention raised by the petitioner and passed the Government Order in G.O.Ms.No.112, School Education (C2) dated 28.07.2011 and treating the degree granted by the Sastra University is equal in all respects to the other degrees given by the State Universities regarding B.Ed., course. In spite of the order passed by the respondents, the petitioner was denied incentives and other increments.

3. He further submitted that during the pendency of the writ petition, the respondents conducted counselling for the promotion as well as transfer of Secondary Grade Teachers employed in various primary schools throughout the State. This Court directed the petitioner to participate in the said counselling on 20.05.2010 and posts were reserved for the petitioner, however posting orders were issued only on 16.09.2011. The post of Secondary Grade Teacher is the feeder category to the promotion post i.e., the B.T.Assistant as well as the Middle School Headmaster and the qualification prescribed are one and the same for the post of B.T.Assistant as well as the Middle Headmaster. However, the senior most person in the panel of the Secondary Grade Teacher in the respective union has been appointed as a Middle School Headmaster. The petitioner is the senior most person in the combined integrated panel prepared for the post of Middle School Headmaster/Secondary Grade Teacher. Hence, on the strength of seniority, the petitioner was appointed as Middle School Headmaster on 16.09.2011. In the same union another middle



school at Vattathikottai North, Peravoorani Union has been upgraded as High School by virtue of an order passed by the Government in G.O.Ms.No.199, School Education Department (C2), dated 07.12.2011. The person who has employed as Middle School Headmaster will be termed and posted as B.T.Assistant in the same school, since the qualification prescribed for both posts viz., the Headmaster of Middle School and B.T.Assistant are one and the same and the senior most in the post of B.T.Assistant will be appointed as Middle School Headmaster. The petitioner being the senior most person in the combined integrated B.T., Assistant the petitioner should not have been reverted. There are number of juniors to the petitioner who were appointed as Middle School Headmaster much later to the period of the petitioner's appointment, the impugned order reverting the petitioner to the post of Headmaster of primary school are totally nonest in law.

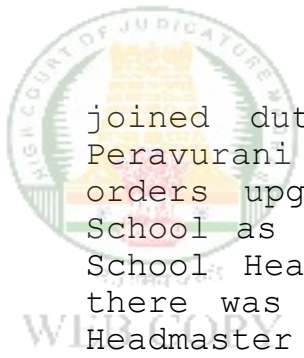
4. He further submitted that the the respondents instead of reverting the petitioner could have used her higher qualification in a better possible manner and utilized her services in the high school. Hence, the order of the respondents not only violative of fundamental rights and against equality and justice. Hence, the petitioner left with no other option except to file the writ petition in W.P.No.154 of 2012 before this Court challenging the order of not appointing the petitioner as a Middle School Headmaster. When the writ petition was pending to decide the seniority of the petitioner, the respondent herein prepared the integrated panel of a seniority list for the post of Middle School Headmaster. Even in the combined list prepared by the respondent for the year 1.1.2010, the petitioner was the senior most person in the combined seniority list. But, in the list prepared for the year as on 1.1.2011, 1.1.2012 and 1.1.2013 the petitioner has been placed in the second position even though she is the senior most qualified person which is totally stange and contrary to the Rule 35 and 36 of Tamil Nadu Government Servant Service Rules.

5. He further submitted that the petitioner being a senior most person in the post of Secondary Grade Teacher, her name should have placed in the seniority panel and her candidature should have been considered first for the promotion either to the post of middle school headmaster or B.T.Assistant. Presently, the Panchayat Union Middle School at Sornakadu, Peravoorani Union has been upgraded as High School. Due to upgradation of the said school, the post of middle school headmaster authomatically get abolished and the person, who was working as a middle school headmaster should be appointed as B.T.Assistant. Instead the person by name Appavoo, who was working as a middle School headmaster is not willing to work as B.T.Assistant, the respondents herein trying to appoint him as a Middle School Headmaster in a post lying vacant at Panchayat Union Middle School, Valasakadu thereby denying the opportunity of the petitioner being appointed as Middle School Headmaster. The



21.09.2013 to post her as a Middle School headmaster. After the enactment of Right to Children Free and Compulsory Education Act 2009. The respondents fully aware that as on 1.1.2010 itself, the petitioner is the senior most person in the integrated list prepared for the promotion to the post of middle school headmaster. But making the petitioner junior in the list prepared in 2011-12 and 2012-13 is without any basis and the same is contrary to the law as well as facts. Having the State Government recognized the B.Ed., degree granted by Sastra University is equivalent in all respects to the degree granted by the other universities. The respondents should have placed the petitioner in Serial No.1 of the seniority list. Whenever any middle school gets upgraded as High School, the person working in a post of Middle School headmaster should be absorbed as B.T.Assistant in the same school. But transferring the middle school headmaster to other middle school and consequential reversion of a junior who was working as a middle school headmaster in the said school is totally contrary, illegal and arbitrary and thereby denying the legitimate expectations of other senior most secondary grade teachers promotion to the post of Middle School headmaster/B.T.Assistant. Therefore, the petitioner has come out with the present writ petition for the aforesaid relief.

6. The learned Additional Government Pleader appearing for the respondents would submit that the petitioner was initially appointed as Secondary Grade Assistant Teacher on 20.07.88 and subsequently she was promoted as Primary School Headmaster with effect from 16.06.2003. She acquired B.Ed., qualification through Sasthra University, Thanjavur during the year 2009. The degree qualification acquired through Sasthra University was not recognized by the Government of Tamil Nadu for the purpose of service benefits and hence the name of the petitioner along with similar others was not considered for promotion as B.T.Assistant and other benefits such as incentive increment for higher qualification. At this juncture the petitioner filed a writ petition before this Court seeking directions for granting incentive increment for higher qualification with reference to G.O.Ms.No.42, Education Department, dated 10.01.1969 as amended from time to time. Though this Court directed the respondents to implement the order of the High Court, the respondents have filed a writ appeal in W.A(MD)Nos.2506 to 2508 of 2010 and W.A(MD)Nos.486 to 492 of 2011. In the meantime, the Government of Tamil Nadu has issued G.O.Ms.No.112, School Education (C2), dated 28.07.2011 by treating the degree obtained from the Sastra University as equal in all respects to the other B.Ed., degree given by the State Universities. As per the directions issued by this Court in W.P.(MD)No.10946 of 2010, one post of Middle School Headmaster was kept vacant and therefore, the petitioner was permitted to participate in the counselling conducted by the third respondent on 20.05.2010. Subsequently, the second respondent has issued instructions vide proceedings in Rc.No.12118/2011, dated 14.09.2011 and in obedience to the above orders, the petitioner was



joined duty as Middle School Headmaster, Idayathikonar Street, Peravurani on 22.09.2011. While so, the Government has issued orders upgrading the Vattathikottai North Panchayat Union Middle School as Government High School and therefore, the post of Middle School Headmaster of the above School stands abolished. Hence, there was a necessity to provide a posting to the Middle School Headmaster of Vattathikottai North. Accordingly, orders were issued by the third respondent vide proceedings in Rc.6685/B2/2011/dated 21.12.2011.

7. The petitioner was reverted and posted as Headmaster of Primary School, the cadre from which the petitioner was elevated to higher post previously. The petitioner has acquired the degree qualification only in the year 2009 and that the degree obtained through Sasthra University has been recognized by the Government of Tamil Nadu only in the year 2011 vide G.O.Ms.No.112, School Education Department, dated 28.07.2011. The petitioner has claimed promotion as Middle School Headmaster and one post of Middle School headmaster was kept vacant as per the directions of this Court and the petitioner was subsequently promoted as Middle School Headmaster, Idayathi Konar Street and the petitioner has also joined duty as Middle School headmaster on 22.09.2011. The Secondary Grade Assistant Teacher is the feeder category for promotion as B.T.Assistant as well as Middle School Headmaster. The petitioner is not the senior most person in the feeder category as alleged. The Government has issued order in G.O.Ms.NO.199, School Education Department, dated 07.12.2011 upgrading the Vattathikottai North Middle School as High School, the post of Middle School stands converted into High School Headmaster and there was necessity to provide a posting to the Middle School Headmaster. The petitioner name is not find a place in the panel for promotion as B.T.Assistant, for the year 2011 and 2012 and hence, the claim of the petitioner for posting as B.T.Assistant has no merit. It is also submitted that there is no vacancy of middle school Headmaster post in Peravurani Union and hence, there is no necessity for preparation of a panel of candidates fit for promotion as Middle School in respect of Peravurani Union. In final, the petitioner's request will be considered for promotion as B.T.Assistant or Middle School Headmaster as the case may be for the next year of panel along with her seniors if any, eligible for promotion.

8. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents and perused the materials available on record.

9. It could be seen from the records that even though the petitioner completed 13 years of service, she was promoted as Primary School Headmaster with effect from 16.06.2003. He got B.Ed., qualification through Sasthra University, Thanjavur during the year 2009. Even though she attained the seniority in the post, she was



many of them filed writ petitions before this Court to grant all other consequential benefits following the G.O.Ms.No.42 and taking the qualification of B.Ed., decree they received from the Sastra University. This Court allowed the writ petition and directed the respondents to enter the petitioner's name. Aggrieved against the said order, the Education Department went on appeal in W.A(MD) Nos.2506 to 2508 of 2010 and W.A.(MD)Nos.486 to 492 of 2011. The petitioner had participated in the counselling for the promotion as well as transfer of Secondary Grade Teachers employed in various primary schools throughout the state on 20.05.2010 and he was promoted as Middle School Headmaster, Panchayat Union Middle School, Idaiyathikonar Street. He further submitted that as far as the promotion is concerned the Secondary Grade Teacher as well as the Middle School Headmaster, the seniority should be taken into account in while promoting the petitioner, she being the senior most person in the post of Middle School Secondary Grade Teacher. Later the said Vattathikottai School was upgraded as High School by G.O.Ms.No.199, School Education Department, dated 07.12.2011 issued by the Tamil Nadu Education Department. Due to upgradation of the school, the petitioner was reverted from the post of Middle School Headmaster to the post of Primary School Headmaster, the cadre from which the petitioner was previously working.

10. It is seen that the said post was only a temporary post and if there was any up-gradation of School and reversion and for want of vacancy, the same could be considered and the petitioner shall be reverted back as per Rule 8(a) of the Tamil Nadu Subordinate Services (Discipline and Appeal) Rules and also it is seen that it is 100% temporary and they can be reverted back to the original post.

11. From the above said contention, it is very clear that the promotion was only temporary basis and there is no other point raised by the counsel for the petitioner. It was further submitted that the panel list produced would show that it is only a selection panel list and it is not the seniority list. Hence, the petitioner cannot claim seniority.

12. In view of the above discussion, the writ petition fails and the same stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar(CS)



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To

1.The Secretary to the Government,
Department of School Education,
Secretariat, Chennai-600 009.

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2.The Director of Elementary Education,
DPI Complex, College Road,
Chennai.

3.The District Elementary Educational Officer,
Thanjavur.

4.The Assistant Elementary Educational Officer,
Peravoorani,
Thanjavur District.

+1CC TO M/S.T.Pon Ramkumar, Advocate, Sr.No.10232

W.P (MD) No.16935 of 2013
05.03.2020

SMA/23/03/2020/7P/6C