



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 17.02.2020
DELIVERED ON : 02.11.2020
CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

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W.P (MD)No.9325 of 2012
and
M.P. (MD) .Nos.2 to 4 of 2012
and
W.M.P. (MD) .No.4634 of 2017

D.I.Chelladurai

... Petitioner

Vs.

1.The Director of School Education,
College Road,
Chennai -6.

2.The District Educational Officer,
Office of the District Educational Office,
Seenavana Higher Secondary School Campus,
Tuticorin.

3.T.D.T.A. Company,
Company Under the Companies Act,
5, Punithavathiar Street,
Palayamkottai - 627 002.

4.The Manager,
High Schools / Higher Secondary Schools
and Special Schools,
Tuticorin Nazareth Diocese,
Tuticorin.

5.S.Prabakaran

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the fourth respondent dated 05.06.2012 and quash the same and consequently forbear the respondents 1 and 2 from approving the promotion of the fifth respondent as Headmaster of the Cald Well Higher Secondary School, Tuticorin and direct the respondents 1 to 4 to follow the seniority to fill up the post of Headmaster of Higher Secondary Schools including Cald Well Higher Secondary School and promote the petitioner as Headmaster of the higher secondary school from the date on which his juniors were promoted with all attendant and monetary benefits.



For petitioner : Mr.Veera Kathiravan,
Senior Counsel for
M/s.Veera Associates
For respondents 1 & 2 : Mr.N.Shanmughaselvam,
Addl. Government Pleader
For 3rd respondent : No appearance
For respondents 4 & 5 : Mr.N.Subramani

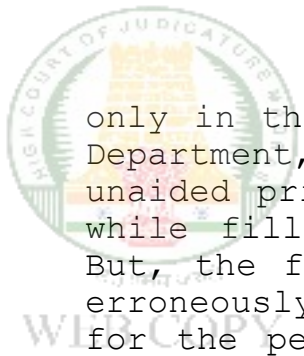
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ORDER

This writ petition has been filed by the petitioner challenging the order passed by the fourth respondent promoting the fifth respondent herein as Headmaster and for a direction to the respondents 1 to 4 not to approve the promotion of the fifth respondent, and to promote the petitioner as Headmaster of Higher Secondary School from the date on which his juniors were promoted with all attendant and monetary benefits.

2. The learned senior counsel appearing for the petitioner submitted that the petitioner was appointed as P.G. Assistant in Seventh Day Adventist Matriculation Higher Secondary School, Kovilpatti, which is an aided school, in the year 1982 and he worked there till 1984. In the years 1984 - 1986, 1988 - 1991, 1991 - 1999 and 1999 - 2001, he served as P.G. Assistant in Seventh Day Adventist School, Tallakulam, Madurai; Baran Bruck Higher Secondary School, Tirunelveli; Pope Memorial Higher Secondary School, Sawyerpuram and Schaffer Higher Secondary School, Tirunelveli respectively. From the year 2001 onwards, the petitioner had been serving as P.G. Assistant in Tucker Higher Secondary School, Pannaivilai. The fourth respondent, by his letter dated 10.01.2007, informed the petitioner that his name stand as No.1 in the seniority list for the post of Headmaster and he will be promoted as Headmaster as and when vacancy arises after January, 2007. The post of Headmaster of Cald Well Higher Secondary School, Tuticorin fell vacant on 05.06.2012, but the fourth respondent, instead of promoting the petitioner as Headmaster of the said school, has promoted the fifth respondent, who is four years junior to the petitioner as Headmaster of the said school and subsequently, the fifth respondent was transferred and now the fifth respondent is presently working in Ranji Aaron Higher Secondary School, Tuticorin. The petitioner retired from service on attaining the age of superannuation on 31.05.2014. The fifth respondent retired from service on 31.05.2017.

3.The learned senior counsel appearing for the petitioner further submitted that the fifth respondent appointed only in October, 1986, whereas the petitioner was appointed in June, 1982. The fourth respondent, without following the seniority list, has passed the impugned order of promotion. Though the respondents stated that the petitioner had served in the private schools and joined in the schools under the control of the fourth respondent



only in the year 1988, as per G.O.Ms.No.116, School Education (B1) Department, dated 14.07.2006, the service rendered in a recognized unaided private school before 01.06.1991 can be taken into account while filling up the post of Headmaster in aided/unaided school. But, the fourth respondent, without considering the said G.O., has erroneously passed the impugned order. The learned senior counsel for the petitioner would further submit that the third respondent company is the owner of the schools and as there is election dispute in the Tirunelveli Diocese and there is no elected office bearers or Board of Directors to approve the appointment, the fourth respondent cannot promote the fifth respondent as Headmaster. Thus, he prayed to allow this writ petition.

4. The learned counsel appearing for the contesting respondents 4 and 5 submitted that the petitioner has already filed a writ petition before the Principal Seat of this Court in W.P.No.15863 of 2012 seeking the relief of Mandamus to direct the official respondents not to approve the proposal sent by the fourth respondent for the post of Headmaster and to direct the fourth respondent to promote him as Headmaster, but he, subsequently, withdrew the same for the reason best known to him and the same has been suppressed by the petitioner in this petition. He would further submit that the petitioner himself aware that the author of letter dated 10.01.2007 has no right to issue such letter. After 10.01.2007, nearly 13 selections were made for the post of Headmaster to various Higher Secondary Schools run by the Tuticorin Nazerth Diocese and having kept silent for about five and half years and knowing fully well that he is not a fit person to be selected, he has raised a plea that he has not been considered. The post of Headmaster is not a promotional post, but it is a selection post and the Selection Committee would select the suitable candidates by carefully examining the merit and ability of the person and the seniority would never be a criteria for selection and appointment, and the seniority would be considered only when the qualification and other factors are found to be equal. Further, the fifth respondent entered into the service of the Diocesan Council in the year 1986, whereas the petitioner entered into the service only in the year 1988 and hence, the petitioner is not senior to the fifth respondent. The petitioner has no right to seek for a direction to select and appoint him as the Headmaster only on the basis of his seniority. The fourth respondent is entitled to appoint a person of his choice under Rule 15(4) of the Tamil Nadu Recognized Private Schools (Regulation) Rules and as it is decided by the Committee that the fifth respondent is a qualified person, the petitioner has no *locus standi* to question the appointment of the fifth respondent. Having served under the fourth respondent and received salary from the fourth respondent, the petitioner has no right to question the right of the Management to be the educational agency. Thus, he prayed to dismiss this writ petition.



5. Heard the learned counsel appearing for both sides and perused the records carefully.

6. The main contention of the learned counsel for the petitioner is that though he joined in the Diocesan Council in the year 1988, he has experience rather than the fifth respondent and the respondents 1 to 4 have failed to take into account his Experience. According to the respondents 3 & 4, the fifth respondent entered into service of the Diocesan Council in the year 1986 and he was a meritorious candidate and therefore, he was selected.

7. It is well settled that promotion cannot be claimed as a matter of right. It is also well settled that the power to make appointment of teaching and non teaching staff of the school is vest with the respective School Committee in the manner prescribed under law. As per the Rule 15(4)(ii) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, the promotion shall be made on the grounds of merit and ability, seniority being considered only when merit and ability are approximately equal. Thus, seniority is not the main criteria for promotion. The petitioner has not proved that he is meritorious than the fifth respondent. Therefore, the contention of the petitioner cannot be countenanced.

8. It is next the contention of the petitioner that the then Manager of the 4th respondent has given a letter dated 10.01.2007 to the effect that he would be appointed in the post of Headmaster as and when vacancy arises after January, 2007 and from that, it is clear that he is senior most person and next to be promoted, but the same has not been purposefully given effect to. In the counter affidavit filed by the 4th respondent, it is categorically stated that nearly 13 selections were made for the post of Headmaster to the various Higher Secondary Schools run by the Tuticorin Nazareth Diocese till 2012. But, the petitioner kept silent without raising a little finger till 2012. Further, as stated earlier, seniority is not the main criteria for the selection and therefore, this contention also has no legs to stand.

9. It is the further contention of the petitioner that the fourth respondent cannot effect promotion, since there is election dispute in Tirunelveli Diocese and there is no elected office bearers or Board of Directors to approve the appointment. But, the official respondents have not disputed the authority of the fourth respondent by filing any counter affidavit. A perusal of the order dated 05.02.2014 passed by the 2nd respondent shows that the 2nd respondent has already approved the appointment of the fifth respondent which in turn would show that the contention of the petitioner is not correct. Therefore, the above contention of the petitioner is also liable to be rejected.

10. In view of the above, this Court does not find any reason to interfere with the impugned order. There is no merit in this



petition. Hence, this writ petition is liable to be dismissed.

11. In the result, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

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Sd/-

Assistant Registrar (CSIII)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1.The Director of School Education,
College Road,
Chennai -6.

2.The District Educational Officer,
Office of the District Educational Office,
Seenavana Higher Secondary School Campus,
Tuticorin.

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-20888[F] dated
03/11/2020)

Pre-delivery order made in
W.P(MD)No.9325 of 2012
02.11.2020

CK(CO)

KB(10.11.2020) 5P 4C