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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2021

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.4841 of 2021

and

W.M.P.Nos.5457 & 5458 of 2021

B.Chandrakala

... Petitioner

Vs

1.State of Tamil Nadu

Rep by its Secretary,
Department of School Education,
Fort St.George, Chennai - 600 009.

2.The Director of Elementary Education,

DPI Campus,
College Road,
Chennai - 600 006.

3.The District Educational Officer,
Krishnagiri District.

4.The Block Educational Officer,
Kelamangalam Block,
Krishnagiri District.

5.K.Bijakshi

6.K.Jayammal

7.R.Muniraj

8.N.Manjula Devi

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records with respect to the Impugned order of the 4th respondent dated nil drawing a panel for promotion to the post of Middle School Headmaster as on 01.01.2021 for Kelamangalam Block and quash the same and consequently direct the respondents to prepare the panel for promotion by including the name of the petitioner in accordance with Proviso to Rule 41 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and Judgment of this Hon'ble



Court in W.P.No.18996/2019 dated 04.12.2019 and grant her with promotion.

For Petitioner : Ms.Dakshayani Reddy

For Respondents : Mr.P.Raja, GA

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ORDER

The relief sought for in this writ petition is to call for the records with respect to the Impugned order of the 4th respondent dated nil drawing a panel for promotion to the post of Middle School Headmaster as on 01.01.2021 for Kelamangalam Block and quash the same and consequently direct the respondents to prepare the panel for promotion by including the name of the petitioner in accordance with Proviso to Rule 41 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and Judgment of this Hon'ble Court in W.P.No.18996/2019 dated 04.12.2019 and grant her with promotion.

2.Mr.P.Raja, learned Government Advocate takes notice for the respondents. By consent, final orders are passed in the Writ Petition at the admission stage.

3.According to the petitioner, she was appointed as a Secondary Grade Teacher in the year 2001 and subsequently she was promoted as Elementary School Headmaster on 20.05.2008 and also promoted to the post of B.T.Assistant on 16.06.2008. The next promotion is to the post of Middle School Headmaster. According to the petitioner, the Elementary School Headmaster pay scale is lower than that of a B.T. Assistant and, the post of B.T.Assistant is a feeder category to the post of Middle School Headmaster and being B.T.Assistant, the petitioner is entitled to be included in the panel drawn for the post of Middle School Headmaster. However, the grievance of the petitioner is that the 4th respondent has drawn the panel for promotion to the post of Middle School Headmaster on 01.01.2021 wherein the name of the petitioner was not included while the names of the respondents 5 to 8 herein, who were holding the post of Elementary School Headmaster, were found place in the panel. Hence the writ petition.

4.The present writ petition pertains to the issue as regards the promotion to the post of Middle School Headmaster, while the petitioner claims that she being B.T.Assistant which is a feeder category to the promotion post, is entitled to be considered first whereas, the respondents 5 to 8 would claim that they being Elementary School Headmasters, are entitled to be considered. In this regard, it is worthwhile to refer to Section 41 of the Tamil Nadu Government Servants (Conditions of



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Service) Act, 2016, which is extracted hereunder:

"Provided further that if scales of pay or pay band of posts in the feeder categories are different, the persons holding post carrying a higher scale of pay or pay band in the feeder category shall be considered first and that, if no qualified and suitable persons holding post in that feeder category are available, the persons holding post carrying the next higher scale of pay or pay band in descending order in other feeder categories shall be considered.

(2) Promotions in a service or class to a selection category or to a selection grade shall be made on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal. The inter se seniority among the persons found suitable for such promotion shall be with reference to the inter se seniority of such persons in the lower post".

It is not in dispute that the petitioner was appointed as Secondary Grade Teacher and later she was promoted to the post of B.T.Assistant with effect from 16.06.2008. It is pertinent to note that the petitioner holding the post is carrying a higher scale of pay than the respondents 5 to 8. Therefore, the above provision makes it very clear that if the scales of pay or pay band of posts in the feeder categories are different, the persons holding the post carrying a higher scale of pay or pay band in the feeder category should be given priority. Therefore, as rightly contended by the learned counsel for the petitioner, when admittedly the petitioner was drawing higher scale of pay than the respondents 5 to 8, the preference should be given to the petitioner.

5.In this regard, this Court in similar writ petition in W.P.No.18996 of 2019, has dealt with the issue involved in the present writ petition and categorically held as under in paragraphs 17 to 21:

"17.It is clear from the above rule that Headmasters/ Headmistresses of Elementary Schools falling in Category I of Class III are eligible for promotion to the post of Headmasters/Headmistresses of Middle Schools. Therefore, this Court does not find any illegality in the 3rd respondent drawing the panel by taking into consideration the Headmasters/Headmistresses of the Elementary School [Primary School] also as a feeder category, apart from the B.T Assistant in Category II of Class I of the service rules. Therefore, the submissions made by the learned



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counsel for the petitioner to the effect that respondents 4 and 5 should not have been considered, while drawing up the panel, cannot be countenanced.

18.The next issue that has to be taken into consideration is as to the effect of the second proviso to Section 41 of the Act. This proviso makes it very clear that if the scales of pay or pay band of posts in the feeder categories are different, the persons holding the post carrying a higher scale of pay or pay band in the feeder category should be given priority. It is seen from records that the pay scale of B.T Assistant is higher than the pay scale of an Elementary School Headmaster. For the purpose of countering this ground, it was submitted both by the learned Additional Government Pleader as well as Mr.L.Chandrakumar, learned counsel appearing for the private respondents that the second proviso has been relaxed by G.O.Ms.No.166 dated 07.06.1999, since it was found that the difference in pay was very meager.

19.This Government Order was passed when Rule 36(a) of the Tamil Nadu State and Subordinate Service Rules was in force and by this Government Order, the second proviso to the said section was relaxed. However, after the coming into the force of Tamil Nadu Government Servants (Conditions of Service) Act, 2016 the same proviso has been added to Section 41 of the Act and the earlier relaxation cannot be extended to the second proviso to Section 41 of the Act. As on today, the second proviso is in force.

20.The issue with regard to the seniority that was claimed by the 4th and 5th respondents in relation to their appointment to the Secondary Grade Post and feeder category post, to be considered above the petitioner, also cannot be countenanced. Section 41(2) of the Act specifically provides that promotion in a service or class to a selection category or to a selection grade shall be made on grounds of merit and ability and seniority will be considered only, where merit and ability are approximately equal. In view of this provision, the seniority of the 4th and 5th respondents in the Secondary Grade Post and feeder category cannot come into play while drawing the panel. It comes into operation only, where the



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merit and ability are approximately equal.

21.The other ground that has been raised by the learned counsel for the petitioner is with regard to the passing of the Tamil language test which has been made as a mandatory requirement under Section 21 of the Act. On the representation submitted by the petitioner, the 2nd respondent has issued proceedings dated 01.07.2019, directing the 3rd respondent to include only those individuals who have completed the second language test within the period of two years from the date of appointment. It is the case of the petitioner that both the 4th and 5th respondents have passed the Tamil test much later and their names should not have been included in the panel. The petitioner has satisfied this requirement also since he has passed the second language Tamil test on 16.03.2003. This issue also gains significance and ought to have been considered by the 3rd respondent before drawing up the panel".

6.Having regard to the above, the impugned panel drawn by the 4th respondent for promotion to the post of Middle School Headmaster on 01.01.2021 for Kelamangalam Block is hereby quashed. The 4th respondent is directed to include the name of the petitioner in the panel for promotion and consider the claim of the petitioner for promotion to the post of Middle School Headmaster strictly in accordance with provisions of Section 41 of the Act and complete the whole process, within a period of six weeks from the date of receipt of copy of this order.

7. Accordingly, the writ petition is ordered, with the above directions. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

mtl

To

1.The Secretary,
State of Tamil Nadu
Department of School Education,
Fort St.George, Chennai - 600 009.



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2.The Director of Elementary Education,
DPI Campus,
College Road,
Chennai - 600 006.

3.The District Educational Officer,
Krishnagiri District.

4.The Block Educational Officer,
Kelamangalam Block,
Krishnagiri District.

+1cc to Mr.Dakshyani Reddy, Advocate SR.16035
+1cc to the Government Pleader SR.15846

W.P.No.4841 of 2021

PL(CO)
CB(01/04/2021)