



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

WEB COPY

W.P.(MD).No.11763 of 2017

and

W.M.P(MD)Nos.9059 and 9060 of 2017

M.Thangavel

... Petitioner

Vs.

1.The Director of Elementary Education,
Directorate Tamil Nadu Elementary Education,
College Road,
Chennai-6.

2.The District Elementary Educational Officer,
District Elementary Educational Office,
Thanjavur.

3.The Assistant Elementary Educational Officer,
Assistant Elementary Educational Office,
Pattukottai.

4.S.P.Anuradha

... Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order in Na.Ka.No.1072/A1/17 dated 23.05.2017 issued by 2nd respondent promoting 4th respondent as B.T Assistant Mathematics and quash the same as illegal and consequently, direct the respondents to promote the petitioner as B.T Assistant Mathematics for the year 2017-2018 based on the seniority obtained on completion of probation.

For Petitioner	: Mr.G.Prabhu Rajadurai for Mr.A.Arul Jenifer
For R4	: Mr.C.Venkateshkumar for M/s.Ajmal Associates

ORDER

This Writ Petition is filed for issuance of a writ of Certiorarified Mandamus to quash the impugned order dated 23.05.2017 in Na.Ka.No.1072/A1/17 issued by second respondent promoting the fourth respondent as B.T Assistant Mathematics and to direct the respondents to promote the petitioner as B.T Assistant Mathematics for the year 2017-2018, based on the seniority obtained on completion of probation.

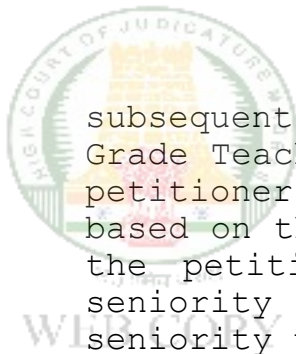


2.The brief facts that are necessary for disposal of the writ petition are as follows.

The petitioner joined in service as Elementary School Teacher on 28.07.1999 and posted at Panchayat Union Primary School, Chinnamalai, Sethuvarchathiram Blcok. It is the case of the petitioner that he was transferred to Pattukottai Union on 01.11.2000 even before completing his probation. The petitioner's name is found below the name of the fourth respondent in the promotion panel prepared in the year 2017. It is the case of the petitioner that the fourth respondent was also transferred to Pattukottai Union on 01.11.2000. Since the fourth respondent completed her probation only on 26.10.2001 that too three months after the petitioner completed his probation, it is submitted by the petitioner that the petitioner cannot be placed below the fourth respondent. Further, the petitioner submitted a representation before the respondents 1 and 2. It is the case of the petitioner that based on the wrong entry in the panel, promotion was given to the fourth respondent. It is also stated that the third respondent promoted the fourth respondent and directed to relieve her from the school and to join in the new school by a consequential order dated 31.05.2017. The grievance of the petitioner is that due to the promotion given to the fourth respondent ignoring the seniority of the petitioner, the chance of promotion to the petitioner has now become ephemeral.

3.In the counter affidavit, it is seen that the order of promotion was effected on the strength of promotion panel which was prepared by the second respondent as on 01.01.2017. It is stated that the petitioner's name was found place at serial No.3, whereas, the name of the fourth respondent was placed at serial No.2. It is now admitted before this Court that the petitioner joined his service in the cadre of Secondary Grade Teacher on 28.07.1999 at Panchayat Union Primary School, Chinnamalai, whereas the fourth respondent was appointed on 27.07.1999. Though the fourth respondent was on maternity leave for a period of three months from 29.01.2001 to 28.04.2001, the fourth respondent's probation was declared to be completed on 27.10.2001 instead of 27.07.2001. It is contended by the second respondent that the seniority in the particular union should be counted by considering the date of appointment which is placing vital role. Since the fourth respondent was appointed one day prior to the petitioner's appointment, the second respondent placed the petitioner as a junior to the fourth respondent. Since the petitioner and the fourth respondent have completed probation, the date of completion of probation has no consequence, as their service will be counted from the date of appointment.

4.The learned counsel appearing for the petitioner however submitted that the petitioner's seniority should be considered based on the date of appointment. It is stated that the petitioner and the fourth respondent were



subsequently transferred to Pattukottai Panchayat Union as Secondary Grade Teacher on 01.11.2000, it is contended by the counsel that the petitioner's seniority in the Pattukottai Panchayat Union cannot be based on the original appointment. It is contended that as per Rules the petitioner and the fourth respondent, have to forego their seniority earned elsewhere upon brought to new union where their seniority will be fixed with effect from the date on which both were appointed in the new Panchayat Union. The submission of the learned counsel for the petitioner cannot be countenanced with reference to any rules. The learned counsel appearing for the petitioner relied upon Rule 35(aa) and the third proviso of Rule found as Tamil Nadu State and Subordinate Service Rules (hereinafter referred to as the 'Act' for short).

5.Rule 35(aa) of the Tamil Nadu State and Subordinate Service Rules, reads as follows:

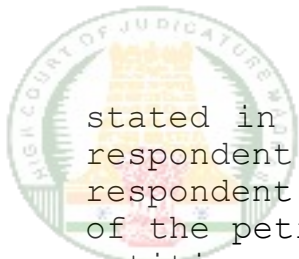
"(aa) The seniority of a person in a service, class, category or grade shall, where the normal method of recruitment to that service, class, category or grade is by more than one method of recruitment, unless the individual has been reduced to a lower rank as a punishment, be determined with reference to the date on which he is appointed to the services, class, category or grade;*

Provided that where the junior appointed by a particular method or recruitment happens to be appointed to a service, class, category or grade, earlier than the senior appointed by the same method of recruitment, the senior shall be deemed to have been appointed to the service, class, category or grade on the same day on which the junior was so appointed:

Provided further that the benefit of the above proviso shall be available to the senior only for the purpose of fixing inter-se-seniority:

Provided also that where persons appointed by more than one method of recruitment are appointed or deemed to have been appointed to the service, class, category or grade on the same day, their inter-se-seniority shall be decided with reference to their age.

6.As per Rule 35(aa) of the Act, seniority of a person in a particular category or class or grade or service will be determined with reference to the date on which the person is appointed to the services, class, category or grade. The third proviso also provides that the inter-se-seniority of all persons appointed by more than one method of recruitment on the same day should be decided with reference to their age. The submission of the learned counsel appearing for the petitioner is misconceived. First of all, the transfer of the petitioner and the fourth respondent at their request cannot be considered as one of the method of recruitment as



stated in Rule 35(aa). In this case, the petitioner and the fourth respondent were recruited by the same method and the fourth respondent was appointed at least one day prior to the appointment of the petitioner. Therefore, the fourth respondent is senior to the petitioner. It is to be noted that the date of commencement of probation will be the date on which he joined duty. The maternity leave availed by the fourth respondent which delayed the completion of probation does not help to the petitioner to claim seniority over the fourth respondent.

7.This Court is of the view that the submission of the learned counsel appearing for the petitioner is only based on some executive instructions. The Government in order to protect the interest of teachers working in Panchayat Union School, and to avoid seniority of teachers working in Panchayat Union School being disturbed by allowing transfer, at the request of teachers has passed orders to the effect that a person goes on transfer at his request to another union should forgo his seniority in the new union in which he seeks transfer. In other words, if a person voluntarily goes on transfer to another union, he will be placed as the junior most in the new union, irrespective of his seniority in the erstwhile station. In the present case, the petitioner and the fourth respondent were transferred to Pudukottai union even in the year 2001 at their request and the seniority earned by the fourth respondent will be maintained in the transferred union also. The third proviso of Rule 35(aa) of the Act, is not applicable to the situation of this where the petitioner and the fourth respondent are placed. In the counter affidavit filed by the second respondent, it is stated that the seniority of the fourth respondent was also maintained above the petitioner after transfer and hence, the seniority list prepared on 01.01.2017 cannot be questioned.

8.As a result, this Court finds no merit in the writ petition. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

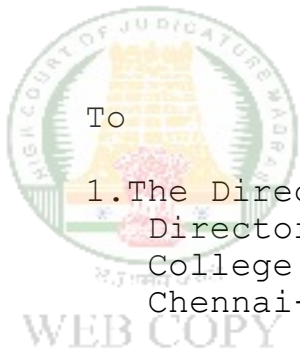
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Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.



To

1.The Director of Elementary Education,
Directorate Tamil Nadu Elementary Education,
College Road,
Chennai-6.

2.The District Elementary Educational Officer,
District Elementary Educational Office,
Thanjavur.

3.The Assistant Elementary Educational Officer,
Assistant Elementary Educational Office,
Pattukottai.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-32341[F] dated
25/10/2021)

W.P. (MD) .No.11763 of 2017
and
W.M.P (MD) Nos.9059 and 9060 of 2017
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SS (CO)
KB(15.11.2021) 5P 5C