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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.04.2022

Pronounced on : 20.06.2022

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.26085 of 2012

and

M.P.No.2 of 2012

S. Jeeva Esther Santhakumari
W/o Joenavash.G

... Petitioner

Vs.

1. The Director,
Tamil Nadu Elementary Education,
College Road, Nungambakkam, Chennai-6
2. The District Elementary, Educational Officer,
Cuddalore District, Manjakuppam, Cuddalore.
3. The Assistant Elementary Educational officer,
Periya Kanganankuppam, Cuddalore,
Cuddalore District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records and quash the proceedings of the 2nd respondent dated 15.06.2012 in Na.Ka.No.1775/A2/2012 and direct the respondent to consider the name of the petitioner to the post of Headmaster of Elementary Schools in Cuddalore panchayat union by taking into account of the G.O.Ms.388 dated 19.06.1996, Education, Science and Technical Education Department.

For Petitioner : Mrs. Dakshayani Reddy

For Respondents: Mr. V.Yamuna Devi

Special Government Pleader

ORDER

This writ petition is filed praying for a writ of certiorarified Mandamus calling for the records of the second respondent dated 15.06.2012 in Na.Ka.No.1775/A2/2012 and direct the respondents to consider the name of the petitioner to the



post of Headmaster of Elementary Schools in Cuddalore Panchayat Union by taking into account the G.O.Ms.No.388 dated 19.06.1996, Education, Science and Technical Education Department and to quash the same.

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2. The petitioner was selected by the Teachers Recruitment Board as Secondary grade Teacher in the year 1995 and was posted at Panchayat Union Primary School, Selankuppam Panchayat, Paragipettai. The petitioner was working there till 12.11.1998 and thereafter transferred to newly upgraded middle School Karumboor, Annagramam Panchayat Union for administrative reasons. Thereafter, the petitioner was transferred to Panchayat Union Primary School at Sothikuppam, Cuddalore at Panchayat Union. The petitioner at the time of filing the writ petition was working in Panchayat Union Primary School, Thotti Cuddalore Panchayat Union.

3. During the year 1995, the Teachers Recruitment Board had selected candidates for being appointed as Middle School teachers. The seniority was fixed State-wise and not District wise. This resulted in difficulty in accommodating the teachers in their respective district or Panchayat Union to which they belong. To alleviate the difficulty, the State Government issued G.O.Ms.No.388 dated 19.06.1988, wherein it was provided that candidates appointed during the year 1995 by the Teacher Recruitment Board shall continue to retain the seniority fixed by the Teacher Recruitment Board, even on transfer and that those who were unable to obtain transfer during the said year, their request for transfer shall be considered in future.

4. It was submitted by the petitioner that the second and third respondents maintain the seniority list of teachers eligible for being promoted as Head Master of elementary School. While the petitioner was ranked 67 in the year 2008-2009 and ranked as 27 for the year 2009-2010. Strangely, when the list for the year 2010-2011 was published by the third respondent, the petitioner was ranked at 107. The second respondent had also published the list of candidates selected for the post of Head Master in the Elementary school on 15.06.2012.

5. Immediately, the petitioner submitted a representation to the second and third respondents requesting that the transfer made for administrative reasons ought not to be considered and the voluntary transfer made to Cuddalore District alone ought to be treated as transfer and on that basis the seniority list fixed by the Teachers Recruitment Board may be adopted and suitable orders may be passed.

6. It was submitted by the learned counsel for the petitioner that the impugned proceedings of the second



respondent dated 15.06.2012 is contrary to the scope and ambit of G.O.Ms.No.388 dated 19.06.1988 as explained by this Court in W.P.Nos.22325 of 2007 dated 10.04.2008 that the Teachers shall be entitled to retain their original seniority assigned by the Teacher Recruitment Board even in the case of transfer by request. However, the impugned order has given a complete go by to the above Government Order and thereby stands vitiated.

7. To the contrary it was submitted by the learned counsel for the respondents Mrs.Yamuna Devi that the transfer which was made to Annagramam Panchayat in the year 1988 was based on the request of the petitioner. Secondly, it was submitted that the transfer can be only from one union to another union in the same district to avail the benefit of G.O.Ms.No.388 dated 19.06.1996. It was further submitted that Rule 35 (aa) of the State and Subordinate Rules, 1955, prescribes the criteria for fixing seniority and the same ought to be followed.

8. Heard both sides and perused the materials available on record.

9. It appears that the submission of the respondents has been negated by this Court on earlier occasions and thus the petitioner is entitled to succeed in the writ petition as could be seen from the following:

a. The submission of the respondent that G.O.Ms.No.388 would be available only in respect of transfer within the district is contrary to the judgment of this Court in W.P.No.22325 of 2007 dated 10.04.2008 wherein it was held as under:

"2.that if at their request such of those teachers who were selected in 1995 by the Teachers Recruitment Board, who were initially posted in a different district, seek for posting in their native district the same to be favourably considered and by virtue of such posting the seniority as determined in the year 1995 in the select list shall not be altered.

"4. When the stipulations contained in G.O.Ms.No.388 dated 19.06.1996 is read along with the proceedings of the first respondent dated 10.3.2000 and 4.10.2001, it is clear to the effect that after the initial appointment made in the year 1995 irrespective of the place of posting at that point of time they are entitled to seek for transfer once and that on that occasion alone they are entitled to retain their seniority..."



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"5..... it can be stated without any contradiction that as a one time measure, the teachers, selected and appointed in 1995 under the selection made by the Teachers Recruitment Board, are entitled to seek for transfer irrespective of their initial place of posting whether it be to their native district or native panchayat union....."

(emphasis supplied)

b. The above decision was reiterated by a Judgment of this Court in W.P.No.12090 of 2008 dated 03.03.2016, wherein it was held as under:

...."4.Therefore, it is quite clear that if any transfer for the first time is made from one district to another district, original seniority should be maintained.

"7.. To put it in short, if any appointment is made as Secondary Grade Teacher in the year 1995 and transferred for the first time from one Panchayat Union to another Panchayat Union, the original seniority should be maintained. Therefore it is quite clear that the reason assigned by the second respondent does not find place in G.O.Ms.No.388... "

(emphasis supplied)

A reading of the above judgments would show that the benefit of G.O.Ms.388 is not restricted or limited in its operation to transfers within a particular district. The other argument that G.O.Ms.No.388 dated 19.06.1996 is in conflict with Rule 35 (aa) of the Tamil Nadu State and Subordinate Rules, 1955, was rejected by this Court in W.P(Md).No.9204 of 2010 dated 25.08.2014 and the relevant portion is extracted hereunder:

"7. Now, all that the learned counsel for the petitioner would submit is that if once a teacher is transferred from one unit to another unit, as sought to be done under the impugned Government Order, then he shall be treated as a fresh appointee in the transferred district/unit and therefore he should be kept at the bottom of the seniority. This argument, may be right in a case where a transfer is requested for by a candidate and transfer is so made on such a request. But, all transfers which are made under the impugned Government Order, though on request, are made as per the policy of the Government. Since all the teachers selected in the same recruitment process



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could not be appointed in their native districts, the Government took a policy decision to allow such transfer even by relaxing the relevant rule. In my considered opinion, this Government order does not violate Rule 35(aa) of the State and Subordinate Service Rules. "

9. Finally the submission that the transfer to Annagramam Panchayat was at the instance/ request of petitioner is contrary to the facts inasmuch as the said transfer was made for administrative reasons as would be evident from the proceeding/communication dated 13.10.1998 of The District Elementary, Educational Officer, second respondent herein.

10. On considering the submission made by both sides, this Court is of the view that the reasons set out by the respondents to deny the benefit of G.O.No.388 dated 19.06.1996 to the petitioner has been raised and rejected on the earlier occasions by this Court. Thus we find no merit in the submission made by the respondents and the petitioner may have to succeed. Having said that, the prayer in the writ petition is to quash the proceedings of the 2nd respondent dated 15.06.2012 and to consider the petitioner to the post of Head Master on the basis G.O.Ms.388 dated 19.06.1996. On applying G.O.Ms.No.388 dated 19.06.1996 if the petitioner is found eligible to the post of Elementary school Head Master she shall be granted notional promotion from the date on which she is found eligible and consequential benefits shall be extended to the petitioner in accordance with law. It is made clear that any appointments made to the post of Elementary school Head Master shall not be disturbed only in view of this order.

11. In view of the above this writ petition stands disposed of on above terms. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar

smn/mka

To:

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



2. The District Elementary, Educational Officer,
Cuddalore District, Manjakuppam, Cuddalore.

3. The Assistant Elementary Educational officer,
Periya Kanganankuppam, Cuddalore,
Cuddalore District.

+lcc to Mrs. Dakshayani Reddy, Advocate, S.R.No.37814
+lcc to the Government Pleader, S.R.No.37674

W.P. No.26085 of 2012
and
M.P.no.2 of 2012

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