



IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON :
21.12.2021

ORDERS PRONOUNCED ON :
10.01.2022

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CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Writ Petition Nos.4973 and 4981 of 2021
and
W.M.P.Nos.5550, 5552, 5556 and 5558 of 2021

S.Rajavardhanan,
S/o T.Sundaramurth

..Petitioner in W.P.No.4973 of 2021

S.Sangeetha,
W/o P.Paramasivam

..Petitioner in W.P.No.4981 of 2021

Vs.

1. The Elementary Education Director,
DPI Campus, Nungambakkam,
Chennai-600 009.
2. The District Education Officer,
Villupuram District,
Villupuram.
3. Block Educational Officer,
Koliyanur Block,
Koliyanur, Villupuram District.
4. L.Sundararajan,
Secondary Grade Teacher,
Panchayat Union Primary School,
M.Kuchchipalayam, Koliyanur Block,
Koliyanur, Villupuram District.
5. R.Bhuvaneshwari,
Secondary Grade Teacher,
Panchayat Union Primary School,
Ayyagkovilpattu, Koliyanur Block,
Koliyanur, Villupuram District.

..Respondents
in both the Writ Petitions

Writ Petitions filed under Article 226 of the Constitution of India, praying for issuance of Writs of Declaration, declaring that proceedings Na.Ka.No.756/D1/2021 issued by the first respondent, dated 05.02.2021 and the consequential



seniority list issued by the third respondent dated 19.02.2021 as arbitrary, illegal, unjust and consequently direct the respondents 1 to 3 to conduct promotion counselling for the vacancies that arose in the year 2020 separately based on the seniority list dated 17.03.2020 published as on 01.01.2020 separately and then to conduct the counselling for the vacancies arose in the year 2021 based on the seniority list published for the year 2021 and to promote the petitioner as BT Assistant Science in the third respondent block with seniority and all attendant benefits.

For petitioners
in both Writ Petitions : Mr.N.G.R.Prasad
for M/s.Row & Reddy

For respondents
in both Writ Petitions : Mr.Abishek Moortny,
Govt. Advocate

for R1 to 3
Mr.S.Rajesh for R4 and R5

COMMON ORDER

Both the Writ Petitions are filed praying for issuance of Writs of Declaration, declaring that proceedings Na.Ka.No.756/D1/2021 issued by the first respondent, dated 05.02.2021 and the consequential seniority list issued by the third respondent dated 19.02.2021 as arbitrary, illegal, unjust and consequently direct the respondents 1 to 3 to conduct promotion counselling for the vacancies that arose in the year 2020 separately based on the seniority list dated 17.03.2020 published as on 01.01.2020 separately and then to conduct the counselling for the vacancies arose in the year 2021 based on the seniority list published for the year 2021 and to promote the petitioners as BT Assistant Science in the third respondent block with seniority and all attendant benefits.

2. The facts and circumstances which led to the filing of the writ petitions are briefly stated hereunder.

i) The petitioners were appointed as Secondary Grade Teacher and was working in the 3rd respondent Block. The petitioners appeared to have acquired B.Ed. and they also qualified B.Sc. Maths and B.A. English respectively. The petitioners claim to have also acquired B.Sc Degree in Chemistry subject and B.Sc. Degree in Physics subject respectively in 2017. According to them, they were fully qualified to be considered for promotion to the post of B.T.Assistant-Science. Their names were also included in the promotional panel for the year 2020.



ii) The 3rd respondent published seniority list for the year 2020 on 17.03.2020 and the petitioners name were included in Serial No.1 and Serial No.2 respectively for promotion to the post of B.T.Assistant-Science in the 3rd respondent Block. However, the promotion counselling for the year 2020 could not be conducted unfortunately due to Covid-19 situation. In that year, two vacancies arose in the 3rd respondent Block due to retirement of two B.T. Assistants in Science subjects. If only the counselling had been conducted during the year 2020, the petitioners could have been automatically promoted to the post of B.T. Assistant (Science).

iii) Subsequently, in 2021, the 1st respondent issued proceedings dated 05.02.2021 framing guidelines for conduct of counselling for the year 2021. In that proceedings, there was no mention about postponement of promotional exercise of the previous year 2020. For the year 2021, the promotional exercise was scheduled to be held on 27.02.2021. In that regard, the 3rd respondent also published a seniority list on 19.02.2021 as on 01.01.2021 revising the earlier seniority list. In that seniority list, the petitioners were placed at Serial No.3 and Serial No.4 respectively for the reason that the respondents 4 and 5 herein by then had acquired requisite qualification and therefore, they were placed above the petitioners.

iv) The petitioners herein questioning the action of the official respondents, submitted a representation on 20.02.2021 requesting that they should be promoted first in respect of the vacancies that arose during the year 2020 on the basis of the earlier seniority list dated 17.03.2020 and thereafter, conduct counselling for any remaining vacancies for the year 2021. As there was no action forthcoming from the competent authorities, the petitioners are before this Court challenging the proceedings of the 1st respondent dated 05.02.2021 and the consequential seniority list of the 3rd respondent dated 19.02.2021.

3. Notice was ordered in the Writ Petitions and Mr.Abishek Moorthy, the learned Government Advocate entered appearance for the respondents 1 & 2.

4. Mr.N.G.R.Prasad, the learned counsel appearing for the petitioners would submit that the impugned action by the official respondents in bunching of the vacancies and revising the seniority, detrimental to the petitioners' interest is illegal and unreasonable and therefore, liable to be interfered by this Court. The learned counsel would also submit that though the promotional exercise could not be conducted during 2020 due to extraordinary pandemic situation prevailing in the State, but when the authorities have chosen to conduct counselling for the



year 2021, they ought to have operated the vacancies which arose in the previous academic year by preparing year-wise seniority list. On the contrary, the action of the authorities in bunching of vacancies and attempting to promote the respondents 4 and 5 herein is illegal and unjust. Admittedly, in 2020, the respondents 4 and 5 were not qualified at all, in which event, the petitioners ought to have been promoted first ahead of the private respondents.

5. The learned counsel would also submit that the issue of year wise seniority and bunching of vacancies was considered by this Court in a batch of writ petitions and the learned Judge of this Court vide his order dated 22.04.2014 in W.P.Nos.9127 to 9129, 9896, 6870, 6871, 9247, 9911, 9937, 9938, 9939 to 9942, 10636 to 10638, 8818 to 8820 of 2014 has held as under.

"7. In the case on hand, in respect of the vacancies of the year 2013, the Director of Elementary Education, Chennai, by his proceedings in Na.Ka.No.02898/D1/2013, dated 21.02.2014, directed all the District Elementary Educational Officers to prepare the respective seniority lists of all qualified Secondary Grade Teachers for the purpose of promotion. Thus, by having 01.01.2013 as the crucial date, lists were prepared. But, without assigning any reason and without operating the said seniority list, the Director of Elementary Education again issued another instruction to prepare a fresh list by having 01.01.2014 as the crucial date. Even during the course of argument, the learned Special Government Pleader is not in a position to explain as to why such a decision was taken by the Director of School Education. When the Rule mandates that for every year there has to be a panel prepared and operated, here in this case, strangely, the panel prepared in the year 2013 has been made inoperative and by suppressing the same, a fresh list has been prepared by taking 01.01.2014 as the crucial date. 01.01.2014 can be taken as a crucial date for the panel to be prepared for the year 2014. Of course, there is no difficulty in understanding that for the year 2014, a panel is to be prepared by taking 01.01.2014 as the crucial date. But, it is not explained to the Court as to why the panel prepared for the year 2013, by having 01.01.2013 as the crucial date was not operated. Thus, in my considered opinion, the action of the respondents in not



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giving effect to the seniority list of the year 2013 is highly arbitrary and therefore, the same is liable to be deprecated.

8. In view of the said position, the petitioners are entitled for being considered for promotion, for the year 2013, as per the respective seniority lists prepared by having 01.01.2013 as the crucial date. That seniority list shall cover all the vacancies which had occurred up to 31.12.2013. On or after 01.01.2014, the remaining unfilled vacancies and the fresh vacancies, which may occur in the year 2014 have to be filled up by preparing a fresh seniority list by having 01.01.2014 as the crucial date.

9. In view of the above, all the writ petitions are disposed of in the following terms:

(i) The respondents shall operate the respective seniority lists prepared in the year 2013 by taking 01.01.2013 as the crucial date and give promotion, as per the said seniority lists, to fill up all the vacancies which occurred up to 31.12.2013.

(ii) It is further directed that after so filling up those vacancies, for the year 2014 the respondents shall prepare fresh seniority list, by having 01.01.2014 as the crucial date, to fill up the unfilled vacancies and the vacancies which arise during the year 2014.

(iii) Considering the fact that the schools are going to reopen in the month of June 2014, after summer vacation, the respondents shall expedite the process and give effect to this order expeditiously.

No costs. Consequently, connected miscellaneous petitions are closed."

6. The learned counsel would also draw the attention of this Court wherein almost similar view has been taken vide order in W.P.No.9550/2019, of course, in different set of circumstance. He would also draw the attention of this Court to paragraph Nos.8 to 10 which are extracted hereunder.

8. Considered the rival submissions of the counsels and perused the materials and pleadings placed on record.

9. The facts as narrated by the petitioner are not in dispute except that the dispute is



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relating to the validity of the panel, which contained the name of the petitioner for the year 2018. Although, much emphasize has been insisted by the learned Government Advocate appearing for the respondents that the panel will prepared every January of that year, but as far as the present case on hand is concerned, the learned counsel for the petitioner would submit that as per Section 7 of the Tamil Nadu Government Servants (Conditions of Service) Rules, the validity of the panel is for a period of one year from the date when the same is approved by the competent authority. In this case, the panel has been approved on 27.04.2018 and therefore the contention put-forth on behalf of the respondent cannot stand the test of judicial scrutiny.

10. Once, the panel is alive for a period of one year and 2 vacancies were identified to be filled up in the panel for the year 2018 and when a clear vacancy arisen in February 2019, after the incumbent therein expressed her unwillingness not to continue and the person who was second in the panel relinquished her right, the respondents ought to have accommodated the petitioner in that vacancy. The contention that the panel expires in January, 2019 does not appear to be correct submission because nothing in support of such contention has been stated in the counter affidavit. Moreover, the very fact that the person who was second in the panel has relinquished her right in February, 2019 would itself show that the panel was alive and only when the panel was alive such relinquishment will have any meaning. Once such relinquishment is accepted by the respondents, it clearly points out the fact that the panel was alive and the vacancy was yet to be filled up. Therefore, the petitioner has every right to be promoted in the said vacancy.

7. The learned counsel referred to another batch of writ petition in W.P.Nos.3354, 4221 of 2021 etc. batch, but this Court finds that the issue there was whether it is open to the authorities to conduct promotional counselling without conducting General Transfer counselling. The decision rendered therein may not be applicable to the facts of the present case.

8. On behalf of the official respondents Mr.Abishek Moorthy,



9. A counter affidavit has been filed in the matter by the 2nd respondent. The facts as narrated above have not been disputed. The objection to the grant of relief is that in terms of Rule 8 of the Special Rules for Tamilnadu Elementary Educational Subordinate Service for the purpose of drawing up the annual list of approved candidates for appointment to the post in the service by promotion, the crucial date on which the candidates should be qualified shall be 1st January of every year. When the seniority list was drawn up, as on 01.01.2021, the crucial year, 4th and 5th respondents happened to be seniors to the petitioners and therefore, they were included in the panel for the promotion. The other objection was, once the new panel was prepared in 2021, the panel of the year 2020 had become invalid. According to the official respondents, there is no legal infirmity in the action of the respondents and therefore, the writ petitions are devoid of merits.

11. This Court considered the submissions of the learned counsel appearing for the respective parties, perused the pleadings and the materials placed on record.

13. Although it is understandable that due to Covid -19 situation, the promotional exercise could not be carried through in the year 2020, however, when the promotional exercise subsequently conducted in 2021, the official respondents ought



not to have bunched up all the vacancies and then seek to conduct promotional exercise. As held by the Hon'ble Supreme Court and held by this Court in several decisions, whenever vacancies arise in a particular year and promotion could not be conducted for some administrative reasons, those vacancies need to be drawn up year wise and then, promotion should be effected. In this case, such procedure has not been adopted, resulting in deprivation of consideration of the petitioners' claim for promotion.

14. Although it is a case of the official and private respondents that respondents 4 and 5 are admittedly seniors to the petitioners but the fact of the matter is that they became qualified only in 2021 as against the petitioners' eligibility and qualification in 2020 itself. The respondents 4 and 5 cannot have any legitimate grievance though they being seniors to the petitioners in terms of service seniority. In 2020, the petitioners had the essential qualification and eligibility for the subject promotion and hence, they were assigned highest seniority then.

15. In such circumstances, the petitioners cannot be put to a disadvantageous position because of the absence of the promotional exercise in 2020 due to an extraordinary Covid-19 situation. The effect of Novel Corona Virus which forced the administration to postpone the promotional exercise cannot be allowed to adversely impact on the rightful career progression of the petitioners herein. The contentions put forth on behalf of the respondents in the said circumstances are therefore liable to be rejected, considering the facts and the circumstances of the case herein. The claim of the petitioners herein is even otherwise is bolstered by the observations of this Court in the above referred decisions.

16. In the said circumstances, the Writ Petitions are allowed and the proceedings in Na.Ka.No.756/D1/2021 issued by the first respondent, dated 05.02.2021 and the consequential seniority list issued by the third respondent dated 19.02.2021 are hereby declared illegal insofar as it affects the promotion of the petitioners herein as B.T. Assistant-Science for the year 2020.

17. The official respondents are directed to conduct promotion counselling for the vacancies which arose in the year 2020 on the basis of seniority list dated 17.03.2020 and grant promotion to the petitioners as B.T. Assistant-Science for the 3rd respondent Block with all attendant benefits like seniority etc. if they were otherwise fit.

18. It is also open to the official respondents to go ahead with the promotional exercise for the year 2021, after



fulfilling and complying with the above directions.

19. The official respondents are directed to pass appropriate orders in this regard within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

vsi

To

1. The Elementary Education Director,
DPI Campus,
Nungambakkam,
Chennai-600 009.

2. The District Education Officer,
Villupuram District,
Villupuram.

3. Block Educational Officer,
Koliyanur Block,
Koliyanur, Villupuram District.

+2cc to M/s.Row & Reddy, Advocate, S.R.No.2123
+2cc to Ms.D.Rajalakshmi, Advocate, S.R.No.2190
+1cc to the Government Pleader, S.R.No.2743, **2744**

+2cc to Ms.Rajalakshmi, Advocate, S.R.No.2191 (18/02/2022)

W.P.Nos.4973 and 4981 of 2021

RSV(CO)
RGA(25/01/2022) (18/02/2022)