

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2022

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.27247 of 2014

V.Sivasankaran

...Petitioner

..Vs..

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

2. The Director of School Education,
College Road,
Chennai - 600 006.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in Na.Ka.No.80594/W3/E1/2005 dated 17.01.2014 and quash the same and direct the respondents herein to fix the seniority of the petitioner for the post of Post Graduate Teacher in Tamil with effect from 1980 and re-fix the scale of allowances applying VI pay commission recommendations and pay the revised pension with interest at 18% P.A.

For Petitioner : Mr.V.Manisekaran

For Respondent : Mr.A.M.Ayyadurai
Government Advocate

ORDER

The order impugned rejecting the claim of the writ petitioner for grant of seniority on par with one Tmt.Lourdhumary and Mr.K.P.Chandrasekaran is under challenge in the present writ petition.

2.The writ petitioner was appointed as Secondary Grade Head Master on 01.06.1962 in the Panchayat Union Elementary School, Pattikadu, Thirukalikundram Panchayat Union and he was promoted as Tamil Pandit Grade-I on 10.10.1974. The petitioner was further promoted to the post of Post Graduate Teacher in Tamil

and thereafter, he filed O.A.Nos.3929 to 3931 of 1992 before the Tamil Nadu Administrative Tribunal with a prayer to direct the respondents to consider the petitioner's appointment as P.G.Assistant in Tamil.

3.The Tribunal passed an order and based on the said order, the petitioner was promoted as P.G.Assistant. However the seniority was not fixed on par with the said Lourdhumary and K.P.Chandrasekaran. In this regard, the petitioner sent a representation and thereafter filed a writ petition in W.P.No.23261 of 2005 and this Court passed an order on 17.09.2013 directing the respondents to consider the representation submitted by the writ petitioner and pass orders. Pursuant to the said directions of this Court, the impugned order has been passed.

4.The learned counsel for the petitioner mainly contended that the writ petitioner was promoted to the post of P.G. Assistant, pursuant to the interim order passed by Tamil Nadu Administrative Tribunal and the said Lourdhumary and K.P.Chandrasekaran were also similarly placed. Therefore, the petitioner is entitled for seniority on par with the said Lourdhumary and K.P.Chandrasekaran.

5.The learned Government Advocate appearing on behalf of the respondents opposed the said contention by stating that the writ petitioner was promoted to the post of P.G.Assistant based on the interim order passed by the Tamil Nadu Administrative Tribunal. The said Lourdhumary promoted based on Rule 21 of the Tamil Nadu State and Subordinate Service Rules i.e., out of turn promotion on certain administrative exigencies and as per Rule 5 of the Special Rules for the Tamil Nadu Higher Secondary Education Service Rules which provides that promotion based on the out of turn mode will not confer any right of seniority. The petitioner got an order from the Tamil Nadu Administrative Tribunal, only by citing promotion of the said Lourdhumary as Post Graduate Assistant and in order to avoid contempt proceedings, the petitioner was promoted as Post Graduate Assistant during the relevant point of time on par with said Lourdhumary. However the said promotion will not confer any right of seniority either to the said Lourdhumary or to the petitioner. Thus the question of revision of seniority and revision of pay scales as claimed by the writ petitioner does not arise at all.

6.This Court is of the considered opinion that the writ petitioner filed O.A.Nos.3929 to 3931 of 1992 before the Tamil Nadu Administrative Tribunal and an order was passed on 20.08.1992. Based on the said order, the writ petitioner was promoted as P.G. Assistant on 26.10.1992. Thereafter the writ

petitioner has not pursued the matter except by submitting one representation in the year 1995. He filed the writ petition in the year 2005 in W.P.23861 of 2005 and therefore after a lapse of above 9 years the petitioner filed the present writ petition to consider the representation and based on such direction, the petitioner secured promotion and created a new cause of action for the purpose of re-opening the lapsed claim.

7. There is a growing trend amongst litigants that they are sending a representation in a casual manner in respect of the lapsed cause of action and thereafter filing a writ petition with a prayer to consider the representation and after obtaining such a routine order from the High Court, they are obtaining an order on merits from the competent authority and thereafter creating cause of action for the purpose of adjudication on merits. Such practice of the litigants for the purpose of overcoming the period of limitation at no circumstances be appreciated by the High Court but to be depreciated.

8. The person aggrieved is expected to approach the competent authority and the Court of law within a reasonable period of time, if there is a long delay in redressing the grievance, then the cause dies and thereafter, they can not re-open the same after a lapse of several years. In those circumstances such litigative tactics are being adopted by the litigants. Merely sending a representation, based on the representation, filing a writ petition and get an order of direction to consider the representation and thereafter the order passed pursuant to the direction of the High Court is challenged in another writ petition with an idea to adjudicate the merits.

9. Such back door adjudication of issues cannot be entertained by the High Courts. Soon after, the rise of the cause, a litigant is expected to approach the authorities or Court of law as the case may be. In the absence of any such approach, the Court would not be in a position to entertain the writ petition and all such belated writ petitions are liable to be rejected on the ground of laches.

10. For instance, in the present case, even at the time of filing of writ petition, the petitioner was aged about 75 years, now he would be around 83 years, he filed the present writ petition for fixation of seniority and revision of pay. Thus, the idea is to get more pension after a lapse of several years in one way or other and by reopening the lapsed cause of action.

11. Even on merits, the petitioner is not eligible for revision of seniority and revision of pay as the said Loudhmary was promoted on out of turn basis under Rule 21 of the Tamil

Nadu State and Subordinate Service Rules and under Rule 5 of the Special Rules for Tamil Nadu Higher Secondary Education Service Rules. The promotion based on out of turn will not confer any right of seniority. Therefore, even the said Loudhmary may not be entitled for seniority, based on her out of turn promotion. Under these circumstances, the petitioner is not entitled for any relief and filing of writ petition at this age, after a lapse of several years cannot be appreciated by this Court.

12. For all these reasons, the Writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mrm/psa

To

1. The Secretary to Government,
Education Department,
Government of Tamil Nadu,
St. George Fort,
Chennai-600 009.
2. The Director of School Education,
College Road,
Chennai - 600 006.

+1cc to Mr.V.Manisekaran, Advocate, S.R.No.41821

+1cc to the State Government Pleader, S.R.No.42005

W.P.No.27247 of 2014

BR(CO)
RGA(28/07/2022)