



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.03.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.751 of 2022

and

W.M.P. (MD) Nos. 591, 1316 and 1410 of 2022

S. Sahaya Rajasekaran,

... Petitioner

Vs.

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

2. The Chief Educational Officer,
Sivagangai District,
Sivagangai

3. The District Educational Officer,
Devakottai Educational Officer,
Devakottai
Sivagangai District,

4. The Block Educational Officer,
Kalayarkoil Block,
Kalayarkoil Taluk,
Sivagangai District,

5. P. Manimozhi

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, call for the records relating to the Order Na.Ka.No.100/Aa.4/2022 dated 10.01.2022 passed by the 3rd respondent and quash the same.

For Petitioner : Mr.A.Thirumurthy

For R1 to R3 : Mr.S. Saji Bino
Special Government Pleader

O R D E R

The order reverting back the writ petitioner from the post of B.T.Assistant to Secondary Grade Teacher in proceedings dated 10.01.2022 is under challenge in the present Writ Petition.

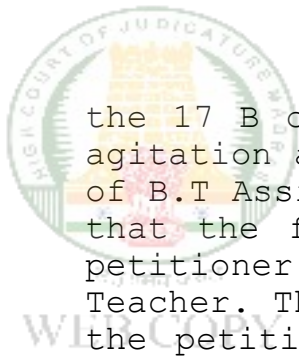


2. The petitioner was initially appointed as Secondary Grade Teacher on 05.11.2004 and he was transferred to Kalayarkovil Union. Thereafter, the petitioner was sanctioned with Selection Grade in the post of Secondary Grade Teacher on 04.06.2016. The panel for promotion to the post of Graduate Teacher in English was prepared in the year 2019. The petitioner was promoted as Graduate English Teacher (i.e., B.T.Assistant) and joined duty on 12.07.2019 at Panchayat Union Middle School, Periyaolaikudipatti, Kalayarkoil Union. The service of the petitioner was regularised in proceedings dated 21.09.2020. Under these circumstances, the impugned order of reversion was issued reverting the writ petitioner from the post of B.T Assistant to Secondary Grade Teacher.

3. The learned counsel appearing for the writ petitioner mainly contended that the service of the petitioner was regularised in the post of B.T.Assistant and he was working about 2 ½ years. Under these circumstances, the reversion cannot be sustained. There are other vacancies available in Marakkathur, Kalayarkoil Union and the petitioner ought to have accommodated atleast in the said place, instead of passing an order of reversion. The petitioner is losing salary on account of reversion. Therefore, the case of the writ petitioner is to be considered for the purpose of retention in the available vacancy.

4. The learned Additional Government Pleader objected the said contention of the petitioner by stating that the writ petitioner was promoted temporarily on certain terms and conditions. The order of promotion is clear that the petitioner was promoted on temporary basis and he cannot claim any priority. Further, in condition No.4 of the transfer order dated 11.07.2019, it is clearly stated that the promotion is absolutely temporary and if the petitioner is liable to be reverted without any notice, in the event of want of vacancies or on other administrative exigencies. The condition No.4 in the temporary order of promotion reveals that in the event of up-gradation of school or want of vacancy, the petitioner will be reverted under Rule 8 of the Tamil Nadu State and Sub-ordinate Service Rules. The said conditions were accepted by the petitioner at the time of temporary promotion in the year 2019. Therefore, the petitioner now cannot turn around and say that his reversion is not in accordance with the Rules.

5. The learned Additional Government Pleader referred the Condition No.8 also. The said condition reveals that all the promotions are to be granted under the Tamil Nadu State and Sub-ordinate Service Rules, more specifically, Rules 35(a) and 35(aa) of the Act. Therefore, all the appeals of the teachers will be considered only under those provisions of the Rules. Relying on the Rules and the conditions accepted by the petitioner at the time of temporary appointment, the learned Additional Government Pleader



the 17 B charges framed against the teachers, who have involved in agitation and accordingly, those seniors are to be provided the post of B.T Assistant in accordance with their seniority. It is contended that the fifth respondent was appointed in the year 1999 and the petitioner was appointed in the year 2004 as Secondary Grade Teacher. Thus, the fifth respondent, admittedly, is much senior than the petitioner even in the cadre of Secondary Grade Teacher. Once the charges are dropped by the Government without even conducting any enquiry, the teacher must be granted with promotion to the post of B.T Assistant. Under these circumstances, the petitioner, who was a junior and temporarily promoted, is reverted and therefore, there is no infirmity as such.

6. The learned counsel appearing for the fifth respondent supporting the arguments of the learned Additional Government Pleader made a submission that there are several other teachers, who are seniors to the petitioner and against them, 17 B charges were dropped. Therefore, promotions are to be granted in accordance with law and based on the seniority of the teachers in the cadre of Secondary Grade Teacher. While considering the cases of senior persons on account of dropping the disciplinary proceedings, if an administrative exigency arises, then the junior most teacher must be reverted back even as per the Rules. However, if sufficient number of vacancies are available, then all the eligible persons may be considered for promotion in the post of BT Assistant. At the outset, the promotions are to be granted subject to the availability of vacancies in the cadre of BT Assistant.

7. The learned counsel appearing for the writ petitioner pointed out that the petitioner has not committed any fault. No doubt, the petitioner is not responsible for framing of 17B charges as against other teachers or dropping of the same. However, temporary promotions are granted on certain terms and conditions. When the charges framed against the senior teachers are dropped, then they are entitled to get all service benefits.

8. The order of temporary promotion issued to the writ petitioner reveals that it is purely temporary and the petitioner will be reverted at any point of time, in the event of want of vacancy or other administrative exigencies. All appeals are to be considered under Rule 35(a) and 35(aa) of the Tamil Nadu State and Sub-ordinate Service Rules. Thus, the petitioner was very much aware of the nature of temporary promotion granted to him to the post of BT Assistant. The petitioner agreed for the terms and conditions and joined in the post of B.T.Assistant. Now the circumstances arouse that the Government took a policy decision to drop the disciplinary proceedings against all the teachers, who participated in the agitation. Therefore, the senior teachers are to be provided with promotion to the post of B.TAssistant in accordance with seniority as 17B Charges were dropped against them. Under those circumstances, an administrative exigency arises regarding the availability of



vacancy. Thus, the junior most teachers in the cadre is to be reverted on administrative ground. But, if the vacancies are available, then all the cases are to be considered including the case of the writ petitioner in the order of seniority and by following the Rules.

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9. The learned counsel appearing for the petitioner made a submission that there is a vacancy and the Authorities Competent are bound to ascertain all such vacancies available and take all appropriate steps to fill up the post of B.T Assistant strictly in accordance with the Rules in-force and by following the seniority and other criterias prescribed for grant of promotion. The learned counsel appearing for the petitioner made a submission that there is a loss of salary.

10. It is a natural corollary that where an employee is reverted from higher post to lower post, the salary will be fixed in accordance with the post in which he is reverted and he cannot claim any higher salary in respect of the lower post in which he is reverted to be posted. Therefore, the employees are entitled for salary for the post in which he is posted and he cannot seek the higher salary attached to the higher post. Thus, the rejection of pay is a natural consequence of reversion. Once the case of the petitioner is considered for further promotion, his pay will be fixed in accordance with the Pay Rules.

11. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

ssb

To

1. The Director of Elementary Education,
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Chennai-600 006.

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Sivagangai District,
Sivagangai



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Devakottai
Sivagangai District,

4. The Block Educational Officer,
Kalayarkoil Block,
Kalayarkoil Taluk,
Sivagangai District,

+1 CC to M/s.SPL GP (SR-9755[F] dated 03/03/2022)

+1 CC to M/s.A.THIRUMURTHY, Advocate (SR-9856[F] dated 03/03/2022)

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-9940[F] dated
04/03/2022)

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