



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.04.2022

Delivered On: 02.06.2022

CORAM:

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P. (MD)Nos.5196 to 5198 of 2015

and M.P. (MD) .Nos.2,2,2,3,3 and 3 of 2015

W.P. (MD) .No.5196 of 2015

P.Patrick Raymond

.. Petitioner

Vs.

1.The State of Tamil Nadu

Rep. by its Secretary,
School Education Department,
Secretariat,
Fort. St. George,
Chennai - 9.

2.The Director of School Education,
O/o. The Director of School Education,
DPI Campus, Nungambakkam,
Chennai.

3.The Joint Director of School Education,
O/o. The Joint Director of School Education,
DPI Campus, Nungambakkam,
Chennai.

.. Respondents

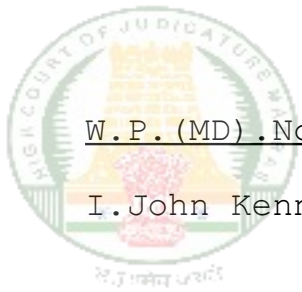
PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in O.Mu.No.91875/C2/E1/2014, dated 08.12.2014 on the file of the respondent No.2 and the impugned order in Na.Ka.No.100183/W2/E2/2014, dated 12.12.2014, on the file of the respondent No.3 and quash the same as illegal and consequently, for a direction, directing the respondents to rework the Seniority Panel for the promotion to the post of PG Assistants, High School Headmasters in Department of School Education by including the past services rendered by the petitioner and other similarly placed persons in the Elementary Education Department, within the time period stipulated by this Court.

For Petitioner

: Mr.T.Lajapathi Roy

For Respondents

: Mr.V.Om Prakash
Government Advocate



W.P. (MD) .No.5197 of 2015

I. John Kennedy

.. Petitioner

Vs.

1.The State of Tamil Nadu
Rep. by its Secretary,
School Education Department,
Secretariat, Fort. St. George,
Chennai - 9.

2.The Director of School Education,
O/o. The Director of School Education,
DPI Campus, Nungambakkam,
Chennai.

3.The Joint Director of School Education,
O/o. The Joint Director of School Education,
DPI Campus, Nungambakkam,
Chennai.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Na.Ka.No.100183/W2/E2/2014, dated 12.12.2014, on the file of the respondent No.3 and quash the same as illegal and consequently, for a direction, directing the respondents to rework the Seniority Panel for the promotion to the post of PG Assistants, High School Headmasters in Department of School Education by including the past services rendered by the petitioner and other similarly placed persons in the Elementary Education Department, within the time period stipulated by this Court.

For Petitioner

: Mr.T.Lajapathi Roy

For Respondents

: Mr.V.Om Prakash

Government Advocate

W.P. (MD) .No.5198 of 2015

P.A. Joseph Xavier

.. Petitioner

Vs

1.The State of Tamil Nadu
Rep. by its Secretary,
School Education Department,
Secretariat,
Fort. St. George,
Chennai - 9.



2.The Director of School Education,
O/o. The Director of School Education,
DPI Campus, Nungambakkam,
Chennai.

3.The Joint Director of School Education,
O/o. The Joint Director of School Education,
DPI Campus, Nungambakkam,
Chennai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Na.Ka.No.100185/W2/E2/2014, dated 12.12.2014, on the file of the respondent No.3 and quash the same as illegal and consequently, for a direction, directing the respondents to rework the Seniority Panel for the promotion to the post of PG Assistants, High School Headmasters in Department of School Education by including the past services rendered by the petitioner and other similarly placed persons in the Elementary Education Department, within the time period stipulated by this Court.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.V.Om Prakash
Government Advocate

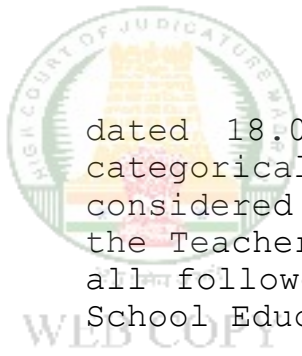
COMMON ORDER

These writ petitions have been filed to quash the impugned orders dated 08.12.2014 and 12.12.2014 and consequently, direct the respondents to rework the Seniority Panel for the promotion to the post of PG Assistants, High School Headmasters in Department of School Education by including the past services rendered by the petitioner and other similarly placed persons in the Elementary Education Department.

2. Since the issues involved in these writ petitions are one and the same, they are taken up together, heard and disposed of by this common order.

3.The brief facts of the writ petition are as follows:

The petitioners have participated in the examinations conducted by the Teacher's Recruitment Board in the year 2004 and were selected. The petitioners were appointed as B.T. Assistant in the year 2004 and 2005 under the Elementary Education Department, vide G.O.Ms.No.100, dated 05.09.2005 and 27.06.2003 and later on 01.06.2006, the petitioners were brought under the regular time scale of pay vide G.O.Ms.No.99, dated 27.06.2006 and G.O.Ms.No.120,



dated 18.07.2006. In the said Government Orders, it has been categorically stated that the petitioners' seniority will be considered in accordance with the rank secured by the petitioners in the Teachers Recruitment Board Examinations. But the same was not at all followed at the time when the petitioners were absorbed under School Education.

4. According to the petitioners, several Juniors, who were appointed in the year 2005-2006 were given all promotions bypassing the petitioners and other persons, who are appointed through Teachers Recruitment Board, vide G.O.Ms.No.120, dated 18.07.2006. Several candidates, who are appointed in the School Education Department alone are considered for promotion bypassing the seniority. On 12.12.2011, the Panchayat Union Middle School, in which, the petitioners were working, were upgraded as Government High School in view of the Government Order, in G.O.Ms.No.198, dated 07.12.2011. Though the petitioners were appointed as B.T. Assistant in the Elementary Education Department, later on, they were absorbed as B.T. Assistant in the School Education Department.

5. As per Rule 35 (a) of the Tamil Nadu State and Subordinate Service Rules, the seniority in a service, class or category or grade shall unless he has been reduced to a lower rank as a punishment be determined by the rank obtained by him in the list of approved candidates drawn up by the Tamil Nadu Public Service Commission or other appointing authorities. The date of commencement of his probation shall be the date on which he joins duty irrespective of his seniority. Therefore, the contention of the petitioners is that the respondent should rework the entire seniority of the B.T. Assistants eligible for P.G. Assistant promotions in the light of Rule 35(a). The petitioners also contended that the up-gradation of Middle School as High School is for an administrative reason and that cannot take away their employment of 5 years in the Middle School after absorbing the petitioners in the School Education Department. The petitioners' previous service should also be considered and taken into account for the purpose of fixation of seniority.

6. The second respondent has issued the impugned order, dated 08.12.2014, in which, it was stated that the petitioners are seeking inclusion of the past service in the Elementary Education Department and the same cannot be done as there is a specific bar for the same as per G.O.Ms.No.209, dated 08.05.1997. The contention of the petitioners is that the said Government Order is not applicable to the petitioners' case. Further a careful reading of the Government Order clearly indicates that only insofar as the candidates, who are willingly opt to move from one Department to the other cannot seek inclusion of past services in the new Department. But the petitioners claim is that the above said Government Order will not



be applicable, as it is an administrative decision to upgrade the schools in which, the petitioners were employed and bring the same under the School Education Department. Hence, the past services should be included for the purpose of calculation of seniority.

7.The third respondent has issued the impugned order, in which, it has been stated that those who have been transferred from one Department to another cannot seek the original seniority and their seniority will be fixed on the date of their joining in the new Department. It is totally arbitrary and against the principles of equality on the part of the respondents 2 to 4. In a similar case, the Honourable Court has struck down the similar condition by way of an order, dated 19.06.2012 passed in W.P.(MD).Nos.15399 to 15406 of 2012. The said judgment is squarely applicable and therefore, the petitioners prayed to allow the writ petition.

8.The third respondent has filed a counter, stating that as per G.O.Ms.No.209/Edn. Dept., dated 08.05.1997, the teachers transfer from Elementary Department to Secondary Department and the concerned teachers promotion seniority was fixed on the date of absorption for the Secondary Unit. It was mentioned in the Na.Ka.No.100183/W2/E2/2014, dated 12.12.2014, while arriving the seniority, the date of absorption in the Secondary Unit shall be taken. The petitioners were appointed in the post of B.T. Assistant in the Elementary Department on 01.06.2006 as per G.O.Ms.No.99 dated 27.06.2006. The above Schools were upgraded on 12.12.2011 and the petitioners were absorbed in the High School as per the option submitted by the petitioners themselves with the condition that the seniority will be fixed only on 12.12.2011 in the Secondary Department. Even though they were selected by Teachers Recruitment Board, their date of absorption in the Secondary Education Department is 12.12.2011 and the seniority was fixed only on 12.12.2011. The petitioners submitted their willingness to work in the High School that is Secondary Unit on the basis of losing the Elementary School service and they agreed to remain as Juniors in the Secondary Unit from their date of absorption in the Secondary Unit.

9.As per G.O.Ms.No.209, School Education Department, dated 08.05.1997, the teachers transferred from one unit to another unit on the basis of following conditions:

- 1) *The Teachers are considered as most Junior while to set Unit Transfer.*
- 2) *No TA DA will be paid.*
- 3) *The transferred teachers should follow the Act, Rules and Regulations of the concerned Department.*
- 4) *The transferred teachers lien with the parent Department shall be cancelled automatically.*

Hence, the past services of the petitioners not taken for the promotion panel.

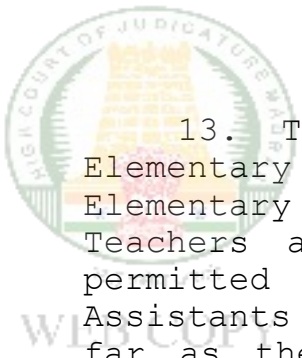


10. Where it has been clearly stated that the transfer of teachers' lien with the parent Department shall be cancelled automatically, based on this the petitioners were transferred and the petitioners have submitted their own willingness. Therefore, the contention of the petitioners that the petitioners were transferred due to administrative reason is incorrect. The petitioners were transferred from Elementary Unit to Secondary Unit on their own request and hence, the seniority for P.G. Assistant Promotion is fixed on the date of absorption in the Secondary Unit. Similarly, the issue was considered in a batch of writ petitions in W.P.Nos.1673 and 11992 of 2011 filed by R.Karunakaran and others, which is related to the similar issue to that of the petitioners herein, wherein, it has been categorically rejected the claims of the petitioners therein for placing them as seniors in the transferred Department based on the selection to the parent Department. The relevant portion is extracted hereunder:

"In Surendra Singh Gaur Vs. State of M.P. (2006) (10) SCC 214), a person appointed in the department of Agriculture, got transferred and absorbed in the department of irrigation, on his own volition, due to the limited chances of promotion in the parent department. In the order of transfer, it was made clear that he would be eligible for seniority in the transferee department only from the date of his joining there. When the aggrieved person made a claim for promotion he was given the option to go back to his parent department. The parent department refused to take him back on the ground that he had lost his lien in that department. When the decision was challenged, the administrative tribunal held that an employee who got transferred to another department at his own request, cannot claim the benefit of past service. The Supreme Court confirmed the same. Similar view was expressed in K.P.Suthakaran Vs. State of Kerala (2006) (5) SCC 286)."

11. Therefore, the respondents submitted that the claim of the petitioners is incorrect and it is against the service Rules provided for the Elementary Education and the School Education Department.

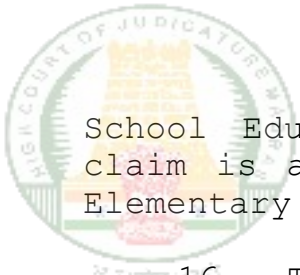
12. Heard Mr.T.Lajapathi Roy, the learned counsel appearing for the petitioner and Mr.V.Om Prakash, the learned counsel Government Advocate for the respondents and perused the records.



13. The Education Department has two Departments, one is Elementary Education Department and School Education Department. The Elementary Education Department is concerning about Secondary Grade Teachers and B.T. Assistants. The Secondary Grade Teachers are permitted to take classes for standards 1 to 5 and the B.T. Assistants are permitted to take classes from standards 6 to 8. As far as the seniority is concerned, union is considered as unit "Union Seniority". There are more 400 such unions and there are more than 500 such "Seniority Panels". However, the B.T. Assistants and the P.G. Assistants who are working under the School Education Department are permitted to take classes for standards 6 to 8 and P.G. Assistants are permitted to take classes for standards 9 & 10 and 11th & 12th standards. The seniority for the B.T. Assistants and P.G. Assistants is "State seniority" and there is only single "Seniority Panel". From this it is evident that these two Departments are separate and transfer from one Department to other Department is considered as Departmental Transfer. For Elementary Education Department, there is a "Special Rules" that is applicable to the Elementary Department. Likewise Special Rules are formulated for the School Education Department. Therefore, the claim of the petitioners as if the Secondary Grade Teachers working in Elementary Education Department and School Education are one and the same is incorrect.

14. The contention of the petitioners is that their Schools were upgraded based on G.O.Ms.No.209 and it is only administrative modification and such administrative modification cannot be fastened on the petitioners. The said contention is not acceptable, if any school is upgraded, the teachers working in the said school will be given an option either to continue in the Secondary Grade Department or they can switch over the School Education Department. The petitioners had exercised their right and ought not to have switched over the School Education Department. Had the petitioner denied to accept the offer to shift to School Education Department from Elementary Education Department, then the petitioner would be entitled to the relief that is being sought in this writ petition. Once the petitioner has shifted to School Education, he cannot claim his service rendered in Elementary Education and grant seniority. If the petitioners' claim is accepted and granted the relief then the Secondary Grade Teachers and the B.T. Assistants working in School Education will be affected. The petitioners have not impleaded any such affected parties in this writ petition.

15. The state Government has formulated separate Rules for School Education as well as the Elementary Education. The said rules are not challenged in this writ petition. Now at these circumstances, the petitioner cannot claim any relief *dehors* the Rules applicable to the Elementary Education. More so, when the Elementary Education Department follows "Union Seniority", the



School Education Department follows "State Seniority". If this claim is accepted than there will be total confusion in both the Elementary Education Department and the School Education Department.

16. The petitioners have relied on *Mullaivendhan's* case rendered in W.P.(MD).No.1777 of 2007, dated 19.07.2012. Against the order, the Government has preferred Writ Appeal in W.A.(MD).No.656 of 2013 and the same was dismissed on 19.04.2017, against which the Government has preferred SLP and the same was also dismissed. In the said *Mullaivendhan's* case, it has been stated that the teachers were not informed by way of any other communication that on absorption into the High School Service they would lose their earlier service for the purpose of seniority for promotion. Hence, *Mullaivendhan's* case was ordered and the claim of *Mullaivendhan* was allowed. However, in the present case, the petitioners have submitted their willingness to forgo their seniority, which they have acquired in the Elementary Education Department, while they were switching over to the School Education Department. Therefore, the said *Mullaivendhan's* case is not applicable to the present case. The teachers in Elementary Education Department are fully aware that "Union Seniority" is followed in Elementary Education and "State Seniority" is followed in School Education and also aware that two Departments are separate Departments and if they are switching over, they should lose their seniority in the Elementary Education Department. In other words, the lien in Elementary Education Department cannot be continued, if they are shifted to School Education Department. Therefore, the said *Mullaivendhan's* case cannot be followed in the present case. Therefore, the claim of the petitioners is totally against the rules of Elementary Education Department and the Rules of School Education Department.

17. Therefore, the writ petitions fails and accordingly, stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Vacation Officer

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

TM

To

1. The Secretary, State of Tamil Nadu
School Education Department,
Secretariat, Fort. St. George, Chennai - 9.



2.The Director of School Education,
O/o. The Director of School Education,
DPI Campus, Nungambakkam, Chennai.

3.The Joint Director of School Education,
O/o. The Joint Director of School Education,
DPI Campus, Nungambakkam, Chennai.

+1 CC to M/s.SPL.GP (SR-24288[F] dated 03/06/2022)

W.P. (MD)Nos.5196 to 5198 of 2015
02.06.2022

MGJ(09.06.2022) 9P 5C