



W.P.No.17798 of 2012

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2023

CORAM

THE HON'BLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.17798 of 2012 and
W.M.P.No.2 of 2012 & W.M.P.No.8737 of 2016

T.Vaithilingam

... Petitioner

Vs.

1. The District Elementary Educational Officer,
Salem.

2. The Panchayat Union Primary School,
Rep. by its Headmaster,
Kadayampatti Union,
Omalur Taluk,
Salem District.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the order of the first respondent dated 14.12.2010 in ATheeMu.No.8053/212/2010 and quash the same and consequently direct the first respondent to promote the petitioner as a Headmaster of a primary school with effect from the date on which his juniors were promoted.

For Petitioner	: Mr.K.Selvaraj
For Respondent 1	: Mr.G.Ameedius, Government Advocate

* * * * *

ORDER

This Writ Petition has been filed to quash the proceedings in ATheeMu.No.8053/212/2010 dated 14.12.2010 passed by the first respondent and prayed for consequential directions to promote the petitioner as a Headmaster of a primary school with effect from the date on which his juniors were promoted.



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2. The case of the petitioner is that he pursuant to the recruitment initiated through employment exchange, the petitioner was called for certificate verification on 25.08.2004 and consequently he was appointed as Secondary Grade Teacher by an order dated 04.10.2004. Several other persons were also appointed in the same process by an order dated 04.10.2004. However, the said appointment order sent by post was received by the petitioner only on 07.10.2004. Accordingly, he reported for duty on 07.10.2004. When the issue of promotion to the post of Head Master came up for consideration, though the petitioner was found eligible for the post of Head Master, he was treated as Junior to the persons, who joined in the service on 06.10.2004 that is one day before the date of joining of the petitioner. Thus, the petitioner was treated as Junior to the persons who were all joined in the service on 06.10.2004. Aggrieved by the said promotion, petitioner brought the same to the knowledge of the first respondent through his representation dated 09.12.2010 and made a claim to treat the petitioner as senior by virtue of appointment order dated 04.10.2004 and also on the ground that the petitioner was senior in registration of his name before the employment



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exchange. But the said request of the petitioner was turned down through impugned order of the 1st respondent on the ground that the petitioner has raised such objection after lapse of six years.

3. The 1st respondent filed counter affidavit. There is no much dispute on the factual aspects such as the petitioner and others were being appointed by an appointment order dated 04.10.2004 and also about the date of joining of the petitioner. In the counter affidavit, the 1st respondent further stated that several Secondary Grade Teachers have reported and joined duty on 06.10.2004. The petitioner joined duty only on 07.10.2004, the very day on which he received the letter of appointment. It is further stated that the petitioner did not raise any objections with regard to date of his joining for many years. It is also stated that the the name of the petitioner was included in the promotional panel from the year 2007 to 2011 and the petitioner also attested and acknowledgment the same, without any objections in the seniority list for preparing promotion panel.



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4. Heard, the learned counsels appearing on either side and perused the records.

5. From the counter affidavit, it is not clear that as to whether any seniority list is prepared at any point of time among the Secondary Grade Teacher for fixing the seniority of the petitioner and others who were appointed on 04.10.2004. Further, it is also not clear that as to whether, the petitioner was shown below the other persons who were appointed on 04.10.2004 and joined service on 06.10.2004 or not. There is no averment in the entire counter affidavit to suggest that there was any seniority list that was ever prepared from the year 2004 till the year 2011 for the Senior Grade Teachers who were appointed on the same day i.e., on 04.10.2004.

6. Taking into consideration, the date of joining for the purpose of fixing seniority is unknown to law. It is settled law that if there is any selection list or merit list, such merit/selection shall be the criteria for



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preparation of seniority list and if there is no selection or merit list and several persons who were appointed on the same day by different orders, age should be criteria for the purpose of fixing the seniority. In the instant case, strangely the date of joining is take into consideration for the purpose of fixation of seniority or for the purpose of effecting further promotion. Further it is also an admitted fact that the appointment order was communicated to the petitioner through post and the address that was mentioned on the envelop was not correctly mentioned and the same was stated to be by mistake. If the first respondent had sent the appointment order to the petitioner to the correct address, the petitioner also would have joined in the service on 06.10.2004. Thus, the petitioner is deprived of consideration of his case on par with the Senior Grade Teachers appointed on 04.10.2004 and the consequent promotion. Thus, promotion of this petitioner delayed by two years. Thus, the petitioner was deprived of his legitimate promotion on par with similarly situated persons basing on a wholly unsustainable ground in an arbitrary manner, which needs to be remedied. In these circumstances, the action of the first respondent in treating the petitioner as junior and thereby not



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considering his case for promotion only on the ground of joining the service one day later on is liable to be declared as illegal and liable to be set aside.

7. Therefore, the 1st Respondent is directed to consider the case of the petitioner for promotion as Head Master on par with the persons who were appointed on 04.10.2004 in the same selection process and provide the benefit of notional promotion to the petitioner to the post of Elementary School Headmaster with effect from the date on which similarly persons were promoted with all consequential benefits as expeditiously as possible at any rate within a period of three months from the date of receipt of copy of this order. Accordingly, Writ Petition is allowed. No costs. Miscellaneous petitions, if any, shall stand closed.

15.12.2023

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Internet:Yes

Index:Yes

Speaking order



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MUMMINENI SUDHEER KUMAR, J.

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To

The District Elementary Educational Officer,
Salem.

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