



W.P.No.6312 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.No.6312 of 2009

W.P.No.12113 of 2010

M.P.No. 2 of 2009 & 2 of 2010

S.Sathiamurthi ... Petitioners in W.P.No.6312 of 2009

1.K.S.Rajendiran

2.R.Arulmozhivernan

3.V.Sekar

4.G.Jegannathan

5.G.Sathyamohan ... Petitioners in W.P.No.12113 of 2010

Vs

1.The Government of Tamil Nadu
Rep., by Secretary to the Government,
School Education Department,
Fort St., George, Chennai – 600 009.

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

3.The Chief Educational Officer,
Pudukkottai District, Pudukkottai.

4.The Teachers Recruitment Board,
Rep., by its Member Secretary,

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College Road, Chennai – 600 006.

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5.M.Saraswathi
6.S.Karpagavalli
7.L.Sabarirajan
8.V.Girija
9.T.Pilorajam

... Respondents in both W.Ps

COMMON PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the second respondent in relation to the proceedings issued in Na.Ka.No.12850/C1/E1/2008, dated 24.10.2008, and quash the same in so far as the fixation of seniority rank between petitioners and the respondents No.5 to 9 is concerned and issue an appropriate direction to the respondents No.1 to 4 to fix the seniority rank as per the date of regularization and date of appointment in the post of B.T. Assistant and place the petitioners at the appropriate and follow the same for further promotion to the post of District Educational Officer and its equivalent cadre and pass appropriate orders.

For Petitioner : Mr.R.Saseetharan in both W.Ps

For Respondents : Mr.S.Ravichandran AGP for RR1 to 3
Mr.C.Kathiravan Standing counsel for TRB for R4
No Appearance for R5 to R9
RR6, 7, 8 served – No Appearance
M/s.K.S.Karthik Raja for R9

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in W.P.No.6312 of 2009

COMMON ORDER

These Writ Petitions had been filed challenging the fixation of seniority between the petitioners and the respondents 5 to 9 and issue appropriate direction to the respondents 1 to 4 to fix the seniority rank, as per the date of regularization and date of appointment in the post of B.T. Assistant and place the petitioners at the appropriate place and follow the said seniority list for further promotion.

2. Heard Mr.R.Saseetharan learned counsel appearing for the petitioner, Mr.S.Ravichandran learned Additional Government Pleader appearing for the respondents 1 to 3, and Mr.C.Kathiravan, learned Standing counsel for the Teachers Recruitment Board, Mr.K.S.Karthik Raja, learned counsel appearing for the ninth respondent. In spite of notice had been served on the respondents 5 to 8, they have neither appeared in person nor through their counsel before this Court.

3.The case of petitioners is that the mode of appointment to the

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post of High School Headmaster is by way of recruitment by transfer of B.T. Assistants in Tamil Nadu Educational Subordinate Service Rule. The petitioners were initially appointed as B.T. Assistants in Maths during the year 1989, pursuant to the selection in the year 1988 by the fourth respondent. They were subsequently posted as B.T. Assistant in Maths except one of the petitioners.

4.The learned counsel appearing for the petitioner would submit that the second respondent had published a seniority list containing both the B.T. Assistant and P.G. Assistants, (who were recruited by way of transfer from the post of B.T. Assistant). In the list, the persons in serial No.1 to 122, were selected from the selection done by the TRB and they were all appointed prior to 1987. The person in serial No.123, was absorbed as B.T.Assistant in the year 1988. and the persons, from the rank 124 to 641, were appointed as B.T. Assistants in the selection done by the fourth respondent in 1988 upto the year 1989 on different dates. The petitioners herein were also shown in the aforesaid list.

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Many of the persons particularly, the respondents 5 to 9, who were regularized in service subsequent to the appointment of the petitioners, were shown as senior to the petitioners. On enquiry, it was intimated that the seniority list was based on subject-wise rotation.

5.The learned counsel appearing for the petitioners would vehemently contend that there is no specific rule to prepare a seniority list based on the procedure that had been adopted by the respondents. The learned counsel would submit it is a well settled principle that in the absence of any specific rule, the date of appointment and the date of regularization would be the criteria in arriving at the seniority in a particular cadre. Therefore, he would submit that the aforesaid list of seniority would have to be revisited by the respondents and fix the seniority as per the date of appointment and regularization.

6.Countering his arguments made by the learned counsel for the petitioner, Mr.S.Ravichandran, learned Additional Government Pleader would submit that the panel is prepared only on the basis of the rank allotted by the fourth respondent, in all subjects which were

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combined together and arranged in the ascending order with serial no in fitment. The rank obtained by the candidates itself would indicate the place, where he could stand in fixation of seniority for promotion and as such there was no error in arriving at the seniority of the respective candidates. He would also submit that to arrive at an inter-se-seniority among themselves, the date of regularization in B.T.Assistant cadre is also taken as eligible criteria to fix the seniority in the preparation of panel. The rank secured by the candidates during the selection of TRB plays a vital role in fixation of seniority. He would further submit that one or more candidates are joined on the same day, then the seniority would be determined based on the date of birth of the candidates, the candidates who is senior in age would be arranged above, the candidates from whom the person, who is junior in age. Therefore, the seniority fixed under impugned in these Writ Petitions as regards to the respondents 5 to 9 are in order and need not be interfered with. He would further reiterate that the candidates selected by the Teachers Recruitment Board, had been arranged in accordance with the rank

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which is assigned during the selection process based on merit cum communal rotations subject to the rules of reservation, the arrangement would not alter at any stage and the rank once allotted remains forever.

7.I have heard the rival submissions made on either side and perused the materials placed on record.

8.From the proceedings of the fourth respondent declaring the selection of the respective petitioners, I do not find that no rank had been assigned to them. Similarly under the proceedings of the Joint Director issuing order of appointment to the respective petitioners, the column no.1 which relates to the rank assigned by the fourth respondent has been left blank. This is the factual position.

9.A counter has been filed by the fourth respondent wherein there is no averment as to whether they had given any ranking to the selected candidates. It had been specifically averred by the deponent of the said counter affidavit that the fourth respondent only recruits and

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send the selected list of candidates along with their respective marks and roster to the appointing authority.

10.The second respondent had filed a counter with contradictory statement, which reads as follows:-

3.It is submitted that the preparation of panel for the year 2008 prepared in accordance with Govt., letter vide No.2074/M2/2008-6, dated 07.07.2008. As stated in the Govt., Letter, the panel is prepared only on the basis of rank No. allotted by the T.R.B., and the candidate with same rank No., (viz) namely 1,2,3,4,5...9, etc., in all subjects were combined together and arranged in ascending order with serial no in the fitment. The rank obtained by the candidate itself will indicate the place where he could stand in fixation of seniority for promotion. The top rank holder in the selection will be placed above in the fixation of seniority. As such the writ petitioner with rank No.516, placed below the candidate with rank Nos.130,131, 142, 144 and 146. Therefore, the placement of seniority is in order.

4.Further it is submitted that to arrive at the inter-se-seniority among these candidates, date of regularization in B.T., cadre is also taken as eligible criteria to fix the seniority in the preparation of panel as Govt., High School



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Headmaster. The rank secured by the candidate in selection of Teachers Recruitment Board, plays a vital role in the fixation of seniority in the panel for promotion as High School Headmaster. If one or more candidate were joined on the same day, their seniority will be determined based on the date of birth of the candidate. The candidate who is senior in age will be arranged above the candidate who is junior in age. The method adopted for the preparation panel is in accordance with the existing rules. Therefore, the order of fitment in the panel dated 24.10.2008, was perfectly in order.

11.From a reading of the aforesaid counter particularly in paragraph 3, it is seen that the panel was prepared only on the basis of the rank allotted by the TRB. However, in paragraph 4, it had been averred that the date of regularization in the B.T. Assistant cadre was also taken as an eligible criteria to fix the seniority. In the same paragraph further it had also been stated that if more than one candidates had joined on the same day, their seniority would be determined on the basis of the date of birth.

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12.If the respondents 1 to 3 had followed the rank assigned by the fourth respondent during the selection for fixing the seniority, then the question of taking into consideration the date of regularization and the date of joining duty would not arise and further if the joining date is same, the date of birth of the candidates would be reckoned does not arise at all.

13.In view of the specific averment extracted supra, I am not convinced that the seniority list, impugned in these Writ Petitions had been fixed by adopting the Rule of law. Therefore, I am inclined to interfere with the order impugned atleast in respect of the respondents 5 to 9.

14.At this juncture, it is informed to this Court that the petitioners as well as the respondents 5 to 9 had superannuated from service.

15.In view of the factual scenario, I do not propose to now direct

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the respondents to revisit the seniority list in its entirety. Since from the counter affidavit filed by the fourth respondent, I do not find any averment indicating that the fourth respondent had given a ranking to the selected candidates, which is also substantiated by the selection order given by the TRB and also the appointment order where the column indicating that the rank obtained by the candidates in the TRB is left blank, I am convinced that the TRB had not given any ranking to the selected candidates. Therefore, the respondents 1 to 3 are directed to notionally fix the seniority of the petitioners concerned vis-a-vis, the respondents 5 to 9 and fix their seniority according to their date of joining and thereafter grant all attendant benefits. However, it is made clear that whatever benefits that had been given to the respondents 5 to 9 should not be disturbed. It is further directed that by such revision of seniority list, the petitioners would not be entitled to any monetary benefit, but however, the respondents 1 to 3 shall calculate the pensionary benefits, that also the petitioners would be entitled to only notional fixation and grant the revised pension to them from the date of

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receipt of a copy of this order.

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16. With the aforesaid directions, the Writ Petitions are disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

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Index : Yes/No
Speaking order : Yes/No
Neutral Citations : Yes/No

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K.KUMARESH BABU,J.

Pbn

To

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