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W.P.No.8104 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2023

CORAM :  
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

**Writ Petition No.8104 of 2021**

V.Anishkumar

... Petitioner

Vs.

- 1.The Chief Educational Officer,  
Chengalpattu.
- 2.The District Educational Officer,  
Maduranthagam Educational District,  
Maduranthagam, Chengalput District.
- 3.The Block Educational Officer-II,  
Madurantagam Block, Madurantagam,  
Chengalpattu District.

4.T.Sangettha

... Respondents

Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records of the third respondent relating to the seniority list as on 01.01.2021 of Secondary Grade Teacher in Madurantagam union and consequent panel for promotion as Graduate Assistant (Science) as on 01.01.2021 (published in Na.Ka.No.142/A1/2021 dated 19.02.2021) quash the same to the limited extent of placement of the petitioner at Sl.No.111 in the seniority list and that



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of the fourth respondent at No.108 therein, and also the placement of the petitioner and the fourth respondent in the panel at No.2 and 1 respectively and to issue consequential directions to the third respondent to revise the seniority of the petitioner and that of the fourth respondent on the basis of their respective ranking assigned by the Teachers Recruitment Board as 3022 and 3065 respectively and on that basis to revise the panel as on 01.01.2021 for promotion as Graduate Assistant (Science) also, within a limited time frame and grant promotion to the petitioner.

For Petitioner : Mr.P.Murali

For Respondents 1 to 3 : Mr.A.M.Ayyadurai,  
Government Advocate

For Respondent 4 : M/s.S.Thankira

### **ORDER**

The petitioner has filed this writ petition seeking to call for the records of the third respondent relating to the seniority list as on 01.01.2021 of Secondary Grade Teacher in Madurantagam union and consequent panel for promotion as Graduate Assistant (Science) as on 01.01.2021 (published in Na.Ka.No.142/A1/2021 dated 19.02.2021) quash the same to the limited extent of placement of the petitioner at Sl.No.111 in the seniority list and that of the fourth respondent at No.108 therein, and also the placement of the



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petitioner and the fourth respondent in the panel at No.2 and 1 respectively and to issue consequential directions to the third respondent to revise the seniority of the petitioner and that of the fourth respondent on the basis of their respective ranking assigned by the Teachers Recruitment Board as 3022 and 3065 respectively and on that basis to revise the panel as on 01.01.2021 for promotion as Graduate Assistant (Science) also, within a limited time frame and grant promotion to the petitioner.

2. Learned counsel for the petitioner submitted that the petitioner has passed SSLC (X std) in March 2002, Higher Secondary Course (Plus Two) in March 2004 and Diploma course in Teacher's Education in October 2006. He has also passed TET Supplementary Examination. This being so, the petitioner was appointed as a Secondary Grade Teacher by proceeding in Pro.Na.Ka.No.27925/2012 dated 11.12.2012 of the Director of Elementary Education, Chennai and was posted at Panchayat Union Elementary School, Malaipakkam, Madurantagam Union, Kancheepuram District (Now in Chengalpattu District). Thereafter, he was joined duty on 17.12.2012 and subsequently, he has passed B.Sc., (Secondary) and B.Ed., degree course and



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became fully eligible and qualified for being empaneled for the post of Graduate Assistant (Science) as on 01.01.2021 in Madurantagam Union and entries have been made in his service register prior to 31.12.2020 to that effect.

3. Learned counsel for the petitioner further submitted that as on 01.01.2021, the third respondent has issued the seniority list of Secondary Grade Teachers in Madurantagam Union, wherein, the petitioner's name has been placed as Sl.No.111 (TRB Ranking No.3022) and Tmt.T.Sangeetha (TRB Ranking No.3065), the fourth respondent herein has been placed as Sl.No.108 and the said list was submitted before the second respondent for approval vide Lr.Na.Ka.No.142/A1/2021 dated 19.12.2021 along with a panel list as on 01.01.2021 for promotion to the post of Graduate Assistant (Science). In the said panel, the petitioner has been placed as No.2 and the fourth respondent has been placed as No.1.

4. Learned counsel for the petitioner contended that this being so, a query has been raised by one Mr.P.Karuppannan and for the said query, the Public Information Officer, Office of the Director of Elementary Education,



Chennai-6 has replied through a letter in Na.Ka.No.16967/D2/2015 dated 14.07.2015 stating that the ranking assigned by the Teachers Recruitment Board should be taken into account while preparing the panel for promotion, which is further confirmed in the reply given in Chief Ministers Special Cell in response to the Petition No.2019/1006532/BO dated 24.05.2019 to the petitioner by Thiru.N.Esakkiappan, director of School Education, Chennai that in the case of teachers approached on the same, while preparing the entire panel for promotion of Union level, the ranking assigned by Teachers Recruitment Board alone should be taken into account. At this juncture it is pertinent to extract Section 40(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016:

*“The seniority of a person in a service, class, category or grade shall, unless he has been reduced to a lower rank, as a punishment, be determined in the order of his placement, in the list prepared by the recruitment agency or appointing authority, as the case may be in accordance with the rule of reservation and the order of rotation specified in Schedule V, where it applies. The date of commencement of his probation shall be the date on which he joins duty irrespective of this seniority”.*

According to the above provision, the petitioner ought to have been assigned seniority above the fourth respondent by taking into account of his ranking as



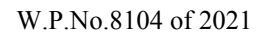
3022 and the fourth respondent as 3065.

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5. Learned counsel for the petitioner further contended that the fixation of seniority on the basis of age in the case of teachers appointed in the same day, would be applicable only in the case of teacher appointed by more than one method of recruitment. In the case on hand both the petitioner and the fourth respondent have been appointed by the same method i.e., by the Teachers Recruitment Board by Direct Recruitment method. The third proviso under Section 40(2) of the said Act reads as follows:

*“Provided also that where persons appointed by more than one method of recruitment are appointed on deemed to have been appointed to the service, class, category or grade on the same day, under se-seniority shall be decided with reference to their age”.*

In violation of the aforesaid Act provision and the orders of the Head of the Department, the third respondent has issued the seniority list and panel for promotion as on 01.01.2021 and the petitioner has submitted a representation dated 22.02.2021 before the third respondent pointing out the mistake in the senior list and panel, however, no action has been taken. Hence, the petitioner has come forward with the present writ petition.



*“28. We therefore direct the respondents to revise and publish the seniority list of the selectees, who were selected in the selection process conducted in pursuance of the notification issued by TNPSC dated 10<sup>th</sup> September 1999, strictly on the basis of the merit determined by it in the selection process and not on the basis of the roster point. The same shall be done within a period of 12 weeks from the date of receipt of this order.”*

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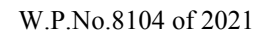
*“3. Subject to the outcome of Special Leave Petition and the .. pending before the Hon’ble Supreme Court of India, I am therefore to request to take necessary action to revise the seniority/re-drawal of the panel Secretariat Department/Head of Departments under your control as also sent the report to this department early.”*

Hence, he prayed for allowing this writ petition.

8. Learned Government Advocate appearing for the respondents has filed a counter affidavit dated 19.04.2021 and the relevant paragraphs are extracted hereunder:

*“10. As already stated above, the seniority in the post of Secondary Grade Teacher has been fixed based on the age of the petitioner and the fourth respondent as per Rule 35(aa) of Tamil Nadu State and Subordinate Service Rules as the petitioner and the fourth respondent have joined on the same day i.e., 17.12.2012 Forenoon.*

*11. As admitted by the petitioner, the petitioner and the fourth respondent have been selected in the same year and they have joined duty on the same day i.e., 17.12.2012 Forenoon. The seniority fixed by the Teachers recruitment Board is subject to the date of appointment i.e., actual date of commencement of probation i.e., date of joining in service/date of regularization of service in the respective post. It is submitted that proviso under Rule 35(aa) of Tamil Nadu State and Subordinate Service Rules*



*Provided also that where persons appointed by more than one method of recruitment are appointed or deemed to have been appointed to the service, class, category or grade on the same day, their inter-se-seniority shall be decided with reference to their age. Substituted in G.O.Ms.No.523, P&AR, dated 04.06.1982 with effect from 13.07.1978.*

6. In my considered opinion, it is not so. Rule 35(aa) speaks of inter-se seniority in case more than one candidate are appointed, by more than one method of recruitment, on different dates. As per this rule, there can be no doubt that if there are candidates appointed on different dates through two different methods, the date of joining in service shall be the crucial date for fixing the seniority. Regarding this position, there is no controversy before this Court. Secondly, if there are two candidates who joined service on the same date, then the date of birth of the candidates shall be the deciding factor for finding their inter-se seniority. Regarding this position also, there is no controversy before this Court.

*It is submitted that any executive instructions cannot override the above statutory rules. Hence the seniority of the petitioner and the fourth respondent has been rightly fixed by the third respondent.”*



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9. Heard the learned counsel on either side and perused the materials available on record.

10. When the matter was taken up for hearing, it is brought to the notice of this Court that at the time of admission, this Court has passed an interim order in W.M.P.No.8664 of 2021 in W.P.No.8104 of 2021 dated 31.03.2021 stating that any appointment/promotion will be subject to the result of this writ petition.

11. Moreover, in compliance of the aforesaid order passed by the Hon'ble Supreme Court of India in the case of C.P.(C) Dairy No.6415/2021 and other batch cases dated 18.04.2023, the Human Resource Management Department has given instruction vide letter No.5230612/S.Spl./2023-6 dated 31.08.2023 to redraw the panel at the first level promotion. Hence, nothing survives in this writ petition for further adjudication.

12. In the result, this writ petition stands closed and the first respondent is hereby directed to complete the aforesaid exercise within a



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period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is also closed.

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Index : Yes/No  
Speaking Order : Yes/No

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**J.SATHYA NARAYANA PRASAD,J.**

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