



WEB COPY



W.P.No.40843 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 10.04.2023

Orders delivered on 01.06.2023

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.No.40843 of 2015

R.Rathinam

..Petitioner

Vs

1. The State of Tamilnadu,
rep. by the Secretary to Government,
School Education Department,
Fort St.George,
Chennai - 600 009.
2. The Director of School Education,
College Road,
Nungambakkam,
Chennai - 6.
3. The Joint Director of School Education
(Personnel)
College Road,
Nungambakkam,
Chennai - 6.
4. The Director of Elementary Education,
College Road,



W.P.No.40843 of 2015

Nungambakkam,
Chennai - 6.

WEB COPY

5. The Joint Director of Elementary Education
(Personnel)
College Road,
Nungambakkam,
Chennai - 6.

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution to issue a Writ of Mandamus to direct the respondents herein to notionally promote the petitioner as Personal Assistant from 10.07.2000 i.e., the date on which the petitioner's junior in the feeder category namely Mrs.N.Santha, Superintendent was promoted as Personal Assistant or any other date as this Hon'ble Court deems fit and proper in the circumstances of the case and sanction all monetary and service benefits including the revision of pension and arrears.

For Petitioner	: Mr.A.R.Suresh
For Respondents	: Mr.M.Rajendran, Additional Government Pleader



W.P.No.40843 of 2015

ORDER

WEB COPY

This writ petition has been filed to direct the respondents herein to notionally promote the petitioner as Personal Assistant from 10.07.2000 i.e., the date on which the petitioner's junior in the feeder category namely Mrs.N.Santha, Superintendent was promoted as Personal Assistant or any other date as this Hon'ble Court deems fit and proper in the circumstances of the case and sanction all monetary and service benefits including the revision of pension and arrears.

2. i) The case of the petitioner is that he originally entered the Government High School on 04.02.1966 as Office Record Clerk and promoted as Junior on 02.02.1974 and thereafter, promoted as 17.01.1994 and then as Superintendent on 02.06.1999 and retired from service on 31.07.2001 as Superintendent. He had put in 35 years of unblemished record of service.

ii) The 3rd respondent issued proceedings promoting Superintendents to the post of Personal Assistants notionally vide proceedings dated 22.07.2011, in which, several juniors to the petitioner



W.P.No.40843 of 2015

were promoted as Personal Assistants. Even though the petitioner is deemed to hold the post of Superintendent with effect from 18.11.1993, as per the notional promotion given vide proceedings dated 20.05.2011 of the 3rd respondent, 13 officials who were promoted to the post of Superintendent on 19.11.1993 were promoted to the post of Personal Assistant. The petitioner, being senior to them in service, should have been promoted as Personal Assistant notionally but he was not promoted.

iii) The petitioner collected the service particulars of the personnel promoted as Personnel Assistants and came to know that (1) N.Santha, (2) S.Kalidoss, (3) M.Natarajan (4) K.Ganesan, (5) T.Govndarajan, (6) P.Jayasiman, (7) S.Gurusamy, (8) N.Kaliyaperumal, (9) A.Sornam, (10) N.Arangasamy, (11) M.Sundararaman, (12) S.Sundaresan & (13) S.Selvaraj, were promoted as Personal Assistants and the petitioner brought to the notice of the 3rd respondent about the seniority position and requested to place him in the appropriate place in the seniority and consequential promotion as Personal Assistant with effect from his immediate junior was promoted as Personal Assistant who was promoted to the post of Superintendent on 18.11.1993 was promoted as Personal Assistant. A



W.P.No.40843 of 2015

detailed representation was made by the petitioner to the 3rd respondent on 23.06.2015 and the 3rd respondent received the same and has not passed any orders. Hence, this writ petition.

3. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents.

4. i) Learned counsel for the petitioner would submit that the petitioner worked in the Government High School as Office Record Clerk, Junior Assistant, Assistant and Superintendent and retired from service on 31.07.2001. The petitioner has put in 35 years of unblemished record of service.

ii) Learned counsel for the petitioner would submit that in the year 1970, the Government ordered absorption of Teaching and Non-Teaching staff of the District Board Schools in Government Service w.e.f. 01.04.1970. The staff of regular Government schools were treated as "A" Wing and the staff of erstwhile District Board schools were treated as "B" wing. The Government directed that the staff of "A" and "B" wings be integrated with immediate effect. Thereafter, the persons appointed till 31.03.1970 in



W.P.No.40843 of 2015

Education Department both in Government service and in District Board service were integrated and certain norms were prescribed for promotions in the ratio of 5:3 to fill up the vacant posts from 02.11.1978. The 3rd respondent vide proceedings dated 06.08.2009, issued combined seniority list of both "A" and "B" wing staffs.

iii) Learned counsel would further submit that subsequently, the 3rd respondent issued proceedings promoting Superintendents to the post of Personal Assistants notionally vide proceedings dated 22.07.2011, in which, several juniors to the petitioner were promoted as Personal Assistants. Even though the petitioner is deemed to hold the post of Superintendent with effect from 18.11.1993, as per the notional promotion given vide proceedings dated 20.05.2011 by the 3rd respondent, 13 officials who were promoted to the post of Superintendent on 19.11.1993, have been promoted as Personal Assistant notionally. Some of the similarly placed persons approached this Court by filing W.P.No.26704 of 2011, seeking to direct the respondents to consider the objections. This Court, vide order dated 28.11.2011 directed the 3rd respondent to consider the same and pass orders within 12 weeks.



W.P.No.40843 of 2015

iv) Learned counsel would further submit that the 3rd respondent referring to the order of this Court, issued proceedings dated 07.01.2012 stating that since there was some mistakes found in the integrated seniority published on 06.08.2009, revised seniority list were published on 28.12.2010, 20.05.2011 and 22.07.2011 and had been sent to the Chief Educational officer. In the said list, if any name is omitted or seniority is to be rectified, they were given liberty to make appeal and hence, directed to approach the concerned Chief Educational Officer and get the revised seniority list and can make representation with sufficient materials if any to prove the same. Again, some of the similarly placed persons approached this Court by filing W.P.No.16478 of 2012, in which, this Court directed the 3rd respondent to consider their objections on merits and in accordance with law within a period of 3 months.

v) Learned counsel for the petitioner would further submit that in the meantime, the petitioner collected the service particulars of the personnel promoted as Personnel Assistants and came to know that (1) N.Santha, (2) S.Kalidoss, (3) M.Natarajan (4) K.Ganesan, (5) T.Govndarajan, (6) P.Jayasiman, (7) S.Gurusamy, (8) N.Kaliyaperumal, (9) A.Sornam, (10)



W.P.No.40843 of 2015

N.Arangasamy, (11) M.Sundararaman, (12) S.Sundaresan & (13)

S.Selvaraj were promoted as Personal Assistants and the petitioner brought to the notice of the 3rd respondent about the seniority position and requested to place him in the appropriate place in the seniority and consequential promotion as Personal Assistant with effect from his immediate junior who was promoted to the post of Superintendent on 18.11.1993, was promoted as Personal Assistant. A detailed representation was made by the petitioner to the 3rd respondent on 23.06.2015 and the 3rd respondent received the same and has not passed any orders.

5. i) Per contra, the learned Additional Government Pleader would submit that 'A' wing personnel, aggrieved over G.O.Ms.No.1968, challenged the same before the Hon'ble Apex Court and the same was dismissed on 23.10.1979. There was a modification in G.O.Ms.No.1307 dated 12.07.1980 by adding rule 2A of Tamil Nadu State Subordinate Service Rules which changed 'A' and 'B' wing ratio into 2:3 (from earlier ratio of 5:3) with effect from 31.03.1970.

ii) Learned counsel would further submit that subsequently, there was



W.P.No.40843 of 2015

an amendment through G.O.Ms.No.98 dated 21.01.1981 amending Rule 2A effecting that the seniority be maintained with effect from 01.11.1978 at a ratio of 2:3. Thereafter, the issue went upto the Hon'ble Supreme Court and the Hon'ble Supreme Court had upheld, the validity of G.O.Ms.No.1968 dated 02.11.1978 in Civil Appeal Nos.5164 to 5166 of 1990 etc. batch on 28.04.1998.

iii) Learned counsel would further submit that an integrated seniority list of Junior Assistants belonging to A and B wings was prepared and released on 6.8.2009 as first step with great difficulty. But subsequently, since several omissions were noticed in the said list, it was cancelled and fresh revised list was prepared and released vide proceedings dated 28.12.2010. Based on the revised integrated seniority list so prepared, retrospective notional promotion to the post of Assistant on par with Junior in 'A' wing was also ordered and released on the same date i.e., on 28.12.2010. Based on the above seniority list of Assistants, a seniority list of Superintendent with retrospective notional promotion was prepared and released on 20.05.2011. Likewise, a seniority list for the post of P.A. to DEO was also prepared with retrospective notional promotion and released



W.P.No.40843 of 2015

on 22.07.2011.

WEB COPY

iv) Learned counsel would further submit that the ratio stipulated in G.O.Ms.No.1968, Education Department dated 02.11.1978, has been followed while preparing the integrated list for the first level post i.e., Junior Assistant post. There is no need to adopt the ratio in each of the posts of Assistants, Superintendents and P.A. to District Educational officer/ District Elementary Educational Officers, since the adoption of ratio in the lower first level post of Junior Assistant was done. When retrospective promotion was ordered certain conditions were stipulated, one of the conditions was passing of prescribed tests as on the date of retrospective promotion. Since some of the persons have not passed the test even upto 01.11.1983 they were not eligible for retrospective promotion. 'B' wing personnel were given promotion notionally as Assistant on par with their Junior in 'A' wing based on the integrated seniority list in the post of Junior Assistant and thereby, the parity was settled at that stage itself. Consequently, according to the seniority in the post of Assistant, which is the feeder category for the post of Superintendent, retrospective promotion was given in the post of Superintendent to those who have been actually



W.P.No.40843 of 2015

deferred/denied with that benefit, on par with their junior of other wing staff. The same process of giving retrospective promotion was made in the post of PA to District Educational Officer/District Elementary Educational Officer. In that process both A & B wing persons were availed these benefits according to their seniority. Moreover, the petitioner's name was already kept in the appropriate place in the integrated seniority list.

v) Learned counsel would further submit that the petitioner was promoted as Junior Assistant on 02.02.1976. His name was incorporated in Sl.No.2831 in the integrated seniority list of Junior Assistant post and was considered for retrospective promotion to the post of Assistant in Sl.No.1752(2831) in comparison with his immediate junior R.V.Geethanathan Sl.No.1771 (2938) w.e.f.15.03.1980. As such, he was further considered for retrospective promotion to the post of Superintendent in comparison with K.Chandrika w.e.f. 18.11.1993 in S.No.1304(1801). Regarding retrospective promotion to the post of PA to DEO is concerned, it would be compared to his immediate junior in 'A' wing A.L.Dhanalakshmi, Sl.No.551(929) on 26.07.2001, but before that, the petitioner retired from service due to superannuation on 30.06.2001.



W.P.No.40843 of 2015

vi) Learned counsel would further submit that the persons who are said to be his juniors by the petitioner except Sl.No.12 (as no details are available in the seniority list prepared) are most senior to him since the petitioner was appointed as record clerk and then promoted as Junior Assistant only on 02.02.1976 i.e., after A & B wing integrated on 31.03.1970, whereas the others were appointed as Junior Assistant before the integration of A & B wing i.e., 31.03.1970 and then promoted as Assistant after that integration i.e., 31.03.1970 and then promoted as Assistant after integration i.e., 31.03.1970. Further, the petitioner finished the Departmental exam by November 1990 only, which is beyond the concession given to B wing staff. Therefore, he would pray to dismiss the writ petition.

6. This Court considered the submissions made on either side and perused the materials available on records.

7. The main grievance of the petitioner is that one N.Santha, Superintendent who is junior to the petitioner in the feeder category was



W.P.No.40843 of 2015

promoted as Personal Assistant but he was not promoted as Personal Assistant and the representation sent by him in this regard was also not considered and the same was rejected by the respondents.

8. It is seen that the Government ordered, absorption of teaching and non-teaching staff of the District Board Schools in Government service with effect from 01.04.1970. On such absorption, the staff of the District Board Schools were called as 'B' Wing Personnel to those who joined on or before 31.03.1970. By G.O.Ms.No.289, the staff of the regular Government School who joined on or after 01.04.1970 were called as 'A' Wing Personnel. In G.O.Ms.No.1786 dated 17.10.1974, the Government expressed the integration of 'A' and 'B' wings were administratively not possible and it was decided to reserve 30% of the posts for 'B' wing personnel. In G.O.Ms.No.1968 dated 02.11.1978, the Government embodied partial modification to the earlier G.O. and the staff of 'A' and 'B' wings integrated together by following 5:3 ratio between the two wings for the different categories of posts. Subsequently, there was a modification G.O.Ms.No.1307 dated 12.07.1980 by adding Rule 2A of Tamil Nadu State



W.P.No.40843 of 2015

and Subordinate Service Rules which changed 'A' and 'B' wing ratio into 2:3 (from earlier ratio of 5:3) with effect from 31.03.1970. The Government through letter dated 22.07.1980 addressed to 2nd respondent upholding G.O.Ms.No.1968, in which, it was directed to implement the integrated order issued in the above referred G.O.

9. Subsequently, there was an amendment through G.O.Ms.No.98 dated 21.01.1981 amending Rule 2A effecting that the seniority be maintained with effect from 01.11.1978 at a ratio of 2:3. Thereafter, the issue went upto the Hon'ble Supreme Court and the Hon'ble Supreme Court on 28.04.1998, upheld the validity of G.O.Ms.No.1968 dated 02.11.1978 in Civil Appeal Nos.5164 to 5166 of 1990 etc. batch. Accordingly, integrated seniority list was prepared by the Director of School education in respect of teaching staff and released during 2000. At the same time, efforts have been taken to prepare integrated seniority list of non-teaching staff belong to A & B wing.

10. An integrated seniority list of Junior Assistants belonging to A



W.P.No.40843 of 2015

and B wings was prepared and released on 6.8.2009. Subsequently, since several omissions were noticed in the said list, it was cancelled and fresh revised list was prepared and released vide proceedings dated 28.12.2010. Based on the revised integrated seniority list so prepared, retrospective notional promotion to the post of Assistant on par with Junior in 'A' wing was also ordered and released on the same date i.e., on 28.12.2010. Based on the above seniority list of Assistants, a seniority list of Superintendent with retrospective notional promotion was prepared and released on 20.05.2011. Likewise, a seniority list for the post of P.A. to DEO was also prepared with retrospective notional promotion and released on 22.07.2011.

11. Further, the ratio stipulated in G.O.Ms.No.1968, Education Department dated 02.11.1978, has been followed while preparing the integrated list for the first level post i.e., Junior Assistant post. Once the persons belonging to both wings have been integrated in the lower post, there is no need to follow the same ratio in each and every promotional post, i.e., Junior Assistant post in the lowest first level post. The posts of Assistants, Superintendents and P.A. to District Educational Officer/District



W.P.No.40843 of 2015

Elementary Educational Officer are promotional posts from the respective feeder category of posts. There is no need to adopt the ratio in each of the posts of Assistants, Superintendents and P.A. to District Educational officer/ District Elementary Educational Officers, since the adoption of ratio in the lower first level post of Junior Assistant was done. If the ratio in each of the posts is adopted, it will lead to undue multiple benefits for the persons who avail ratio in each and every post. However, the ratio in the post of Assistant have been fixed among those persons who were working as Assistant as on 31.03.1970. There is no ratio in the post of Superintendent post as on 31.03.1970 as there were no person working in the post of Superintendent belonging to 'B' wing as on 31.03.1970.

12. Further, on the basis of integrated seniority list in the post of Junior Assistant, retrospective promotion were given to person who were actually deferred or denied with the benefit of promotion previously. Thus, the 'B' wing personnel were given promotion notionally as Assistant on par with their juniors in 'A' wing and thereby, the parity was settled at that stage itself. Consequently, a seniority list of Assistants was arrived at and



W.P.No.40843 of 2015

according to the seniority in the post of Assistant, which is the feeder category for the post of Superintendent, retrospective promotion were given in the post of Superintendent to those who have been actually deferred or denied with that benefit, on par with their juniors of other wing staff. Similarly, the same method was adopted in giving retrospective promotion to the post of P.A to District Educational Officer/District Elementary Educational Officer. In that process, both A & B wing persons were given the benefits, according to their seniority.

13. Further, as per the order passed in W.P.No.16478/2012 dated 27.02.2013, the 3rd respondent after holding the personal hearing to each one of them, passed orders on 11.06.2013 individually by considering the representation made by the petitioners during the personal hearing. The petitioner had been appointed in District Board School (B wing staff) as record clerk on 09.02.1966 and promoted as Junior Assistant on 02.02.1976 i.e., after the date of integration as on 31.03.1970 and he was promoted as Assistant on 17.01.1994 and thereafter, as Superintendent on 02.06.1999 and retired from service due to superannuation on 30.06.2001.



W.P.No.40843 of 2015

WEB COPY

14. As per Apex Court verdict, while preparing the integrity seniority list, the name of personnel who were promoted, resigned, died, relinquished during the period from 01.04.1970 to 01.11.1978 were deleted and kept separately in each category of post. Further, no person were compared with personnel who were already promoted during the above said period i.e., 01.04.1970 to 01.11.1978 for giving retrospective promotion in that post. The petitioner was promoted as Junior Assistant on 02.02.1976. His name was incorporated in Sl.No.2831 in the integrated seniority list of Junior Assistant post and was considered for retrospective promotion to the post of Assistant in Sl.No.1752(2831) in comparison with his immediate junior R.V.Geethanathan Sl.No.1771 (29838) w.e.f.15.03.1980. As such, he was further considered for retrospective promotion to the post of Superintendent in comparison with K.Chandrika w.e.f. 18.11.1993 in S.No.1304(1801). Regarding retrospective promotion to the post of PA to DEO, it would be compared to his immediate junior 'A' wing A.L.Dhanalakshmi, Sl.No.551(929) on 26.07.2001, before that, the petitioner retired from service due to superannuation on 30.06.2001. Further, the person who are



W.P.No.40843 of 2015

said to be his junior by the petitioner except Sl.No.12 are most senior to him since the petitioner was appointed as record clerk and then promoted as Junior Assistant only on 02.02.1976 i.e., after A & B wing integrated on 31.03.1970 whereas the others were appointed as Junior Assistant before the integration of A & B wing i.e., 31.03.1970 and then promoted as Assistant after that integration i.e., 31.03.1970. The persons compared by the petitioner are all seniors to the petitioner as detailed below.

<i>Sl. No.</i>	<i>Name</i>	<i>A&B wing JA integrated seniority No./ Date of Normal/ retrospective promotion.</i>	<i>A&B wing Assistant integrated seniority No./ Date of Normal/ retrospective promotion.</i>	<i>A&B wing Superintendent integrated seniority No./ Date of Normal/ retrospective promotion.</i>	<i>A&B wing PA to DEO integrated seniority No./ Date of Normal/ retrospective promotion.</i>
1	N.Santha	30.09.65 (1072N)	07.08.78 (821/1072N)	19.11.93 (779/821N)	10.07.2000 (498/779N)
2	S.Kalidass	21.12.65 (1104N)	01.08.78 (826/1104N)	19.11.93 (782/826N)	05.07.2000 (499/782N)
3	M.Natarajan		03.08.78 (828/1121N)	20.11.93 (784/828N)	18.05.2000 (501/784N)
4	K.Ganesan	11.02.66 (1139)N	28.08.78 (834/1139N)	18.11.93 (787/834N)	10.05.2000 (503/787N)
5	T.Govindarajan	21.02.66 (1141N)	07.09.78 (835/1141N)	18.11.93 (788/835N)	10.01.2000 (504/788N)
6	P.Jayasimman	24.02.66	11.09.78	20.11.93	05.05.2000



W.P.No.40843 of 2015

WEB COPY

Sl. No.	Name	A&B wing JA integrated seniority No./ Date of Normal/ retrospective promotion.	A&B wing Assistant integrated seniority No./ Date of Normal/ retrospective promotion.	A&B wing Superintendent integrated seniority No./ Date of Normal/ retrospective promotion.	A&B wing PA to DEO integrated seniority No./ Date of Normal/ retrospective promotion.
		(1143N)	(836/1143N)	(790/836N)	(506/790N)
7	S.Gurusamy	28.02.66 (1147N)	15.09.78 (838/1147N)	20.11.93 (791/838N)	14.08.2000 (507/791N)
8	N.Kaliyaperumal	23.05.66 (1159N)	18.10.78 (841/1159N)	19.11.93 (794/841N)	15.09.2000 (508/794N)
9	A.Somam	25.01.63 (687N)	18.07.79 (934/687N)	19.11.93 (823/934N)	07.08.2000 (511/823N)
10	N.Arangasamy	13.04.61 (554N)	08.06.79 (912/554R)	22.11.93 (814/912N)	20.12.2000 (509/814N)
11	M.Sundararaman	24.04.61 (562N)	08.06.79 (915/562R)	19.11.93 (815/915N)	20.12.2000 (510/815N)
12	S.Sundararasan	No details available in the seniority list in the name and date of birth			
13	M.Selvaraj	29.12.65 (1111N)	07.08.78	18.11.93 (783/827N)	08.05.2000 (500/783N)
14	A.Rathinam (Petitioner-Junior)	02.02.76 (2831N)	15.03.80 (1752/2831R)	18.11.93 (1284/1752N)	Before arriving retrospective promotion on 26.07.2001 retired on 30.06.2001



W.P.No.40843 of 2015

there is no merit in the writ petition and the same is liable to be dismissed.

Accordingly, the Writ Petition stands dismissed. No costs.

01.06.2023

Index :Yes/No

Speaking/Non-speaking order

vsi

To

1. The State of Tamilnadu,
rep. by the Secretary to Government,
School Education Department,
Fort St.George,
Chennai - 600 009.
2. The Director of School Education,
College Road,
Nungambakkam,
Chennai - 6.
3. The Joint Director of School Education
(Personnel)
College Road,
Nungambakkam,
Chennai - 6.
4. The Director of Elementary Education,



W.P.No.40843 of 2015

College Road, Nungambakkam,
Chennai - 6.

WEB COPY

5. The Joint Director of Elementary Education
(Personnel)
College Road,
Nungambakkam,
Chennai - 6.



WEB COPY



W.P.No.40843 of 2015

J.NISHA BANU, J.

vsi

Pre-delivery order made in
W.P.No.40843 of 2015

01.06.2023