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W.P.No.35509 of 2016, batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

|              |            |
|--------------|------------|
| Reserved on  | 29/11/2023 |
| Delivered on | 15/12/2023 |

C O R A M

**THE HONOURABLE Dr.JUSTICE D.NAGARJUN**

Writ Petition Nos.35509 to 35513, 31737, 40177 and 40178 of 2016

|                |     |                                       |
|----------------|-----|---------------------------------------|
| K. Valliammal  | ... | Petitioner<br>in W.P.No.35509 of 2016 |
| U. Palanisamy  | ... | Petitioner<br>in W.P.No.35510 of 2016 |
| A. Mala        | ... | Petitioner<br>in W.P.No.35511 of 2016 |
| C.S.Murugesan  | ... | Petitioner<br>in W.P.No.35512 of 2016 |
| P. Vasuki      | ... | Petitioner<br>in W.P.No.35513 of 2016 |
| C. Jayakanthan | ... | Petitioner<br>in W.P.No.31737 of 2016 |
| P. Kala        | ... | Petitioner<br>in W.P.No.40177 of 2016 |
| M. Palanivel   | ... | Petitioner<br>in W.P.No.40178 of 2016 |



W.P.No.35509 of 2016, batch

Vs

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1. The State of Tamil Nadu  
rep. By its Secretary to Government  
School Education Department  
Secretariat  
Chennai 600 009.
2. The Director of School Education  
DPI Complex, College Road  
Chennai 600 006.
3. The Director of Elementary Education  
DPI Complex, College Road  
Chennai 600 006. ... Respondents 1 to 3 in  
all the writ petitions
4. A. Davidkumar ... Fourth respondent in  
W.P.No.35509 of 2016
- S. Sounder ... Fourth respondent in  
W.P.No.35510 of 2016
- S. Bhuvaneswaran ... Fourth respondent in  
W.P.No.35511 of 2016
- T. Kumaresan ... Fourth respondent in  
W.P.No.35512 of 2016
- S. Jayabalan ... Fourth respondent in  
W.P.No.35513 of 2016
- T. Kumaresan ... Fourth respondent in  
W.P.No.31737 of 2016
- Shanthi ... Fourth respondent in  
W.P.No.40177 of 2016



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R. Manohar

...

Fourth respondent in  
W.P.No.40178 of 2016

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**Common Prayer:** Petitions filed under Article 226 of the Constitution of India for the issuance of writs of mandamus to direct the respondents 1 to 3 to re-fix the above petitioners immediate junior, who are the fourth respondent in the petitions along with all benefits including monetary benefits from the date of promotion of the fourth respondent in all the petitions.

For petitioners

...

Mr.Durai Gunasekaran

For respondents

...

Mr.S.Silambanan  
Additional Advocate General – II  
assisted by  
Ms.M.Jayanthi  
Additional Government Pleader  
for R.R.1 to 3

For R.4 – Notice served  
(No appearance)

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### **COMMON ORDER**

These writ petitions have been filed seeking mandamus, directing the respondents 1 to 3 to re-fix the seniority of the petitioners above their immediate juniors/fourth respondents by giving all benefits including monetary benefits from the date of promotion of the fourth respondent.



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2. The facts in brief as per the affidavits enclosed in these writ petitions are that the peittioners have completed their graduation and B.Ed from recognised Universities. There were about 1340 vacancies in the cadre of Secondary Grade Teacher to be filled up in various Elementary Schools throughout the State of Tamil Nadu. On account of non-availability of the qualified Secondary Grade Teachers belonging to SC and ST Community in the employment exchange, the Government of Tamil Nadu has decided to fill all the vacancies with the persons who are eligible to be appointed as B.T Assistants whose names were enrolled in Employment Exchanges.

3. In this connection, Government has issued G.O.Ms.No.113, dated 14/3/1997 with the following conditions:-

(i) They have to complete one month training course on Child Psychology for B.Ed Teachers' through the District Institute of Education and Training;

(ii) They are eligible only for the pay-scale fixed for the post of Secondary Grade Teacher and they will not claim pay-scale fixed for the post of B.T.Assistant.



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(iii) They are not entitled to get any special allowance and increment

if they qualified for the grade of higher education

(iv) They are not entitled to claim any direct recruitment for the post of B.T.Assistant

(v) They have to give consent and willingness to work anywhere within the State.

(vi) They have to give declaration to that effect and

(vii) This concession has been issued only for the non-availability of SC & ST Secondary Grade Teacher and this is the special concession applicable only for 1152 posts.

4. Basing on the said G.O., the petitioners are appointed as Secondary Grade Teachers through their respective Employment Exchanges and all of them have joined on various dates in their respective Schools. The petitioners who joined in various Schools as Secondary Grade Teachers were subsequently transferred to different Schools.

5. Even though there were number of vacancie of B.T Assistants posts, the petitioners were not considered for promotions, on account of the conditions in G.O.Ms.No.113. The petitioners personally and through



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their Union have submitted number of representations to the respondents to consider their promotions as B.T.Assistants. Government has ultimately issued orders for appointing qualified persons as B.T Assistants.

6. Fourth respondents in all the writ petitions who were originally joined as Secondary Grade Teachers similar to that of the petitioners were promoted as B.T.Assistant. Some of the Secondary Grade Teachers who could not get promotion as B.T.Assistants filed W.P.No.14507 of 2009 seeking to upgrade their posts of Secondary Grade Teacher as B.T.Assistants. The said writ petitions were disposed of on 26/7/2009 with a direction to the petitioners therein to make an individual or joint representations to the respondents within a period of ten days from the date of receipt of a copy of the order and on receipt of the same, first respondent was directed to consider the representations and pass orders on merits and in accordance with law. Accordingly, representations were submitted. However, without taking into consideration of the representations of the petitioners, a Notification has been issued on 17/7/2016 declaring the schedule of counseling for promotions from the post of Secondary Grade Teachers to B.T.Assistant. Therefore, these writ petitions are filed.



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7. The second respondent/ the Director of School Education has filed counter affidavit, stating that the petitioners were appointed as Secondary Grade Assistant in the backlog vacancies to SC / ST category and drawing the salary salary applicable to the Secondary Grade Assistants. Though the petitioners have got B.Ed., degree and fully qualified to hold the post of B.T.Assistant, they were appointed as Secondary Grade Assistants as per the conditions laid down in G.O.Ms.No.113, School Education Department, dated 14.03.1997 and G.O.Ms.No.301, School Education Department, dated 15.10.1999.

8. It is further mentioned in the counter affidavit that as per the orders in the W.P.No.14507 of 2009, respondents were directed to consider the representation of the petitioner dated 29.09.2008 in respect of the upgradation of the Secondary Grade Assistants as B.T. Assistant. G.O.Ms.No.26, School Education Department, dated 02.02.2011, was issued to the effect that the persons appointed vide G.O.Ms.No.301, School Education Department, dated 15.10.1999, shall be brought into the post of B.T. Assistant by following the procedure laid down in G.O.Ms.No.171, School Education Department, dated 18.08.2008. Said



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G.O.Ms.No.171, speaks about the promotion of B.T. Assistant in the ratio of 15:15:20:20:30 for the subjects Tamil, History, Mathematics, English, Science respectively.

9. It is also mentioned in the counter affidavit that the eligible persons would be promoted to the post of B.T. Assistant by following the procedure in G.O.Ms.No.171, School Education Department, dated 18.08.2008, and the promotion to the B.T. Assistant from the Secondary Grade Assistants is being considered only on the basis of seniority and rule of reservation is not followed.

10. It is further mentioned in the counter affidavit that the writ petitioners have not reached the zone of consideration in the seniority for promoting as B.T.Assistants. Respondent No.4 in all the Writ Petitions were promoted from the Secondary Grade Assistants post to B.T. Assistant basing on the seniority on the Subject, and that there is no irregularity or illegality in promoting the fourth respondent.

11. The third respondent/ Director of Elementary Education has filed separate counter affidavit stating that the petitioners have not reached the



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zone of consideration, and that there are seniors to the petitioners who are waiting for promotion who have joined the service much prior to the petitioners.

12. Heard Mr.Durai Gunasekaran, learned counsel for the petitioners and Mr.S.Silambanan, learned Additional Advocate General for the respondents 1 to 3.

13. Mr.Durai Gunasekaran, learned counsel appearing for the petitioners while reiterating the grounds of the writ petition has submitted that petitioners have given a representation through their Association as early as 29/9/2008 seeking for the relief of upgrading the posts of Secondary Grade Teacher, however, till date, the representations made by the petitioners have not been considered by the respondents. It is also submitted that the fourth respondents who were appointed similar to that of the petitioners were given promotion but declined to consider the promotion to the petitioners thereby respondents are resorting to discrimination.

14. Learned Additional Advocate General Mr.Silambanan has



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submitted that the promotions are being given basing on the subject wise seniority for which a candidate is appointed, thereby, the petitioners cannot compare themselves with the fourth respondents. The learned Additional Advocate General has also taken this Court to various parts of the counter affidavit, and demonstrated that there are number of seniors to the petitioners who have been waiting to get promotion as B.T.Assistants and submitted that petitioners are far below in the seniority, thereby, they have not reached the zone of consideration. It is submitted that the fourth respondents have reached the zone of consideration thereby, they were considered for the promotion. Learned Additional Advocate General has finally submitted that Government will consider the representations of the petitioners on merits, if some time is granted.

15. Perused the materials available on record.

16. The seniority list of the Secondary Grade Teachers is prepared in each unit separately in the ratio of 15:15:20:20:30 for the subjects Tamil, History, Maths, English and Science, respectively, as per G.O.Ms.No.171.

That means seniority of Tamil teachers is different from seniority of



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History Teachers, so also separate seniority lists are being prepared for Maths, English and Science, thereby, even if the petitioners and fourth respondents were selected in the same proceedings, still basing on subject wise seniority all of them may not get promotion simultaneously. The seniority of the petitioners and that of the seniority of the fourth respondents will not be governed by same seniority list. If there are more vacancies in one subject, the Teachers in that subject will get promotion earlier than other Teachers. It is not the case of the petitioners that petitioners and fourth respondents were selected in same proceedings and were in the same seniority list, and that ignoring the petitioners, juniors were promoted.

17. Be that as it may, the petitioners have submitted several personal representations and through their Association, till date no orders have been passed by the respondents. The respondents 1 to 3 could have considered the representations of the petitioners and should have disposed them with suitable reply.

18. Considering the facts and circumstances submitted by both the sides, this Court is inclined to direct the petitioners to submit fresh



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representation either individually or jointly to the first respondent, so that first respondent will consider those representations and the representations that are pending with them and pass appropriate orders on merits by following the procedure known to law.

19. Accordingly, these writ petitions are disposed of giving liberty to the petitioners to submit individual or joint representations to the first respondent and on receipt of the same, first respondent is directed to consider the said individual or joint representations along with the representation already given by the petitioners through their Association dated 29/9/2008 and pass orders on merits and in accordance with law within a period of twelve weeks thereafter. No costs.

15/12/2023

mvs/jai

Index: Yes/No

Neutral Citation: Yes/No

To

1. The Secretary to Government



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State of Tamil Nadu  
School Education Department  
Secretariat  
Chennai 600 009.

2. The Director of School Education  
DPI Complex, College Road  
Chennai 600 006.
3. The Director of Elementary Education  
DPI Complex, College Road  
Chennai 600 006.

Dr.D.NAGARJUN,J

mvs.



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Pre-delivery common order in  
Writ Petition Nos.35509 to 35513,  
31737, 40177 and 40178 of 2016

15/12/2023