



W.P.No.7777 of 2014

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.7777 of 2014

K.Nithyanandham

...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 Chief Educational Officer,
Tiruvallur District, Tiruvallur.
5. The District Educational Officer,
Ponneri, Tiruvallur District.

..Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution to issue a Writ of Certiorarified Mandamus to call for the entire records pertaining to the orders passed by the Joint Director of School Education (Personnel), College Road, Nungambakkam, Chennai - 6, the 3rd respondent herein vide his proceedings Na.Ka.No.11573/A3 Sec/E2/2007 dated 11.06.2013 and quash the same as illegal, arbitrary, unreasonable being violative of rules and principles of natural justice and thereby direct the respondents herein to notionally promote the petitioner as Personal Assistant from 19.07.1999 i.e., the date on which the petitioner's junior in the feeder category namely 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

ORDER

This writ petition has been filed challenging the order passed by the 3rd respondent dated 11.06.2013 and to direct the respondents herein to notionally promote the petitioner as Personal Assistant from 19.07.1999 i.e.,



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the date on which the petitioner's junior in the feeder category namely 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 District Board School Education Service on 09.03.1961 as Junior Assistant/steno-typist. Subsequently, he was promoted as Assistant on 13.06.1988. Thereafter, he was promoted as Superintendent on 05.01.1996 and retired from service on 30.06.2001 as Superintendent. He had put in 40 years of unblemished record of service.

ii) The administration of the erstwhile District Board Secondary Schools were brought under the control of the Special District Educational Officers in the year 1963. Thereafter, 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



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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 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. In the said proceedings, the petitioner's name was placed at Serial Number 1612 and his initial has been wrongly noted as "N" instead of "K" and the mistake was subsequently, rectified. Thereafter, the 3rd respondent revised the petitioner's seniority and notionally promoted the petitioner as Assistant with effect from 11.09.1979 instead of 13.06.1988 vide proceedings dated 28.12.2010. Thereafter, vide proceedings dated 20.05.2011, the 3rd respondent further notionally promoted the petitioner as Superintendent with effect from 18.11.1993 instead of 05.01.1996.

iii) Subsequently, the 3rd respondent issued proceedings promoting Superintendents to the post of Personal Assistants notionally vide



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proceedings dated 22.07.2011 in which several junior 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, one A.Perumal who was promoted to the post of Superintendent on 19.11.1993 was promoted as Personal Assistant notionally though the petitioner was senior to him. The petitioner's name did not find place in the proceedings dated 22.07.2011.

iv) The petitioner made representation to the 3rd respondent through 4th and 5th respondents on 27.08.2011 bringing the same to notice and requesting them to rectify this anomaly, but the same was not considered. Therefore, the petitioner along with 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. In the meantime, without reference to the order passed by this Court, the 3rd respondent passed an order stating that the regular promotion to the post of



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Personal Assistant for "B" wing staff was given only from 2002 and nobody in "A" wing after the petitioner's seniority number 954 were promoted, while the petitioner was in service. One, M.Perumal was promoted as Superintendent only on 19.11.1993 whereas the petitioner was deemed to be promoted notionally as Superintendent before him on 18.11.1993 itself and hence, the fixation is wrong.

v) The petitioner made representation dated 02.02.2012 to the 3rd respondent bringing to the notice that M.Selvaraj who has been placed at Serial No.500 and has been promoted as Superintendent on 18.11.1993 has been promoted as Personal Assistant on 08.05.2000, whereas the petitioner was not promoted as Personal Assistant who was promoted as Superintendent notionally on 18.11.1993. The petitioner also submitted an appeal on 05.02.2013 through the 5th respondent. Since the appeal was not considered, the petitioner along with similarly placed persons filed W.P.No.16478 of 2012 and this Court vide order dated 27.02.2012 directed the 3rd respondent to consider the same within 3 months.

vi) The petitioner came to know that not only M.Selvaraj who was



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junior to him was promoted as Personal Assistant but totally 14 persons who were promoted as Superintendents after the petitioner was notionally promoted as Personal Assistants were promoted as Personal Assistants viz., (1) N.Santha, (2) S.Kalidoss, (3) M.Chinnaiyan, (4) R.Sundaram, (5) N.Kaliyaperumal, (6) M.Sundaram, (7) A.Sornam, (8) N.Panchapagesan, (9) G.Ilango, (10) M.S.Mani, (11) M.Natarajan, (12) S.Gurusamy, (13) N.Arangasamy, & (14) S.Sundaresan.

vii) The petitioner again, made representation on 05.02.2013 to the 3rd respondent, seeking to place him in the seniority list for promotion to the post of Personal Assistant but the 3rd respondent vide impugned proceedings dated 11.06.2013 referred only the name of M.Selvaraj, leaving the petitioner and other similarly placed persons for promotion to the post of Personal Assistant. Immediately, the petitioner sent representation the 3rd respondent on 11.07.2013 requesting him to reconsider the same. Even though the same was received by the 3rd respondent, he has not passed any order. Hence, this writ petition.

3. Heard the learned counsel for the petitioner and the learned



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Additional Government Pleader appearing for the respondents.

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4. i) Learned counsel for the petitioner would submit that for any promotion, the feeder category seniority alone has to be taken into consideration and in such case, the date of appointment in the feeder category, ought to have taken into consideration, but the 3rd respondent has not done so. Further, when the date of appointment is the same, the date of birth is to be taken into consideration as per Rules 35(f) of the Tamil Nadu State and Subordinate Services Rules and the proviso to Rule 35(aa) of the said Rules.

ii) Learned counsel would further submit that when the 3rd respondent received the order dated 27.02.2013 of this Court in W.P.No.16478 of 2012 on 22.03.2013, the petitioner's representation dated 05.02.2013 was very much available with him, in which, the petitioner has stated that 14 other juniors were promoted as Personal Assistants but the same has not been taken into consideration and rejected the same on some untenable grounds.

iii) Learned counsel would further submit that he made an appeal to



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the 3rd respondent on 11.07.2013 and the remainder on 20.08.2013 but the 3rd respondent has not chosen to pass any orders. The impugned order is arbitrary, unreasonable being violative of rules and principles of natural justice.

5. i) Per contra, the learned Additional Government Pleader would 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. 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. However, 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. 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 petitioner had not passed the tests within the prescribed



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period i.e., even upto 01.11.1983, he was not eligible for retrospective promotion.

ii) Learned counsel would further submit that the '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 were given in the post of Superintendent to those who have been actually 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.

iii) Learned counsel would further submit that as per the order passed in W.P.No.16478/2012 dated 27.02.2013, the 3rd respondent considered the representation in comparison with M.Selvaraj said to be a junior, who was promoted as Assistant on 07.08.1978 and then promoted as Superintendent on 18.11.1993 and further promoted as PA to DEO on 08.05.2000 as per his



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own seniority and his name was not considered for retrospective notional promotion but his name was included in the seniority list in the appropriate place as per his own seniority. But the petitioner was originally promoted as Assistant on 13.08.1988 and was notionally promoted as Assistant on 11.09.1979 and was originally promoted as Superintendent on 05.01.1996 and was notionally promoted as Superintendent on 18.11.1993. Hence, the compared person M.Selvaraj is senior to the petitioner in the post of Assistant as Superintendent, no retrospective promotion can be given in the post of PA to DEO in comparison with Selvaraj. Further, the junior 'A' wing person to the petitioner in the seniority list was notionally promoted as PA to DEO on 08.01.2003 only and before that, the petitioner retired on superannuation on 30.06.2001. Therefore, he is not entitled to the benefit of advancement in the post of PA to DEO.

iv) Learned counsel would further submit that the compared person A.Perumal was appointed as Junior Assistant as on 05.05.1964 and as per his original seniority, he was promoted as Assistant on 07.01.1977 whereas the petitioner joined the post of Junior Assistant by promotion on



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22.06.1970 and was further promoted as Assistant on 20.05.1988 only. As per the integrated seniority list of Assistant in the ratio of 5:3 (A:B) A.Perumal was placed in Sl.No.713 (Junior Assistant Sl.No.867) ,whereas the petitioner was placed in Sl.No.1254 (Junior Assistant Sl.No.1566). Thus, the compared person is not junior to the petitioner, the petitioner cannot claim retrospective promotion in the post of Assistant, Superintendent and P.A. to D.E.O also. Further, since the Superintendent post is the feeder category for promotion to the post of PA to DEO, based on joining in the post of Superintendent i.e., on 27.03.1985, he was further considered for retrospective promotion to the post of PA to DEO on 05.12.1991 whereas the petitioner was retrospectively considered to the post of Superintendent as on 18.11.1993 only. Hence, the petitioner cannot claim for retrospective promotion in comparison with A.Perumal.

v) Learned counsel would further submit that as far as the retrospective promotion in comparison with K.Selvaraj is concerned, the petitioner is far junior to K.Selvaraj as per seniority list of A and B wing for Superintendent post, since K.Selvaraj was placed at Sl.No.783, whereas the



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petitioner was placed in 954. According to the seniority in the Superintendent post K.Selvaraj was placed in Sl.No.563 in the seniority list for the post of PA to DEO released on 22.07.2011 and was not considered for retrospective promotion whereas the petitioner retrospective promotion to the post of PA to DEO would arise to immediate junior 'A' wing person of the petitioner on 08.01.2003 only, since the petitioner retired on 30.06.2001.

vi) Learned counsel would further submit that as regards the contention of the petitioner that totally 14 persons who were promoted as Superintendents after the petitioner was notionally promoted as Personal Assistants were promoted as Personal Assistants is concerned, they are far seniors to the petitioner. Those persons are seniors to the petitioner and were promoted as Assistant, after the date of integration i.e., 31.03.1970. No retrospective promotion were given to them in the post of Assistant, Superintendent and PA to DEO. But their name were included in the seniority list on the date of joining in each post to assign seniority only. The petitioner is not senior to the compared person i.e., M.Selvaraj and 14 others. Therefore, he would pray to dismiss the writ petition.



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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 14 juniors were promoted to the post of Personal Assistant but he was not promoted and the representation sent by him in this regard was also not considered and the same was rejected by the respondents.

8. 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



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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 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 had upheld on 28.04.1998, 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-



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teaching staff belong to A & B wing.

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10. 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 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,



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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 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 this is done, it will lead to undue multiple benefits for the persons who avail ratio in each and every post. However, 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,



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the 'B' wing personnel were given promotion notionally as Assistant on par with their Junior in 'A' wing and thereby, the parity was settled at that stage itself. Consequently, a seniority list of Assistants was arrived at and according to the seniority in the post of Assistant, which is the feeder category for the post of Superintendent, respective promotion were given in the post of Superintendent to those who have been actually deferred or denied with that benefit, on par with their junior 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, in compliance with the order passed by this Court in W.P.No.16478/2012 dated 27.02.2013, the 3rd respondent considered the representation of the petitioner, in which, the petitioner has compared M.Selvaraj stating that the said M.Selvaraj is his junior but he was promoted to the post of P.A. to DEO, but the petitioner was not promoted. Insofar as the compared person M.Selvaraj is concerned, he was promoted as



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Assistant on 07.08.1978 and then promoted as Superintendent on 18.11.1993 and further, promoted as PA to DEO on 08.05.2000 as per his own seniority, whereas the petitioner was originally promoted as Assistant on 13.08.1988 and was notionally promoted as Assistant on 11.09.1979 and was originally promoted as Superintendent on 05.01.1996 and was notionally promoted as Superintendent on 18.11.1993. Hence, the compared person M.Selvaraj is senior to the petitioner in the post of Assistant and Superintendent. Further, the junior 'A' wing person to the petitioner in the seniority list was notionally promoted as PA to DEO on 08.01.2003 only and before that, the petitioner retired on superannuation on 30.06.2001. Therefore, he is not entitled to the benefit of advancement in the post of PA to DEO.

14. Further, 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



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period i.e., 01.04.1970 to 01.11.1978 for giving retrospective promotion in that post.

15. Further, the petitioner is also comparing him with other persons viz., A.Perumal and some others. The compared person A.Perumal was appointed as Junior Assistant as on 05.05.1964 and as per his original seniority, he was promoted as Assistant on 07.01.1977, whereas the petitioner had joined as Junior Assistant by promotion on 22.06.1970 and was promoted as Assistant on 20.05.1988 only. As per the integrated seniority list of Assistant in the ratio of 5:3 (A:B), A.Perumal was placed in Sl.No.713 (Junior Assistant Sl.No.867), whereas the petitioner was placed in Sl.No.1254 (Junior Assistant Sl.No.1566). Thus, the compared person is not a junior to the petitioner, the petitioner cannot claim retrospective promotion in the post of Assistant, Superintendent and P.A. to D.E.O also. Further, the compared person, A.Perumal name was included in Sl.No.444 in the seniority list to the post of PA to DEO and was retrospectively promoted as PA to DEO w.e.f. 05.12.1991.

16. Further, the said A.Perumal actually joined as Superintendent on



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19.11.1993, according to his own seniority. He was further considered for retrospective promotion to the post of Superintendent as per integrated seniority w.e.f. 27.03.1985. Further, since the Superintendent post is the feeder category for promotion to the post of PA to DEO, based on joining in the post of Superintendent i.e., on 27.03.1985, he was further considered for retrospective promotion to the post of PA to DEO on 05.12.1991. Whereas the petitioner was retrospectively considered for promotion to the post of Superintendent as on 18.11.1993 only. According to the date of joining in Superintendent post, while considering his name to the post of PA to DEO promotion to his immediate junior, 'A' wing person S.Gobalakrishnan Sl.No.575 (1031) arise on 08.01.2003 only, but before that, the petitioner retired from service due to superannuation on 30.06.2001. Hence, the petitioner cannot claim for retrospective promotion comparing with A.Perumal.

17. Further, while comparing with K.Selvaraj in respect of retrospective promotion, the petitioner is far junior to K.Selvaraj as per seniority list of 'A' and 'B' wings for Superintendent post, since K.Selvaraj



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was placed at Sl.No.783, whereas the petitioner was placed in 954. According to the seniority in the post of Superintendent, K.Selvaraj was placed in Sl.No.563 in the seniority list for the post of PA to DEO released on 22.07.2011 and he was not considered for retrospective promotion whereas the petitioner's retrospective promotion to the post of PA to DEO would arise to immediate junior 'A' wing person of the petitioner on 08.01.2003 only. Since the petitioner retired on 30.06.2001, he is not entitled for the benefit of advancement.

18. As regards the contention of the petitioner that totally 14 persons who were promoted as Superintendents, after the petitioner was notionally promoted as Superintendent, were promoted as Personal Assistants is concerned, they are far seniors to the petitioner as shown in the tabular column below:

<i>Sl. No.</i>	<i>Name</i>	<i>Superintendent seniority list Nos.</i>	<i>Date of promotion as Superintendent</i>	<i>PA to DEO seniority list No.</i>	<i>Date of Promotion</i>
1	N.Santha	779	19.11.1993	498	10.07.2000
2	S.Kalidass	782	19.11.1993	499	05.07.2000



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<i>Sl. No.</i>	<i>Name</i>	<i>Superintendent seniority list Nos.</i>	<i>Date of promotion as Superintendent</i>	<i>PA to DEO seniority list No.</i>	<i>Date of Promotion</i>
3	M.Chinnaiyan	786	19.11.1993	502	12.06.2000
4	R.Sundaram	789	19.11.1993	505	28.08.2000
5	N.Kaliyaperumal	794	19.11.1993	508	15.09.2000
6	M.Sundararaman	815	19.11.1993	510	20.12.2000
7	A.Somam	823	19.11.1993	511	07.08.2000
8	N.Pachapagesan	824	19.11.1993	512	11.10.2000
9	G.Ilango	829	19.11.1993	514	13.12.2000
10	M.S.Mani	830	19.11.1993	515	09.10.2000
11	M.Natarajan	784	20.11.1993	501	18.05.2000
12	S.Gurusamy	791	20.11.1993	507	14.08.2000
13	N.Arangasamy	814	22.11.1993	509	20.12.2000
14	S.Sundaresan	881	22.11.1993	535	20.12.2000
15	B.Nithyananthan	954	18.11.1993	..	..

19. The persons mentioned above are seniors to the petitioner and were promoted as Assistant, after the date of integration i.e., 31.03.1970. Further, as per the Supreme Court verdict, the persons who were promoted, resigned, death during the period between 1.4.78 to 1.11.78, may be deleted for the purpose of drawal of seniority. But seniority was drawn so as to enable them to assign seniority for the next promotional post i.e., Superintendent and PA to DEO. No retrospective promotion were given to



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them in the post of Assistant, Superintendent and PA to DEO. But their names were included in the seniority list on the date of joining in each post to assign seniority only. The petitioner is not senior to the persons compared, viz., M.Selvaraj and 14 others. Further, as per the concession given in G.O.Ms.No.47 dated 8.1.82 to the 'B' wing staff who have not crossed 45 years of age on 02.11.1978, the petitioner should have passed the departmental exams on or before 01.11.1983, but he finished the departmental exams by May, 1984 only.

20. For all the reasons stated above, this Court is of the opinion that there is no merit in the writ petition and the same is liable to be dismissed. According, the Writ Petition stands dismissed. No costs.

01.06.2023

Index :Yes/No
Speaking/Non-speaking order
vsi



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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 Chief Educational Officer,
Tiruvallur District, Tiruvallur.
5. The District Educational Officer,
Ponneri, Tiruvallur District.



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vsi

Pre-delivery order made in
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01.06.2023