



Writ Appeal No.318 of 2020
and W.P.No.8065 of 2020

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.11.2023

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE G.ARUL MURUGAN

Writ Appeal No.318 of 2020
and W.P.No.8065 of 2020
and C.M.P.No.5386 of 2020
and W.M.P.Nos.9549 and 9550 of 2020

W.A.No.318 of 2020

1. N.Umapathy
2. R.Jayasankar
3. V. Venkatesan
4. P.Venkatesan
5. V. Kotres
6. K.S.Murugaiah
7. D.Venkateswaralu
8. K.S.Ganapathy
9. K.S.Gurappa
10. V.Ramesh
11. A.Yuvaraj
12. S.Sahanezbegum
13. D.Venkateshwaralu
14. A. Gopal Chetty
15. C. Kumar
16. M. Murali Mohan

... Appellants

Vs

1. The Government of Tamil Nadu,



Writ Appeal No.318 of 2020
and W.P.No.8065 of 2020

WEB COPY

rep. By its Secretary to Government,
School Education Department (Minority) Department,
Secretariat, Chennai – 600 009.

2. The Director of Elementary Education,
DPI Campus, College Road,
Chennai – 600 006.
3. The District Elementary Educational Officer,
Tiruvallur.
4. The Additional Assistant Elementary Educational Officer,
Pallipattu Union, Tiruvallur District.
5. M.Suganthi
6. S.G.Sivakumar
7. C. C.Pappi
8. C.M.Devarajan
9. S.Amirthavalli
10. M.S.Dhanalakshmi
11. E.K.T.Kavitha
12. K.R.Kalyani
13. O.A.Venkatesan
14. V.S.Lakshmi
15. N.M.Govindamma
16. A.Latha
17. S.Thajubegum
18. T.Varalakshmi

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 15.11.2019 made in W.P.No.13192 of 2013.

For Appellants	: Mr.M.Ravi
For Respondents	: Mr.K.V.Sajeev Kumar Special Government Pleader [R1 to R4]



Writ Appeal No.318 of 2020
and W.P.No.8065 of 2020

W.P.No.8065 of 2020

1. N.Ramani
2. M.Suganthi
3. C.C.Pappi
4. C.M.Devarajan
5. S.Amirthavalli
6. M.S.Dhanalakshmi
7. D.Malarkodi
8. M.E.Latha
9. E.K.T.Kavitha
10. K.R.Kalyani
11. K.S.Selvai
12. O.A.Venkatesan

... Petitioners

Vs.

1. The Director of Elementary Education,
DPI Compound, College Road,
Chennai – 6.
2. The District Elementary Educational Officer,
Tiruvallur.
3. The Additional Assistant Elementary Educational Officer,
Pallipattu Union, Tiruvallur District.
4. The Chief Educational Officer,
Tiruvallur.
5. The District Educational Officer,
Thirutani.
6. The Block Educational Officer,
Pallipattu Union, Tiruvallur District.

... Respondents



Writ Appeal No.318 of 2020
and W.P.No.8065 of 2020

Prayer: Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling the records related to 1st respondent's proceedings made in R.C.No.002618 /E1/2020 dated 19.03.2020 to quash the same and to consequently direct the respondents to draw a separate seniority list for Tamil Medium, Telugu Medium, Bilingual Schools as per Rules.

For Petitioners : Mr.L.Chandrakumar
For Respondents : Mr.K.V.Sajeev Kumar
Special Government Pleader

COMMON JUDGMENT

(Judgment of the Court was delivered by R.SURESH KUMAR,J.)

Since the issue raised in the writ appeal as well as the writ petition is one and the same, with the consent of learned counsel appearing for both sides, these cases were heard together and are disposed of by this common order.

2. The appellants in W.A.No.318 of 2020 are the writ petitioners in W.P.No.13192 of 2013. The said appellants/writ petitioners filed the said writ petition seeking for a writ of mandamus to prepare a combined seniority list among the Secondary Grade Teachers of various languages like Tamil, Telugu, Malayalam etc., as a single combined seniority list



Writ Appeal No.318 of 2020
and W.P.No.8065 of 2020

for the purpose of promotion to the post of Headmaster of Elementary School.

3. The said writ petition having been considered was rejected by the learned Judge through the impugned order dated 15.11.2019, wherein the learned Judge though accepted the line of plea raised by the writ petitioners/appellants had rejected the said writ petition on the ground that it is a premature one. As against which, this appeal has been directed.

4. Insofar as the writ petition in W.P.No.8065 of 2020 is concerned, such a combined seniority list irrespective of the language since had been prepared, based on which promotion was sought to be given by conducting counselling as per the proceedings issued by the Director of Elementary Education vide his proceedings dated 19.03.2020, the same has been under challenge in the writ petition by some of them, who wanted to oppose the move of preparing the single seniority list irrespective of the language, that is how these writ appeal and the writ petition had been tagged together for joint hearing and disposal.



Writ Appeal No.318 of 2020
and W.P.No.8065 of 2020

WEB COPY

5. Heard Mr.M.Ravi, learned counsel appearing for the appellants, Mr.L.Chandrakumar, learned counsel appearing for the petitioners and Mr.K.V.Sajeev Kumar, learned Special Government Pleader appearing for the respondents.

6. In fact the issue raised in these cases is no more *res-integra* as in number of such cases already a Division Bench of this Court followed by various other learned single Benches, has passed orders taking the consistent view that irrespective of the language, the seniority list must be a single one and based on the seniority alone, the promotion shall be given in a bilingual school. One such case in ***W.A.Nos.1480 and 1708 of 2019*** came up for consideration before us on 15.11.2023 in the matter of ***S.Murugesan Vs.E.Makkar and Ors.***

7. In the said case, earlier decision taken by a Division Bench of this Court in ***W.P.No.19856 of 2004 etc., batch (K.Gangadharan and Others Vs. The District Educational Officer, Nilgiris and Ors.)*** was taken into account and accordingly, we have passed orders rejected the appeal filed by the Government as well as the contesting respondents,



Writ Appeal No.318 of 2020
and W.P.No.8065 of 2020

who separately filed two writ appeals against the order passed by the Writ Court, where a direction was given to prepare a combined seniority list and give promotion to the writ petitioner in that case, who was senior in the said combined seniority list irrespective of the language.

8. For better understanding, the relevant portion of the order in W.A.Nos.1480 and 1708 of 2019 is extracted hereunder:

*“5. Before the learned Judge, the issue that was raised and resolved by a Division Bench of this Court had been brought in, where, in the matter of **K.Gangadharan and Others -vs- The District Educational Officer and Others**, a Division Bench of this Court, in a writ petition filed against the order passed by the Tamil Nadu Administrative Tribunal by order dated 09.10.1990 made in O.A.No.1953 of 1989, had taken the view that Rule 5 of the Special Rules has made it clear that, by virtue of the candidates who were the applicants before the Tribunal has passed the second class language test ie., full test in Tamil, they can be posted to bilingual schools offering Malayalam and Tamil media of instruction, where they can very well manage the administrative and academic functions. The Division Bench in fact had held that there can be one seniority list among these teachers irrespective*



WEB COPY



Writ Appeal No.318 of 2020
and W.P.No.8065 of 2020

*of the language and based on the seniority list, further promotion to the post of primary school Head Master had to be given and accordingly the issue has been settled by the Division Bench judgment which was made in **W.P.No.19856 of 2004 etc., batch (K.Gangadharan and Others -vs- The District Educational Officer, Nilgiris and Others).***

6. The said judgment of the Division Bench in fact has been considered by the learned Judge of the writ court in Para 9 and 10 of the order, which are usefully extracted hereunder:

" 9. It is beyond any cavil that in the seniority list of Secondary Grade Teachers, the petitioner is placed at Serial No.41, whereas the third respondent is placed at Serial No. 68. It is also not in dispute that the petitioner has passed Second Class Language Test (Full Test) in Tamil conducted by the Tamil Nadu Public Services Commission.

10. Under identical facts and circumstances of the case, the Division Bench of this Court in K.Gangadharan and others v. The District Elementary Educational Officer and others, supra, after referring to the operative portion of the order of the Tamil Nadu Administrative Tribunal dated 09.10.1990 made in O.A.No.1953 of 1989, which reads as under:



WEB COPY



Writ Appeal No.318 of 2020
and W.P.No.8065 of 2020

"Therefore, Rule 5 of the Special Rules itself is quite clear in the matter. Further, it is conceded by the respondents that by virtue of the applicants having passed the second class language test (Full test) in Tamil, they can be posted to bilingual schools offering Malayalam and Tamil media of instruction where they can very well manage the administrative and academic functions. Under such circumstances, reliance placed by the respondents on Rule 5 of the Special Rules for maintaining separate seniority list is totally unfounded. The contention raised by the applicant that only a combined seniority list for Secondary Grade Teachers should be maintained and promotion effected for the post of Headmaster in the Primary Schools from the said combined Seniority List is in accordance with the Special Rules. No doubt, it is open to the respondents to prescribe any test qualifications for promotion as Headmaster, like passing the Second Class Language Test in Tamil. But the Rules do not contemplate maintenance of a separate seniority list among the



WEB COPY



Writ Appeal No.318 of 2020
and W.P.No.8065 of 2020

Secondary Grade Teachers depending upon the media of instructions in which they were trained. We have, therefore, no hesitation to come to the conclusion that the practice of maintaining a separate Seniority list for Tamil, Malayalam and Kannada Teachers in the Gudalur Taluk in Nilgiris district is contrary to the Special Rules and is, therefore, illegal. Consequently, we direct the respondents to maintain a common seniority list among the Secondary Grade Teachers and promote them as Headmasters in the Primary Schools whenever vacancy arises in accordance with their seniority in such a list, subject to the condition that they satisfy the other qualifications, if any, prescribed under the Rules. The order dated 30.9.1989 promoting the third respondent, a junior to the applicants, is also against the provisions contained in the Special Rules and is, therefore, quashed. Application allowed. No order as to costs."

held as under:

"Therefore, the above direction of the Tribunal was that the maintenance of the



WEB COPY



Writ Appeal No.318 of 2020
and W.P.No.8065 of 2020

common seniority list among the language pundits including Malayalam, Tamil and Kannada, will not amount to any violation of Rule 5 of the Special Rules. If once the common seniority is maintained, there is no impediment for those persons to be promoted to the post of the Primary School Headmaster, if they had completed the second language test (Full test in Tamil). The respondent-State did not file any appeal against the said order. On the contrary, subsequent to the pronouncement of the said order, the Director of elementary Education issued a proceedings dated 20.5.2003 virtually nullifying the earlier orders passed by the Tribunal. It was stated by the department that the Malayalam Medium Headmaster cannot teach a Tamil Medium class and give correct pronouncement in Tamil and it is the same case of Tamil Medium Headmaster in respect of Malayalam Medium class and therefore in the circular dated 20.5.2003, which was brought into effect from 1.1.2003, it was stated that a Tamil Medium Headmaster will be



Writ Appeal No.318 of 2020
and W.P.No.8065 of 2020

appointed in a Tamil Medium school and Malayalam Medium person appointed as Headmaster of Malayalam Medium School but in respect of following common seniority, all language pandits will be considered for the post of Headmaster in bilingual schools. In the light of this instruction given by the Director of School Education, the Department was denying promotion to the petitioners on the ground that they are Pandits of Malayalam Medium Primary Schools and therefore, they cannot be appointed for vacancies in Tamil Medium Primary Schools in Gudalur District."

7. Relying upon the said Division Bench judgment, the learned Judge allowed the said writ petition, as he found that the writ petitioner E.Makkar had completed the language test and his name is found at S.No.41 in the combined seniority list, whereas the name of S.Murugesan, even though he belongs to Tamil language, has been placed in S.No.68 in the said seniority list. Since Makkar is senior, he should have been given promotion to the post of Primary School Headmaster, instead since promotion had been given to the said Murugesan, that was found to be



WEB COPY

unlawful and accordingly the learned Judge allowed the writ petition through the impugned order.

8. We have heard Mr.K.V.Sajeev Kumar, learned Special Government Pleader appearing for the appellant in W.a.No.1708 of 2019 Mr.G.Sankaran, learned Senior Counsel appearing for the appellant in W.A.No.1480 of 2019, and Mr.P.Mohanraj, learned counsel appearing for the contesting respondent in the writ appeals.

9. It is not in dispute that the writ petitioner Makkar got qualified in the language test in Tamil ie., full test. Therefore, he can be posted in bilingual institutions offering Malayalam and Tamil medium. Moreover, it is not a separate seniority list being maintained by the Department based on the language and that is also not permitted under the Rules and a combined seniority list had been prepared, where, admittedly the writ petitioner found place at S.No.41 whereas the said Murugesan found place at S.No.68. Therefore, naturally the writ petitioner E.Makkar had become senior and since had become qualified by having passed the test, he can very well be considered for the post of Primary School Headmaster.

10. Therefore, the promotion denied to the said writ petitioner E.Makkar and given to the said Murugesan was found to be unlawful, of course rightly by the learned judge



Writ Appeal No.318 of 2020
and W.P.No.8065 of 2020

WEB COPY

through the impugned order, who in fact had followed the Division Bench judgment as referred to above.

*11. It is also a fact that, as against the Division Bench order no further appeal has been filed and therefore, what has been concluded by the Division Bench in **K.Gangadharan's** case has become final. Therefore, following the said Division Bench judgment since the writ petition was allowed by the learned Judge through the impugned order, we do not find fault with the approach of the learned Judge and also, as a coordinate bench has already held in this subject in the said order in **K.Gangadharan's** case, which we would also respectfully follow, we do not find any infirmity in the order that is impugned herein.*

12. Resultantly, both the appeals have to fail. Accordingly, they are dismissed, however there shall be no order as to costs.”

9. Therefore, the issue raised in these cases is covered by the said decision and earlier decisions also, where Courts have taken the consistent view that irrespective of the language when seniority list is prepared, there must be a single seniority list consisting of the Secondary



Writ Appeal No.318 of 2020
and W.P.No.8065 of 2020

WEB COPY

Grade Teachers of various languages like Tamil, Telugu, Malayalam, etc., and accordingly in the combined seniority list, whoever be the senior will be considered for promotion for the post of Elementary School Headmaster, which is the pattern in fact has been followed in number of Districts and Panchayat Unions of-course by following the law declared by this Court.

10. When that being so, the appellants herein when approached this Court seeking for inclusion of their names in the combined seniority list and the consequential promotion, the Writ Court had taken the view that it is a premature one.

11. Insofar as the inclusion of the names in the combined seniority list is concerned, once the list is prepared, on the date of preparation of the list, whoever in the rolls according to the seniority their names should be included. Merely because their names have been included in the seniority list, it will not confer any right automatically to seek for promotion because the promotion will be given only based on the availability of the vacancy and whenever vacancy arises based on the



Writ Appeal No.318 of 2020
and W.P.No.8065 of 2020

seniority, the promotion will be given. Therefore, the prayer sought for by these appellants, who are the writ petitioners before the Writ Court seeking for a mandamus cannot be treated as a premature one. Hence, in this context, the view taken by the Writ Court is not to be approved, therefore, it needs to be interfered with.

12. Insofar as the prayer sought for in W.P.No.8065 of 2020 is concerned, the stand taken by the official respondents, who passed the order impugned in the writ petition is the right stand of-course based on the law declared by this Court as stated supra. Therefore, it cannot be successfully challenged for the reasons, which we have discussed herein above including the earlier decisions referred herein above.

13. It is made clear that by virtue of this order, the parties concerned, who are all eligible to be included in the combined seniority list and if they already been included, if their turn comes based on the seniority and the vacancy arise, it is needless to mention that, they are entitled to seek for such promotion and such an exercise shall be undertaken by the official respondents within a period of two(2) months from the date of receipt of a copy of this order.



Writ Appeal No.318 of 2020
and W.P.No.8065 of 2020

WEB COPY

14. It is further made clear that, merely because the name is included in the combined seniority list, they are not automatically entitled to seek for promotion, provided if they are not from Tamil Medium or Tamil language, they must have qualified in a Tamil language test, which is being conducted by the Government in this regard, unless such qualification is fulfilled, they are not eligible to be considered for such promotion that is the stand since has already been taken consistently by this Court, in these cases also the same shall be followed.

15. For all these reasons, the appeal deserves to be allowed and the writ petition deserves to be dismissed. Accordingly, we allow the writ appeal and dismiss the writ petition. No costs. Connected miscellaneous petitions are closed.

(R.S.K.,J.)

(G.A.M., J.)

20.11.2023

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
mp



Writ Appeal No.318 of 2020
and W.P.No.8065 of 2020

WEB COPY

To

1. The Secretary to Government,
School Education Department (Minority) Department,
Secretariat, Chennai – 600 009.
2. The Director of Elementary Education,
DPI Campus, College Road,
Chennai – 600 006.
3. The District Elementary Educational Officer,
Tiruvallur.
4. The Additional Assistant Elementary Educational Officer,
Pallipattu Union, Tiruvallur District.
5. The Chief Educational Officer,
Tiruvallur.
6. The District Educational Officer,
Thirutani.
7. The Block Educational Officer,
Pallipattu Union, Tiruvallur District.



WEB COPY



Writ Appeal No.318 of 2020
and W.P.No.8065 of 2020

R.SURESH KUMAR, J.
and
G.ARUL MURUGAN, J.

mp

Writ Appeal No.318 of 2020
and W.P.No.8065 of 2020

20.11.2023