



W.A.No.1480 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2023

CORAM :

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN**

W.A.Nos.1480 and 1708 of 2019

W.A.No.1480 of 2019

S.Murugesan

... Appellant

-Vs-

1.E.Makkar

2.The Director of Elementary Education
College Road, Chennai 600 006.

3.The District Elementary Educational Officer
Coonoor, The Nilgiris District.

... Respondents

Prayer : Writ Appeal under Clause 15 of the Letters Patent against the order in
W.P.No.200 of 2013 dated 13.07.2017.

For Appellant	:	Mr.G.Sankaran
For Respondents	:	Mr.P.Mohanraj for Mr.P.Rajendran - for R1 Mr.K.V.Sajeev Kumar, Special Government Pleader - for RR 2 and 3

W.A.No.1708 of 2019

1.The Director of Elementary Education
College Road, Chennai 600 006.



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2.The District Elementary Educational Officer
Coonoor, The Nilgiris District.

... Appellants

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-Vs-

1.E.Makkar

2.S.Murugesan

... Respondents

Prayer : Writ Appeal under Clause 15 of the Letters Patent against the order in W.P.No.200 of 2013 dated 13.07.2017.

For Appellants	:	Mr.K.V.Sajeev Kumar, Special Government Pleader
For Respondents	:	Mr.P.Mohanraj for Mr.P.Rajendran - for R1 R2 - No appearance

COMMON JUDGMENT

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

Since both the appeals arise out of the order passed by the writ Court made in W.P.No.200 of 2013 dated 13.07.2017, with the consent of the learned counsel appearing for both sides, these writ appeals are taken up together and are disposed of by this common judgment.

2. It is a tussle between one E.Makkar, who was the writ petitioner in W.P.No.200 of 2019 and one S.Murugesan, who was the third respondent in the said writ petition, who is the appellant in W.A.No.1480 of 2019.



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3. The writ petitioner E.Makkar was a secondary grade teacher in the language Malayalam. The said Murugesan who the third respondent in the said writ petition was also in same position, in Tamil language. These two were included in the combined seniority list prepared by the Department, where the writ petitioner E.Makkar finds place at S.No.41, whereas Murugesan finds place at S.No.68.

4. Accordingly, when promotion was to be given as Primary School Head Master, promotion was given to Murugesan, even though he was in S.No.68. Therefore, challenging the same, E.Makkar filed the said writ petition. The issue that was confronted by the learned Judge of the writ Court was that, whether a combined seniority list alone can be prepared consisting of teachers of various languages or separate seniority list has to be prepared based on the language.

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



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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 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:

"Therefore, Rule 5 of the Special Rules itself is quite clear in the matter. Further, it is conceded by the respondents



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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 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 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 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



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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 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



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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 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.



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

(R.S.K.,J..) (G.A.M.,J.)
15.11.2023

Index : Yes
Internet : Yes
KST

To

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