



W.A.(Md).Nos.1468 of 2017 etc., batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 02.03.2023	Delivered on 23.03.2023
---	--

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

W.A.(Md) Nos.1468 of 2017, 928, 945, 964 of 2018
W.P.No.17502 of 2008,
W.P.Nos.25569 of 2008, 31547 of 2014,
W.P.Nos.20533, 20534, 20535, 29150, 29151, 32473 of 2016
W.P.Nos.2668, 4610, 4611, 12663, 16771,
16772, 34123, 34227 of 2017
W.P.No.32060 of 2019
W.P.(Md) No.12656 of 2016,
W.P.(Md) No.23444 of 2017,
W.P.(Md) No.47 and 19090 of 2018
and all connected miscellaneous petitions

W.A.(Md.)No.1468 of 2017:-

D.Rajan

.. Appellant

Vs.

1.The State of Tamil Nadu
Rep. by its Secretary,
School Education Department,
St.George Fort, Chennai – 9.



W.A.(Md).Nos.1468 of 2017 etc., batch

WEB COPY

2.The Director of School Education,
DPI Campus, College Road,
Chennai – 600 006.

3.The Joint Director (Higher Secondary)
DPI Campus, College Road,
Chennai – 6.

4.M.Lingeswari

5.K.Sivabala

6.A.Marimuthu

7.C.Jeyarani

8.C.Paneer Selvam

9.G.Natarajan

10.M.Krishnamoorthy

11.M.Paramasivam

12.N.Murugesan

13.A.Muniappan

14.K.Dhivyanathan

15.P.Mukilan

16.V.Muthukumaran

17.R.Jeyakumar

2/50



W.A.(Md).Nos.1468 of 2017 etc., batch

WEB COPY

18.A.Ramesh

19.S.Arockia Raja

20.D.Srinivasan

21.G.Kannan

22.S.BharathiRaja

23.S.Dhanababukumar

24.K.Santhanakumar

25.C.Rajendran

26.V.Rangasamy

27.B.Revathi

28.R.Ramesh

29.T.Tamilservi

..Respondents

Prayer in W.A.(Md.)No.1468 of 2017: Writ Appeal filed under Clause 15 of the Letters Patent to set aside the order dated 30.11.2017 passed in WMP.(MD).Nos.9577 of 2016 and 11333 of 2017 in W.P.(MD)No.12656 of 2016 and thus restore the interim order granted in WMP.(MD).No.12656 of 2016.



W.A.(Md).Nos.1468 of 2017 etc., batch

W.A.(Md.)No.1468 of 2017:-

For Appellant	: Mr.Ajmal Khan, Senior Counsel for M/s.Ajmal Associates
For R1 to R3	: Mr.S.Silambanan, Additional Advocate General Assisted by Mr.L.S.M.Hasan Fizal, Additional Government Pleader
For R4, 5 & 7	: Mr.S.Karthick
For R6, 10, 11, 20 to 29	: Mr.R.Saseetharan
For R8	: Mr.R.Subramanian
For R14 to 19	: Mr.G.Sankaran, Senior Counsel for Mr.F.Deepak
For R9 and 12	: Served – No appearance

COMMON JUDGMENT

The common question that arises in the above batch of cases is as to whether the PG Assistants who were recruited under the Tamil Nadu Special Rules for Tamil Nadu Higher Secondary Educational Services by recruitment by transfer could be considered for promotion to the post of



W.A.(Md).Nos.1468 of 2017 etc., batch

High School Head Masters, which comes under the Tamil Nadu Subordinate Educational Services and is a promotional post from the post of BT Assistants, who were recruited under the special Rules for Tamil Nadu Subordinate Educational Services.

2. The Educational services in the State of Tamil Nadu excluding Elementary education are governed by three sets of Rules. The earliest of them being Special Rules for Tamil Nadu School Educational Service Rules introduced in the year 1978, then came the Special Rules for Tamil Nadu Higher Secondary Educational Services which was introduced on 20.08.1981, of course, with effect from 1st July 1978. The third is the Special Rules for Tamil Nadu Subordinate Educational Services, which was introduced in the year 1985 with effect from 15th July 1985. These Rules were in supersession of Special Rules of Tamil Nadu Educational Subordinate Services in Section 6 Volume 3 of the Tamil Nadu Service Manual, 1970, insofar as they relate to the posts which fall under the School Education Department.



W.A.(Md).Nos.1468 of 2017 etc., batch

WEB COPY

3. Till Academic Year 1977-78 the Tamil Nadu Higher Secondary Education was not invogue. The School Education consisted of Standard I to V called Elementary Education and Standard VI to XI called High School Education. While the Elementary Education was governed by the Elementary Educational Service Rules. The High School Education was governed by the Special Rules of Tamil Nadu Educational Subordinate Service contained in the Tamil Nadu Service Manual, 1970.

4. The Government of Tamil Nadu introduced the X +2 system in the School Education from the Academic Year 1978-79. Thereby, introducing classes XI and XII, together called Higher Secondary. Upon modification of School Education system as above, the Government introduced the Tamil Nadu Higher Secondary Education Service, which provided for appointment of PG teachers and Physical Directors/Directeress and Higher Secondary Head Masters/Head Misteresses.



W.A.(Md).Nos.1468 of 2017 etc., batch

WEB COPY

5. The Service Rules of the Tamil Nadu Educational Subordinate

Services were also modified in 1985, in view of the introduction of Higher Secondary Education. As a result of this introduction, we now have the Tamil Nadu Educational service which consists of the Administrative Officers viz., the Director of School Education, Director of Government Examinations, Joint Director of School Education, Deputy Director of School Education, Chief Educational Officer, District Educational Officer, Inspectors of Girls School, the Inspectors of Anglo Indian School, Assistant Director of School Education and Readers in State Council of State Education and Training, Chennai, the Assistant Director of School Education, Head Master and Head Mistress including Head Masters and Head Mistresses of Middle and High Schools, Chief Inspectors of Physical Education, and Section C posts in Directorate of Government examinations called as Secretary to the Director of Government Examinations and Additional Secretary to the Director of Government Examinations.



W.A.(Md).Nos.1468 of 2017 etc., batch

WEB COPY

6. A reading of the above would show that the Tamil Nadu School Educational Service comprises of only Administrative and Supervisory staff. The Tamil Nadu Educational Subordinate Services consists of six categories of posts, they are Deputy Inspector of School and School Assistants, Junior Deputy Inspectors of Schools, Pandits in Tamil, Pandits and Munshis other than Tamil, Grade I and Pandits and Munshis other than Tamil, Grade II, Art Masters in basic training schools, Music teachers, Regional Instructors of Physical Education and Physical Directors of Physical Education Teachers. Except the posts of Deputy Inspector of School and Junior Deputy Inspector of School and Regional Inspectors of Physical Education, all other posts comprised in Tamil Nadu Subordinate Services are teaching posts.

7. The third service viz., the Tamil Nadu Higher Secondary Educational Service consists of Head Masters and Head Mistresses in Higher Secondary Schools, Post Graduate Assistants in Academic subjects. Post Graduate Assistants in language, Post Graduate teachers in Academic subjects who had SCERT's Post Graduate teachers certificate. Physical



W.A.(Md).Nos.1468 of 2017 etc., batch

Directors and Physical Directoresses in Higher Secondary Schools, Physical

Directors and Physical Directoresses with SCERT Post Graduate teacher certificates.

8. The mode of recruitment for the post of Post Graduate Assistants in Academic subjects as well as the Post Graduate Assistants in language is either by direct recruitment or recruitment by transfer from categories 3 and 5 of Clause II of Tamil Nadu Educational Subordinate Services viz., Deputy Inspectors of School, School Assistants, Pandits and Munshis Grade I.

9. The post of Head Master and Head Mistresses of High Schools falls under the Tamil Nadu School Educational Services. The mode of appointment for such posts is recruitment by transfer from Deputy Inspectors of schools, School Assistants, Career Masters, Pandits and Munshis Grade I, Secretarial Assistants, Engineering Instructors, Agricultural Instructors and Physical Directors.



W.A.(Md).Nos.1468 of 2017 etc., batch

10. The post of School Assistants is now being commonly called

as BT Assistants. It could therefore be seen that the promotional avenue for a BT Assistant who is governed by the Tamil Nadu Educational Subordinate Services is either to the post of High School Masters which falls under the Tamil Nadu School Education Services or to the post of Post Graduate Assistants which falls under the Tamil Nadu Higher Secondary Educational Services, both by recruitment by transfer.

11. The Post Graduate Assistants who come under the Tamil Nadu Higher Secondary Services are entitled to be promoted as Head Masters and Head Mistresses in Higher Secondary Schools. It could therefore be seen that the three different services have been created governing different sets of employees working in the School Education Department. A controversy arose with the Graduate Teachers or BT Assistants, who were originally teaching up to XI Standard but confined to teach only upto X standard after introduction of Higher Secondary and Higher Secondary Services claiming that the Post Graduate teachers who are governed by the Special Rules for Tamil Nadu Higher Secondary Educational Services are not entitled to claim



W.A.(Md).Nos.1468 of 2017 etc., batch

promotion as High School Head Masters on the ground that they cease to be the members of the Tamil Nadu Educational Subordinate Services upon their recruitment by transfer as Post Graduate Assistants.

12. Few writ petitions were filed seeking a writ of mandamus forbearing the Government from including Post Graduate teachers in the seniority list that is prepared for the post of High School Head Masters. While things stood thus, the Director of School Education passed an order on 22.12.2015 issuing certain directions for preparation of the seniority list for the post of High School Head masters as on 01.01.2016. This proceedings directed inclusion of Post Graduate Assistants in the panel for promotion as High School Head Masters, based on their seniority as BT Assistants. This particular Clause viz., Clause 9 of the said communication triggered a bunch of writ petitions by the graduate teachers and BT Assistants seeking to quash the said direction alone contending that upon appointment as PG teachers, the BT Assistants are transplanted into another service viz., Tamil Nadu Higher Secondary Educational Service and they cannot claim a lien over the post of BT Assistants, which they held prior to



W.A.(Md).Nos.1468 of 2017 etc., batch

their recruitment by transfer and on the ground that as per the Tamil Nadu Educational Service Rules.

13. The feeder category for the post of Head Master and Head Mistresses of High Schools is only BT Assistants working under the Tamil Nadu Subordinate Educational Service Rules and not Post Graduate Assistants who are working under the Tamil Nadu Higher Secondary Educational Service Rules. The fact that the Government did not choose to amend the Tamil Nadu School Education Service Rules even after introduction of the Special Rules for Tamil Nadu Higher Secondary School Educational Services is projected as the foundation for the claim made by the BT Assistants/ Graduate Teachers.

14. When one such Secondary Grade Teacher, who was promoted as Post Graduate Assistant in 1997 based on his qualification was appointed as the Head Master of a High School. The said order was challenged on the ground that the feeder category for the post of High School Head Master is only the post of BT Assistants, therefore the Post Graduate Assistants who is



W.A.(Md).Nos.1468 of 2017 etc., batch

working in Higher Secondary School cannot be posted as Head Masters of High School. The challenge was upheld by this Court based on the relevant Rules and the Hon'ble Mr.Justice Hariparanthaman held that once the feeder category for the post of High School Head Masters is BT Assistants alone, the Post Graduate Assistant who is working under a completely different service cannot be posted as a High School Head Master.

15. When subsequent batch of cases came up before Hon'ble Mr.Justice P.D.Audikesavalu the learned Judge felt certain difficulties in accepting the conclusion of the Hon'ble Mr.Justice Hariparanthaman in WP.No.7920 of 2011 since the provisions of Rule 9(d) of the Tamil Nadu State and Subordinate Service Rules were not placed for consideration before the learned Judge. Hon'ble Mr.Justice P.D.Audikesavalu also took note of the fact that several writ petitions relating to the same issue were pending before the Principle Bench also and having regard to the nature of the issue, felt that the matters could be heard by the Larger Bench of this Court and referred the matter to the Hon'ble The Chief Justice. Thereafter the Hon'ble The Chief Justice had directed these matters to be posted before



W.A.(Md).Nos.1468 of 2017 etc., batch

the Division Bench of this Court by order dated 25.01.2018. Even while referring the matters to the Division Bench the Hon'ble Mr.Justice P.D.Audikeksavalu thought it fit to vacate the interim orders that were granted and made the appointments subject to the result of the writ petitions. W.A.(MD).No.1468 of 2017 has been filed against the said order vacating the stay.

16. While things stood thus, another bunch of matters challenging the very same proceedings dated 22.12.2015 came up before the Hon'ble Mr.Justice G.R.Swaminathan at the Madurai Bench. The learned Judge disposed of the writ petitions directing the Government to consider the question whether Post Graduate Assistants can still be considered as members of the Tamil Nadu Educational Subordinate Services. If the answer to the question is in affirmative, according to the learned Judge, there can be no impediment for appointing them as Head Masters of High School. The learned Judge also directed the 1st respondent viz., the Secondary School Education Department to pass appropriate orders. These orders passed by the Hon'ble Mr.Justice G.R.Swaminathan are subject matters of Writ Appeal (MD)Nos. 928, 945 and 964 of 2018.



W.A.(Md).Nos.1468 of 2017 etc., batch

17. Pursuant to the orders of the Hon'ble Mr.Justice

G.R.Swaminathan referred to supra the Secretary, School Education Department issued a letter dated 04.07.2018 stating that since the Post Graduate teachers are also continuing the job of teaching they could be treated as persons in the regular line under proviso to Section 12(d) of the Tamil Nadu Government Service (Conditions of Service) Act, 2016. Thereby, implying that the PG Assistants can also be promoted as high School Head Masters. This letter is subject matter of challenge in WP.No.32060 of 2019. As per the directions of the Hon'ble The Chief Justice dated 25.01.2019 all these matters are clubbed together and listed before us.

18. The essential contention of the various counsel appearing for the BT Assistants / Graduate Teachers is that upon being appointed as Post Graduate Teachers by recruitment by transfer the Post Graduate Teachers are transplanted into another service viz., Tamil Nadu Higher Secondary Educational Service. Once they are transplanted into another Service, they cannot claim to hold a lien over the post in the Tamil Nadu Educational



W.A.(Md).Nos.1468 of 2017 etc., batch

Subordinate Services. They will be governed by the Rules relating to the Tamil Nadu Higher Secondary Educational Service only. Once the lien is lost, the members of the Tamil Nadu Higher Secondary Educational Services cannot seek appointment as Head Masters of High Schools since the Special Rules of Tamil Nadu Educational Service provide only the post of School Assistants as feeder category for the post of High School Head Master/ Head Mistresses.

19. It is also the contention of the learned counsel appearing for the Graduate Teachers/ High School Teachers that having availed the promotion from the post of BT Assistants to the post of Post Graduate Assistants the Post Graduate Assistants cannot be considered for promotion as High School Head Masters treating their service as BT Assistants. Apart from relying upon the judgment of the Hon'ble Mr.Justice. Hariparanthaman the learned counsel would submit that Rule 9(d) of the Tamil Nadu State and Subordinate Service Rules, which is the basis of the conclusion of the Hon'ble Mr.Justice P.D.Audikesavalu cannot be construed in such a manner, so as to enable those persons who had left the service to continue to hold the



W.A.(Md).Nos.1468 of 2017 etc., batch

lien. Reference is also made to Rule 14A of the Fundamental Rules which provides that the Government servants lien on the post stands terminated on his acquiring lien over the permanent post outside the cadre of which he is borne.

20. Mr.Ajmal Khan, learned Senior Counsel appearing for the BT Assistants would submit that Rule 9 of the Tamil Nadu State and Subordinate Service Rules cannot be applied, as according to him, it would stand attracted only when the absence from duty *in such service* is due to being on leave or being sent to foreign service or being on deputation or for any other reasons. The learned Senior Counsel would submit that the words **or for any other reasons** found in Rule 9 should be read *ejusdem generis* with the other causes appearing in the same Rule and therefore once the person is appointed to a substantive vacancy in another service, he would loose the lien and he would be rendered ineligible in his turn, for reappointment to substantive or officiating vacancy or for promotion from lower cadre to higher category in such service or substantive or officiating vacancy in another service for which he may be an approved candidate.



WEB COPY

21. The learned Senior Counsel would also invite our attention to the judgment of the Hon'ble Supreme Court in ***State of Rajasthan and another Vs.S.N. Tiwari and others*** reported in **2009 (4) SCC 700** regarding the lien. The Hon'ble Supreme Court had considered Rule 18 of the Rajasthan Rules which is almost akin to Rule 14A of the Fundamental Rules and concluded as follows:-

17. It is very well settled that when a person with a lien against the post is appointed substantively to another post, only then he acquires a lien against the latter post. Then and then alone the lien against the previous post disappears. Lien connotes the right of a civil servant to hold the post substantively to which he is appointed. The lien of a government employee over the previous post ends if he is appointed to another permanent post on permanent basis. In such a case the lien of the employee shifts to the new permanent post. It may not require a formal termination of lien over the previous permanent post.



WEB COPY

22. Reliance is also placed by the learned Senior Counsel on the judgement of the Hon'ble Supreme Court in ***Ramlal Khurana (Dead) by LRs Vs. State of Punjab and others*** reported in ***(1989) AIR (SC) 1985***, wherein the Hon'ble supreme Court had while considering the acquisition of lien by the Government servants held as follows:-

8.The other contention urged for the appellant that he was not confirmed in the Excise Department and unless confirmed, he acquired no lien cannot also be accepted. Lien is not a word of art. It just connotes the right of a civil servant to hold the post substantively to which he is appointed. Generally when a person with a lien against a post is appointed substantively to another post, he acquires a lien against the latter post. Then the lien against his previous post automatically disappears. The principle being that no government servant can have simultaneously two liens against two posts in two different cadres. It is a well-accepted principle of service jurisprudence.



WEB COPY

23. Drawing our attention to the judgment of the Division Bench of this Court in *State of Tamil Nadu Vs. Nagaraj* in *Revl.Appln.No.217 of 2015*, Mr.Ajmal Khan, learned Senior Counsel would contend that if a person holding substantive post in particular service of the Government is recruited by transfer or otherwise to another service under the same Government also, he would loose the lien he had in the original post as against the deputationist who continues to have the lien. He draws our attention to the following observations of the Division Bench which according to him supports his contention:-

43. Substantive appointment to a permanent post in public service confers substantive rights to the post and the person appointed to the post is entitled to hold a lien in the post. It is a settled proposition of law that a deputationist would continue to hold the lien in the post held in parent department, thill he is absorbed in the post, in the subsequent department or service, to which, he is deputed. Appointment to a post could be by direct recruitment or by promotion or by recruitment by transfer from one service to another. If a person is appointed by any of the three odes, permissible under the rules, then it



should be treated as a fresh appointment to the post, to which, recruitment is made.

24. The learned Senior Counsel would also draw our attention to Clause 15 of Rule 2 of the Tamil Nadu State and Subordinate Service Rules which defines recruitment by transfer as follows:-

(15) A candidate is said to be “recruited by transfer” to a service-

(a) if, at the time of his first appointment thereto, he is either a full member or an approved probationer in the Madras High Court Service or in any other service, the rules for which prescribe a period of probation for member thereof; or

(b) in case, at the time of his first appointment thereto, he is the holder of a post which has been included in another service but for which no probation has been prescribed, if he has put in that post satisfactory service for a total period of two years on duty within a continuous period of three years.

Explanation- Where the special rules for a service provide for recruitment to that service or to any class or category thereof by transfer from any specified



service, class or category, a candidate need not, for the purposes of such recruitment, be a full member or an approved probationer in the service, class or category so specified, provided he is a full member or an proved probationer in any other service class or category;

25. The learned Senior Counsel would also point out that the Clause (s) of Section 3 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 also defines the term recruitment by transfer as above as found in Sub-Rule 15 of Rule 2 of the Tamil Nadu State and Subordinate Service Rules.

26. Reliance is also placed by the learned Senior Counsel on the judgment of the Division Bench in ***R.Perachi Vs. The Principal District Judge, Thoothukudi and others*** reported in (2009) 1 MLJ 212, wherein, the Division Bench considered Rule 14A of the Fundamental Rules and held that upon being transferred from one District to another a Sirastadar in the Judicial Department would loose his lien which he had held prior to transfer.



W.A.(Md).Nos.1468 of 2017 etc., batch

27. Faulting the judgment of the Honble Mr.Justice

G.R.Swaminathan referred in WP.(MD)No.16637 of 2017, the learned Senior Counsel would contend that the learned Judge was in error in misconstruing the words in the regular line and concluding that despite having been appointed to substantive post in another service, the Post Graduate Assistants did not snap their umbilical cord and they continued to have a lien over the post of Graduate Assistant in the Tamil Nadu Educational Subordinate Service. Though the learned Judge has required the Government to consider the question on a case to case basis the Government has come up with a subsequent letter which is subject matter of challenge in WP.No.32060 of 2015, wherein, it conceded that the Post Graduate Assistant continued to be in the regular line and therefore they would not snap their ties with the past service viz., the Tamil Nadu Educational Subordinate Services.

28. Mrs.Dakshayani Reddy, learned Senior Counsel appearing for the Graduate Teachers would submit that Rule 9 of the State and Subordinate Service Rules has been considered by this Court in



C.Natarajan Vs. The Government of Tamil Nadu reported in **1986 (1)**

WEB CO

MLJ 357. Hon'ble Mr.Justice V.Ratnam, as he then was, had held that the principles of *ejusdem generis* would apply to the said Rule and persons who have been appointed to the substantive post cannot invoke Rule 9 and contend that they were on leave or on foreign service or on deputation.

While doing so the Hon'ble Judge had observed as follows:-

6. Rule 9 of the General Rules providing for lien, in my view, is inapplicable on the facts and circumstances of this case. The absence of respondents 3 to 53 in W.P. Nos. 2727 of 1979 and respondents 3 and 4 in W.P. No. 5772 of 1979 from the service of Junior Assistants cannot be attributed to leave, or foreign service, or deputation, or for any other reason. The absence in this case is attributable to their having been borne on the cadre of Assistant Statistical Investigators with effect from 4.9.1971. Apart from this, the absence for any other reason in rule 9 of the General Rules would connote such absence on grounds similar or akin to the member being on leave or on foreign service or on deputation and would not comprehend a case like the present where the absence from, service is owing to the member having become



part of another cadre, namely, Assistant Statistical Investigators. Under those circumstances, rule 9 of the General Rules cannot at all be applied to give the benefit of a paper promotion to respondents 3 to 53 in W.P. No. 2727 of 1979 and respondents 3 and 4 in W.P. No. 5772 of 1979 from Junior Assistant to Assistant with effect from anterior dates with a view to make them seniors to direct recruits, like the petitioner. In view of the considerations pointed out above, there is no need for the termination of the lien as contended by the learned Additional Government Pleader, for, on their temporary entry into the cadre of Assistant Statistical Investigators and the subsequent regularisation of their services in that cadre, the lien, which they had earlier in the post of Junior Assistant, came to an end if at all, they can claim to have such a lien over the post of Assistant Statistical Investigator thereafter and not over the post of Junior Assistant since rule 9 of the General Rules is inapplicable on the facts and circumstances of this case, the impugned orders invoking that rule and giving the benefit of a paper promotion to respondents 3 to 53 in W.P. No. 2727 of 1979 and respondents 3 and 4 in W.P. No. 5772 of 1979 are clearly unsustainable.



WEB COPY



W.A.(Md).Nos.1468 of 2017 etc., batch

29. Mrs.Dakshayani Reddy, learned Senior Counsel would also draw our attention to the Judgment of the Hon'ble Supreme Court in ***Dr.S.K.Kacker Vs. All India Institute of Medical Sciences and another*** reported in ***(1996) 10 SCC 734***, wherein, the Hon'ble Supreme Court on the question of acquisition of lien and termination of lien considering Clause (d) of Fundamental Rule 14A, held as follows:-

10. It would indicate that on appointment to a permanent post, be it under the Central Government or the State Government, outside the cadre on which he is borne, his lien on the previous permanent post stands terminated on his acquiring a lien in a permanent post. The post of Director is not in the same cadre as the post of Professor in the AIIMS. The post of Director is the Head of the AIIMS and it is independent of all the Departments. The Director is enjoined to supervise not only the administrative work of the AIIMS, but also its management for and on behalf of the Institute Body. Therefore, on his appointment to the permanent post as a Director, he lost his lien on the post as a Professor and



W.A.(Md).Nos.1468 of 2017 etc., batch

Head of the ENT Department. Resultantly, when the tenure of the appellant had expired on/by efflux of time or in case any of the eventualities mentioned in Regulation 30-A had happened, he cannot revert to the post of Professor and Head of the Department.

30. Reliance is also placed on the judgment in ***Palure Bhaskar Rao and others Vs. P.Ramaseshiah and others*** reported in **2017 (5) SCC 783**, wherein, again the effect of recruitment by transfer was considered by the Hon'ble Supreme Court. While doing so, the Hon'ble Supreme Court had observed as follows:-

14. Transfer and recruitment by transfer are entirely two different concepts. No doubt transfer can be from one category to another category or within the class if the rule permits interchangeability of the categories within a class. Any other transfer both intra-category and inter-category are in fact, under law is a selection and appointment by way of a transfer from one category to another or from one class to another class or from one service to another. If it is a transfer simpliciter it conveys a different meaning and if it is a recruitment by transfer, as we have clarified above conveys a different concept



altogether. The latter is a mode of selection/recruitment to a service.

15. Transfer in relation to service simply means a change of a place of employment within an organisation. Such transfer being to a similar post in the same cadre and therefore obviously such a transfer does not result in the termination of his lien in the parent cadre but recruitment by transfer is a different service concept altogether. It is a method of recruitment to a service, in the instant case to a different category in the same service initially and thereafter to a different service altogether. Once an employee undergoes a transfer by way of a recruitment to a different cadre or to a different service, the employee loses his lien in the parent cadre/service. In that process, there is an induction to a new cadre and sometimes with a different type of duty. Such induction has distinct consequence on the career of the employee different from what would have been the normal course had he continued in the parent service. Thus the recruitment by transfer terminates the lien of an employee in the parent cadre/service whereas transfer simpliciter to a similar post in the same cadre results only in change of place of employment and therefore there is no termination



of lien (see V. Jagannadha Rao v. State of A.P. [V. Jagannadha Rao v. State of A.P., (2001) 10 SCC 401 : 2002 SCC (L&S) 872] and B. Thirumal v. Ananda Sivakumar [B. Thirumal v. Ananda Sivakumar, (2014) 16 SCC 593 : (2015) 3 SCC (L&S) 379]).

31. Contending contra Mrs.Nalini Chidambaram, learned Senior Counsel appearing for the PG assistants would submit that the lien does not terminate unless there is an order terminating the lien. According to her, Fundamental Rules 14(d) would not apply since emphasis under 14(d) is to the acquisition of the lien. She would further submit that once the lien is not terminated then the Post Graduate teachers would be entitled to be considered for the post of High School Head Masters.

32. Mr.Issac Mohan Lal, learned Senior Counsel appearing for some of the Post Graduate teachers would while conceding that the lien will not continue would however contend that the Tamil Nadu Educational Service Rules consists of only administrative posts. The Fundamental Rules as well as the State and Subordinate Rules would not apply if they are



W.A.(Md).Nos.1468 of 2017 etc., batch

repugnant to any of the provisions of the special Rules framed for a particular service. Therefore, according to the learned Senior Counsel either Rule 9(d) of the State and Subordinate Service Rules or Rule 14A of the Fundamental Rules could be applied in the given case.

33. According to the learned Senior Counsel, though there are three different Service Rules governing the services of the teachers working in the Tamil Nadu Education Department, they will have to be taken as people coming under one single umbrella and the posts are always interchangeable. He would also justify the conclusion of the Honble Mr.Justice G.R.Swaminathan contending that except the persons holding the supervisory post or administrative post under the Tamil Nadu Education Service Rules the other persons who come either in Higher Secondary School Education Service or under the Tamil Nadu Educational Subordinate Service performing the same function viz., teaching. Therefore, they cannot be artificially split up into two different categories so as to deny them the chance of promotion.



WEB COPY

34. Mr.G.Shankaran, learned counsel appearing for the post graduate teachers while reiterating the submissions of Mr.Issac Mohan Lal would also point out on the basis of the statistics that the PG teachers have lesser chances of promotion than the graduate teachers. He would therefore seek to justify the opportunity given to PG teachers to revert to the other position as BT assistants in order to be considered for promotion as head master of high schools based on their seniority as BT assistants, on the ground that this would provide a level playing field for the Post Graduate teachers and Graduate teachers.

35. Mr.R.Subramanian, learned counsel appearing for some of the post graduate teachers would support the submissions of Mr.Issac Mohan Lal.

36. Mr.S.Silambanan, learned Additional Advocate General appearing for the Government would submit that though there are three sets of Rules all of them perform the same functions or same job of teaching and therefore they should all be considered as belonging to one single service



W.A.(Md).Nos.1468 of 2017 etc., batch

and they should not be denied promotional opportunity on the basis that they belong to different service. The learned Additional Advocate General would also submit that Rule 9 of the Tamil Nadu State and Subordinate Service Rules would apply and the Post Graduate teachers can be treated as members absent from duty and be considered for promotion in substantive or officiating vacancy in another service.

37. We have considered the submissions of the learned counsel appearing on either side.

38. The following questions arise for determination by us:

1) Whether the three services viz., the Tamil Nadu Educational Service, The Tamil Nadu Educational Subordinate Service and Tamil Nadu Higher Secondary Educational Service can be treated as a single unit coming under the Education Department?

2) Whether Rule 9 of the Tamil Nadu State and Subordinate Service Rules can be applied so as to entail the Post Graduate Assistants to be promoted as High School Head Masters treating their service as Post



W.A.(Md).Nos.1468 of 2017 etc., batch

Graduate Assistants as a temporary absence from the Tamil Nadu Educational Subordinate service?

3) Whether on appointment to the permanent post as Post Graduate Assistants in another service the Post Graduate teachers would loose their lien in terms of Clause (d) of Rule 14A of the Fundamental Rules?

39. Adverting to the first question as we had already pointed out right from the inception of High School Education there were two services viz., the Tamil Nadu Educational Subordinate Service and the Tamil Nadu Educational Service. We are not for the present dealing with yet another service viz., the Tamil Nadu Elementary Educational Services as the same does not overlap with the other three services.

40. While the Tamil Nadu Educational Service consists of administrative post and the lowest there in is the post of Head Master or Head Mistresses of High School. The Tamil Nadu Educational Subordinate Service consists of teaching staff. Prior to 1978 there were only one



W.A.(Md).Nos.1468 of 2017 etc., batch

category of teachers viz., Graduate Teachers or BT Assistants whose essential qualification was a graduation and a B.Ed., degree. Upon the advent of X+2 system of education in 1977-78, there arose a need for employing PG Assistants as teachers in Higher Secondary Schools. Then came a new service christened the Tamil Nadu Higher Secondary Educational Service, which consisted of Higher Secondary School Head Masters, Head Mistresses and PG Teachers in Academics and Languages. There was a third category of teachers called PG teachers with certificate course from the SCERT. These were Graduate teachers with certain amount of experience, who were given training for teaching Higher Secondary classes. That particular breed of teachers does not any longer exists, as almost all of them have retired by efflux of time. Therefore, as of today the Higher Secondary Service consists of Head Masters/Head misteresses,PG teachers in Language and Academics and Physical Directors and Physical Directoresses in higher Secondary Schools.

41. A close reading of the different Rules that have been made by the Government in this regard would show that three of them deal with



W.A.(Md).Nos.1468 of 2017 etc., batch

different sets of posts. Though they are under the same Department, they are governed by different sets of Recruitment Rules. Care has been taken to provide for recruitment by transfer wherever necessary. If we are to take the post of Post Graduate teacher or Post Graduate Assistants the mode of recruitment is either by direct recruitment or by recruitment by transfer from Graduate teacher who were working in High Schools. As far as the High School Head Masters are concerned the Rules provide for recruitment by transfer from BT Assistants who are working in High Schools. Though the Tamil Nadu Educational Service Rules which consists of the administrative posts only was amended providing a proportional representation of Head Masters and Head Mistresses of Higher Secondary Schools to the other administrative posts viz., the District Educational officer, Chief Educational Officer, Deputy Director of School Education, Director of School Education etc., the feeder category to the post of Head Masters by High Schools was not changed or amended to include Post Graduate teachers. Therefore the directly recruited Post Graduate teachers cannot become a Head Master or Head Mistresses of a High School. Whereas if the impugned letter which provides for promotion of Post Graduate teachers as High School Head



W.A.(Md).Nos.1468 of 2017 etc., batch

Master taking into account the seniority as Graduate teachers is upheld, that by itself would create an anomaly, where two persons appointed to the same post and same service would be treated differently. Therefore, we do not think that these three services could be treated as ones coming under the same umbrella.

42. We are therefore unable to uphold the conclusion of the Hon'ble Mr.Justice G.R.Swaminathan, when he said that all the three services being under the same Department, the teachers who are recruited by transfer as Post Graduate teachers from the post of Graduate teachers do not snap their umbilical cord and they continue to be Graduate teachers. The Service Rules provide for a particular method of recruitment. As we had already pointed out, the recruitment by transfer is a completely different concept. It is a selection and appointment by way of transfer from one category to another and in this case from one service to another.

43. In *Palure Bhaskar Rao and others Vs. P.Ramaseshiah and others* referred to *supra*, the Hon'ble Supreme Court had pointed out that



W.A.(Md).Nos.1468 of 2017 etc., batch

'recruitment by transfer' being a method of recruitment to a service results in termination of the lien. Therefore, one cannot postulate a situation where a person is recruited by transfer to a post in another service, continues to hold the lien or retain the umbilical cord to the earlier service.

44. We are therefore unable to subscribe to the contention of the both Mr.Issac Mohan Lal, learned Senior Counsel and Mr.G.Sankaran, learned Senior Counsel appearing for the PG Teachers to the effect that those people having been working in the same Department would continue to retain the right and they should all be treated as coming under one service. We therefore answer the first question to the effect that the three different services cannot be merged for the purpose of interchangeability of posts except to the extent provided under the Rules concerned.

45. The next question to be decided is the applicability of Rule 9. As far as the applicability of Rule 9 is concerned Mr.Ajmal Khan, learned Senior Counsel appearing for the Graduate teachers would vehemently contend that Rule 9 cannot be applied in the case on hand since it would



apply only in a case where the member of service is absent from duty in **such service** and not otherwise. Rule 9 of the State and Subordinate

Service Rules read as follows:-

9.Members absent from duty - The absence of a member of a service from duty in such service, whether on leave, or on foreign service or on deputation or for any other reason and whether his lien in a post borne on the cadre of such service is suspended or not, shall not, if he is otherwise fit, render him ineligible in his turn.

(a) for re-appointment to a substantive or officiating vacancy in the class, category, grade or post in which he may be a probationer or an approved probationers;

(b) for promotion from a lower to higher category in such service;

(c) for appointment to any substantive or officiating vacancy in another service for which he may be an approved candidate, as the case may be, in the same manner as if he had not been absent. He shall be entitled to all the privileges in respect of appointment, seniority, promotion and appointment as full member which he would have



W.A.(Md).Nos.1468 of 2017 etc., batch

enjoyed but for his absence subject to his completing satisfactorily the period of probation on his return.

(d) for appointment to any substantive or officiating vacancy in another service, if according to the rules governing appointment to such other service—

(i) he is entitled to such appointment; and

*(ii) the normal method of recruitment to such other service is by transfer from the service of which he is a member of any class or category thereof. ***

*Provided that a member of a service who is appointed to another service outside his regular line and is continuing in that service beyond five years shall not be considered for promotion or for appointment by recruitment by transfer to a higher post in his regular line eventhough he is otherwise qualified under the rules for such promotion or appointment, unless he returns to the former service and puts in a fresh service for a period of not less than one year in the former service". ***

*Substituted in G.O.Ms.NO.103, P & AR(S) Dept. ,
dt .21-7-2006 w.e.f.21-7- 2006*



WEB COPY

46. A reading of the above Rule shows that it would apply only in a case where the member of service is absent from duty in such service. Meaning thereby the member of service should continue to be in such service and he should be absent from duty for any one of the reasons specified thereunder viz., whether on leave or on foreign service or on deputation or for any other reason.

47. The question whether this “or for any other reason” would include appointment to another substantive post in another service was considered by this Court in *C.Natarajan Vs. The Government of Tamil Nadu* cited *supra*. The Hon'ble Mr. Justice Ratnam, as he then was, held that if the absence cannot be attributed to leave or foreign service or deputation or any other reason would connote such absence on the grounds similar or akin to the member of service being on leave or on foreign service or on deputation and would not comprehend a case like the person where the absence from service is owing to the member having been made part of another service viz., the Tamil Nadu Higher Secondary Service. We do not



W.A.(Md).Nos.1468 of 2017 etc., batch

find any convincing reason to depart from the above conclusion of this Court.

48. Even assuming that principles of *ejusdem generis* could not be applied, we would like to point out that the very Rule 9 cannot be invoked in a case where a person is permanently borne into another service. In view of the opening words of Rule 9 which definitely indicate that the absentee should have continued to be a member of the same service. The words “**the absence of a member of a service from duty in such service**” would necessarily indicate the requirement that the member of the service should be continuing in the same service. Once he is borne into another cadre of another service he cannot be considered as member of the service absent from duty in *such service*.

49. We are therefore unable to conclude that Rule 9 of the Tamil Nadu State and Subordinate Rules could be applied to the case on hand to conclude that the PG Assistants were absent from duty in the Tamil Nadu Educational Subordinate Service and therefore they are not rendered



W.A.(Md).Nos.1468 of 2017 etc., batch

ineligible for appointment to any substantive or officiating vacancy in another service if according to Rule governing appointment to such other service he is entitled to such appointment.

50. More over the proviso to Rule 9 would apply and a Graduate teacher who was promoted as Post Graduate teacher and appointed as such under the Higher Secondary service, if he wants to return to parent service and claim a post of High School Head Master on the basis of his/her service as Graduate teacher he/she should serve as Graduate teacher for one year. We need not elaborate on this since we have concluded that Rule 9 will not be itself applicable to the case on hand.

51. We shall now look at the effect of the lien. A Government servant acquires the lien over the post upon his appointment to a permanent post and under Rule 12A of the Fundamental Rules the Government servants lien over the post ceases when he is appointed to a permanent substantive post subsequently. Clause (d) of Rule 14A of the Fundamental Rules provides that a lien of the Government servant over a post stand



W.A.(Md).Nos.1468 of 2017 etc., batch

terminated on his acquiring the lien over a permanent post outside the cadre on which he is borne.

52. We had already adverted to the fact that the Educational Service are made of different cadres of employees. All of them provide for a method of recruitment and wherever there is a post of promotional post and the feeder category, belongs to the other service, care is taken to make that promotion as a recruitment by transfer, thereby terminating the lien on the post that was held in the feeder category and creating a lien over the post to which the appointee is posted by recruitment by transfer.

53. Though Mrs.Nalini Chidambaram, learned Senior Counsel appearing for some of the Post Graduate teachers would vehemently argue that unless there is an order terminating the lien the lien would continue. We are unable to accept her submission in view of the plain language of Rule 14A(d) of the Fundamental Rules, which provide that the Government servant's lien over the post will terminate on his appointment to any substantive post, which is permanent in nature. The same view was



W.A.(Md).Nos.1468 of 2017 etc., batch

reiterated in ***Ramlal Khurana (Dead) by LRs Vs. State of Punjab and others*** cited *supra*

54. In fact as already pointed out the Hon'ble Supreme Court has in ***Dr.S.K.Kacker Vs. All India Institute of Medical Sciences and another*** cited *supra* has held that in view of Sub-Section (d) of Rule 14A, the Government servant will loose lien which he had acquired in permanent post on his being appointed to another permanent post even within the said cadre to which he is borne.

55. Again in the ***State of Rajasthan and another Vs.S.N. Tiwari and others*** cited *supra* the Hon'ble Supreme Court referred to Rule 18 of the Rajasthan Service Rules which is akin to Rule 14 A of the Fundamental Rules of Tamil Nadu Government and held that the termination of lien is automatic on acquiring lien in another substantive post.

56. Again in the ***State of Tamil Nadu Vs. Nagaraj*** cited *supra*, a Division Bench of this Court had considered Fundamental Rule 14A and



W.A.(Md).Nos.1468 of 2017 etc., batch

concluded that the Government servant who is holding the substantive post acquires the lien over that post and such lien gets terminated upon his being appointed to another post. We are therefore unable to accept the submission of Mrs.Nalini Chidambaram, learned Senior Counsel to the effect that unless there is an order terminating the lien the lien will continue.

57. Mr.G.Sankaran, learned Senior Counsel appearing for some of the Post Graduate teachers would place certain statistics before us and submit that the chances of promotion of Post Graduate Assistants as Higher Secondary School Head Masters and further promotion as District Educational Officer and Chief Educational Officer being very bleak they should be permitted to retain the lien over Graduate teachers and be permitted to be promoted as High School Head Master.

58. We do not think we can countenance such submission. Since the promotional post viz., District Educational Officer which is an administrative post comes under the Tamil Nadu Educational Service. There are four modes of recruitment to the said post viz., 20% is by direct



W.A.(Md).Nos.1468 of 2017 etc., batch

recruitment, 5% is by direct recruitment from Head Masters and Head Mistresses of aided Higher Secondary Schools, 40% by recruitment by transfer from High School Head Masters and 35% by recruitment by transfer from Higher Secondary School Head Masters.

59. We find from the statistics that is furnished by Mr.G.Sankaran himself that the number of High School Head Masters and Higher Secondary School Head Masters is almost the same. While the number of High School Head Masters is 3095 the Higher Secondary School Head Masters is 3173. It is the grievance of Mr.G.Sankaran that the directly recruited Post Graduate teachers occupy the post of Higher Secondary School Head Masters. Therefore the BT Assistants who are recruited by transfer as Post Graduate Assistants are unable to gain further promotion. That cannot be a reason to allow them to come back into another service and claim promotion in this service denying an opportunity for those who continue in the same service.



60. No doubt an argument can be raised on the ground that people

who had obtained higher qualification are being denied the benefit, but such an argument is only illusory, since the pay scale for High School Head Master and Post Graduate teachers is one and the same. In view of the above conclusions, we find that the Post Graduate teachers cannot be recruited by transfer to the post of High School Head Masters based on their service as BT assistants as they have been recruited by transfer to a completely different service.

61. Therefore, the writ petitions which challenge the Government letter dated 22.12.2015 will stand allowed. Clause 9 of the said Government letter which allow Post Graduate teachers to be recruited as High School Head Masters based on their service as BT Assistants will alone stand quashed.

62. In view of our conclusion that these three services are different and a Graduate teacher who has been recruited by transfer as Post Graduate Assistant and who had borne into the service of Higher Secondary



W.A.(Md).Nos.1468 of 2017 etc., batch

Education cannot be said to retain the umbilical cord and they cannot seek recruitment by transfer to the post of High School Head Masters under the Tamil Nadu Education Service treating them as Graduate teachers. The writ appeals that are filed against the judgment of Hon'ble Mr.Justice G.R.Swaminthan, dated 09.06.2018 will stand allowed. The writ petitions in WP.(MD).Nos.16637 of 2017 etc., batch will stand allowed. In view of the disposal of the writ petitions themselves, the writ appeals filed against the interim orders passed by the Hon'ble Mr.Justice P.D.Audikesavalu, viz., W.A.No.1468 of 2017 will stand dismissed. The two writ petitions of the year 2008, in which a writ of mandamus is sought for will also stand dismissed.

63. In fine, we conclude that the Graduate teachers who have been recruited by transfer as Post Graduate Assistants cannot seek recruitment by transfer as High School Head Masters based on their service as BT Assistants in the Tamil Nadu Subordinate Educational Service.



W.A.(Md).Nos.1468 of 2017 etc., batch

64. We place on record our appreciation to the assistance rendered by all the Senior Counsel and the learned counsel on record in all these cases, as all of them had made a genuine attempt in assisting the Court to arrive at appropriate conclusion. No costs. Consequently the connected miscellaneous petitions are closed.

(R.S.M.,J) **(K.G.T,J)**
23.03.2023

dsa

Index : No
Internet : No
Neutral Citation : Yes
Speaking order

To:-

- 1.The Secretary,
State of Tamil Nadu
School Education Department,
St.George Fort, Chennai – 9.
- 2.The Director of School Education,
DPI Campus, College Road,
Chennai – 600 006.
- 3.The Joint Director (Higher Secondary)
DPI Campus, College Road,
Chennai – 6.

49/50



W.A.(Md).Nos.1468 of 2017 etc., batch

R.SUBRAMANIAN, J.
and
K.GOVINDARAJAN THILAKAVADI, J.

dsa

**PRE-DELIVERY
COMMON JUDGMENT
IN
W.A.(Md) Nos.1468 of 2017 etc., batch**

23.03.2023