



W.A. (MD) No.1427 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 01.08.2023

PRONOUNCED ON : 23.08.2023

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A(MD).No.1427 of 2014
and
MP(MD).No.1 of 2014

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

2.The District Elementary Educational Officer
Virudhunagar District

3.The Additional Assistant Elementary Educational Officer
Sivagasi, Virudhunagar District

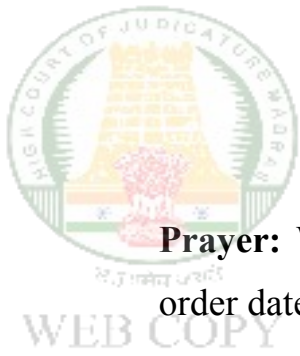
4.The Headmaster
Middle School
Gangakulam
Sivagasi Panchayat Union
Virudhunagar District

...Appellants

Vs

Jeyakumar

...Respondent



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Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 02.07.2014 in W.P.No.1161 of 2010.

For Appellants : Mr.V.Om.Prakash
Government Advocate

For Respondent : Mr.S.Selvakumar

J U D G M E N T

(Judgment of the Court was made by **R.VIJAYAKUMAR, J.**)

The respondents in the writ petition are the appellants herein.

2.The respondent herein as writ petitioner had challenged an order dated 19.07.2006 wherein and whereunder his request for inclusion of his name in the panel for promotion of Middle School Headmaster was rejected.

Factual Matrix:

3.The writ petitioner was originally appointed as a Secondary Grade Teacher in a private aided School on 18.07.1986 and he was conferred with selection grade with effect from 18.07.1996. On the basis of his employment seniority, he was appointed as a Secondary Grade Teacher in Panchayat Union Middle School in Narikudi Union on 11.12.2000. He had resigned from the private aided School with effect from 08.12.2000. On request, the writ petitioner was transferred from Panchayat Union Middle School, Narikudi Union to a Panchayat Union Middle School in Sivakasi Union by way of an



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order dated 22.07.2001. In the transfer order, it was specifically mentioned that in the transferred union, the writ petitioner will be placed a last person among the probation declared teachers.

4.The writ petitioner had filed WP(MD).Nos.948 and 4138 of 2011 claiming selection grade and special grade pay scale taking into consideration his services in the private aided school on the basis of G.O.Ms.No.992, Education Department, dated 22.06.1979. Both the writ petitions were allowed on 05.04.2013. The said orders of the writ court were challenged in WA(MD).Nos.No.778 and 779 of 2016 by the official respondents. Both the writ appeals came to be dismissed on 07.09.2017.

5.According to the petitioner, his pay scale in the Panchayat Union School has been revised taking into consideration his past services in the private aided School. Therefore, according to him, considering his seniority and educational qualification, he should be included in the panel for the post of Middle School Headmaster. The petitioner's request was rejected by the authorities on 19.07.2006 on the following grounds.

(a). The Middle School Headmaster panel is prepared from the combined seniority consisting of Primary School Headmaster, Tamil Pandit and Graduate Teacher. The writ petitioner does not fall within the feeder category and he is only a Secondary Grade Teacher.



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(b).In view of G.O.Ms.No.166, School Education (S2) Department, dated 07.06.1999, his name cannot be included in the promotion panel for the post of Middle School Headmaster. The said order was challenged by the writ petitioner in WP(MD).No.1161 of 2010.

6.In the writ petition, the petitioner had relied upon G.O.Ms.No.333 Education Department dated 14.02.1977 and G.O.Ms.No.992 Education Department dated 22.06.1979 for the purpose of reckoning his services in the private aided School for fixing the seniority. The petitioner had further relied G.O.Ms.No.1550 Education Department dated 20.09.1987 and G.O.Ms.No.13 Education (C2) Department, dated 09.02.2005.

7.The official respondents had filed a counter contending that G.O.Ms.No.333 Education Department dated 14.02.1977 and G.O.Ms.No.992 Education Department dated 22.06.1979 can be relied only to award selection grand and special grade taking into consideration the services of the teachers who had resigned from the private aided School and joined Panchayat Union School. Those two government orders do not in any way relate to reckoning the period of services rendered by the teachers in a private aided School prior to their resignations for seniority or promotion. They have further contended that G.O.Ms.No.13 School Education (C2) Department dated 09.02.2005 fixes the feeder category for the post of Middle School Headmaster only from the



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Primary School Headmaster, B.Ed./Tamil Teacher. The writ petitioner being a Secondary Grade Teacher does not fall within the feeder category to the post of Middle School Headmaster.

8.The respondents had further contended that the writ petitioner also does not fall within the ambit of G.O.Ms.No.166, School Education (S2) Department, dated 07.06.1999 to claim for his inclusion in the panel for the post of Middle School Headmaster.

9.The writ Court after considering the pleadings and submissions made on either side, relied upon G.O.Ms.No.373, Education, dated 31.03.1989 and G.O.Ms.No.510 Education (B1) Department, dated 26.05.1992 to arrive at a conclusion that the services of the petitioner in the private aided School having been reckoned for the purpose of pay fixation, there is no justification whatsoever for considering the said services for fixing seniority in the Panchayat Union School. Based on the said finding, the writ Court allowed the writ petition and directed the educational authority to pass appropriate orders in the light of G.O.Ms.No.510 Education (B1) Department, dated 26.05.1992. The said order is under challenge in the present writ appeal.

Submissions of the Counsels:

10. The learned Government Advocate appearing for the appellants had contended that granting of selection grade and special grade based upon the past



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services of the writ petitioner in the aided School cannot be pressed into service for the purpose of claiming seniority in the Panchayat Union School or to include his name in the panel for promotion to the post of Middle School Headmaster. Having resigned from the aided School, he cannot tag the said seniority with that of his services in the Panchayat Union. He had further contended that as per G.O.Ms.No.166, Education (S2) Department, dated 07.06.1999, the writ petitioner does not fall within the feeder category for promotion to the post of Middle School Headmaster.

11.The learned Government Advocate had further pointed out that G.O.Ms.No.510, Education (B1) Department, dated 26.05.1992 was amended by way of G.O.Ms.No.400, Education Science and Technology Department, dated 25.05.1995 in view of introduction of V pay commission pay scale. Therefore, the writ Court was not right in relying upon G.O.Ms.No.510, Education (B1) Department, dated 26.05.1992 for conferring benefits upon the writ petitioner.

12.Per contra, the learned counsel appearing for the respondent/writ petitioner had contended that the Government by way of G.O.Ms.No.333, Education Department, dated 14.02.1977, G.O.Ms.No.992, Education Department, dated 22.06.1979, G.O.Ms.No.1550, Education Department, dated 20.09.1987 and G.O.Ms.No.510, Education (B1) Department, dated 26.05.1992



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has categorically declared that a Secondary Grade Teacher is eligible to be appointed as a Middle School Headmaster counting his previous services in the aided School. The learned counsel for the respondent had further relied upon G.O.Ms.No.13, Education (C2) Department, dated 09.02.2005 to support his case. Hence, he prayed for sustaining the order passed by the writ Court.

13.We have considered the submissions made on either side and perused the materials available on record.

Discussion:

14.The claim of the petitioner for inclusion of his name in the panel for promotion as Middle School Headmaster is based on the following facts:

(a) Through various Government orders, the Government has recognized the previous services rendered in the aided School for conferment of selection grade and special grade. When the said benefits were not granted, the petitioner had approached this Court in WP(MD).No.948 and 4138 of 2011 and was successful. The orders of the writ Court were confirmed by the Division Bench in WA(MD).Nos. 778 and 779 of 2016. When the past services in the aided School were considered for granting selection grade and special grade, the same should also be extended for fixing the seniority of the writ petitioner in the Panchayat Union School.



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(b)As per G.O.Ms.No.510, Education (B1) Department, dated 26.05.1992 and G.O.Ms.No.166, Education(S2) Department, dated 07.06.1999, a Secondary Grade Teacher also falls within the feeder category for being promoted to the post of Middle School Headmaster.

15.A perusal of G.O.Ms.No.333, Education Department, dated 14.02.1977 and G.O.Ms.No.992 Education Department, dated 22.06.1979 clearly indicate that those Government orders only relate to the conferment of selection and special grade taking into consideration the services rendered in the aided School. Therefore, these Government orders have no connection whatsoever to the fixation of seniority or for empanelment for promotion to the post of Middle School Headmaster.

16.As far as G.O.Ms.No.13 School Education (C2) Department, dated 09.02.2005 is concerned, it relates to upgradation of 676 Primary Schools into Middle Schools. In the said Government order, it has been categorically pointed out that the post of headmasters in the upgraded Middle Schools should be filled up by way of seniority from the feeder category of Primary School Headmaster/B.T.Assistant /Tamil Pandit only. Therefore, the said G.O does not in any way support the case of the writ petitioner.

17.G.O.Ms.No.510, Education (B1) Department, dated 26.05.1992 declares that the permanent vacancies for the post of Middle School



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Headmasters should be filled up through Secondary Grade Teachers who are qualified for B.Ed./Tamil Pandit. It further points out as far as the local body Schools are concerned, concerned local body will be treated as one unit. The writ Court had primarily relied upon the said Government order for conferring benefits upon the writ petitioner. However, the said Government order was amended by G.O.Ms.No.400 Education Science and Technology Department dated 25.05.1995. As per the said Government order, whenever vacancies arise in the post of Headmaster of Middle School, such vacancies shall be filled up by promoting the B.T.Assistant/Tamil Pandits who were appointed prior to 01.06.1988. If no such suitable or qualified persons are available from them, then it shall be filled up among the senior most of the following category of teachers by drawing a combined seniority list:

- (a) B.Ed Grade teacher appointed in the Middle Schools;
- (b) Tamil Pandit appointed in the Middle School ;
- (c) The Primary School Headmaster qualified for B.Ed. Or Tamil Pandit.

If no such qualified teachers in the above said category is available in the unit, the senior most Secondary Grade Teacher qualified for B.Ed./Tamil Pandit drawing similar scale pay of Secondary Grade Teachers may be considered for promotion as Middle School Headmaster.



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18. Therefore, it is clear that the priority conferred upon the Secondary Grade Teacher under G.O.Ms.No.510, Education (B1) Department, dated 26.05.1992 has been taken away and it has been conferred upon B.T.Assistant/Tamil Pandit appointing prior to 01.06.1988 and if no such qualified person is available, the feeder category would be from the combined seniority list of B.Ed. Grade Teacher in the Middle School/Tamil Pandit in Middle School/ Primary School Headmaster with B.Ed. Or Tamil Pandit in the order of priority. Hence, it is clear that the Secondary Grade Teacher was placed last in the priority list under G.O.Ms.No.400, Education Science and Technology Department, dated 25.05.1995.

19. In G.O.Ms.No.166, Education (S2) Department, dated 07.06.1999 was passed in view of change in the pay scale effected due to the implementation of VI pay commission. As per pay scale of the VI pay commission, the B.Ed Teacher/Tamil Pandit was placed above the Primary School Headmaster. Therefore, the Government issued G.O.Ms.No.166 dated 07.06.1999 to include the Primary School Headmaster also as one of the feeder categories along with B.Ed. Teacher/Tamil Pandit for the post of Middle School Headmaster ignoring the marginal difference in the pay scale between B.T Assistants and Primary School Headmasters. Even as per the said Government Order, Secondary Grade Teachers do not find a place in the feeder category for the post of Middle



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School Headmaster.

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20.The orders obtained by the writ petitioner for conferment of selection grade and special grade in WP(MD).Nos. 948 and 4138 of 2011 and confirmed in WA(MD).Nos. 778 and 779 of 2016, are confined only to the conferment of monetary benefit and there is no reference about the seniority or promotion. Therefore, the said orders do not support the case of the writ petitioner.

21.The writ Court has primarily relied upon G.O.Ms.No.510, Education (B1) Department, dated 26.05.1992 to direct the educational authorities to place the writ petitioner in the panel for promotion to the post of Middle School Headmaster. G.O.Ms.No.400, Education Science and Technology Department, dated 25.05.1995 and G.O.Ms.No.166, Education (C2) Department, dated 07.06.1999 were not brought to the notice of the writ Court. The priority conferred upon a Secondary Grade Teacher under G.O.Ms.No.510, Education (B1) Department, dated 26.05.1992 has been taken away in G.O.Ms.No.400, Education Science and Technology Department, dated 25.05.1995 and the said position was confirmed in G.O.Ms.No.166, Education (C2) Department, dated 07.06.1999.

22.G.O.Ms.No.400, Education Science and Technology Department, dated 25.05.1995 was issued due to the difference in the scale of pay introduced by V pay commission and G.O.Ms.No.166 Education (C2) Department dated



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07.06.1999 was passed in view of difference in pay scale due to the implementation of VI pay commission.

23.At the time of hearing, the learned Government Advocate brought to the notice of the Court that the writ petitioner was originally appointed to a Panchayat Union School in Narikudi Block on 11.12.2000 and later he was transferred to a Middle School in Sivakasi Block on 22.07.2001. Therefore, the seniority of the writ petitioner would get refixed in the transferred Panchayat Union. This issue should also be taken into consideration while preparing the panel to the post of Middle School Headmaster. However, no records have been placed before us by either parties with regard to the seniority of the writ petitioner in the transferred Panchayat Union. Therefore, it is for the authorities to decide the seniority of the writ petitioner at the time of drawing of promotion panel.

24.In view of the above said deliberations, it is clear that the writ petitioner cannot claim benefit under G.O.Ms.No.510, Education (B1) Department, dated 26.05.1992 in view of amendment of the said G.O.by way of another Government order in G.O.Ms.No.400, Education Science and Technology Department, dated 25.05.1995 and G.O.Ms.No.166 Education (C2) Department dated 07.06.1999. These two Government orders were not brought to the notice of the writ Court.



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Conclusion:

25. In view of G.O.Ms.No.400, Education Science and Technology Department, dated 25.05.1995 and G.O.Ms.No.166 Education (C2) Department dated 07.06.1999, the petitioner falls in the last order of priority for preparing the panel for the post of Middle School Headmaster. Therefore, the request of the writ petitioner to get him empaneled for promotion to the post of Middle School Headmaster is not legally sustainable. Therefore, we are of the considered opinion that the order of the Writ Court is not sustainable in the light of the amended Government Orders cited supra and hence, the order in the Writ Court is set aside and the Writ Appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

**[A.S.M.J.,] & [R.V.J.,]
23.08.2023**

NCC : yes/no
Index :yes/no
Internet :yes/no
msa



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To

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College Road, Chennai 600 006

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Virudhunagar District

3.The Additional Assistant Elementary Educational Officer
Sivagasi
Virudhunagar District

4.The Headmaster
Middle School
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DR.ANITA SUMANTH, J.
AND
R.VIJAYAKUMAR, J.

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Pre-delivery Judgment made in
W.A(MD).No.1427 of 2014
and
MP(MD).No.1 of 2014

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