



W.P.(MD)No.13935 of 2015

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

<i>Judgment Reserved On</i>	<i>Judgment Pronounced On</i>
13.10.2022	23.01.2023

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No. 13935 of 2015

and

M.P(MD)Nos.1 & 2 of 2015

M.Balasubramani

... Petitioner

vs.

1. The State of Tamil Nadu,
Represented by its Secretary,
School Education Department,
Secretariat, Chennai – 9.
2. The Director of School Education,
Elementary School Education Department,
DPI Compound, Chennai – 6.
3. The Chief Educational Officer,
O/o.the Chief Education Office,
Collectorate Campus, Thandhoniimalai,
Karur, Karur District.
4. The District Elementary Educational Officer,
O/o. the District Elementary Office,
Collectorate Campus,
Thandhoniimalai, Karur,
Karur District.



W.P.(MD)No.13935 of 2015

WEB COPY

5. The Assistant Elementary Educational Officer,
O/o. Assistant Elementary Educational Office,
Aravakurichi Union, Karur District.
6. The Additional Assistant Elementary Educational Officer,
O/o. Assistant Elementary Educational Office,
Aravakurichi Union, Karur District.
7. P. Thenmozhi ... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a *Writ of Certiorarified Mandamus*, calling for the records relating to the Impugned order passed by the 4th respondent in his Proceedings in Na.Ka. No. 2856/A4/2015, dated 17.07.2015 and the consequential panel of Secondary Grade Teacher fit for promotion to the post of Elementary School Head Master as on 01.01.2015, as approved by the respondent Nos.4 to 6 on 17.07.2015 and quash the same as illegal in so far as placing the petitioner at Serial No.2 is concerned and consequentially to direct the respondents to place the petitioner at Serial No.1 and thereby consider the petitioner for promotion to the post of Elementary School Head Master in the available vacancy within the period that may be stipulated by this Court.

For Petitioner	: Mr.H.Mohammed Imran, for M/s.Ajmal Associates.
For R-1 to R-6	: M/s.D.Farjana Ghoushia, Special Government Pleader



W.P.(MD)No.13935 of 2015

WEB COPY

For R-7

: Mr.B. Saravanan

ORDER

This Writ Petition is filed for issuance of *Writ of Certiorarified Mandamus*, to quash the impugned order in Na.Ka. No. 2856/A4/2015, dated 17.07.2015, and the consequential order, dated 01.01.2015, as approved by the respondent Nos.4 to 6 on 17.07.2015 and consequently direct the respondents to place the revision petitioner and serial No.1 and grant promotion to the post of Elementary School Head Master in the available vacancy.

2. The brief facts as stated in the affidavit by the petitioner is that the petitioner was initially appointed as Secondary Grade Teacher on consolidated pay, on 20.07.2004 and thereafter, brought under time scale of pay, on 01.06.2006. The 4th respondent has published a list of Secondary Grade teacher in Aravakurichi Union, as on 01.01.2014, and the petitioner has placed in serial No.38. The official respondents had issued G.O.Ms.No.35(3D) School Education Department, dated 10.04.2014, whereby, the petitioner's service was regularised from the date of initial appointment, i.e., on 20.07.2004. Based on the said G.O., the petitioner name was placed at Serial No.1. Hence, the petitioner submitted a



W.P.(MD)No.13935 of 2015

WEB COPY

representation, dated 16.06.2014, with regard to the seniority list as on 01.01.2014, requesting the respondents to place the petitioner at appropriate place. The 5th respondent, vide proceedings, dated 15.07.2014, informed that the said G.O. was issued only on 20.05.2014. Hence, the petitioner's request to be considered only in respect of seniority list, as on 01.01.2015. Hence, the petitioner filed a writ petition before this Court in W.P(MD.No.8812 of 2015, seeking a direction to promote the petitioner as Elementary School Head Master, in the available vacancy and the same is pending before this Court. In the meanwhile, the official respondents, vide proceedings, dated 20.03.2015 have issued a panel of Secondary Grade Teacher fit for promotion, as on 01.01.2015, in which the petitioner was placed in serial No.37.

3. The contention of the petitioner is, as stated in G.O.Ms. No.35(3D) School Education Department, dated 10.04.2014, the petitioner name ought to place as serial No.1. The 4th respondent, while preparing the impugned panel has not considered as per G.O.Ms.No.35(3D) School Education Department, dated 10.04.2014. Hence, the petitioner has submitted a representation, dated 06.02.2015, requesting to place the petitioner in appropriate



W.P.(MD)No.13935 of 2015

WEB COPY

place. Based on the representation, the 4th respondent, vide proceedings, dated 17.07.2015, directed the 5th respondent to prepare the panel placing the petitioner in serial No.2. Hence, the impugned proceedings came to be published and in the impugned proceedings, dated 17.07.2015, in which the petitioner's name was placed in serial No.2. As per G.O.Ms.No.35(3D) School Education Department, dated 10.04.2014, the petitioner's service was regularised with effect from 20.07.2004, in respect of six persons out of which, five persons seniority was fixed and those five persons were working in different unions and as such the impugned panel having been discriminated, which is violative of Article 14 of the Constitution of India.

4. The further contention of the petitioner is that the 7th respondent is a junior to the petitioner and she after having placed next to the petitioner. The relevant date is the date on which, both the petitioner and the 7th respondent were posted in the present union, i.e., Aravakurichi Union. If the teacher is transferred on their own will, they will loose their seniority and in the new Union, they will be placed in the bottom of the list. Since the petitioner and the 7th respondent were transferred to the present union on their own consent, the date of transfer is



W.P.(MD)No.13935 of 2015

WEB COPY

relevant for the purpose of recurring the seniority. The petitioner having been transferred prior to the 7th respondent hence the petitioner is senior than the 7th respondent. In the Aravakruichi Union, one post of Elementary School Head Master is vacant and the petitioner should be considered based on the seniority. Since the petitioner was not posted as Head Master and the impugned order declined to grant the promotion, the petitioner is coming with this Writ Petition.

5. The respondents have filed counter and stated that the petitioner's service was regularised with effect from 20.07.2014 and completed his probation on 19.07.2006. Accordingly, an orders were issued placing the petitioner in serial No.2, vide proceedings, dated 17.07.2015. The particulars of both the teachers are given below:

		Thiru.M.Balasubramani	Tmt.P.Thenmozhi
1.	Date of Appointment	20.07.2004	28.07.1997
2.	Scale of Pay	Consolidated pay	Regular Time scale of pay
3.	Panchayat Union	Krishnarayapuram	Aravakurichi
4.	Regularisation [Subsequently revised as 20.07.2004]	01.06.2006	28.07.1997
5.	Date of completion of probation	31.05.2008	27.07.1999
6.	Date of joining in the Present Union	09.01.2006 [Probationer]	04.09.2006 [Approved Probationer]



W.P.(MD)No.13935 of 2015

WEB COPY

6. At the relevant point of time, the petitioner was a probationer and was placed below the probationers list at serial No.37, whereas the 7th respondent was approved probationer and was placed above the petitioner. The 7th respondent was already promoted as Primary School Head Master on the basis of the panel as on 01.01.2013 that subsequently reverted in the year for want of vacancy and she was promoted and reverted for want of vacancy the 7th respondent's case is taken first for promotion as per instructions of the Director of Elementary Education, vide proceedings, dated 15.11.2001, in Na.Ka.No.5939/ED1/2001. Based on these instructions, the 7th respondent already promoted and reverted and was again promoted as Primary School Head Master in the vacancy on 17.08.2015. The petitioner who was placed serial No.2 was also promoted as Head Master on the same day. Hence, the petitioner cannot have any grievance at all. For the reasons stated above, the petitioner was placed below the 7th respondent. Therefore, the respondents prays to dismiss the writ petition.

7. Heard Mr.H.Mohammed Imran, for M/s.Ajmal Associates, , learned counsel appearing for the petitioner and M/s.D.Farjana Ghoushia, learned Special Government Pleader, appearing for the respondent Nos.1 to 6 and



W.P.(MD)No.13935 of 2015

WEB COPY

Mr.B. Saravanan, learned Counsel appearing for the 7th respondent and perused the material documents available on record.

8. From the tabulation given in the counter, it is seen that the 7th respondent was appointed on 28.07.1997, whereas the petitioner was appointed on 20.07.2004. Eventhough, the petitioner was appointed on consolidated pay, based on G.O.Ms.No.35(3D) School Education Department, dated 10.04.2014, the petitioner's service was regularised covering the consolidated pay service and regularised as on 20.07.2004, whereby the petitioner was granted a concession by considering consolidated pay service. The date of completion of probation by he petitioner is 31.05.2008, whereas the 7th respondent has completed probation on 27.07.1999. The petitioner and the 7th respondent were transferred to Aravakurichi Union on 09.01.2006 and 04.09.2006, respectively. While, fixing the seniority in the present Union the respondents have taken the date of completion of probation by the two contending employees. Since the petitioner has not completed his probation while joining the Aravakurichi union, he was placed junior most in the probationers list. Whereas, the petitioner has already completed the probation on 27.07.1999. Hence, she was placed junior most in the



W.P.(MD)No.13935 of 2015

WEB COPY

approved probationers list, which is above the petitioner. Therefore, the respondents have rightly fixed the seniority of the petitioner and the 7th respondent. Therefore, the claim of the petitioner that should be placed before the 7th respondent is not sustainable in law. Since the petitioner has not completed probation when he was transferred to Aravakurichi Union.

9. The next contention that was raised by the official respondents is that the 7th respondent was already promoted on 01.01.2013. However, was reverted due to want of vacancy in the year 2014, when a vacancy arose in the year 2014 again the 7th respondent was posted in the promoted post. Since the 7th respondent was reverted due to want of vacancy, the 7th respondent was having priority over the petitioner. This reasoning is also absolutely right. When the 7th respondent was already promoted, then the 7th respondent will have right over the vacancy than the petitioner. Hence on this ground also, the petitioner is not entitled and therefore, the claim of the petitioner is not sustainable in law.



W.P.(MD)No.13935 of 2015

WEB COPY

10. Accordingly, this Writ Petition stands dismissed. No Costs.

Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
ksa

23.01.2023



W.P.(MD)No.13935 of 2015

WEB COPY

To

1. The State of Tamil Nadu,
Represented by its Secretary,
School Education Department,
Secretariat, Chennai – 9.
2. The Director of School Education,
Elementary School Education Department,
DPI Compound, Chennai – 6.
3. The Chief Educational Officer,
O/o.the Chief Education Office,
Collectorate Campus, Thandhionalmai,
Karur, Karur District.
4. The District Elementary Educational Officer,
O/o. the District Elementary Office,
Collectorate Campus,
Thandhionalmai, Karur,
Karur District.
5. The Assistant Elementary Educational Officer,
O/o. Assistant Elementary Educational Office,
Aravakurichi Union, Karur District.
6. The Additional Assistant Elementary Educational Officer,
O/o. Assistant Elementary Educational Office,
Aravakurichi Union, Karur District.



WEB COPY



W.P.(MD)No.13935 of 2015

S.SRIMATHY, J

ksa

Order made in
W.P.(MD)No. 13935 of 2015

23.01.2023