



W.P(MD)No.30646 of 2

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 21.12.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.30646 of 2023

and

W.M.P(MD)Nos.26343 & 26346 of 2023

S.Sekkilar

... Petitioner

Vs.

1.The Joint Director (Personal),
Commissioner of School Education Department,
DPI Campus, College Road,
Chennai-600 006.

2.The Chief Educational Officer,
Tenkasi,
Tenkasi District.

... Respondents

Prayer : Writ Petition 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 proceedings of the first respondent in Na.Ka.No.59205/A3/E1/2022, dated 28.09.2022 and quash the same and consequently include the name of the petitioner name in the said panel list for the post of Regular Superintend and post the petitioner as regular Superintendent on par with his junior and with all monetary and service benefits.



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For Petitioners : Mr.VR.Shanmuganathan

For Respondents : Mr.N.GA.Natraj
Government Advocate

ORDER

The present writ petition has been filed by a Desk / Upgraded Superintendent challenging the revised seniority list prepared by the first respondent herein for the appointment by transfer from the post of Desk / Upgraded Superintendent to the post of Regular Superintendent.

2. The petitioner was appointed as a Junior Assistant in the year 1996. Thereafter, he was promoted and appointed as Desk / Upgraded Superintendent on 15.05.2017. According to the learned Counsel appearing for the petitioner, all the Desk / Upgraded Superintendents would be appointed as Regular Superintendents after a period of 4 or 5 years by way of transfer of service. For the said transfer of service, a seniority list is being prepared and published every year.

3. In the present case, seniority list was prepared and published on 21.09.2022, in which the name of the petitioner was ranked as serial No.97 with a remark that 17(b) charge is pending as against the writ petitioner. Thereafter,



the petitioner has given an objection to the first respondent that there is no bar for transferring him as Regular Superintendent since pendency of charge is a bar only for promotion. A revised seniority list was published on 28.09.2022 repeating the same remarks to the effect that 17(b) charge is pending as against the writ petitioner. The said revised proceedings of the first respondent are under challenge in the present writ petition.

4. According to the learned Counsel appearing for the writ petitioner, as per G.O(Ms)No.111, School Education (R2) Department, dated 22.04.2010, the post of Desk / Upgraded Superintendents and Regular Superintendents are equal in cadre and they are receiving the same scale of pay. Therefore, the appointment of an Desk / Upgraded Superintendent to the post of Regular Superintendent is not by way of promotion but it is only by transfer of service. Therefore, pendency of 17(b) charge would not be a bar for considering the name of the petitioner for being appointed as a Regular Superintendent.

5. Per contra, the learned Government Advocate appearing for the respondents had contended that the post of Desk / Upgraded Superintendent is a promotional post and what was prepared by the authorities is a panel and



hence, the name of the petitioner could not be considered in view of the pendency of 17(b) charge as against the writ petitioner.

6. I have carefully considered the submissions made on either side and perused the materials available on record.

7. The only issue that arises for consideration is whether the appointment of an Desk / Upgraded Superintendent as a Regular Superintendent would amount to promotion or it is a mere appointment by transfer of service.

8. A perusal of G.O(Ms)No.111, dated 22.04.2010 clearly reveals that the post of Desk / Upgraded Superintendent is equivalent to the post of Regular Superintendent and they carry the same scale of pay. In view of the said fact, 384 Desk / Upgraded Superintendent posts have been converted to Regular Superintendent post. The service rules which are applicable to the writ petitioner also do not point out that the post of Regular Superintendent is a promotional post from the post of Desk / Upgraded Superintendent. Therefore, the appointment of an Desk / Upgraded Superintendent as a Regular Superintendent could never be considered to be a promotion but only



appointment by transfer of service. Any pendency of 17 (b) charge would be a bar, only incases where the post for which the petitioner aspires is a promotional post. In the present case, admittedly, the authorities have not prepared a panel mentioning the crucial date. Therefore, it is clear that the petitioner aspires only to another equivalent post which is being offered on the basis of seniority.

9. In such view of the matter, the remarks in the impugned seniority list, dated 28.09.2022 to the effect that due to pendency of 17 (b) charge, the petitioner's name is excluded is hereby set aside. The respondent authorities are directed to consider the name of the writ petitioner for being appointed as Regular Superintendent by way of transfer of service as and when vacancy arises and promote the writ petitioner with all attendant benefits with effect from the date on which the petitioner's juniors have been promoted.

10. This writ petition stands allowed to the extent as stated above. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

21.12.2023



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NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

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Chennai-600 006.
- 2.The Chief Educational Officer,
Tenkasi,
Tenkasi District.



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R.VIJAYAKUMAR, J.

BTR

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