



Writ Appeal No.107 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON
01.07.2024

PRONOUNCED ON
11.07.2024

CORAM

**THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Appeal No.107 of 2022
and C.M.P.No.876 of 2022**

K.Bijakshi

... Appellant

Vs

1.B.Chandrakala

2.State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort St.George, Chennai – 600 009.

3.The Director of Elementary Education,
DPI Campus, College Road,
Chennai – 600 006.

4.The District Educational Officer,
Krishnagiri District.

5.The Block Educational Officer,
Kelamangalam Block, Krishnagiri District.

6.K.Jayammal

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7.R.Muniraj
8.N.Manjula Devi

... Respondents

PRAYER:- Writ Appeal has been filed under Clause 15 of Letter Patent to set aside the order dated 11.03.2021 made in W.P.No.4841 of 2021 and pass such further order.

For Appellant : Mr.G.M.Ananthakumar

For R1 : Mrs.Suneetha

For RR2 to 5 : Mr.J.C.Durairaj
Additional Government Pleader

For RR6 to 8 : No appearance

JUDGMENT

(Judgment of the Court was made by Mr.K.KUMARESH BABU.,J.)

This Intra-Court Appeal has been preferred as being aggrieved against the order of the learned Single Judge wherein a panel for the promotion of the Middle School Headmaster at Kelamangalam had been set aside by the learned Single Judge with a direction to include the name of the first respondent also in the list and to strictly adhere to the provisions of Section 41 of the Tamil Nadu Government Servants (Conditions of Service) Act 2016 (hereinafter referred to as the Act).



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2. Heard Mr.G.M.Ananthakumar, learned counsel for the appellant, Mrs.Suneetha, learned counsel appearing on behalf of the first respondent and Mr.J.C.Durairaj, learned Additional Government Pleader appearing for the respondents 2 to 5.

3. In spite of notice to the respondents 6 to 8 none had appeared neither in person nor through their counsel.

4. Mr.G.M.Ananthakumar, learned counsel for the appellant would submit that a panel was drawn for making promotion to the post of Middle School Headmaster at Kelamangalam Block. A panel was prepared based upon the seniority of the persons in the list of the Primary School Headmaster which was a Feeder Category. Since, the first respondent was junior to the appellant and respondents 6 to 8, she was placed in the list and only the first four names were drawn into the panel for grant of promotion to the one Middle School Headmaster of a Telugu medium of instructions. However, the first respondent/petitioner by relying upon Section 41 (1) of the Act has approached this Court contending that even a B.T. Assistant would be entitled to be considered as the said post, is also a Feeder



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Category to the promotion to the post of Middle School Headmaster. She had also further contended that as per section 41 of the Act, if there are various Feeder Categories for promotion and the post of Feeder category which draws a higher salary would have to be given priority. Since, the first respondents held the post of B.T.Assistant, she would normally draw a higher salary than the appellant and respondents 6 to 8.

5. In that context, he would submit that Section 41 of the said Act would not be applicable, since, there are Special Rules governing the service conditions of the teachers serving under the Elementary Education. He would draw our attention to the Special Rules for Tamil Nadu Elementary Education Subordinate Service (hereinafter referred to as “Special Rules”) and contend that the Special Rules only contemplates promotion to the post of Middle School Headmaster from the combined seniority of both class 2 and category of class 3 service.

6. When that being so, relying upon Section 68 of the Act, he would contend that the Special Rules will prevail over the Act and therefore,



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reliance placed upon by the learned Single Judge only under Section 41 to appreciate the case of the first respondent to set aside the order impugned therein would have to be interfered with.

7. Mr.J.C.Durairaj, learned Additional Government Pleader appearing for the respondents 2 to 5 would also subscribe to the arguments made by the learned counsel for the appellant and would also plead this Court to interfere with the order passed by the learned Single Judge.

8. Mrs.Suneetha, learned counsel appearing on behalf of the first respondent on the other hand would contend that Section 41 of the Act is not in any way repugnant to the Provisions of the Special Rules. Therefore, the application of Section 41 of the Act by the learned Single Judge to the facts of the case cannot be faulted with. She would submit that the Special Rules does not provide any basis on which a seniority should be fixed when there are more than one feeder category for the promotion to the next post. Therefore, she would pray this Court to confirm the order passed by the learned Single Judge and dismiss the Intra-Court Appeal.



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9. We have considered the submissions made by the learned counsels appearing for their respective parties and perused the materials available on record.

10. The claim of the first respondent is to place her in the panel for promotion and grant her priority by invoking Section 41 of the Act indicated above. On the other hand, the appellants have contended that Section 41 would not be applicable to the facts of the case, as the services of the first respondent is governed by the Special Rules and Section 68 of the Act mandates that the Special Rules will prevail upon the provisions of the Act, if the provisions of the Act are inconsistent to the Special Rules. For better appreciation, the relevant Provisions are extracted hereunder:-

41. (1) No member of a service or class of a service shall be eligible for promotion from the category in which he was appointed to the service unless he has satisfactorily completed his probation in that category:

Provided that a member of a service or class of a service who, having satisfactorily completed his probation in the category in which he was appointed to the service,



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has been promoted to the next higher category shall, notwithstanding that he has not been declared to have satisfactorily completed his probation in such higher category be eligible for promotion from such higher category :

Provided further that if the scale of pay or pay band of posts in the feeder categories are different, the persons holding post carrying a higher scale of pay or pay band in the feeder category shall be considered first and that, if no qualified and suitable persons holding post in that feeder category are available, the persons holding post carrying the next higher scale of pay or pay band in descending order in other feeder categories shall be considered.

(2) Promotions in a service or class to a selection category or to a selection grade shall be made on grounds of merit and ability, seniority, being considered only where merit and ability are approximately equal. The inter-se-seniority among the persons found suitable for such promotion shall be with reference to the inter-seniority of such persons in the lower post.

(3) Promotions made other than to a selection category or



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a selection grade shall be made in accordance with seniority unless— (i) the promotion of a member has been withheld as a penalty, or (ii) a member is given special promotion for conspicuous merit and ability.

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“68. If any provision of this Act is inconsistent with any provision of the special rules applicable to any particular service, the special rules shall, in respect of that service, prevail over the provisions of this Act.”

11. A reading of Section 68 would imply that when any Provisions of the Act are inconsistent with any provisions of the Special Rules which are applicable to a particular services then the Special Rules shall prevail over the provisions of the Act. It is to be noted that the services of the respondents are governed by the Special Rules namely the Tamil Nadu Elementary Education Subordinate Service Rules. The said Rules provide that the Headmaster of a Middle School shall be appointed by promotion from Class 2 and category 1 of Class 3 of services in combined seniority. Class 2 of the said services includes a graduate teacher (Tamil), a graduate teacher (other than Tamil) and graduate teacher (subjects) and category 1



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of Class 3 is the headmaster and headmistresses of a Primary School. The

relevant portion of the said enactment is extracted hereunder

SECTION 48 A - TAMIL NADU ELEMENTARY EDUCATIONAL SUBORDINATE SERVICE

1. Constitution .- The Service shall consist of the following classes and categories, namely :-

<i>Class (1)</i>	<i>Category (2)</i>
<i>I.</i>	<i>1. Block Educational Officer</i> <i>2. Headmaster / Headmistress of Middle Schools.</i>
<i>II.</i>	<i>1. Graduate Teacher (Tamil)</i> <i>2. Graduate Teacher (Other than Tamil)</i> <i>3. Graduate Teacher (Subjects)</i>
<i>III.</i>	<i>1. Headmaster / Headmistress of Primary Schools</i> <i>2. Secondary Grade Teacher</i>
<i>IV.</i>	<i>Physical Education Teacher</i>
<i>V.</i>	<i>Pre-Vocational Instructor (Full time)</i>

2. Appointment.- Appointment to the various classes and categories shall be made, as follows:-

<i>Class</i>	<i>Category</i>	<i>Method of Appointment</i>
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<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
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<i>I</i>	<i>1. Block Educational Officer</i>	<i>(i) By direct recruitment through Teachers Recruitment Board;</i> <i>(ii) By promotion from category 2 of class I of the service:</i>
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Provided that fifty percent of the substantive vacancies shall be filled by direct recruitment.

2. Headmaster / (i) By promotion from class II and category I
Headmistress of class III of the service in combined
seniority.
of Middle Schools

(ii) If no qualified and suitable candidate is available for appointment by the method specified in item (i) above, the vacancy shall be filled by direct recruitment.

12. The method of appointment envisages that to the post of a Headmaster Middle School will be made by promotion of the aforesaid Class based on their combined seniority. It is not the case of the first respondent that she is senior to the appellant and respondents 6 to 8 whose names were drawn in the panel by the respondents 2 to 5. However, it is her case that Section 41 of the Act gave her priority, as she draws more salary than the appellant and individual respondents. Since, Section 68 mandates that the provisions of the Act would not be applied, if the Special Rules on the subject is inconsistent with the Act.



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13. Even though, the arguments of the learned counsel for the first respondent is attractive, we do not propose to entertain the same. The Special Rules envisages only a combined seniority of the feeder categories and does not give any priority for a person placed in a higher pay band. Therefore, we are of the view that Section 41 is inconsistent with the Provision of the Special Act and by application of Section 68 of the Act, the Provisions of the Act particularly Section 41. becomes inoperative. The learned Single Judge had over looked the provisions of the Special Rules and the Provision of Section 68 of the Act and had applied Section 41 of the Act to the facts of the present case and had held that the first respondent would be entitled to be included in the panel for promotion and to grant promotion based on Section 41 of the Act, which according to us is not correct principle, that ought to have been followed in the facts of the case.

14. For the foregoing reasons, we are inclined to interfere with the order passed by the learned Single Judge and accordingly, this Writ Appeal is allowed and the order passed by the learned Single Judge in W.P.No.4841 of 2021, dated 11.03.2021 is set aside. However, there shall



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be no order as to costs. Consequently, connected miscellaneous petition is

closed.

(D.K.K.,J.) (K.B., J.)
11.07.2024

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
gba

To

- 1.The Secretary,
for The State of Tamil Nadu,
Represented by its,
Department of School Education,
Fort St.George, Chennai – 600 009.
- 2.The Director of Elementary Education,
DPI Campus, College Road,
Chennai – 600 006.
- 3.The District Educational Officer,

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Krishnagiri District.

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4.The Block Educational Officer,
Kelamangalam Block,
Krishnagiri District.



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D. KRISHNAKUMAR., J.
and
K.KUMARESH BABU.,J.

gba

A Pre-delivery Judgment made in
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