



W.P.No.14718 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :13.09.2024

C O R A M :

THE HONOURABLE MR.JUSTICE **MUMMINENI SUDHEER KUMAR**

W.P.No.14718 of 2013
and M.P.Nos.1 and 2 of 2013

D.Rajasekar

... Petitioner

VS.

1. The Director of Elementary Education,
College Road, Chennai 600 006.
2. The District Elementary Educational Officer,
Erode District, Erode.
3. The Assistant Elementary Educational Officer,
Sathiyamangalam Panchayat Union,
Erode District, Erode.
4. The Additional Assistant Elementary Educational Officer,
Sathiyamangalam Panchayat Union,
Erode District, Erode.
5. D.Jabaseela
6. D.Senthil Kumar
7. R.Sakthivel
8. T.Eswaramurthy
9. S.Sarath Arul Maran

... Respondents



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Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorarified mandamus, calling for the records of the respondents 1, 2 and 4 issued in guideline No.1 of Proceedings No. Na.Ka.No.9683/ D1/2004 dated 03.05.2004; and the seniority list of Secondary Grade Teachers published in proceedings No.Nil dated 14.07.2011 and the proceedings in Na.Ka.No.42/2013/A1 dated 08.03.2013, respectively and quash the same in so far as the petitioner and respondent Nos. 5 to 9 is concerned and issue a consequential direction to the respondents 1 to 4 to restore the seniority rank of the petitioner and respondent Nos.5 to 9 as fixed in the seniority list as on 01.01.2007 issued in proceedings No.Nil dated 06.03.2007 and to follow the same for the year 2013-2014, for promotion to the post of Primary School Headmaster and to promote the petitioner as Primary School Headmaster in Sathiyamangalam Panchayat Union, Erode District with service and monetary benefits

For Petitioner : Mr.R.Saseetharan

For Respondents : Mr.K.H.Ravikumar,
1 to 4 Government Advocate

For Respondents
5,8 and 9 : Served – No Appearance

For Respondents
6 and 7 : Unserved



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ORDER

This writ petition has been filed seeking writ of certiorarified mandamus to call for the records of the respondents 1, 2 and 4 issued in guideline No.1 of Proceedings No. Na.Ka.No.9683/ D1/2004 dated 03.05.2004, the seniority list of Secondary Grade Teachers published in proceedings No.Nil dated 14.07.2011 and the proceedings in Na.Ka.No.42/2013/A1 dated 08.03.2013, respectively and quash the same in so far as the petitioner and respondent Nos. 5 to 9 are concerned and also sought for consequential direction to the respondents 1 to 4 to restore the seniority rank of the petitioner and respondent Nos.5 to 9 as fixed in the seniority list as on 01.01.2007 issued in proceedings No.Nil dated 06.03.2007 and to follow the same for the year 2013-2014, for promotion to the post of Primary School Headmaster and to promote the petitioner as Primary School Headmaster in Sathiyamangalam Panchayat Union, Erode District with service and monetary benefits.



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2. The respondents 5, 8 and 9 were served. However, they have not entered appearance. Notices sent to respondents 6 and 7 have been returned with an endorsement “Out of Station”. As notice has been substantially served on all the private respondents, the non service of the respondents 6 and 7 is not fatal to this writ petition. Hence, this Court does not deem it necessary to serve respondents 6 and 7 with notice.

3. The petitioner and respondents 5 to 9 were appointed as secondary teachers by order dated 04.12.2006 issued by the Assistant Elementary Educational Officer, basing upon the list forwarded by the concerned employment exchange. The petitioner and respondents 5 to 9 have joined duty on 04.12.2006 itself as second grade teachers and they have been working as such.

4. While so, the seniority of the petitioner and respondents 5 to 9 was finalized through proceedings dated 01.01.2007, wherein the petitioner was shown as senior to respondents 5 to 9. The same situation was reflected in the seniority lists that were prepared as on 01.01.2008 and 01.01.2009.



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However, in the seniority list prepared on 01.01.2011, the petitioner was pushed down and respondents 5 to 9 were given seniority over the petitioner on the ground that the petitioner has reported duty on 04.12.2006 A.N. whereas the respondents 5 to 9 have reported duty on 04.12.2006 F.N.. It is aggrieved by the said revision of the seniority list, the petitioner has approached this Court by filing this writ petition.

5. This Court has carefully considered the submissions made on either side and also perused the entire material on record.

6. While challenging the proceedings of the Assistant Elementary Educational Officer dated 08.03.2013 whereby the respondents 5 to 9 were given seniority over the petitioner herein, the petitioner has also challenged the proceedings in Na.Ka.No.9683/D1/2004 dated 03.05.2004 whereby the Director of Elementary Education issued directions to take into consideration the time of joining as criteria for fixation of seniority among the persons who joined the services on the same day. Taking into consideration the date of joining into the services as criteria for fixing the seniority has been held to be



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bad by the Hon'ble Apex Court in the judgment reported in **2007(1) SCC 405**.

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In the relevant portion, it has been held as follows:

“6. There is no dispute that the appellant was ranked higher to Respondent 8. There is also no dispute that in the appointment letter the appellant was given six weeks' time to join. Merely because Respondent 8 joined earlier that did not in any way affect the merit placement.

7. This Court in Chairman, Puri Gramya Bank v. Ananda Chandra Das [(1994) 6 SCC 301 : 1994 SCC (L&S) 1384 : (1994) 28 ATC 293] held as follows : (SCC p. 301, para 2)

“2. This appeal arises from the judgment of the High Court of Orissa in OJC No. 1007 of 1988, dated 4-3-1992. The respondent and others were selected by direct recruitment as managers of Rural Bank. His rank was No. 9 in the merit list. He was directed to be given seniority on the basis of the date of his reporting to duty. It is reported that the first respondent is dead. The only question in this case is that what shall be the ranking among the direct recruits? Is it the date on which they joined duty or according to the ranking given by the Selection Board? On



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comparative evaluation of the respective merits of the candidates for direct recruitment, the Board has prepared the merit list on the basis of the ranking secured at the time of the selection. It is settled law that if more than one are selected, the seniority is as per ranking of the direct recruits subject to the adjustment of the candidates selected on applying the rule of reservation and the roster. By mere fortuitous chance of reporting to duty earlier would not alter the ranking given by the Selection Board and the arranged one as per roster. The High Court, is, therefore, wholly wrong in its conclusion that the seniority shall be determined on the basis of the joining reports given by the candidates selected for appointment by direct recruitment and length of service on its basis. The view, therefore, is wrong. However, we need not interfere with the order, since the first respondent has died.”

(underlined for emphasis)

8. Since there was no rule in operation, obviously the ranking in the merit list was to decide the respective seniority. The ratio in Chairman, Puri Gramya Bank



case [(1994) 6 SCC 301 : 1994 SCC (L&S) 1384 : (1994) 28 ATC 293] has full application to the facts of the case. The appellant's claim that he was to be treated as senior to Respondent 8 was rightly accepted by the learned Single Judge. Unfortunately, the Division Bench did not address itself to the specific question and has placed undue stress on Respondent 8 having joined earlier.

9. Therefore, the judgment of the Division Bench is set aside and that of the learned Single Judge is restored. We, however, make it clear that the appellant will not be entitled to any salary for the period during which Respondent 8 has worked. For all other service benefits, the period in question shall be reckoned. The official respondents shall explore the possibility of absorbing Respondent 8 to the suitable post considering the fact that for nearly quarter of the century he has rendered services. The payment made to him shall not be recovered.

7. Taking into consideration the date of joining itself was held to be bad for the purpose of finalizing the seniority and hence the question of taking the time of joining into services on the same day as criteria is much more arbitrary and illegal. There is no legal basis for issuing such guidelines



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to take into consideration the time of joining. The fixation of seniority is governed by Rule 35 of the State and Subordinate Service Rules and seniority is to be fixed in terms of the said Rules and not contrary otherwise. In cases, where several persons appointed on the same day, merit should be taken into consideration for fixing seniority. In the absence of merit, the date of birth of the candidate should be taken into consideration for the purpose of fixing the seniority. Though appointments may be made on the same date for several candidates, the appointment order may be communicated to them at different times and different dates and depending upon the same, the candidates would join the services accordingly. Receiving the appointment order on an earlier date and joining service earlier are under no circumstances relevant criteria for the purpose of fixing seniority, much less the time of joining.

8. Be that as it may, in terms of the Rule 35(f) of the Tamil Nadu State and Subordinate Service Rules, any objection with regard to the seniority is required to be raised within a period of three years. Rule 35(f) reads as under:-



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“Application for the revision of seniority of a person in a service, class, category or grade shall be submitted to the appointing authority within a period of three years from the date of appointment to such service, class, category or grade or within a period of three years from the date of order fixing the seniority, as the case may be. Any application received after the said period of three years shall be summarily rejected. This shall not, however, be applicable to cases of rectifying orders, resulting from mistake of facts”

9. Admittedly, seniority among the petitioner and respondents 5 to 9 was finalized on 01.01.2007 and the same continued till 01.01.2011 on which date the seniority was altered without notice to the petitioner. As respondents 5 to 9 failed to raise any objection with regard to the seniority that was finalized on 01.01.2007 in representation that was submitted, the said representation ought not to have been considered by respondents 1 to 4 in terms of the bar under Rule 35(f) of the Tamil Nadu State and Subordinate Service Rules. In such circumstances, the impugned order cannot be sustained and accordingly, the same is hereby set aside. The Writ Petition is



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allowed. The respondents 1 to 4 is directed to restore the seniority of the petitioner as on 01.01.2010 and also grant the consequential benefits to the petitioner. There shall be no order as to costs. Consequently, miscellaneous petitions are closed.

13.09.2024

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To

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2. The District Elementary Educational Officer,
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3. The Assistant Elementary Educational Officer,
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MUMMINENI SUDHEER KUMAR,J.

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