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W.P.No.10798 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.12.2023

PRONOUNCED ON : 31. 01.2024

CORAM

THE HONOURABLE **MR.JUSTICE K.KUMARESH BABU**

W.P.No.10798 of 2008

G.Bindu . . . Petitioner

Vs

1.Director of Elementary Education,
Chennai – 600 006.

2.District Elementary Educational Officer,
Coimbatore.

3.Assistant Elementary Educational Officer,
Madukkarai, Othakkalmandapam,
Coimbatore.

4.Mrs.Deivanayagi . . . Respondents

PRAYER: PRAYER: Writ Petition filed u nder Article 226 of the Constitution of India praying for a Writ of Declaration to declare that the action of the respondents Nos.1 to 3 in not promoting the petitioner as B.T.Assistant in English in the available two vacancies in the Madukkarai Panchayat Union in the counseling held on 26.11.2006 and 23.12.2006 as per the proceedings of the 1st respondent bearing Na.Ka.No.24356/D1/2005,



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dated 21.11.2006, the order 3rd respondent dated 01.11.2007 bearing Na.Ka.No.571/A2/07, and the order of the second respondent bearing Na.Ka.No.1903/A2/A4/B5/2007, dated 03.11.2007 and promoting the fourth respondent as middle school Head Master as illegal, arbitrary and contrary to law and consequently direct the respondents No:1 to 3 to treat the petitioner being promoted as B.T.Assistant in English in Madukkarai Panchayat Union in the counseling held on 26.11.2006 and promote the petitioner as Middle School Headmaster from 03.11.2007 and also include her name in the panel prepared for the post of Assistant Elementary Educational Officer on 31.12.2007.

For Petitioner : Mr.K.Venkataramani Sr.Counsel for
Mr.M.Muthappan

For Respondents : Mr.S.Silambanan (AAG) Assisted
by Mr.R.Neethi Perumal (GA) for RR1-

3

Mr.P.Rajendiran for R4

ORDER

The Writ Petition has been filed to direct the respondents 1 to 3 to treat the petitioner being promoted as B.T.Assistant in English in Madukkarai Panchayat Union in the counseling held on 26.11.2006 and to promote the petitioner as Middle School Headmaster from 03.11.2007 and also to include her name in the panel prepared for the post of Assistant Elementary Educational Officer dated 31.12.2007 and to declare that the



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promotion given to the 4th respondent as Middle School Headmaster as

illegal, arbitrary and contrary to law.

2. Heard, Mr.K.Venkataramani, learned Senior Counsel for Mr.M.Muthappan, learned Counsel appearing for the petitioner and Mr.S.Silambanan, Additional Advocate General, Assisted by Mr.R.Neethi Perumal learned Government Advocate appearing for respondents 1 to 3 and Mr.P.Rajendran, learned counsel appearing for the 4th respondent.

3. The learned Senior counsel appearing for the petitioner would submit that, the petitioner joined in the service as a Secondary Grade Teacher on 27.09.1996 at Valparai. The petitioner is working in the Madukarai Panchayat Union from 24.10.2000 and is a graduate in BA English Literature and had completed B.Ed in English during the year 2000. He would contend that based on G.O.Ms.No.174 dated 15.09.2006, the Government has directed that 50% of the vacancies in the B.T. Assistant Post should be filled up from the Secondary Grade Teachers holding degree in the concerned subject, so based on this G.O, the petitioner is eligible to be appointed as a B.T. Assistant in English.



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4. The learned Senior Counsel would submit that as per

G.O.Ms.No.174 in each Panchayat, seniority list of the eligible Secondary Grade Teacher has to be drawn and based on the seniority in the available vacancy of B.T. Assistant in the concerned subject has to be promoted. He would submit that based on the G.O, the first Respondent issued proceedings dated 21.11.2006 and in the said proceedings, seniority list of eligible Secondary Grade Teacher in each Panchayat Union was directed to be drawn as on 01.01.2006 in each subject such as Tamil, English, Mathematics, Science and Social Science. The counselling for promotion, the eligible candidate in the available vacancy was directed to be held on 26.11.2006.

5. He would further submit that in the Madukkarai Panchayat Union two posts for B.T Assistant in English were vacant and the petitioner was the only eligible candidate available and her name was included in the seniority list. But her name was not forwarded by the third respondent and the petitioner was not called for the counselling, which was held on 26.11.2006. The respondents 1 to 3 have not considered the petitioner despite she had the necessary qualifications. The petitioner had made representations on various dates such as 27.11.2006, 30.11.2006,



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01.12.2006, 18.12.2006, 24.12.2006, 06.01.2007 and 24.01.2007 but her representations did not evoke any response. Thereafter on 28.02.2007 the petitioner was promoted as B.T. Assistant, but the grievance of the petitioner is that she should have been promoted even as on 26.11.2006.

6. He would submit that B.T. Assistant, Tamil Pandit and Elementary School Headmaster are eligible to be promoted as Middle School Headmaster and their promotion is effected purely based on seniority considering their date of joining and the Seniority list is drawn in the month of January every year and accordingly, the same was prepared on 01.01.2007. He would contend that in the Madukkarai Panchayat, there were three posts of Middle School Headmaster available for the year 2007. In the seniority list one Sreekala and Renukadevi were placed at Serial No.1 and 2 respectively and both of them were Elementary School Headmistress.

7. He would contend that the petitioner had made a representation dated 30.04.2007, to the third respondent to place the petitioner in the Seniority list. The same was rejected on 29.06.2007 on the ground that the petitioner had become B.T. Assistant only on 28.02.2007 and her name cannot be included in the Seniority list dated 01.01.2007. Then the



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petitioner had made a further representation to the first respondent on 17.07.2007 and the first respondent had directed to consider the case of the petitioner in accordance with the rules. Further representation was sent to the first respondent but there was no response, then the petitioner had made a representation to the second respondent dated 19.10.2007. The representation was rejected by the third respondent on 01.11.2007. Thereafter on 02.11.2007, the petitioner gave another representation to the first respondent and the counselling date was fixed on 03.11.2007. The first respondent assured that the petitioner will be given promotion and in case of non-selection, the petitioner was directed to make representation after the counselling. As the petitioner was not selected in the counselling held on 03.11.2007, the petitioner gave another representation on 05.11.2007 to the first respondent.

8. He would further submit that the petitioner had undergone mental stress due to the non representation and had further made a representation to the first and second respondents to consider the petitioner as a person who had been promoted as B.T. Assistant on 26.11.2006. He would further contend that the fourth respondent has been promoted as a Headmistress of the Panchayat Union Middle School, Madukkarai Panchayat by an order



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dated 03.11.2007, the reason why the fourth respondent got promoted was that she was senior to the petitioner in the post of Secondary Grade Teacher.

9. He would submit that the action of the respondents 1 to 3 in not promoting the petitioner as a B.T. Assistant in English in the available two vacancies, even though the petitioner was fully qualified to be promoted in the counseling held on 26.11.2006 and that the 4th respondent cannot be treated as senior to the petitioner and that the promotion given to the 4th respondent ignoring the claim of the Petitioner, as Middle School Headmistress, is illegal. Therefore, the learned Senior counsel would seek to consider and treat the petitioner as being promoted as on 26.11.2006 and to declare that the promotion given to the 4th respondent as contrary to law and prays before this Court to allow this Writ Petition.

10. Countering his arguments learned Additional Advocate General would submit that, the initial appointment of the petitioner in Valparai Panchayat, was for the Malayalam language, as the petitioner had studied Malayalam language as Primary subject in Kerala and later she had passed the second language and thereafter, she got transfer to the respondent Panchayat Union Middle School on 24.10.2000. He would contend that the



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respondents had followed the directions as per G.O.Ms.No.174 School Education Department and the petitioner was granted with promotion on 28.02.2007 as per the seniority list prepared and only after getting due approval for the qualified teacher list, the post of Graduate Teacher was granted with eligible candidates including the petitioner.

11. He would further submit that the petitioner has not participated in the counselling held on 26.11.2006 and 23.12.2006. As per the Government Rules promotion had been granted to all the eligible teachers based on their qualifications and seniority list. He would further submit that the petitioner had also put her signature on the list of qualified teacher as on 01.01.2006. but the petitioner had not made any objections to the same. He would submit that the petitioner was a junior in order to consider her name for promotion in the Middle School Headmaster for the counselling held on 03.11.2007, it was informed that she was not qualified in the seniority list so as to consider her name for promotion.

12. He would further submit that the 4th respondent was appointed duly in accordance with the law as the 4th respondent was senior to the petitioner in service viz., the fourth respondent joined in the service on



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04.07.1988, but whereas the petitioner joined in the service only on 22.09.1996. He would further submit that the 4th respondent had joined in the Madukkarai Panchayat School on 08.08.1996 and the petitioner had joined only in 24.10.2000. He would submit that the petitioner is not entitled for any promotion and as stated by the petitioner, the respondents 1 to 3 have not committed any violation in granting promotion to the 4th respondent. The proceedings of the 1st respondent dated 21.11.2006, order of the 2nd respondent dated 3.11.2007 and the order of the 3rd respondent dated 01.11.2007 is not illegal nor contrary to law and that the petitioner herself had committed mistake in non participating in the counselling and now the petitioner has no case to claim that the appointment made to the 4th respondent as illegal and the proceedings of the respondents 1 to 3 to be invalid. Hence the respondents 1 to 3 prays before this Court to dismiss the Writ Petition.

13. Mr.Rajendran, learned counsel appearing for the 4th respondent would submit that, considering the date of initial appointment, date of regularization of service, date of completion of probation, date of joining duty in the present Block and date of acquiring the eligibility qualification for promotion, the petitioner is junior to the 4th respondent. He would



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submit that in the panels for promotion to the post of Middle School Headmaster as on 01.01.2006 and 01.01.2007, the 4th respondent was placed above the petitioner. The petitioner also did not attend the counseling held on 26.11.2006 and 23.12.2006 and the petitioner was not considered for promotion to the post of B.T Assistant as the petitioner was not working as a B.T. Assistant as on 01.01.2007 and on such date, she was working only as Secondary Grade Teacher.

14. He would submit that considering the seniority of the 4th respondent, she was promoted as a Middle School Headmistress on 03.11.2007 and joined duty as Head Mistress in the Panchayat Union Middle School, Okkilipalayam on 07.11.2007. He would contend that the claim of the petitioner that she should have been placed in the position of the 4th respondent in the panel drawn on 01.01.2007 is unsustainable in law for the simple reason that the petitioner was not working as a B.T. Assistant as on 01.01.2007 and that the petitioner was promoted as B.T. Assistant only on 28.02.2007.

15. He would submit that the petitioner was given promotion as B.T Assistant in accordance with the provisions of G.O.Ms.No.174, School



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Education Department dated 15.09.2006. The said Government Order was

issued for filling up of 50 percent of the vacancies in the post of B.T.

Assistant among the eligible Secondary Grade Teachers qualified in the concerned subject and it was a special drive for the year 2006-2007 alone.

The Petitioner was promoted as B.T.Assistant (English) since she possessed a degree in English, as and when a vacancy was available in the post of B.T.

Assistant (English). He would further submit that even assuming the claim of the petitioner that if she was promoted as B.T. Assistant (English) on

26.11.2006 also she cannot claim seniority for promotion to the post of

Middle School Headmistress with reference to the promotion given to her as

B.T. Assistant, as it was a special case for the year 2006-2007 and therefore

the petitioner cannot claim seniority over the 4th respondent in the matter of promotion to the post of Middle School Headmaster. Hence there is no merit

in the Writ Petition so as to declare that the promotion given to the 4th

respondent is contrary to law and he would seek to dismiss the Writ

Petition.

16. I have heard the submissions on behalf of the respective parties and perused the materials placed on record.



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17. It is an admitted case that the petitioner had been working as a Secondary Grade Teacher and that she was also included in the panel fit for promotion as B.T. Assistant as on 01.01.2006. However, she was not granted promotion to the post of B.T. Assistant during the counselling. After repeated representations, the second respondent herein by its proceedings dated 03.11.2007 has passed orders granting her promotion and in the said order also refers to the seniority list dated 01.01.2006. The reason assigned by the respondents in not promoting her as a B.T. Assistant during the counselling was that there was no vacancy to the post of B.T. Assistant in the subject relating to the petitioner. It is imperative to analyze the order of the Director of Elementary School Education namely the first respondent herein on the procedure in which such counselling should take place. It is also provided that the procedure to be followed in case of non-availability of suitable candidates to grant promotion in respect of a particular subject. It is also an admitted case that the B.T. Assistant post in the said union is only available for Maths subject. However, there was no candidates for Maths subject. Had they followed the procedure laid down by the first respondent, then that vacancy which was not filled due to non-availability of Maths Secondary Grade Teacher would have been filled by some other eligible Secondary Grade Teachers holding of a different



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subject.

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18. In this case, the petitioner was an eligible Secondary Grade Teachers available for promotion. The order of promotion given to the petitioner would also read, the scheme issued by the first respondent dated 21.11.2006 and the seniority list dated 01.01.2006. However, only after repeated representations from the petitioner, the petitioner was given promotion on 28.02.2007. This is not the fault on the side of the petitioner but fault squarely on the side of the respondents.

19. Therefore, I am of the view that the petitioner ought to have been treated as being promoted as B.T. Assistant during the counseling on 26.11.2006 and 23.12.2006. Had she been promoted, she would have been B.T. Assistant as on 01.11.2007 and she would have entitled to be further promoted as Headmistress for a Middle school.

20. In such circumstances, the respondents are directed to treat the petitioner as being promoted as B.T. Assistant, pursuant to the counselling held in the month of November 2006 and include her name in the panel fit for promotion as a Middle School Headmaster in the year 2007, as the only



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condition for promotion to the post of Middle school Headmaster is a person holding the post of B.T. Assistant. After including her name in the panel of B.T. Assistant fit for promotion to the post of Middle School Headmaster as on 01.01.2007, the respondents are directed to promote the petitioner as a Middle School Headmistress, if otherwise she is found eligible. Such exercise shall be carried out by the respondents within a period of 12 weeks from the date of receipt of a copy of this order.

21.In fine the Writ Petition is allowed with the aforesaid directions.

However, there shall be no order as to costs.

31. 01.2024

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Index/ Yes/No

Speaking order: Yes/No

Neutral citation: Yes/ No



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K.KUMARESH BABU,J.

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To

1. Director of Elementary Education,
Chennai – 600 006.
2. District Elementary Educational Officer,
Coimbatore.
3. Assistant Elementary Educational Officer,
Madukkarai, Othakkalmandapam,
Coimbatore.

A Pre-delivery order made in

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