



W.P. No.26035 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No. 26035 of 2010 and
M.P.No.2 of 2010

R.Ganesan

.. Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by its Secretary to Government,
School Education Department,
Chennai - 9.
2. The Secretary to Government,
P and AR Department,
Chennai -9.
3. The Director of School Education,
College Road,
Chennai -6.
4. The Joint Director of School Education (Personnel),
Directorate of School Education,
Chennai -6.
- 5.Tmt.M.Kasthuri
6. Thiru.P.Muniyandi



W.P. No.26035 of 2010

7. Tmt.Kathijabee
8. Thiru.A.Dhandapani
9. Thiru.R.Manoharan

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..Respondents

PRAAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records connected in G.O.(2D).No.38, School Education (R2) Department, dated 23.07.2009 passed by the 1st Respondent and quash the same insofar as re-fixation of seniority of the petitioner is concerned and direct the respondents 1 to 4 refix the seniority of the petitioner in the light of judgment of the Division Bench of this Court in W.P.No.21654/04, W.P.No.3822/06, 3823/06 dated 03.04.2006 will all consequential benefits.

For Petitioner : Mr.S.N.Ravichandran for
M/s.G.Elanchezhiyan, K.Sannjay and
N.Nethaji

For R1 to R4 : Mr.M.Rajendiran
Additional Government Pleader

For R5 to R8 : Dismissed vide order dated 26.08.2016

For R9 : No appearance

ORDER

The writ petition is filed challenging G.O.(2D).No.38 dated 23.07.2009, insofar as the re-fixation of seniority of the petitioner on the premise that it is



W.P. No.26035 of 2010

contrary to the judgment of the Division Bench of this Court in W.P.No.21654 of 2004 dated 03.04.2006.

2. It is submitted by the learned counsel for the petitioner and the respondents in unison that the issue stands covered by the order of this Court in W.P.(MD).No. 12523 of 2013 and W.P.(MD).No.12037 of 2018 dated 22.12.2023 wherein the refixation of seniority vide the impugned G.O.(2D).No.38 was found to be contrary to the directions of the Division Bench of this Court in the case of *K.Parthasarathi and another vs. Additional Director Agriculture and others* reported in (1999) SCC OnLine SC 309 and was set aside. The relevant portion of the order is extracted hereunder :

"14. As pointed out above, what I am able to peruse from paragraphs Nos.12 and 14 of the order dated 03.04.2006 in W.P.No.21654 of 2004 is that those who were directly recruited through TNPSC should be placed first and they will rank above those who had been appointed under Rule 10(a)(1) of the Tamil Nadu State and Subordinate Services Rules. This issue had been taken to the Supreme Court in K.Parthasarathi-s case. In K.Parthasarathi-s case, those appointed on compassionate grounds wanted to take a march over those who were directly recruited and that came to be rejected by the Supreme Court in 1999 SCC Online SC 309. However, the said judgment did not deal with the inter se seniority between those appointed under Special Absorption Rules and those appointed on compassionate grounds. This issue had been specifically dealt with only by the Division Bench of this Court in their orders dated 03.04.2006 and 28.05.2015.



15. *In both the cases, it had been held that inter se seniority between those appointed on compassionate grounds and those appointed through Special Absorption Rules by TNPSC should depend upon the date of their initial appointment. The later portion of paragraph 14 referring to TNPSC candidates, refers only to those who had been appointed by the special absorption examination, which was conducted pursuant to the order passed in 1988. Therefore, the re-fixation as done by the impugned G.O. is contrary to the judgment of the Division Bench of this Court.*

16. *The re-fixation being contrary to the directions given by the Division Bench of this Court and borne out of the confusion treating the case of the petitioner as one covered by K.Parthasarathi-s case, the said Government Order has been issued. When the Division Bench has categorically held that the inter se seniority between those appointed under Special Absorption Rules and those who were appointed on compassionate grounds should be on the basis of their initial appointment, the Government Order passed contrary to the same, necessarily, has to be interfered with. Accordingly, the impugned order in G.O.(2D).No.38, School Education (R2) Department dated 23.07.2009, insofar as it is contrary to the judgment of the Division Bench, is set aside and the Writ Petition in W.P.(MD).No.12523 of 2013 is allowed. The Government shall pass a fresh order fixing the inter se seniority of the persons, those who were appointed under Special Absorption Rules and those who were appointed under compassionate grounds, according to their initial appointment and after re-working the same, a fresh seniority list shall be issued. Consequently, the impugned order dated 10.05.2018 is set aside and the Writ Petition in W.P.(MD).No.12037 of 2018 is allowed.*

17. *The learned counsel for the petitioner reports that apart from gratuity, no other retirement benefits have been settled to the petitioner on account of the pendency of the Writ Petitions.*



W.P. No.26035 of 2010

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18. I fail to understand as to how one is connected to the other. Therefore, there shall be a direction to the respondents to disburse the retirement benefits due and payable to the petitioner, if not already paid.

19. In the result, the Writ Petitions are allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed."

3. In view of the above, the writ petition stands disposed of in terms of the decision in W.P.(MD).No.12523 of 2013 and W.P.(MD).No.12037 of 2018 dated 22.12.2023. No costs. Consequently, connected miscellaneous petition is closed.

20.06.2024

Speaking (or) Non Speaking Order
Index: Yes/No
Neutral Citation: Yes/No
Spp



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W.P. No.26035 of 2010

MOHAMMED SHAFFIQ, J.

Spp

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