



W.P.Nos.4351 & 4537 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.4351 & 4537 of 2022
and W.M.P.No.4680 of 2022

W.P.No.4351 of 2022 :-

1. E.Vijayameena
2. N.Jayanthi
3. C.Gomathy

...Petitioners

-Vs -

1. The State of Tamil Nadu,
Rep. by the Principal Secretary
to Government,
School Education Department,
Fort St. George,
Chennai – 600 009.
2. The Commissioner of School Education,
Directorate of School Education,
DPI Complex, College Road,
Chennai – 600 006.
3. The Joint Director of School
Education (Personnel),
Directorate of School Education,
DPI Complex, College Road,
Chennai – 600 006.
4. The Chief Educational Officer,
Thirupattur District,
Thirupattur.



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5. The Elementary Education Officer,
Thirupattur District,
Thirupattur.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the second and third respondents to prepare a seniority list of BT Assistants coming under the Tamil Nadu Special Rules for Elementary School Education Subordinate Service in conformity with the provisions of Section 40(2) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 Act by fixing the seniority of the petitioners in the cadre of BT Assistant taking the date of the petitioners' first appointment as BT Assistant as the relevant date.

W.P.No.4537 of 2022 :-

1. K.Karthikeyan
2. N.Venkatraman
3. S.Perianayagasamy
4. M.Kalyanasundaram
5. R.Swathi
6. C.Thangaiyan
7. K.Senthilkumar
8. M.Barathidhasan
9. B.Gurumurthi
10. K.Natarajan
11. A.Radhakrishnan

...Petitioners

-Vs -

1. The Government of Tamil Nadu,
Rep. by the Principal Secretary
to Government,
School Education Department,
Fort St. George,
Chennai – 600 009.



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2. The Commissioner of School Education,
Directorate of School Education,
DPI Complex, College Road,
Chennai – 600 006.

3. The Joint Director of School Education
Directorate of School Education,
DPI Complex, College Road,
Chennai – 600 006.

4. The Chief Educational Officer,
Nagapattinam District,
Nagarpattinam – 611 003.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the second and third respondents to implement the tentative seniority list dated 26.07.2019, prepared separately for the subjects English and Mathematics for the post of BT Assistants by the second respondent in conformity with Section 40(2) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 Act and promote the petitioners to the post of PG Assistants/High School Headmasters in the vacancies existing in the High Schools and Higher Secondary Schools in the State of Tamil nadu as per the said tentative seniority list of BT Assistants within a time frame to be fixed by this Court.

In both W.Ps.

For Petitioner : Mrs.Nalinichidambaram
Senior Counsel
For Ms.C.Uma

For Respondents : Mr.M.Rajendran
Additional Government Pleader



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ORDER

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Both the writ petitions have been filed for direction directing the respondents 2 & 3 to prepare seniority list of BT Assistant coming under the Tamil Nadu Special Rules for Elementary School Education Subordinate Service in conformity with the provisions of Section 40(2) of the Tamil Nadu Government Servants (Conditions of Service) Act 2016 by fixing seniority of the petitioners in the cadre of B.T. Assistant taking the date of their first appointment as B.T. Assistant.

2. The petitioners were appointed as B.T. Assistant during the year 2006 & 2007. After completion of their probation satisfactorily, they were declared and confirmed in the post of B.T. Assistant successfully. They were appointed under the department of elementary education in the panchayat union middle school. Thereafter, they were granted incentives for having acquired higher qualification as per the relevant government orders.

3. While being so, the panchayat union middle schools were upgraded as high school and new B.T. Assistant posts were created for the subjects in Tamil, English, Maths, Science and Social Science. In the



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high school, the petitioners were appointed in their respective subject.

Their seniority will be fixed taking their date of observation in the post of B.T. Assistant in the high school in the relevant dates in the year 2013. They were given consent for working as B.T. Assistant in the upgraded high school. They were granted selection grade after completion of ten years of service as B.T. Assistant from the year 2006 to 2016 and they were given 3%+3% incentives. However, the petitioners are now apprehended that their seniority will be reckoned from the date of their observation as B.T. Assistant in the high school for the purpose of preparing panel for the post of P.G. Assistant and High School Headmaster. Hence, the petitioners filed the present writ petitions.

4. The learned Senior Counsel appearing for the petitioners submitted that the Tamil Nadu Government Servant (Conditions of Service) Act, 2016 (hereinafter referred to as “the Act”) has been passed to regulate the service conditions of the Tamil Nadu Government Service. Therefore, the second respondent is under obligation to comply with provisions under Section 40 (2) of the Act. Accordingly, the seniority panel of B.T. Assistant have to be prepared by the second



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respondent as per Section 40 (2) of the Act. However, the seniority panel for B.T. Assistant has been prepared taking the date of petitioner's absorption in the post of B.T. Assistant in the High School by ignoring the date of their initial appointment as B.T. Assistant in the panchayat union middle school. The B.T. Assistants, who had joined in the service under the Special Rules for Elementary School Education Subordinate Service much later to the petitioners have been promoted to the post of P.G. Assistant/Headmaster without considering the provisions under Section 40(2) of the Act.

4.1. She further submitted that tentative seniority list has to be prepared based on the provisions under Section 40(2) of the Act, when there is more than one method of recruitment to the post of namely direct recruitment, promotion, compassionate appointment, transfer etc., taking the date of first appointment to the service as the relevant date for preparation of seniority list. But the promotion are being made from the post of B.T. Assistant to the post of P.G. Assistant/Headmaster ignoring the said provisions. Therefore, it is illegal and sought for necessary directions.



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5. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

6. On perusal of the counter filed by the fourth respondent and on the submission made by the learned Additional Government Pleader revealed that admittedly the petitioners were appointed as B.T. Assistant in the panchayat union middle schools in various districts. It is coming under the elementary school education department. While upgrading the said school from middle school to high school, it has come under the school education department. The teachers working in the panchayat union middle school were allowed to exercise their option to continue the elementary school/high school/ higher secondary school by forgoing the seniority benefits.

7. Accordingly, the petitioners had exercised their option by forgoing their seniority and applied for unit transfer for which, they had given their consent to the authority concerned. Therefore, the petitioners were transferred to high school or higher secondary school. The said



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provisions are very clear that they are being transferred to high school/higher secondary school as per the consent given by them.

Further, their seniority will be considered as junior in the school education department. Only after accepting the said condition, they had joined in the high school/higher secondary school. Therefore, their seniority will be considered only from the date of their joining in the school education department.

8. Further they were paid incentive increments to encourage their acquisition of additional qualifications, which will be useful for the students and also for the improvement of the educational system. Therefore, they cannot seek seniority by receiving incentives increments. The contention raised by the learned Senior Counsel appearing for the petitioners cannot be countenanced and the direction sought for in these writ petitions cannot be issued. Both the writ petitions are devoid of merits and liable to be dismissed.



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9. Accordingly, both the Writ Petitions stand dismissed.

Consequently, connected miscellaneous petition is closed. There shall be no orders as to costs.

12.07.2024
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Index : Yes/No

Speaking/Non Speaking order

Neutral Citation : Yes/No

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To

1. The Principal Secretary
to Government,
State of Tamil Nadu,
School Education Department,
Fort St. George,
Chennai – 600 009.

2. The Commissioner of School Education,
Directorate of School Education,
DPI Complex, College Road,
Chennai – 600 006.

3. The Joint Director of School
Education (Personnel),
Directorate of School Education,
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5. The Elementary Education Officer,
Thirupattur District,
Thirupattur.
6. The Chief Educational Officer,
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Nagarpattinam – 611 003.

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