



Writ Petition No.5377 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2024

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THE HONOURABLE MR. JUSTICE BATTU DEVANAND

Writ Petition No.5377 of 2018

C.Ravikumar

..Petitioner

vs.

1.The Joint Director of School Education(Personnel),
Directorate of School Education,
College Road, Chennai-600 006

2.The Chief Educational Officer,
Namakkal District,
Namakkal.

3.Mr.R.Duraisamy
4.P.Anbu Selvi

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records from the first respondent relating to his proceedings in Na.Ka.No.028608/C2/E2/2017 dated 26.05.2017 alongwith Annexure of final seniority panel of Secondary Grade Teachers(SGT) to be promoted as BT.Assistants (History) as on 01.01.2017 and quash the same in so far as the petitioner is concerned and consequently direct the first respondent to place the petitioner's name in between Sl.No.356 & 357 in the final



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seniority panel prepared as on 01.01.2017 and promote him as BT Assistant(History) retrospectively with all monetary benefits.

For Petitioners : Mr.P.Ganesan for M/s.S.Vinodha
For Respondents : Ms.P.Rajarajeswari, GA for R1&2

ORDER

This Writ Petition has been filed seeking for issuance of a Certiorarified Mandamus, to call for the records from the first respondent relating to his proceedings in Na.Ka.No.028608/C2/E2/2017 dated 26.05.2017 alongwith Annexure of final seniority panel of Secondary Grade Teachers(SGT) to be promoted as BT.Assistants (History) as on 01.01.2017 and quash the same in so far as the petitioner is concerned and consequently direct the first respondent to place the petitioner's name in between Sl.No.356 & 357 in the final seniority panel prepared as on 01.01.2017 and promote him as BT Assistant(History) retrospectively with all monetary benefits.

2.Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents 1 & 2 and perused the



entire material available on record.

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3.In spite of service of notice, there is no representation for the respondents 3 & 4.

4.The petitioner was appointed as Junior Grade Physical Education Teacher on consolidated pay on 07.01.2005 in a regular sanctioned post in the Government Higher Secondary School, Devanangurichi, Tiruchengode Taluk, Namakkal District. He joined duty on 10.01.2005 as Physical Education Teacher. Subsequently, he was absorbed on regular scale of pay from 01.06.2006. He completed his probation period and the second respondent issued proceedings to that effect on 04.09.2008. It is the case of the petitioner that the expulsion of one student for lodging complaint about the non-availability of the toilet facility in the school, came to be published in the local newspaper namely, "Kaalai Kathir" a Tamil Daily on 31.08.2016. On seeing the publication of the news, the second respondent visited the school on 01.09.2016 itself and after meeting with the third respondent, the petitioner was transferred to another school by the second respondent vide his proceedings dated 01.09.2016. Later, when the



petitioner came to know that the transfer order was issued at the instance of the third respondent and also under the impression that the petitioner was an instrumental to publish the news about the school in the news paper. Since the transfer order was punitive in nature, the petitioner filed a Writ Petition in WP No.32583 of 2016 to quash the transfer order, which was admitted and status quo was granted in the said Writ Petition. The petitioner did not join in the transferred school and went on medical leave. Thereafter, the second respondent has recalled the order of transfer dated 01.09.2016 and allowed the the petitioner to continue in the same school.

5. Thereafter, WP No.32583 of 2016 was dismissed as infructuous, in view of the impugned transfer order was re-called and with a further direction to regularise the leave period. Accordingly, the leave period was also regularised. While so, the first respondent has called for eligible list of Secondary Grade Teachers, Physical Education Teachers and Special teachers from Chief Educational Officers of all Districts vide his proceedings dated 07.02.2017, for further promotion as BT Assistant.

6. Pursuant to the said proceedings, the second respondent issued a



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Circular on 13.02.2017, to all the Headmasters of Municipal as well as the Government High/Higher Secondary Schools to submit the list of eligible teachers for further promotion as B.T.Assistant. On knowing the proceedings of the first and the second respondents, the petitioner requested the third respondent to send his name to include in the panel to be prepared for further promotion as B.T.Assistant. Hence, the first respondent has prepared a final seniority panel of SGT, to promote as BT Assistant (Social Science) as on 01.01.2017 and forwarded the same to all the Chief Educational Officers vide proceedings dated 26.05.2017. After publication of the final seniority list, the petitioner came to know that his name did not find a place in that list. When the petitioner asked the third respondent with respect to the same, thereafter, the third respondent prepared the eligibility list of further promotion as B.T.Assistant with the particulars of the petitioner and gave the same to the petitioner to hand over it to the second respondent in person. The petitioner handed over the letter to the second respondent on 31.05.2017 itself, with a request to forward the same to the first respondent. But it was not forwarded. The petitioner after verifying the seniority list and found that number of his juniors were promoted as B.T.Assistants. Hence, he submitted a representation dated 03.06.2017 to



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the first respondent to promote him as B.T.Assistant, but he did not get any reply from the first respondent. Therefore, the petitioner has constrained to file the present Writ Petition before this Court.

7.In the counter affidavit filed by the second respondent, it is averred that writ petitioner is a miscreant. Every year he selected some students and misdirected them to revolt against the School Administration and Village wherein, the school situated. In order to set-right the damage and maintain discipline in the school, the second respondent visited the school and made enquiry with the teachers, students and the villagers and found that the writ petitioner is instrumental for wrong activities and hence, he transferred him to another school. It is submitted that in obedience to the interim order passed by this Court on 03.02.2016, the transfer order was cancelled and permitted the petitioner to continue to work in the same school. But he did not utilize the opportunity to change his behavior.

8.In the counter affidavit, it is further averred that the first respondent vide proceedings dated 07.02.2017, called the eligible persons for promotion as on 01.01.2017 as B.T. Assistant(History). The matter was



promptly communicated by the respondents to all the schools. The petitioner got his B.Ed., Degree in the year 2010. He completed his B.A., History at Vinayaka Mission University only in the year 2010. He has only Provisional Certificate. The first respondent in his proceedings strictly mentioned with regard to the Special Teachers that the name of the persons, who are having original degree should be recommended for inclusion in the Panel. The petitioner has no original degree at that time. Hence, he did not consider for promotion.

9.It is further averred that the petitioner did not get prior permission from the competent authority for getting admission to study B.A.History and thereby he violates the Service Rules. To evade his wrong doings, he blamed the third respondent. The petitioner failed to enclose the proof in support of his claim that he applied for promotion in the stipulated time with all essential certificates. In the absence of original certificates, the authorities could not find out the genuineness of the certificates. It is further averred that the petitioner is not eligible to compare with the 4th respondent as he did not submit his original certificates for verification. Hence, his name could not be included in the seniority list for the year 2017.



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10. The learned counsel for the petitioner would submit that the petitioner is fully qualified for inclusion of his name in the final seniority list and entitled for promotion as B.T. Assistant(History) as on 01.01.2017. The petitioner's promotion is denied because of the latches on the part of the third respondent and it is only due to administrative latch or outcome of vendetta with the third respondent. Accordingly, learned counsel submits that impugned final seniority list of the first respondent is liable to be interfered with to rectify the mistake, by allowing the present Writ Petition.

11. On the other hand, learned Government Advocate appearing for the respondents 1 & 2 submits that as the petitioner did not produce the original Degree certificate at the time of forwarding his name by the third respondent along with other candidates, his name is not included in the final seniority list.

12. Having heard the submissions of the respective learned counsels and on perusal of the entire material available on record, it is very surprising to note that the petitioner in the present Writ Petition impleaded the third



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respondent by name, who is none other than the Headmaster of the particular school, where the petitioner was working at the relevant point of time. Strangely, the second respondent, who is the Chief Educational Officer filed counter affidavit on behalf of the first respondent and also on behalf of the third respondent. When the third respondent is impleaded by name, he has to file his counter affidavit, if he intends to do so. But the second respondent who was impleaded in his official capacity is not supposed to file counter affidavit on behalf of the private person. This itself shows the non-application of mind of the second respondent and his ignorance towards the procedure to be followed for filing counter affidavit in the Writ Petition pending before this Court. It is also noticed that in the counter affidavit, the second respondent made very unwanted and wild allegations against the petitioner. Those allegations are not supported by any material. There is no necessity for the second respondent to make such averments in the counter affidavit, which are unwarranted. If the allegations made against the petitioner by the second respondent are true, the second respondent ought to have conducted proper enquiry and ought to have initiated disciplinary proceedings against the petitioner. But no enquiry was initiated against the petitioner. As such, it clearly shows that the second

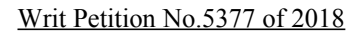


respondent with vindictive nature against the petitioner for filing a Writ Petition before this Court against the transfer order issued by him, he is making such averments, which are not acceptable and accordingly, this Court is not inclined to take into consideration such averments made in the counter affidavit for adjudicating this case.

13.In the affidavit filed by the petitioner in support of this Writ Petition, the petitioner clearly stated that he submitted a representation dated 03.06.2017 to the first respondent to include his name in the seniority list and to promote him as B.T.Assistant(History) and so far he did not get any reply from the first respondent to that representation. But in the counter affidavit, there was no mention about the representation dated 03.06.2017 of the petitioner. It is not stated anywhere in the counter whether the said representation has been considered or not. The sum and substance of the averments in the counter affidavit filed by the second respondent is that the reason for not including the petitioner's name in the seniority list is that the petitioner did not submit the original Degree Certificate. It is stated that the petitioner has submitted only Provisional Certificate.



14.This Court is unable to accept such contention of the second respondent. The Provisional Certificate issued by the Vinayaka Missions University is also an authenticated document pending issuance of the original Degree by the University. If the Provisional Certificate issued by the University is not valid, the University would not have issued such certificate. It is the specific case of the petitioner that the petitioner joined in Government Service on 10.01.2005 and the 4th respondent joined on 12.01.2005. Thus the 4th respondent is junior to him. The 4th respondent was promoted as B.T.Assistant as per the impugned seniority list. As seen from the date of joining of the petitioner and the 4th respondent, there was no dispute that the petitioner is senior to the 4th respondent and he has to be considered for promotion before the 4th respondent. As the name of the petitioner was not included in the seniority list and he was not promoted as B.T.Assistant, he forwarded a representation to the respondents 1 and 2 on 03.06.2017 with a request to promote him placing his name in the final seniority list notified on 01.01.2017. The first respondent is responsible to correct the seniority list wherever there are defects were found in including eligible candidates. But he did not take any proper action on the request of the petitioner made through his representation dated 03.06.2017.



4.If any eligible person's name is omitted and if any teacher is transferred to any other school from the school where they are working, the details of which is to be informed immediately. If any errors are found after giving promotion, the Chief Educational Officers shall take the responsibility for the same."



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17. Though there was a specific direction to inform the details of any eligible person's name is omitted and the Chief Educational Officer shall take the responsibility for the same, in the case of the petitioner though he has brought to the notice of the first respondent vide his representation dated 03.06.2017 with regard to the error committed by the respondents 2 and 3, in including the name of the petitioner in the seniority list of the Physical Education Teachers prepared on 01.01.2017, unfortunately, no action has been taken by them.

18. Accordingly, in the considered opinion of this Court injustice caused to the petitioner which requires to be set right by the first respondent by placing the name of the petitioner in proper place in the final seniority list dated 01.01.2017, as per the entitlement of the petitioner. Accordingly, this Writ Petition is liable to be allowed.

19. For the above said reasons, this Writ Petition is allowed with the following direction:

(i) The first respondent is directed to place petitioner's name in the final seniority list prepared as on 01.01.2017 at appropriate place, taking his



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date of entry into service i.e., 10.01.2005 and promote him as B.T.Assistant,

Harur retrospectively with all monetary benefits within a period of four(4)

weeks from the date of receipt of a copy of this order.

No costs.

10.09.2024

Index : Yes/No

Speaking order: Yes/No

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To

1.The Joint Director of School Education(Personnel),
Directorate of School Education,
College Road, Chennai-600 006

2.The Chief Educational Officer,
Namakkal District,
Namakkal.



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BATTU DEVANAND, J

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