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W.P.No.5654 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: .06.2024

CORAM

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Writ Petition No.5654 of 2023
and W.M.P.Nos.5665 & 5666 of 2023

Dr.S.Selvi

... Petitioner

-VS-

1. The Director,
State Council of Education Research
and Training,
College Road, Chennai-600 006.

2.The Chairman,
Teachers Recruitment Board,
Chennai-600 006.

3.The Principal Secretary,
School Education Department,
(Teacher Educational Service),
Government of Tamil Nadu,
Chennai-600 009.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records in Na.Ka.No.4068/m2/2019 dated 27.01.2023 on the file of the 1st respondent and quash the same.



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For Petitioner : Mr.V.Kasinatha Bharathi

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For R1 & R3 : Ms.S.Mythereye Chandru, Spl. G.P. (Education)

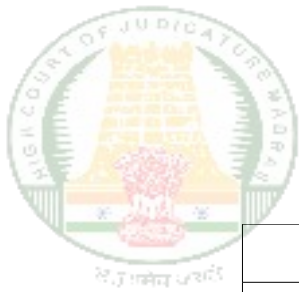
For R2 : Mr.R.Siddharth

ORDER

This writ petition is filed challenging the impugned order dated 27.01.2023 in and by which the petitioner's representation dated 14.07.2018 is disposed of by confirming the seniority in the post of Senior Lecturer fixed earlier vide seniority list dated 01.01.2018.

2. The brief facts relevant for disposal of this writ petition are as follows:

2(i). There exist a post of Senior Lecturer in the Directorate of Teacher Education Research and Training and in the District Institutes of Education and Training. Recruitment to the said post is governed by the Adhoc Rules framed by *G.O.Ms.No.133, School Education Department, dated 14.06.2007*. As per the same, the method of recruitment is as follows:



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Post (1)	Method of Recruitment (2)
1. Senior Lecturers in Directorate of Teacher Education Research and Training and District Institutes of Education and Training	(i) Direct Recruitment; or
	(ii) By promotion from among the holders of the post of lecturers in Directorate of Teachers Education Research and Training or District Institute of Education and Training; or
	(iii) Recruitment by transfer from among the holders of the post of Principals of Government Teacher Training Institutes.
	Providing that vacancies arising in the post shall be filled up so as to ensure that the proportion of appointment by direct recruitment and by promotion or by recruitment by transfer shall be in the ratio of 1:3
	Providing further that out of the ten posts reserved for promotion or recruitment by transfer, the tenth turn shall be filled upon from among the holders of the post of principles of Government Teacher Training Institutes by recruitment by transfer.
	The vacancies arising in the post shall be filled up by direct recruitment, by promotion and by recruitment by transfer as indicated in following cyclical order: 1) Direct Recruitment 2) Promotion 3) Promotion 4) Promotion 5) Direct Recruitment 6) Promotion 7) Promotion 8) Promotion



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<i>Post (1)</i>	<i>Method of Recruitment (2)</i>
	9) <i>Direct Recruitment</i> 10) <i>Promotion</i> 11) <i>Promotion</i> 12) <i>Promotion</i> 13) <i>Direct Recruitment</i> 14) <i>Recruitment by Transfer</i> 15) <i>Promotion</i> 16) <i>Promotion</i> 17) <i>Direct Recruitment</i> 18) <i>Promotion</i> 19) <i>Promotion</i> 20) <i>Promotion</i> 21) <i>Direct Recruitment</i> 22) <i>Promotion</i> 23) <i>Promotion</i> 24) <i>Promotion</i> 25) <i>Direct Recruitment</i> 26) <i>Promotion</i> 27) <i>Recruitment by Transfer</i>

2(ii). In the said background, a notification was issued by the respondents for filling up the vacancies under the direct recruitment quota by a written examination in the year 2012. The petitioner took part in the said examination and her certificates were also verified as on 18.06.2012. However, there was a delay in the process of recruitment and only by an order dated 12.06.2015, the petitioner was appointed as Senior Lecturer.



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2(iii). In the meanwhile, promotions were also made to the said post on adhoc basis. The said adhoc promotions were regularised in the year 2017 with effect from the date of adhoc promotion. Thereafter, on 01.01.2018, the seniority list for the post of Senior Lecturers was published by the 1st respondent. In the seniority list, the petitioner was placed in Sl.No.72 with reference to her date of appointment. The candidates who were promoted to the post of Senior Lecturers before the date of appointment of the petitioner but after the issuance of notification in the year 2012 in which the petitioner participated, were placed above the petitioner. Therefore, the petitioner made a representation to the respondents in detail that as per the Adhoc Rules, when the recruitment has to be done by rotation of vacancies in the ratio of 1:3, the seniority also should be fixed as such. The promotees whose vacancies did not even arise as of the year 2011-2012 cannot become senior to that of the petitioner. Thereafter, the petitioner filed W.P.No.19081 of 2018 which was disposed of by an order dated 11.07.2022 with the following directions:

“11. Hence, this Court is inclined to dispose of this writ petition with the following directions:



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a) There shall be a direction to the official respondents to consider and decide the request made by the petitioner by her representation dated 14.07.2018 and pass orders on merits and in accordance with law, within a period of 6 weeks from the date of receipt of a copy of this order.

b) It is made clear that if the seniority of the petitioner is fixed and communicated to the petitioner pursuant to the said order, on what basis such a seniority has been arrived at also has to be clearly spelt out in this regard by the respondents and it shall be communicated to the petitioner within the time frame as indicated above. ”

2(iv). Pursuant thereto now the impugned order is passed reaffirming the seniority fixed in the year 2018 by stating that as per Section 40 of the *Tamil Nadu Government Servants (Conditions of Service) Act, 2016*, (hereinafter referred to as '*the Act*'), seniority has to be fixed with reference to the date of appointment and among the appointees of the same date with reference to their age. Aggrieved by the same, the present writ petition is filed.

3. *Mr.V.Kasinatha Bharathi*, learned counsel appearing for the



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petitioner, would submit that when the Recruitment Rules clearly point out that the vacancies should be filled up in the ratio of 1:3 that too, the first vacancy by direct recruitment, and the second to fourth vacancies by promotees and similarly fifth vacancy by direct recruitment, sixth to eighth vacancies by promotees etc., the seniority has to be accordingly fixed by the respondents.

3(i). In support of the submissions, the learned counsel would rely upon the judgment of the Hon'ble Supreme Court of India in ***Union of India and others Vs. N.R.Parmar and others***¹, more specifically relying upon paragraphs 31.2 & 34.1 to contend that the seniority should be fixed with reference to the vacancies of the relevant recruitment year, the date of joining would not be a relevant factor for determining the seniority. When the recruitment process in respect of the petitioner was for the year 2011-2012, the seniority should be fixed accordingly in the order of rotation of vacancies.

3(ii). The learned counsel would also rely upon the judgment of this

¹ (2012) 13 SCC 340



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Court dated 03.08.2018 in ***W.P.Nos.15683 & 15684 of 2011 (J.Ganesan***

and others Vs. The Chief Secretary and others), morefully relying upon paragraph 22 to contend that the promotees cannot usurp the quota meant for direct recruits and the seniority has to be fixed as per the quota and Section 40 of *the Act* cannot be pressed into service whenever the Recruitment Rules prescribed quota. The learned counsel would submit that only because of the administrative delay on the part of the respondents, the petitioner cannot be put to jeopardy.

3(iii). The learned counsel would also rely upon the judgment of the Hon'ble Supreme Court of India in ***Hariharan & others Vs. Harsh Vardhan Singh Rao & others*** ² to contend that while referring the matter to the Chief Justice for placing it in a larger Bench, the Supreme Court had ordered the rights of the direct recruits who were put to prejudice on account of the delay be protected. The learned counsel also would rely upon the judgment of this Court in ***V.P.Thandapani & another Vs. The Secretary to Government, Municipal Administration and Water Supply***

² CDJ 2022 SC 1369



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(M.E.I.) Department, Chennai & others³, to contend that the temporary appointees who gained entry in service as a stop gap appointees cannot be permitted to claim the consequential seniority just because they have been regularised from their date of initial appointment.

4. Per contra, *Ms.S.Mythereye Chandru*, learned Special Government Pleader (Education), placing reliance upon the counter affidavit, would submit that when the petitioner was appointed only in the year 2015, his seniority can count only from the date on which he is borne into the Government service. Now the petitioner is claiming seniority from the year 2012 which is impermissible. The rules regarding recruitment and seniority are different. The *G.O.Ms.No.133* is only in respect of recruitment and not seniority. There is nothing in the Special Rules governing the present post relating to seniority. In the absence of any special rule, seniority has to be fixed as per Section 40 of *the Act*. As per Section 40(2), if the recruitment to any post is by more than one method, then the seniority has to be fixed with reference to the date of appointment only. Therefore, she would submit that

³ CDJ 2022 MHC 1532



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the seniority having correctly fixed there is nothing for this Court to interfere.

5. I have considered the rival submissions made on either side and perused the entire records.

6. Firstly, the claim of the petitioner is relating to seniority in the post of Senior Lecturer. She claims seniority over one P.Elavarasu and 20 others who were promoted to the post of Senior Lecturers after the year 2012 on adhoc basis and were subsequently regularised in service with effect from the date of promotion. When the petitioner filed W.P.No.19081 of 2018, the petitioner rightly arrayed them as respondent nos. 4 to 25. When the Court has ordered considering the representation of the petitioner and answering the claim of the petitioner by passing a speaking order, and when the impugned order dated 27.01.2023 is passed reaffirming the said seniority position and placing the said P.Elavarasu and 20 others above the petitioner as per the original seniority list dated 01.01.2018, this present writ petition cannot be filed by challenging the order disposing of the representation alone. The writ petition ought to have been filed challenging the original



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seniority list dated 01.01.2018.

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7. The said persons namely, P.Elavarasu and 20 others ought to have been made as parties to the present writ petition. In their absence, the petitioner is now claiming to be placed as senior above them. Therefore, the writ petition is bound to fail for want of challenge to the original seniority list dated 01.01.2018 and for non-joinder of necessary parties.

8. Even otherwise, seniority in the post of Senior Lecturer has to be fixed only as per the Service Rules. The reliance placed on *G.O.Ms.No.133* is incorrect. The said Government order only frames the Adhoc Rules relating to the recruitment. It advocates filling up of the vacancies in the ratio of 1:3 and also delineates the order in which such ratio has to be implemented. It states that every first vacancy should be filled up by direct recruitment and vacancies 2 to 4 shall be filled up by promotion. Similarly, fifth vacancy is to be filled up by direct recruitment and vacancies 6 to 8 by promotion and so on and so forth up to vacancy No.13 and it postulates that vacancy No.14 is to be filled up by way of recruitment and transfer as out of



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the post reserved for promotion as further apportionment has to be done in the 75% quota meant for promotion by way of recruitment by transfer also.

Therefore, it can be seen that the said rule is only with respect to when the authorities should resort to direct recruitment or promotion or recruitment by transfer. The said rules does not indicate that the consequent seniority of the persons so recruited would be in the same order. There is no special rule for the post of Senior Lecturer with reference to fixation of seniority. When there is no any special rule, then it is only Section 40 of *the Act* which applies. Section 40(2) of *the Act* reads as follows:

“40(1)

(2) The seniority of a person in a service, class, category or grade shall, where the normal method of recruitment to that service, class, category or grade is by more than one method of recruitment, unless the individual has been reduced to a lower rank as a punishment, be determined with reference to the date on which he is appointed to the services, class, category or grade.”

Therefore, the seniority has to be fixed as per the said provision. If the recruitment is from more than one sources (as in this case it is from three



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sources namely, direct recruitment, promotion and transfer) then the seniority has to be with reference to the date of appointment. The petitioner is appointed with effect from 12.06.2015. The said P.Elavarasu and 20 others were all appointed before the said date. The dates are furnished in the impugned order itself. Therefore, the petitioner cannot claim to be senior over the said persons.

9. The reliance placed by the learned counsel for the petitioner in *Union of India and others Vs. N.R.Parmar and others* cited supra is totally misplaced. The same relates to seniority in the Central Government service. The seniority in respect of Central Government is governed by the rules framed and amended by the Central Government vide various official memoranda issued from time to time. As per the consolidated orders of seniority, as between direct recruits and promotees, it is expressly ordered in Rule 6 that the relative seniority of the direct recruits and of the promotees shall be determined according to the rotation of the vacancies between the direct recruits and promotees which shall be based on the quotas of the vacancies reserved for direct recruitment and promotion respectively in the



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recruitment rules. Whereas as far as the service in the Government of Tamil Nadu is concerned, the seniority is governed by Section 40 of *the Act* which is extracted supra. Therefore, the reliance placed on various judgments relating to rota-quota for seniority would be of no avail when there is no such rule in the services under the Government of Tamil Nadu.

10. As far as the case in ***J.Ganesan and others Vs. The Chief Secretary and others*** cited supra is concerned, the finding of the Court is that the direct recruits were recruited as against regular vacancies. To tide over the crisis in the meanwhile, temporary promotions were granted even though there were no vacancies which were meant for promotion. When thereafter the temporary promotees were regularised in service with effect from their original date of appointment, this Court ruled that they will not be entitled for the consequential seniority, as the direct recruits have been appointed in the substantive vacancies in the meanwhile. Therefore, the said judgment will not apply to the present facts situation. Further, the reasoning in paragraph 22 of the judgment is only based on the reasoning that a substantive appointee will have a better right than the temporary appointee



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who did not have the quota of post available. The same is not the case in the present facts situation. In any event, there is a particular service rule(Section 40 of *the Act*) which prescribes how the seniority has to be fixed. The special rules do not prescribe that the seniority should also be fixed as per the rotation of the vacancies. In that event, the rota-quota rule cannot be extrapolated and applied for fixation of seniority in violation of Section 40 of *the Act*. Therefore, the contention of the learned counsel for the petitioner cannot be accepted.

11. The other two judgments relied upon by the learned counsel for the petitioner in *Hariharan & others Vs. Harsh Vardhan Singh Rao & others* cited supra, *V.P.Thandapani & another Vs. The Secretary to Government, Municipal Administration and Water Supply (M.E.I.) Department, Chennai & others* cited supra would also will not alter the situation in the wake of the clear and categorical legal position relating to fixation of seniority. When the legislature has prescribed that the seniority has to be fixed only from the date of appointment and the said provision remaining unchallenged, this Court cannot super impose the rota-quota rule



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relating to seniority. In view thereof, the contentions of the learned counsel for the petitioner shall stand rejected.

12. Accordingly, W.P.No.5654 of 2023 shall stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

.06.2024

Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No

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To

1. The Director,
State Council of Education Research
and Training,
College Road,
Chennai-600 006.

2.The Chairman,
Teachers Recruitment Board,
Chennai-600 006.

3.The Principal Secretary,
School Education Department,
(Teacher Educational Service),
Government of Tamil Nadu,

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D.BHARATHA CHAKRAVARTHY,J.

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