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W.P.No.5259 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.09.2024

PRONOUNCED ON : 04.10.2024

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.5259 of 2020 and
W.M.P.Nos.6217 & 6220 of 2020 & 870 of 2024

Dr.S.Akila

... Petitioner

-Vs-

1. The Teachers Recruitment Board,
Rep. by its Chairman,
College Road, Chennai – 6.
2. The Director of Elementary Education,
College Road,
Chennai – 6.
3. The Deputy Commissioner,
Education Department,
Grater Chennai Corporation,
Ripon Building,
Chennai – 3.
4. The Educational Officer,
Education Department,
Grater Chennai Corporation,
Ripon Building,
Chennai – 3.



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5. K.Muthurkumar

6. P.P.Parameshwari

7. G.Rajaguru

8. S.Malarkodi

9. G.Guruthai

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondents in connection with the impugned order passed by the third respondent in Na.Ka.No.E4/362/2020 dated 03.02.2020 and confirmed by the fourth respondent in his Ka.Thu.No.E4/13384/2019 dated 05.02.2020 and quash the same and direct the respondents to fix the seniority of the petitioner based on the rank obtained by her at the time of selection and promote the petitioner as Physical Education Director, Grade-I, and grant her all consequential service and monetary benefits.

For Petitioner : Mr.K.Venkataramani, Senior Counsel
For Mr.M.Muthappan

For Respondents

For R1 : Mr.C.Kathiravan
Special Government Pleader

For R2 : Mrs.S.Mythreye Chandru
Special Government Pleader

For R3 & R4 : Mr.S.Gopinathan
Standing Counsel

For R5 : Mr.G.Sankaran, Senior Counsel
For Mr.S.Neduchezhiyan

For R7 & R8 : Mr.C.Johnson

For R6 & R9 : No appearance



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ORDER

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This writ petition has been filed challenging the circular issued by the third respondent dated 03.02.2020, thereby circulated the temporary panel of Physical Education Teacher for the promotion to the post of Physical Education Director, Grade-I and the order passed by the fourth respondent dated 05.02.2020, thereby rejected the request made by the petitioner to seek promotion as per the seniority list of Teachers Recruitment Board.

2. The petitioner is qualified with degree in Physical Education and as per the notification issued by the first respondent, the petitioner applied for the post of Physical Education Teacher. The petitioner was provisionally selected for the post Physical Education Teacher and she was allotted to Directorate of Elementary Education, by the communication dated 01.11.2010. The petitioner attended the counseling and the petitioner was informed by the first respondent that she has been allotted to Chennai Corporation along with the rank list in Sl.No.6. Accordingly, the petitioner reported before the fourth respondent and she was issued posting order at Corporation Higher Secondary School, Erukancherry. The next promotion of the petitioner is to the post of



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Elementary Education Officer Grade- II.

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3. In the mean while, the petitioner also qualified with P.G degree in Physical Education as well as Doctorate and as such she is fully qualified to be appointed to the post of Physical Education Director, Grade-I. Since there was no eligible person in the post of Physical Education Director Grade-II for the promotion to the post of Physical Education Director Grade-I, the third respondent issued circular dated 03.02.2020, thereby circulated the temporary panel of Physical Education Teacher for the promotion to the post of Physical Education Director, Grade-I.

4. As per the circular issued by the third respondent dated 03.02.2020, they published seven names, who are graduated and eligible to be considered for promotion to the post of Physical Education Director, Grade-I, based on their educational qualification, wherein the petitioner's name is appeared in Sl.No.6 for the seven vacancies. Aggrieved by the same, the petitioner submitted objection stating that she is being a senior, based on the rank list prepared by the first respondent, she should have been placed in Sl.No.1 instead of Sl.No.6. In the mean while, the



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petitioner also submitted representation to fix her seniority as per the rank list prepared by the first respondent. It was rejected by the fourth respondent by the communication dated 05.02.2020, stating that the petitioner's name was fixed at Sl.No.6 and the seniority of the petitioner in the corporation is decided based on the date of her joining.

5. The learned Senior Counsel appearing for the petitioner submitted that the petitioner's rank is 658 based on the employment exchange seniority as well as based on the rule of reservation. Accordingly, she was allotted in the Directorate of Elementary Education in which her name was found in Sl.No.665. Subsequently she was allotted in the department of Directorate of Elementary School Education. During the counseling, the petitioner was informed that she has been allotted to Chennai Corporation School Education Department. Further the petitioner's name now placed in serial No.6, for the purpose of promotion to the post of Physical Education Director Grade-I, on the basis of date of joining in the Chennai Corporation and fixed the seniority.

5.1. He further submitted that as per the tentative provisional



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selection list, the respondents 5 to 9 were placed in 767, 769, 774, 778 and 786 and the petitioner was placed in Sl.No.658. Therefore, the petitioner is the senior to them and now she has been placed in Sl.No.6 instead of Sl.No.1 in the seniority list prepared by the first respondent. The request made by the petitioner was rejected only on the ground that she had reported for duty on 17.02.2011, whereas the respondents 5 to 9 had reported their duty on 20.12.2010 itself. Therefore, it can not be a ground to deny the seniority to the petitioner.

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

7. On perusal of the counter filed by the fourth respondent and on the submission made by the learned Standing Counsel appearing for the respondents revealed that as per the notification, tentative list of 838 candidates provisionally selected for direct recruitment of Physical Education Teacher, through employment registration State seniority for Directorate of School Education – 665 posts; for Directorate of Elementary Education – 114 posts; for Chennai Corporation – 46 posts; for Madurai Corporation – 13 posts for the year 2007-2010 by the first



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respondent. The petitioner was selected and allotted to Directorate of Elementary Education. Thereafter during the counseling, only on the request made by the petitioner, she was sent to Chennai corporation by the second respondent since the petitioner is residing in Chennai.

8. Further, the petitioner had joined duty on 17.02.2011, whereas the respondents 5 to 9 had joined duty earlier than the petitioner. Therefore, the petitioner has been placed last in the list of already allotted candidates for Chennai Corporation. Accordingly, her seniority was fixed for promotion. Therefore, the petitioner has been placed in Sl.No.6. The promotion to the post of Physical Director Grade-I is being given based on regularization of service in the post of Physical Education Teacher. Accordingly, the petitioner was placed in Sl.No.6 in the temporary panel drawn on 03.02.2020 for the year 2020-2021.

9. That apart, after seniority list dated 03.02.2020, the petitioner did not raise any objection. As per the earlier request made by the petitioner dated 18.12.2019 & 27.12.2019, the fourth respondent had replied by its communication dated 05.02.2020 that her seniority has been fixed in Sl.No.6. The petitioner raised objection only on 14.02.2020



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for the temporary seniority list published by the third respondent.

Therefore, the order dated 05.02.2020 passed by the fourth respondent is not a confirmation order to confirm the circular dated 03.02.2020.

10. Further on perusal of counter filed by the fifth respondent and on the submission made by the learned Senior Counsel appearing for the fifth respondent revealed that the respondents 5 to 9 were appointed to the post of Physical Education Teacher and they were allotted to Chennai Corporation. Accordingly they were joined on 20.12.2010 in their respective schools. Their services were regularized from the date of their appointment and the probation was also declared successfully. They also qualified with higher qualification and eligible for the promotion to the post of Physical Education Director, Grade-I.

11. The third respondent prepared panel for the year 2017 to the post of Physical Education Directorate, Grade-I vide circular dated 24.04.2017, wherein the fifth respondent name was found in Sl.No.2. One Sivagama Sundari was placed in Sl.No.1. However, the fifth respondent was not promoted to the post of Physical Education Director Grade-I. Thereafter in the year 2020, the third respondent prepared panel



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for promotion to the post of Physical Education Director Grade-I vide the present impugned proceedings dated 03.02.2020.

12. It is pertinent to note that the petitioner was included as Sl.No.9 in the panel of the year 2017 and Sl.No.6 in the panel for the year 2020. However, the petitioner failed to challenge the panel of the year 2017 in which her name was placed in Sl.No.9. Therefore, she is estopped from challenging the panel of the year 2020.

13. That apart, the petitioner is seeking seniority after the period of ten years, as per the seniority list published by the first respondent. In this regard, the learned Senior Counsel appearing for the fifth respondent relied upon the judgment reported in **2023 SCC OnLine SC 1307** in the case of **Bichitrananda Behera Vs. State of Orissa and ors**, in which the Hon'ble Supreme Court of India held as follows :-

“39. Before proceeding further, it is important to clarify distinction between “acquiescence” and “delay and laches”. Doctrine of acquiescence is an equitable doctrine which applies when a party having a right stands by and sees another dealing in a manner inconsistent with that right, while the act is in progress



and after violation is completed, which conduct reflects his assent or accord. He cannot afterwards complain. [See Prabhakar v. Sericulture Deptt., (2015) 15 SCC 1 : (2016) 2 SCC (L&S) 149. Also, see Gobinda Ramanuj Das Mohanta v. Ram Charan Das, 1925 SCC OnLine Cal 30 : AIR 1925 Cal 1107] In literal sense, the term acquiescence means silent assent, tacit consent, concurrence, or acceptance, [See Vidyavathi Kapoor Trust v. CIT, 1991 SCC OnLine Kar 331 : (1992) 194 ITR 584] which denotes conduct that is evidence of an intention of a party to abandon an equitable right and also to denote conduct from which another party will be justified in inferring such an intention. [See Krishan Dev v. Ram Piari, 1964 SCC OnLine HP 5 : AIR 1964 HP 34] Acquiescence can be either direct with full knowledge and express approbation, or indirect where a person having the right to set aside the action stands by and sees another dealing in a manner inconsistent with that right and in spite of the infringement takes no action mirroring acceptance. [See “Introduction”, U.N. Mitra, Tagore Law Lectures — Law of Limitation and Prescription, Vol. I, 14th Edn., 2016.] However, acquiescence will not apply if lapse of time is of no importance or consequence.

40. Laches unlike limitation is flexible. However,



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both limitation and laches destroy the remedy but not the right. Laches like acquiescence is based upon equitable considerations, but laches unlike acquiescence imports even simple passivity. On the other hand, acquiescence implies active assent and is based upon the rule of estoppel in pais. As a form of estoppel, it bars a party afterwards from complaining of the violation of the right. Even indirect acquiescence implies almost active consent, which is not to be inferred by mere silence or inaction which is involved in laches. Acquiescence in this manner is quite distinct from delay. Acquiescence virtually destroys the right of the person. [See Vidyavathi Kapoor Trust v. CIT, 1991 SCC OnLine Kar 331 : (1992) 194 ITR 584] Given the aforesaid legal position, inactive acquiescence on the part of the respondent can be inferred till the filing of the appeal, and not for the period post filing of the appeal. Nevertheless, this acquiescence being in the nature of estoppel bars the respondent from claiming violation of the right of fair representation.”

Thus, it is clear that laches unlike limitation is flexible. However, both limitation and laches destroy the remedy but not the right. Laches like acquiescence is based upon equitable considerations, but laches unlike acquiescence imports even simple passivity. The above judgment is



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squarely applicable to the case on hand.

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14. In view of the above discussions, this Court finds no infirmity or illegality in the orders passed by the third and fourth respondents and the writ petition is devoid of merits and liable to be dismissed. Accordingly, the Writ Petition stands dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

04.10.2024

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No

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G.K.ILANTHIRAIYAN. J.

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ORDER IN
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