



W.P.No.29909 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.02.2024

CORAM:

THE HON'BLE MR JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.29909 of 2012

K.J.Mathew

...Petitioner.

Versus

1.The Director of Elementary Education,
College Road, Chennai – 600 006.

2.The District Elementary Educational Officer,
Coonoor, The Nilgiris District.

3.Mr.S.Murugesan

...Respondents

Prayer: This writ petition is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records relating to the impugned order of the 2nd respondent in Na.Ka.No.852/AA-2/2012 dated 29.06.2012 and quash the same and direct the 2nd respondent to follow the judgment of the Division Bench of this Hon'ble Court in W.P.No.19856 of 2004 and W.P.No.21732 of 2005 dated 03.02.2009 in the matter of promotion to the post of primary school headmaster in Tamil Medium Schools and promote the petitioner to the post of Primary School headmaster with effect from the date of the impugned order and grant him all consequential benefits.

For petitioner

:

Mr.P.Rajendran



W.P.No.29909 of 2012

For respondents : Mr.T.Cheziyan
R1 and R2 Additional Government Pleader
R3 : No Appearance

ORDER

The case of the petitioner is that he was working secondary grade teacher at the Panchayat Union Elementary School, Erumad, Gudalur Block and was initially appointed on 25.09.1999 and was declared to have completed the period of probation on 24.09.2001. The petitioner is a Malayalam Medium Teacher and passed second class Language test in Tamil (Full Test) conducted by Tamil Nadu Public Service Commission and have also passed Tamil Subject in SSLC. The petitioner is qualified for being promoted to the post of primary school headmaster in Tamil Medium Schools. However, the 2nd respondent has promoted his junior namely Mr.S.Murugesan as Primary School Headmaster. Aggrieved by this, the petitioner has given a representation to the 1st respondent on 10.07.2012 since no order is passed by the respondent.

2. Mr.P.Rajendran, learned counsel appearing for the petitioner submits that in the seniority list of teacher, the petitioner was placed at Serial No.59 and the 3rd respondent namely Mr.S.Murugesan is placed at serial No.68. The District Elementary Educational Officer, Coonor (2nd



W.P.No.29909 of 2012

respondent herein) has issued an order dated 29.06.2012 in Na.Ka.No.852/AA-2/2012 (the impugned order herein), promoting the 3rd respondent headmaster in the Panchayat Union Primary School, Mudumalai. The 3rd respondent name was wrongly typed as A.Murugesan in the impugned order and when the petitioner enquired at the office of the 2nd respondent as to why petitioner's seniority is overlooked. He was orally told by the officials of the second respondent office that only Tamil Medium Teachers should be posted as headmasters in the Tamil Medium Schools since the petitioner is a malyalam medium teacher he could not be promoted.

3. The learned counsel would further submit that it is contrary to the judgment of the Division Bench of this Hon'ble Court in W.P.No.19856 of 2004 and W.P.No.21732 of 2005 dated 03.02.2009. Since the 3rd respondent is junior to the petitioner and the petitioner's seniority was overlooked, he has submitted a representation dated 10.07.2012 to the 1st respondent and no order was passed till the date of fling of the representation.

4. The 2nd respondent vide order dated 29.06.2012 in Na.Ka.No.852/AA-2/2012 promoting petitioner's junior as headmaster,



W.P.No.29909 of 2012

aggrieved by the said order passed by the respondent, the petitioner has come forward with the present writ petition.

5. The learned counsel further drew attention of this Court to the order passed by the Division Bench of this Hon'ble Court in W.P.No.19856 of 2004 and W.P.No.21732 of 2005 dated 03.02.2009 upholding the directions of Tamil Nadu Administrative Tribunal:-

“We have therefore no hesitation to come to the conclusion that the practice of maintaining a separate seniority list for Tamil, Malayalam and Kannada Teachers in the Gudalur Taluk in Nilgiris District is contrary to the Special Rules and is therefore illegal. Consequently, we direct the respondents to maintain a common seniority list among the Secondary Grade Teachers and promote them as Headmasters in the Primary Schools whenever vacancy arises in accordance with their seniority in such a list subject to the condition that they satisfy the other qualifications, if any, prescribed under the Rules.”

The Division Bench of this Hon'ble Court was pleased to hold as follows:-

“If once the common seniority is maintained, there is no impediment for those persons to be promoted to the post of Primary School Headmaster, if they had completed the Second Language Test (Full Test in Tamil)...The Tribunal also held that such of those Malayalam Teachers who have passed Tamil alone have been provided the Headmaster post and therefore, there is no difficulty in maintaining a common seniority list in



respect of Gudalur District wherein substantial number of malayalis are residing. In the absence of any challenge to the Tribunal's order the respondent-state is bound to implement the said order”.

6. Hence he contended that the denial of promotion to the Malyali Medium Teachers in Tamil Medium Schools is contrary to the above said judgments of the Tamil Nadu Administrative Tribunal and the Division Bench of this Court. Hence the impugned order of the 2nd respondent Na.Ka.No.852/AA-2/2012 dated 29.06.2012 is liable to be set aside.

7. The learned counsel for the petitioner would further submit that the petitioner is fully qualified to the post of Primary School Headmaster in Tamil Medium Schools and is senior to the 3rd respondent and has also passed passed second class Language test in Tamil (Full Test) conducted by Tamil Nadu Public Service Commission and have also passed Tamil Subject in SSLC and denying promotion only on the ground that a Malyali Medium Teacher cannot be promoted in Tamil Medium Schools is unsustainable.

8. Learned counsel for the petitioner would rely on a judgment passed by the Division Bench of this Court in a connected matter in writ



W.P.No.29909 of 2012

appeal Nos.2480 and 170 of 2019 in which the appellant is none other than junior in the present writ petition namely Mr.S.Murugesan who filed the appeal against the order passed by the learned Single Judge in W.P.No.200 of 2013 dated 13.07.2017 quashing the promotion granted quashing appointment of said Murugesan as headmaster in Panchayat Union Primary School, Mudumalai. The Division Bench of this Court has dismissed the writ appeal on the ground that the appeal filed by the Mr.S.Murugesan as well as the department and by confirming the order passed by the learned single judge quashing the appointment of Murugesan as the Headmaster. The said Division Bench judgment is squarely applicable to the present case of the petitioner on hand.

9. A counter affidavit is filed by the 2nd respondent in the year 2013 in which it is stated that as per the direction of Elementary Education Proceedings in Rc.No.5939/ED1/2001 dated 15.11.2001 is not bound by the Special Rule 5 which states as follows:

“ a vacancy in the post of Headmaster/Headmistress in a Middle or Primary School especially provided for linguistic minority shall be filled up by transfer of any member of the same grade who is in possession of the respective language qualification and who may be employed at the time of



the vacancy in an institution not specially provided for linguistic minority. When such transfer is not possible, a member who is in possession of the respective language qualification may be appointed by any method admissible under Rule 2 above but he shall not acquire by reason only of such appointment any right in the matter of seniority or full membership in such grade transfer to a vacancy in such grade in an institution or establishment, not specially provided for linguistic establishment, not specially provided for linguistic minority or promotion, to a higher grade or category.”

10. Mr.T.Cheziyan, learned Additional Government Pleader would submit that the promotion of bi-linguistic Elementary School, no specific Rule is mentioned in the Special Rules for the Elementary Education Sub-Ordinate Service except the guidance given in the proceedings stated *supra* , therefore, as per the sub-Rules, the secondary grade teachers who are working in Tamil Medium Schools, are eligible for promotion to the post of primary school headmaster in Tamil Medium Primary Schools as well as the bi-lingual schools as per the combined seniority. On the other the Malyali Medium Secondary Grade Teachers who were working in Malyalam Medium School are eligible for promotion in minority Malyalam medium schools and bi-lingual schools as per the combined seniority. He further submitted that since the petitioner is a Malyalam



W.P.No.29909 of 2012

Secondary Grade Teacher is eligible to promote only in minority Malayalam Medium Schools and bi-linguistic schools. Mere passing of second language test in Tamil is not eligible to teach in Tamil Medium Schools. The primary objective of the schools is education of the children and not the convenience of the teachers and as and when vacancy arises in Malayalam Medium Schools, the name of the petitioner will be considered and he will be promoted as primary school headmaster in the Malayalam Medium School.

11. Heard both sides and perused the all the available materials on record.

12. In the case on hand and admitted fact that the petitioner is a Malayalam Medium Teacher and passed second class Language test in Tamil (Full Test) conducted by Tamil Nadu Public Service Commission and have also passed Tamil Subject in SSLC. Hence he is eligible and qualified for being promoted to the post of primary school headmaster in Tamil Medium School in view of the judgment passed by this Court in Writ Appeal Nos.1480 of 2019 and 1708 of 2019 in a similar case wherein Mr.S.Murugesan (3rd respondent herein) is a party in writ



appeals and the judgment of the Division Bench of this Court vide judgment dated 15.11.2023 has quashed the promotion of Mr.S.Murugesan as headmaster in the Panchayat Union Primary School, Mudumalai.

13. The Division Bench of this Court has relied on an earlier judgment of this Court in **Mr.S.Murugesan Vs. E.Makkar and Anr** in W.A.No.1480 of 2019 dated 15.11.2023 of which relevant paragraph Nos.7, 9, 10 and 11 are extracted below for ready reference:-

7. Relying upon the said Division Bench judgment, the learned Judge allowed the said writ petition, as he found that the writ petitioner E.Makkar had completed the language test and his name is found at S.No.41 in the combined seniority list, whereas the name of S.Murugesan, even though he belongs to Tamil language, has been placed in S.No.68 in the said seniority list. Since Makkar is senior, he should have been given promotion to the post of Primary School Headmaster, instead since promotion had been given to the said Murugesan, that was found to be unlawful and accordingly the learned Judge allowed the writ petition through the impugned order.

9. It is not in dispute that the writ petitioner Makkar got qualified in the language test in Tamil ie., full test. Therefore, he can be posted in bilingual institutions offering Malayalam and Tamil medium. Moreover, it is not a separate seniority list being maintained by the Department based on the language and that is also not permitted under the Rules and a combined seniority list had been prepared, where,



WEB COPY



W.P.No.29909 of 2012

admittedly the writ petitioner found place at S.No.41 whereas the said Murugesan found place at S.No.68. Therefore, naturally the writ petitioner E.Makkar had become senior and since had become qualified by having passed the test, he can very well be considered for the post of Primary School Headmaster.

10. Therefore, the promotion denied to the said writ petitioner E.Makkar and given to the said Murugesan was found to be unlawful, of course rightly by the learned judge through the impugned order, who in fact had followed the Division Bench judgment as referred to above.

11. It is also a fact that, as against the Division Bench order no further appeal has been filed and therefore, what has been concluded by the Division Bench in K.Gangadharan's case has become final. Therefore, following the said Division Bench judgment since the writ petition was allowed by the learned Judge through the impugned order, we do not find fault with the approach of the learned Judge and also, as a coordinate bench has already held in this subject in the said order in K.Gangadharan's case, which we would also respectfully follow, we do not find any infirmity in the order that is impugned herein.

14. This writ petition which is the subject matter of the Writ Appeal No.1408 of 2019 was filed by one Mr.E.Makar whose serial No.41 is junior to Mr.S.Murugesan is at serial No.68 and the petitioner in the present writ petition is at serial No.59. In the writ appeals, the respondent Mr.E.Makar was also senior like the petitioner in this case on hand Mr.K.J.Mathew to that of Mr.S.Murugesan (3rd respondent herein)



W.P.No.29909 of 2012

who is junior to the petitioner and was appointed as headmaster in primary school at Panchayat Union Primary School, Mudumalai.

15. In view of the factual above matrix and the ration laid down by the Hon'ble Division Bench of this Court in W.A.Nos.1480 of 2019 and 1708 of 2019 dated 15.12.2023, the impugned order of the 2nd respondent in Na.Ka.No.852/AA-2/2012 dated 29.06.2012 is liable to be quashed and the same is hereby quashed. In the result the writ petition is allowed and the 2nd respondent is directed to promote the petitioner to the post of primary school headmaster with effect from the date of the impugned order that is from 29.06.2012 and grant all consequential benefits within a period of eight (8) weeks from the date of receipt of copy of this order. There shall be no order as to costs.

01.02.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation Case: Yes/No
nst



WEB COPY



W.P.No.29909 of 2012

To:

- 1.The Director of Elementary Education,
College Road, Chennai – 600 006.
- 2.The District Elementary Educational Officer,
Coonoor, The Nilgiris District.

J.SATHYA NARAYANA PRASAD,J.

nst



WEB COPY



W.P.No.29909 of 2012

W.P.No.29909 of 2012

01.02.2024