



W.P.No.808 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2024

CORAM :

THE HONOURABLE **DR. JUSTICE D.NAGARJUN**

W.P.No.808 of 2015
and
M.P.Nos.1 and 2 of 2015

K.Ramalingam

... Petitioner

Vs.

1. The District Elementary Educational Officer,
District Elementary Education Office,
Nagapattinam.
2. The Additional Elementary Educational Officer,
District Elementary Education Office
Kollidam - 609 102.
3. The Assistant Elementary Educational Officer,
District Elementary Education Office
Kollidam - 609 102.
4. S.M.Saravana Kumar

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus, calling for the records of the first and the third respondents vide proceedings in Na.Ka.No.2393/A2/AA4/2014 and Na.Ka.No.1570/A1/2014 dated 30.12.2014 and to quash the same and



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consequently direct the first to third respondents to promote the petitioner to the post of BT Assistant (Maths) with effect from 30.12.2014 with all consequential benefits including the arrears of pay and seniority etc.

For petitioner	:	Mr.R.Syed Mustafa
For R1 to R3	:	Mr.S.Ravikumar Special Government Pleader
For R2	:	Mr.L.Pravinbanu for M/s.Row and Reddy

ORDER

This writ petition is filed seeking to quash the proceedings in Na.Ka.No.2393/A2/AA4/2014 and Na.Ka.No.1570/A1/2014 dated 30.12.2014 and to direct the respondents one to three to promote the petitioner to the post of BT Assistant (Maths) with effect from 30.12.2014.

2. The facts in brief as per the affidavit enclosed to the writ petition are as follows:

2.1. The petitioner has joined as a Secondary Grade Teacher on 29.08.2001 and acquired the qualification for the post of BT Assistant (Maths) and her qualification was also entered in the service register.



2.2. The fourth respondent joined as Senior Grade Teacher on 16.07.2009 nearly eight years after the petitioner joined the service. The respondents one to three have prepared a panel in the discipline of Maths for B.T.Assistant for the year 2014 on 19.05.2014, wherein the petitioner's name was not found in the said panel.

2.3. The petitioner has submitted representations to include his name in the panel and has also made several representations to that effect on various dates including on 05.06.2014, 04.09.2014, 03.10.2014 and 12.11.2014. The Seniority list for the post of Senior Grade Teacher was published on 01.01.2014, whereas the petitioner's name was reflected at Sl.No.43 and the fourth respondent's name was reflected at Sl.No.114.

2.4. The representation of the petitioner with regard to the panel was rejected by the respondents one to three *vide* Na.Ka.No.1570/A1/2014 dated 30.12.2014 on technical ground and the said representation was not given on time and further the fourth respondent was promoted on the same day *vide* proceeding in Na.Ka No.2393/A2/AA4/2014 dated 30.12.2014. Aggrieved by the rejection of the representation made by the petitioner, the present writ



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petition is filed.

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3. Counter affidavit has been filed by the first respondent stating that seniority list of B.T. trained Secondary Grade Teachers were to be filled up by the way of promotion for the academic year 2014-2015 and the seniority list was published in the notice board of A.E.E.O's Office, Kollidam and circulated to all teachers of Kollidam Block. As per the instruction's cited in the Directors Proceedings, if any error or irregularity was found in the list the affected teachers may make representation before the concerned Officers within a period of three months as per G.O.Ms.No.72 P&A.R. Department dated 28.01.1982. Since no complaints were received, the seniority list and the panel for promotion was released.

3.1. The petitioner has not raised any issue or appeal against the said seniority list and panel within the stipulated time as per the above said Government Order. The petitioner's representations dated 05.06.2014, 04.09.2014 and 03.10.2014 were not received through proper channel. The petitioner has sent representations on various dates, i.e., 05.11.2014 and 14.11.2014, after a lapse of 9 months and racking up the past matters after a



long time would result administrative complications and difficulties.

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3.2. The petitioner submitted delayed representations and the same was rejected by proceedings in Na.Ka.No.1570/A1/2014 dated 30.12.2014. Therefore, the order of the District Elementary Educational Officer, Nagapattinam *vide* proceedings dated Na.ka.No.2393/A2/A4/2014 dated 30.12.2014 are justifiable and hence, the relief sought by the petitioner could not be entertained.

4. Heard both sides and perused the materials available on record.

5. There is no dispute that the petitioner entered into service as Senior Grade Teacher on 29.08.2001 whereas the fourth respondent entered into service on 16.07.2009 nearly eight years after the petitioner joined the service. In the seniority list published by the respondents for the Kollidam Taluk, Nagapattinam District, the petitioner has been shown at Sl.No.43 and the fourth respondent's name is shown at Sl.No.104. As per the seniority list published the petitioner is senior than the fourth respondent. Once the petitioner is senior he should get promotion when ever opportunity comes,



ahead of the fourth respondent.

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6. The respondents one to three Department with an intention to fill the post of BT Assistant (Maths) by way of promotion has prepared the panel and published on 19.05.2014 in the discipline of Maths in the year 2014. In the said panel the petitioner's name was not found. However, the name of the fourth respondent was included. Aggrieved by the same the petitioner has made representations on 05.06.2014, 04.09.2014, 03.10.2014 and 12.01.2014. However, such representations were not considered and finally the representation of the petitioner was rejected on 30.12.2014 on simple technical ground that the petitioner has not raised objections within three months from the date of preparation of the panel. In support of the contention of the respondents, the learned counsel for the respondents has quoted Rule 45 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, wherein it is stated that:

"....on a petition submitted by an aggrieved member within two months in the case of State Services and within three months in the case of Subordinate service, from the date on which the list is displayed in the Notice Board in the office of the appointing authority. If no representation is received within the said period, the list



communicated shall be deemed to be final."

It is true that as per the above referred rule, within three month from the date of declaration of the panel, representations if any, have to be given raising objections seeking revision of panel.

7. The learned counsel for the petitioner has submitted vehemently that the proceedings of the respondents rejecting the representation of the petitioner is grossly violation of principle of natural justice and settled legal propositions. the petitioner submitted representation dated 05.06.2014 and on subsequent dates in respect of the panel prepared on 19.05.2014, i.e, initial representation was given by the petitioner within 15 days of publishing of the said panel. The proceedings dated 30.12.2014 was sent to the petitioner discloses that on 05.11.2014 the petitioner has addressed a letter to the respondents one to three and clarification in respect of the same was sought. It clearly shows that the petitioner has submitted representation dated 05.11.2014. It is mentioned in the letter dated 30.12.2014 that within thirty days from the date of receipt, the request of the petitioner was rejected as he could not filed appeal at that time.



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8. On considering the material on record it appears to this Court that the petitioner has represented on time and the same was not considered by the respondents one to three on merits. However, the representation filed by the petitioner was rejected on the ground of delay and according to the petitioner there is no delay as he filed the representation on 05.06.2014. Therefore, the contention of the respondents that there is a delay in filing of the representation by the petitioner is not convincing.

9. However, while rejecting the representation filed by the petitioner the respondent did not speak anything on merits. The respondents should have disposed of the representation of the petitioner even on merits. In the entire counter affidavit there is no mention as to why the petitioner being much senior to the fourth respondent was denied promotion. There was no disciplinary proceedings pending, there was no punishment in currency, even then the petitioner was simply ignored. When the petitioner is admittedly at Sl.No.43 then the fourth respondent who was placed at Sl.No.143, giving promotion to the fourth respondent and declining promotion to the petitioner is incorrect.



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10. The petitioner is not responsible for the administrative mistake committed by the respondents one to three in not promoting the petitioner prior to the fourth respondent. The petitioner was in zone of consideration, however, for the reasons known to the respondents one to three he was not promoted. There is no whisper in the entire counter affidavit as to why the petitioner could not be promoted as B.T Assistant (Maths).

11. Once the petitioner's name was not found in the panel for promotion, then the respondents one to three should have rectified their mistake by including the petitioner's name in the promotion list and promoted him as B.T Assistant (Maths). However, in order to get over the mistake committed by the respondents one to three, the respondents have taken a silly ground that the petitioner submitted delayed representation, even though, the representation was received by them on time. It is evident that the respondents one to three have deliberately committed a serious mistake and even after submission of representation by the petitioner, without making any efforts to rectify the mistake and again continued the same mistake of not considering the petitioner's representation on merits. The petitioner's



representation should have been considered by the respondents one to three as considering for the promotion is a basic right. though the petitioner cannot demand promotion as a matter of right, but he has got every right to demand that his representation should be considered as his name be included in the panel. This Court would have appreciated the respondents one to three if they would have considered the representation of the petitioner and disposed of on merits. Considering from any angle, declining the promotion of the petitioner and rejecting the representation of the petitioner by way of impugned order is not justifiable and liable to be set aside. Once the rejection is liable to be set side, as the petitioner is senior to the fourth respondent he should have been promoted w.e.f. 30.12.2014.

12. It is reported by the learned counsel for the petitioner that the petitioner is still working as Senior Grade Teacher whereas the fourth respondent has been working as B.T Assistant (Maths) since the year 2014. Though, it is submitted by the learned counsel for the petitioner that in the place of the petitioner the fourth respondent has been promoted and is working but no record has been filed to that extent. In view of the above discussion, the impugned order dated 30/12/2014 is liable to be set aside.



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13. In view of the above, this writ petition is allowed in part. The respondents one, two and three are directed to give promotion to the petitioner as BT Assistant (Maths) w.e.f. 30/12/2014 notionally without any financial benefits and re-fix the salary of the petitioner in the post of BT Assistant (Maths) w.e.f. 30/12/2014 and to provide monetary benefits from the date of joining of the petitioner as BT Assistant (Maths). It is further directed to treat the petitioner's promotion as BT Assistant (Maths) w.e.f. 30/12/2014 for service benefits including terminal benefits, pension, etc. However, this writ petition is dismissed insofar as the prayer seeking to set

DR.N.NAGARJUN.J.,

vca

aside the proceedings in Na.Ka.No.2393/A2/AA4/2014 dated 30/12/2014 through which the fourth respondent was promoted as BT Assistant (Maths). Connected M.Ps are closed. No costs.

12.01.2024

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Indexs	:	Yes/No
Internet	:	Yes/No
Citation	:	Yes/No



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To:

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District Elementary Education Office,
Nagapattinam.
2. The Additional Elementary Educational Officer,
District Elementary Education Office
Kollidam - 609 102.
3. The Assistant Elementary Educational Officer,
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