



Rev.Aplw.No.133 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Review Application No.133 of 2024
in W.P.No.18996 of 2019
and WMP.No.23906 of 2024

- 1.T.Jayashree
Elementary School Headmaster
Panchayat Union Primary School
Sanamau, Soolagiri Block.
- 2.Savithramma
Elementary School Headmaster
Panchayat Union Primary School
Sanamau, Soolagiri Block.
- 3.V.Munisamy
Elementary School Headmaster
Panchayat Union Primary School
Sanamau, Soolagiri Block.
- 4.A.Munirathna
Elementary School Headmaster
Panchayat Union Primary School
Sanamau, Soolagiri Block.

.. Petitioners

Vs.

- 1.Yessagnanam Arketi
B.T.Assistant (Mathematics)
Panchayat Union Middle School
Kottangarai, Shoolagiri Unioin
Krishnagiri District.
- 2.The Director of Elementary Education
DPI Campus
College Road
Chennai 600 006.



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3.The District Educational Officer
Hosur
Krishnagiri District.

4.The Block Educational Officer
Soolagiri
Krishnagiri District.

.. Respondents

PRAYER: Review Petition has been filed under Order 47 Rule 1 r/w under Section 114 of CPC, to review the order dated 04.12.2019 in W.P.No.18996 of 2019.

For Petitioners	:	Mr.L.Chandrakumar
For Respondents	:	Mrs.Dakshayani Reddy Senior Counsel for Mrs.S.Suneetha for R1 Mr.R.Neelakandan Additional Advocate General Asst. by Mrs.S.Mythreye Chandru Special Government Pleader for R2 to R4

ORDER

This Review Application has been filed to review the order passed in W.P.No.18996 of 2019, dated 04.12.2019.

2.When the matter came up for hearing on 12.08.2024, this Court passed the following order:

Heard Mr.L.Chandrakumar, learned counsel appearing on behalf of the petitioner.



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2.The writ petition was disposed of by this Court by an order dated 04.12.2019 and the operative portion of the order is extracted hereunder:

22.In view of the above discussion, the impugned panel drawn by the 3rd respondent for promotion to the post of Middle School Headmaster, Soolagiri Block, requires interference. Accordingly, the same is quashed. The 3rd respondent is directed to include the name of the petitioner in the panel for promotion and consider the promotion to the post of Middle School Headmaster strictly in accordance with the provisions of Section 41 of the Act and complete the whole process within a period of four (4) weeks from the date of receipt copy of this order.

3.The learned counsel for the petitioner brought to my notice two orders passed by Division Benches in W.A.No.107 of 2022, dated 11.07.2024 and W.A.No.1346 of 2021, dated 01.07.2024.

4.In the order passed in W.A.No.107 of 2022, it has been held as follows:

12. The method of appointment envisages that to the post of a Headmaster Middle School will be made by promotion of the aforesaid Class based on their combined seniority. It is not the case of the first respondent that she is senior to the appellant and respondents 6 to 8 whose names were drawn in the panel by the respondents 2 to 5. However, it is her case that Section 41 of the Act gave her priority, as she draws more salary than the appellant and individual respondents. Since, Section 68 mandates that the provisions of the Act would not be applied, if the Special Rules on the



subject is inconsistent with the Act.

13. Even though, the arguments of the learned counsel for the first respondent is attractive, we do not propose to entertain the same. The Special Rules envisages only a combined seniority of the feeder categories and does not give any priority for a person placed in a higher pay band. Therefore, we are of the view that Section 41 is inconsistent with the Provision of the Special Act and by application of Section 68 of the Act, the Provisions of the Act particularly Section 41. becomes inoperative. The learned Single Judge had over looked the provisions of the Special Rules and the Provision of Section 68 of the Act and had applied Section 41 of the Act to the facts of the present case and had held that the first respondent would be entitled to be included in the panel for promotion and to grant promotion based on Section 41 of the Act, which according to us is not correct principle, that ought to have been followed in the facts of the case.

5.In the order in W.A.No.1346 of 2021, it has been held as follows:

5. The learned Additional Advocate General furnished a copy of the letter 14.03.2024 issued by the Director of Elementary School Education addressed to the learned Additional Advocate General. The said letter reveals that an exemption was granted by the Government in G.O (Ms) No.12, School Education Department dated 30.01.2020 for implementing Section 41(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. Based on G.O (Ms) No.166, School Education Department



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dated 07.06.1999, promotions were granted till the year 2020. Since the Government granted exemption. Subsequently a decision was taken to implement Section 41(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 with effect from 31.12.2023 by making necessary amendments to the Elementary School Subordinate Service Rules. Therefore, as of now, promotions to the post 'Middle School Headmasters' are made based on Section 41(1) of Tamil Nadu Government Servants (Conditions of Service) Act, 2016.

6. With reference to the grievance as advanced by the appellant, though we could able to find some discrepancies in following the Rules for grant of promotion to 'Middle School Headmasters', that was rectified by the Government by granting exemption and therefore, the settled seniority need not be now unsettled after several years. The appellants have approached the Writ Court after a lapse of 14 years from the date of issuance of G.O (Ms) No.166, School Education Department dated 07.06.1999. Though they have approached the Writ Court at the time of considering their names, we could able to find by that time, the seniority was settled and promotions were granted to large number of employees served in the cadre of 'Elementary School Headmasters' and 'B.T Assistants'. Since the seniority position was settled and all those promoted candidates are serving in the cadre of 'Middle School Headmasters', unsettling the settled seniority would result in wider repercussions. Thus, we are not inclined to undo the promotions already granted based on G.O (Ms) No.166, School Education Department dated 07.06.1999, which has been upheld by the learned Division Bench as stated supra.

7. Thus, the case of the appellants are directed to be



considered with reference to Section 41(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. It is needless to state that all promotions hereinafter must be made strictly in accordance with the provisions of the Act. In the event of any violations, actions are to be initiated against the officials, who are responsible and accountable.

6.It was also brought to the notice of this Court that the order passed in the writ petition has already been implemented and the name of the petitioner was also included in the panel for promotion to the post of Middle School Headmaster and the promotion was also granted.

7.The Division Bench orders that have been cited by the learned counsel for the petitioner have come subsequent to the order passed by this Court in the writ petition. It is now too well settled that the subsequent order can never be a ground to review an earlier order passed. Therefore, the order that has been passed in the writ petition can only be challenged in the manner known to law by way of filing an appeal citing the two Division Bench orders.

8.This Court wants to see if the review petitioner can also be accommodated in the post of Middle School Headmaster without disturbing the status of the writ petitioner. The learned Special Government Pleader appearing on behalf of respondents 2 to 4 shall take instructions in this regard and shall report before this Court.

Post this case for further hearing on 27.8.2024 at 2.15 pm.



3.The matter was once again listed for hearing on 03.09.2024 and this Court passed the following order :

Pursuant to the order dated 12.8.2024, the learned Additional Advocate General appearing on behalf of respondents 2 to 4 has produced the written instructions received from the third respondent. He submitted that even though vacancies are available, the review petitioners cannot be accommodated in the post of Middle School Headmaster.

2. In view of the said submission, the matter has to be considered only on its own merits.

3. Post on 04.9.2024 at 2.15 PM.

4.Heard Mr.L.Chandrakumar, learned counsel for the petitioners, Mrs.Dakshayani Reddy, learned Senior Counsel for R1 and Mr.R.Neelakandan, learned Additional Advocate General for R2 to R4.

5.The main ground that was urged by the learned counsel for the review petitioners is that the writ petitioner cannot claim seniority over the review petitioners by referring to Section 41 of the Tamil Nadu Government Servants (Conditions of Service) Act 2016 [hereinafter referred to as 'the Act']. The learned counsel submitted that the review petitioners were already promoted to the post of Middle School Headmaster much earlier and the writ petitioner has not challenged the promotion of the petitioner which took place in the year 2010,



2011 and 2014 respectively. It was further submitted that the law on this issue has now been settled in two Division Bench orders where it was made clear that Section 41 of the Act will only have a prospective effect. That Apart, Section 41 of the Act cannot outweigh the effect that was given under G.O.Ms.No.166 dated 07.06.1999 which was passed under Rule 48 of the Tamil Nadu State and Subordinate Service Rules (hereinafter referred to as 'the Rules').

6.Per contra, the learned Senior Counsel appearing on behalf of the writ petitioner submitted that the Division Bench had only considered the effect of the subsequent G.O.Ms.No.12 dated 30.01.2020. Whereas in the instant case, the promotion pertained to the year 2019 i.e., 01.01.2019. The learned Senior Counsel submitted that the law that was governing the field was only Section 41 of the Act and the same was taken into consideration while passing the order in the writ petition. The learned Senior Counsel further submitted that the order passed by the Division Bench will not have any bearing and the same cannot be treated as a ground to review the order passed in the writ petition. It was further contended that this Court had also taken into account the fact that the review petitioners had not completed the Tamil test within the time stipulated and they had completed it much later. On this ground also, writ petition was allowed and there is absolutely no reason to review the order passed in the writ petition.



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7.The writ petition was mainly allowed after taking into consideration the scope of Section 41 of the Act. This Court held that the Government Order in G.O.Ms.No.166 dated 07.06.1999 was passed under Rule 48 of the Rules. However, after coming into force of Section 41 of the Act, the same will prevail.

8.On considering the order passed by the Division Bench, it can be seen that the Division Bench has merely upheld the Government Order in G.O.Ms.No.166 dated 07.06.1999. The subsequent relaxation came into force on 30.01.2020, after the issuance of G.O.Ms.No.12. Between the period from 2016 to 2020, there was no clarity. The promotion in question pertained to 01.01.2019 at which point of time, only Section 41 of the Act was in force. The Division Bench in W.A.No.107 of 2022, focused only on the effect of G.O.Ms.No.12 dated 30.01.2020.

9.In the light of the above discussion, none of the findings rendered by this Court in the writ petition suffers from any error apparent on the face of the order. In any event, the subsequent orders passed by the Division Bench cannot be a ground to review the order passed in the writ petition at which point of time, the order of the Division Bench was not available.



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10. This Court does not find any ground to review the order passed in the writ petition in W.P.No.18996 of 2019, dated 04.12.2019 and accordingly, this review application stands dismissed. No costs. Consequently, connected writ miscellaneous petition is closed.

04.09.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No



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B.T.Assistant (Mathematics)
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N.ANAND VENKATESH, J.

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