



WEB COPY



W.P.No.6882 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2024

CORAM

THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.6882 of 2016
and WMP Nos.6113 & 6114 of 2016

M.Angayee

... Petitioner

vs.

1. The State of Tamil Nadu
rep. by the Secretary to Government
Education Department, Secretariat,
Chennai – 600 009.

2. The Director of School Education (Personnel),
College Road,
Chennai – 6.

3. The Joint Director of School Education,
(Personnel Establishment),
College Road,
Chennai – 6.

4. The District Elementary Educational Officer,
Salem.

5. The District Elementary Educational Officer,
Dharmapuri. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of



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India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 3rd respondent in connection with the order passed by him in Proc. Na. Ka. No.91431/A4/ 2008 dated 20.12.11 and also on the file of the 2nd respondent in connection with the orders passed by him in his proc.Na.Ka. No. 13913/C4/ E2/2012 dated 12.2012 signed on 4.1.13 and Na.Ka. No. 48314/ A3/E1/ 2015 dated 29.8.15 quash the same and direct the respondents to promote the petitioner to the post of Superintendent with effect from the date of promotion given to her juniors in September 2008 with all monetary and service benefits.

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mr.S.Prabhakaran (for R1 to R3)
Government Advocate

R4 & R5 : No Appearance

ORDER

The instant writ petition is filed for the following relief:

“for issuance of a writ of certiorarified mandamus, to call for the records on the file of the 3rd respondent in connection with the order passed by him in Proc. Na. Ka. No.91431/A4/ 2008 dated 20.12.11 and also on the file of the 2nd respondent in connection with the orders passed by him in his proc.Na.Ka. No. 13913/C4/ E2/2012 dated 12.2012 signed on 4.1.13 and Na.Ka. No. 48314/ A3/E1/ 2015 dated 29.8.15 quash the same and direct the respondents to promote the petitioner to the post of Superintendent with effect from the date of promotion given to her juniors in September 2008 with all monetary and service benefits.”



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2. The petitioner was appointed as Typist and joined the service on 03.04.1984. She was promoted to the post of Assistant on 26.10.1995 and was eligible for promotion to the post of Superintendent in September 2008. The petitioner was not given promotion because of the pendency of the disciplinary proceedings that were initiated against her by way of a charge memo dated 21.10.2008, wherein five charges were framed against the petitioner. The petitioner replied to the charges on 30.10.2008 and since her reply was found to be unsatisfactory, an enquiry was conducted and the enquiry officer submitted his report on 27.07.2010.

3. Thereafter, a show cause notice was issued to the petitioner on 02.05.2011 and she gave her detailed representation on 08.06.2011. The 2nd respondent thereafter passed a detailed order imposing minor punishment of stoppage of increment for six months without cumulative effect by order dated 20.12.2011. The petitioner challenged the said punishment order before this Court in W.P.No.11660 of 2015 and also prayed for promotion as Superintendent from September 2008, on par with his juniors. This Court vide order dated 21.04.2015 disposed of the said writ petition with a



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direction to the 1st respondent therein to consider the request of the petitioner for promotion, taking note of the further proceedings of the 3rd respondent dated 04.11.2013 on merits, as the petitioner had already retired from service on 30.04.2013 and pass appropriate orders expeditiously.

4. The respondents in pursuance to the orders passed by this Court in W.P.No.11660 of 2015, passed the impugned order rejecting the petitioner's request for promotion. Aggrieved by the order passed by the 2nd respondent, the petitioner has filed the present writ petition.

5. (i) The learned counsel for the petitioner submitted that even in the earlier writ petition, the petitioner claimed promotion during the year September 2008 on par with her juniors. The learned counsel further submitted that the delay on the part of the respondents in concluding the enquiry and imposing the punishment, ought not to have been held against the petitioner. The learned counsel submitted that the petitioner was eligible for promotion even in September 2008 and because of the delay in concluding the disciplinary proceedings, her right to promotion was affected, that too, for no fault of hers.



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WEB COPY (ii). The learned counsel relied on the Division Bench judgment of this Court in WA No.646 of 2021 dated 15.09.2021 and submitted that on the crucial date, i.e., on 15.03.2008, there were no disciplinary proceedings pending against the petitioner and therefore, the petitioner ought to have been empanelled for promotion in September 2008 itself. The learned counsel for the petitioner submitted that the Division Bench in the Judgment dated 15.09.2021 in W.A.No.646 of 2021 clearly held that if on the crucial date, no disciplinary proceedings were pending, then the person could not be deprived of promotion.

6.(i) The learned Government Advocate appearing for the respondent on the other hand relied on the order dated 21.04.2015 made in WP No.11660 of 2015 and submitted that the petitioner was eligible for promotion only from 2010 and therefore, the claim of the petitioner for promotion in the year 2008, was untenable. The learned Government Advocate further submitted that the direction issued by this Court was only to consider the petitioner's case for promotion as per the proceedings of the 3rd respondent dated 04.11.2013 and therefore, the petitioner could not claim



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promotion, as a matter of right

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7. Heard the learned counsel on either side and perused the materials available on record.

8. Admittedly, the petitioner joined as Typist on 03.04.1984 and was subsequently promoted as Assistant on 26.10.1995. The petitioner was eligible for promotion to the post of Superintendent in September 2008, but she was not included in the panel for promotion, on the ground that disciplinary proceedings were initiated against her vide charge memo dated 21.10.2008. The counsel for the petitioner submits that the crucial date as far as promotion to the post of Superintendent is concerned was 15.03.2008 and as no disciplinary proceedings were initiated against the petitioner on the said date, the petitioner ought to have been considered for promotion in September 2008 itself. In contra, the Government Advocate appearing for the respondents, submits that at the time of preparation of the selection panel, the charge memo was already issued and therefore, the petitioner could not be considered for promotion in September 2008.

9. In my view, the contention of the learned Government Advocate



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appearing for the respondents cannot be countenanced in view of the judgment of the Division Bench of this Court in WA No.646 of 2021 dated 15.09.2021. In the said judgment, the Hon'ble Division Bench following the earlier Division Bench Judgment of this Court had held that if on the crucial date there were no disciplinary proceedings pending, then the employee would be entitled for promotion. In the present case, the charge memo was issued on 21.10.2008 after 7 months of the crucial date (i.e.) 15.03.2008. Therefore, the Division Bench judgment squarely applies to the facts of the case.

10. The learned Government Advocate relying on the order passed by this Court in the earlier round of litigation in WP No.11660 of 2015 dated 21.04.2015 contended that the petitioner's request was directed to be considered as per the proceedings of the 3rd respondent dated 04.11.2013 and so the petitioner could not claim promotion from September 2008. In my view, the said contention cannot be countenanced, as in the present writ petition and also in the earlier writ petition, the petitioner claimed promotion from the year 2008.



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11. In view of the above discussions, I am of the considered view that the petitioner is entitled for the relief prayed for. Accordingly, the impugned orders are quashed and the respondents are directed to consider the petitioner for promotion to the post of Superintendent from September 2008 and to pass appropriate orders within a period of twelve weeks from the date of receipt of a copy of this order.

12. With the above directions, the writ petition stands allowed. No Costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

13.08.2024

Index : Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
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To
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State of Tamil Nadu,
Education Department, Secretariat,
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N.MALA, J.

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