



W.P.No.18654 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.18654 of 2020

D.Chitra

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep by the Secretary to Government,
School Education Department,
Chennai 600 009.
- 2.The Director of Elementary Education,
DPI Campus,
Chennai.
- 3.The District Educational Officer,
Tiruvannamalai.
- 4.The Block Educational Officer -III
Tiruvannamalai.

5.R.Prasanna

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the third respondent relating to the impugned order dated 11.07.2019 bearing ref: Na.Ka.No.4388/B2/2019 on the file of the fourth



W.P.No.18654 of 2020

respondent relating to the impugned orders (i) bearing ref: Na.Ka.No.1305/E2/2019 dated 11.07.2019 and (ii) bearing Procs No.1579/E/2019 dated 03.09.2019 and quash the same in as much as they did not grant promotion to the petitioner with effect from 01.06.2017 and consequently direct the respondents 1 to 4 to grant promotion to the petitioner as B.T.Assistant (Maths) with effect from 01.06.2017 with all seniority, service and monetary benefits.

For Petitioner : Mr.R.Saravanan for
Mr.T.Saikrishnan

For Respondents : Mr.P.Gurunathan, AGP for R1 to R5

ORDER

This Writ Petition has been filed seeking issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the third respondent relating to the impugned order dated 11.07.2019 bearing ref: Na.Ka.No.4388/B2/2019 on the file of the fourth respondent relating to the impugned orders (i) bearing ref: Na.Ka.No.1305/E2/2019 dated 11.07.2019 and (ii) bearing Procs No.1579/E/2019 dated 03.09.2019 and quash the same in as much as they did not grant promotion to the petitioner with effect from 01.06.2019 and consequently direct the respondents 1 to 4 to grant promotion to the petitioner as B.T.Assistant



W.P.No.18654 of 2020

(Maths) with effect from 01.06.2017 with all seniority, service and monetary benefits.

2. Heard Mr.R.Saravanan, learned counsel for the petitioner and Mr.P.Gurunathan, learned Additional Government Pleader for the respondents 1 to 5.

3. The petitioner was originally appointed as Secondary Grade Teacher and as per the list of seniority, she stood above one Prasanna in the promotion panel prepared as on 01.01.2011 for according 50% promotion to the Secondary Grade Teacher to the post of B.T.Assistant as stated in G.O.Ms.No.174 dated 15.06.2006. As on 10.08.2010 there were 10 vacancies for promotion to the post of B.T.Assistant from the cadre of Secondary Grade Teachers. Admittedly, the petitioner stood in the fourth position in the selection list and Prasanna stood in the fifth position.

4. Since promotion was not given to the immediate junior of the petitioner viz., Prasanna, he filed a Writ Petition in W.P.No.37968 of



W.P.No.18654 of 2020

2016 and obtained an order for direction. Subsequently, Prasanna was promoted with effect from 01.06.2017. Since the petitioner was not promoted despite her junior was promoted, she filed a Writ Petition in W.P.No.15939 of 2017 and on which, a direction has been given to consider the petitioner's representation for promotion in accordance with G.O.Ms.No.174 dated 15.09.2006. However an order has been issued subsequent to the said order passed in the Writ Petition by the third respondent on 26.10.2017 stating that promotion panel for the year 2017 was over and hence, the petitioner cannot be accommodated in 01.01.2017 panel and she can be accommodated to the next promotion panel dated 01.01.2018.

5. Since the petitioner's junior was promoted, the petitioner once again challenged the said order by preferring a Writ Petition in W.P.No.32606 of 2017. An order has been passed in the said Writ Petition on 14.02.2019 by confirming in unequivocal terms that the petitioner is no doubt senior to Prasanna who was also arrayed as fifth respondent in the said Writ Petition. Hence, a further direction was given



W.P.No.18654 of 2020

to pass an order by promoting the petitioner in the light of her seniority over Prasanna. Subsequently, the impugned order has been passed by promoting the petitioner with effect from 11.07.2019. Now the grievance of the petitioner is that even though she is senior to her immediate junior Prasanna, she has not been given any retrospective effect in the matter of promotion on par with her junior. But her promotion was given effect only from 11.07.2019. Hence, she has filed this Writ Petition to quash the order dated 11.07.2019 so far it relates to the date of implementation of the promotion and for consequential direction.

6. The learned Additional Government Pleader for the respondents 1 to 4 submitted that the claim of the petitioner is devoid of merits in view of the following reasons:

"1. The writ petitioner is a 'fence-sitter' who waited for some time for the 5th respondent to get favourable orders in his favour and thereafter, she had come to this Court.

2.The seniority could not be fixed with retrospective effect from 01.06.2019 as the petitioner was appointed and serving as B.T.Assistant only from



W.P.No.18654 of 2020

WEB COPY

12.07.2019 and if allowed, it will further affect the 3rd party rights and it would unsettle the settled things.

3.The petitioner was served as Secondary Grade Assistant up to 11.07.2019 as such the salary was disbursed to the petitioner for the post of Secondary Grade Assistant upto 11.07.2019.

4. As the petitioner was promoted and appointed as B.T.Assistant from 12.07.2019. The petitioner's salary was fixed in the post of B.T.Assistant scale of pay w.e.f 12.07.2019.

5.The principle of no work no pay is applicable in the petitioner's case as she was working as B.T.Assistant from the date of 12.07.2019 only but she did not work as B.T.Assistant during the period between 01.06.2017 and 11.07.2019 as such fixing B.T.Assistant pay from 01.06.2017 is against the rules."

7. So far as the first point is concerned, it is wrong to assume that the petitioner was a 'fence-sitter' because the respondents need not wait for any one to file a litigation for getting their promotion. The Government Order rightly gives 50% share of the B.T.Assistant post to



W.P.No.18654 of 2020

be promoted from and among the Secondary Grade Teachers in accordance with their seniority. Hence, such a description about the petitioner is unnecessary. Atleast after her immediate junior was given with a favourable order, the respondents ought to have considered the claim of the petitioner who is senior to the person who have got the order in the Writ Petition, without waiting for each one of them to come to Court and get an individual order.

8. In respect of points 2 to 5, there is a difference between giving notional effect and extending monetary benefits. It is unfortunate that the petitioner though senior to her immediate junior Prasanna could get promotion only on 11.07.2019 and prior to that she was only executing her functions as Secondary Grade Teacher and not as B.T.Assistant. Even though the petitioner is entitled to claim compensation for the delayed promotion in terms of salary, she can only get the salary meant for the post held by her and for the relevant functions executed by her . So the monetary benefit of the promotion can only be extended from the date of her appointment in the promoted post of B.T.Assistant. However,



W.P.No.18654 of 2020

notional benefit can be given with retrospective effect from 01.06.2017

on which date, the petitioner's immediate junior Prasanna was promoted and accordingly, her seniority should also be restored above her immediate junior Prasanna atleast for the purpose of considering the promotional prospectus of the petitioner favourably during the next promotion.

9. In view of the above stated reasons, this Writ Petition is allowed and the impugned orders in Na.Ka.No.1305/E2/2019 dated 11.07.2019 and in Procs No.1579/E/2019 dated 03.09.2019 are set aside and the respondents 1 to 4 are directed to grant promotion to the petitioner as B.T.Assistant (Maths) with effect from 01.06.2017 with all seniority, service and monetary benefits, within a period of four weeks from the date of receipt of a copy of this order. No costs.

20.02.2024

Index : Yes /No

Internet : Yes/No

Speaking / Non-speaking

gsk



W.P.No.18654 of 2020

WEB COPY

To

- 1.The Secretary to Government,
School Education Department,
Chennai 600 009.
- 2.The Director of Elementary Education,
DPI Campus,
Chennai.
- 3.The District Educational Officer,
Tiruvannamalai.
- 4.The Block Educational Officer -III
Tiruvannamalai.



WEB COPY



W.P.No.18654 of 2020

R.N.MANJULA, J.

gsk

W.P.No.18654 of 2020

20.02.2024