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W.P.No.12295 of 2017



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.12295 of 2017

and

W.M.P.No.13067 of 2017

Mrs.P.Porkodi

... Petitioner

Vs.

1. The Director of Elementary School Education,
DPI, Chennai – 6.
2. The District Elementary School Educational Officer,
Salem, Salem District.
3. The Additional Assistant Elementary Educational Officer,
Office of the Asst., Elementary Education,
Nangavalli – 636 454, Salem District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent bearing Na.Ka.No.1345/அ2/2017 dated 24.04.2017 passed subsequent to the order of the 3rd Respondent and order bearing Na.Ka.No.272/2017/A2 dated 23.02.2017 and quash the orders of the 2nd and 3rd respondents with the consequential direction to the second and third respondents to act in compliance of requisition made by the petitioner for considering the petitioner as Head Master in Panchayat Union Middle School



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as the eligible teacher as on 01.01.2017.

For Petitioner : Mr.V.Parthiban
for P.Bhuvaneshwari

For R1 to R3 : Mr.K.H.Ravikumar,
Government Advocate

ORDER

The petitioner herein, who was initially appointed as Graduate Teacher on regular basis was temporarily promoted to the post of Middle School Head Master through proceedings dated 10.10.2019 and accordingly, the petitioner joined the said post on 12.10.2009 and thereafter, made a request to relinquish the said promotion and opted to work as Graduate Teacher because of certain personal reasons. Thereafter, in the year 2017, the petitioner made a request for including her name in the seniority list for consideration for promotion to the post of Middle School Head Master. The said request of the petitioner was rejected by the respondents on the ground that the petitioner has permanently relinquished her right to promotion and the demotion that was effected on her request is of permanent nature and accordingly, the proceedings in Na.Ka.No.272/2017/A2 dated 23.02.2017 was issued by the third respondent. The said proceedings was confirmed by the second respondent through proceedings in Na.Ka.No.1345/A2/2017



dated 24.04.2017. Aggrieved by the said proceedings, the petitioner approached this Court by filing the present Writ Petition.

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2. It is contended by learned counsel for the petitioner that the relinquishment of her promotion to the post of Middle School Head Master by the petitioner at the relevant point of time in the year 2009 is only in respect of the said post/vacancy to which the petitioner was temporarily promoted at the relevant point of time. But the same cannot be construed as a permanent relinquishment for promotion.

3. The respondents filed a counter-affidavit placing reliance on Rule 47(2) of the Tamil Nadu State and Subordinate Service Rules and also Section 57 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.

4. Mr.K.H.Ravikumar, learned Government Advocate appearing on behalf of the respondents submit that once an employee relinquish her privilege or right to promotion to the post of Middle School Head Master, the said relinquishment shall be permanent in terms of Rule 47(2) of the Tamil



Nadu State and Subordinate Service Rules and Section 57 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.

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5. This Court has carefully considered the submissions made on either side and also perused the materials available on record.

6. As already noted above, the petitioner was promoted to the post of Middle School Head Master through proceedings dated 10.10.2019 and thereafter, considering the request of the petitioner to relinquish the said promotion through proceedings dated 05.11.2009, the petitioner was reverted to the post of Graduate Teacher and in the said proceedings, it is categorically mentioned that the petitioner's reversion to the post of Graduate Teacher was permanent. But it is nowhere mentioned that the petitioner will not be entitled to make any claim for promotion in future. Further, the reliance placed by the learned Government Advocate on Rule 47 (2) of the Tamil Nadu State and Subordinate Service Rules and Section 57 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 to support the impugned proceedings, in the considered view of this Court does not stand to legal scrutiny for the following reasons:-



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7. Sub-Rule (2) of Rule 47 of the Tamil Nadu State and Subordinate Service Rules reads as under:-

*“ (2) Relinquishment of a right or privilege for a temporary period shall be accepted if it is made for a period of not less than three years subject to the condition that after the expiry of the said period, the claim of the right or privilege relinquished will be with reference to the state of affairs that exist on the date of expiry of period of relinquishment and without restoration of original seniority. **If relinquishment of right or privilege is made permanently and is accepted subsequent claim of the relinquished rights or privileges shall not be entertained.** ”*

8. Section 57(2) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 reads as under:-

“ (2) Relinquishment of a right or privilege for a temporary period shall be accepted if it



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is made for a period of not less than three years, subject to the condition that after the expiry of the said period, the claim of the right or privilege relinquished will be with reference to the state of affairs that exist on the date of expiry of the period of relinquishment and without restoration of original seniority. If relinquishment of right or privilege is made permanently and is accepted, subsequent claim of the relinquished rights or privileges shall not be entertained.”

9. A reading of Sub-Rule 2 of Rule 47 of the Tamil Nadu State and Sub-ordinate Service Rules and Section 57 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 makes it clear that any relinquishment of a right or privilege for a temporary period shall be accepted if it is for a period of not less than three years and after expiry of that relinquishment period, the claim of the right or privilege relinquished will be with reference to the state of affairs that exist on the date of expiry of the period of relinquishment and the employee, who relinquished such privilege or right will not be entitled to claim such right or privilege with a retrospective



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effect i.e., from the date of such relinquishment. But the claim of such employee would be considered as per the circumstances existing as on the date of expiry of such relinquishment only. In other words, the effect of the above provision is that, the person who relinquishes her/his right or privilege will not be entitled to claim such benefit for the vacancy/ post in respect of which relinquishment was made or entitled to make any claim on par with the persons, who get the benefit as a result of such relinquishment of such a right or privilege by such an employee. But on the other hand, the above provision emphasizes that such employee, who relinquished her right would be entitled to claim such privilege or right as per the circumstances or affairs existing as on date of expiry of period of relinquishment.

10. In the instant case, the petitioner is not making any claim within a period of three years, but admittedly, the petitioner made a claim for consideration of her case for promotion to the post of Middle School Head Master after a period of eight years. Even assuming that the petitioner has relinquished her right or privilege for promotion to the post of Middle School Head Master in the year 2009. Such relinquishment is only in respect of the part to which she was then promoted and such relinquishment viz-a-viz the



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said post would be permanent. In addition to such relinquishment, the restriction that would follow is that she will not be entitled to make any claim for the same right or privilege for a minimum period of three years from the date of relinquishment. Thus, even assuming that the petitioner has relinquished her right for promotion to the post of Middle School Head Master that was existing in the year 2009, there is nothing in the Rules that would prevent her to claim such right or privilege and make a claim with prospective effect as per the affairs prevailing after expiry of the period of relinquishment. In the instant case, the claim of the petitioner is only to consider her case for promotion to the post of Middle School Head Master only from the year 2017 i.e., when she made a representation but not with retrospective effect. But unfortunately, the respondents 2 and 3 have totally misconstrued the effect of Sub-Rule(2) of Rule 47 of the Tamil Nadu State and Subordinate Rules and Section 57 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and erroneously declined the claim of the petitioner.

11. In the circumstances, the impugned orders are wholly unsustainable and contrary to the very import of Section 57 of the Tamil



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Nadu Government Servants (Conditions of Service) Act, 2016. Therefore, the impugned orders are liable to be set aside and they are accordingly set aside.

Consequently, the Writ Petition stands allowed directing the respondents to consider the case of the petitioner for promotion to the post of Middle School Head Master with reference to the date of her representation i.e., 21.02.2017 and in case if any of her juniors as on 21.02.2017 are promoted to the post of Middle School Head Master, the respondents shall consider the case of the petitioner for notional promotion from the date on which the juniors of the petitioner were promoted and pass appropriate orders as expeditiously as possible at any rate within a period of three months from the date of receipt of a copy of this order. No costs. Connected Miscellaneous Petitions, if any, shall stand closed.

01.04.2024

skr

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

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MUMMINENI SUDHEER KUMAR, J.

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