



W.A.No.3584 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.02.2024

CORAM

THE HON'BLE Mr. JUSTICE R. MAHADEVAN
AND
THE HON'BLE Mr. JUSTICE MOHAMMED SHAFFIQ

W.A.No.3584 of 2023

AND

C.M.P.No.29337 of 2023

1.The State of Tamil Nadu
Principal Secretary to Government
School Education Department
Secretariat, Fort St. George
Chennai 600 009

2.The Director of School Education
DPI Campus, College Road
Chennai 600 006

.. Appellants

Vs.

A.Arumainathan

.. Respondent

Writ Appeal filed under Clause 15 of the Letters Patent Act, against the order dated 28.02.2023 passed in W.P.No.1175 of 2015.

For Appellants : Mr.Abishek Murthy
Government Advocate

For Respondent : Mrs.Nalini Chidambaram
Senior Counsel
for Mrs.C.Uma



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JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

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This appeal has been filed against the order passed by a learned Judge in W.P.No.1175 of 2015 on 28.02.2023.

2.The respondent herein has preferred the aforesaid writ petition for the following relief:

"to issue a writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the 1st appellant in Letter No.20112/pakal(1) /2013(2) dated 29.07.2013 and the subsequent proceedings issued by the 1st appellant in Letter no.39294/pakal (1)/2013-1 dated 17.01.2014 and to quash the same and consequently direct the appellants to promote the respondent to the post of High School Headmaster by including his name in the panel for the year 2010 on par with junior with all consequential and other attendant benefits including arrears of salary within a time frame to be fixed by this court."

3.It was stated by the respondent before the writ court that he got qualified in B.Sc. Mathematics in the year 1989 and M.Sc. Mathematics in the year 1991 and B.Ed. in the year 1993. His name was sponsored through employment exchange for selection by Teachers Recruitment Board. Though the selection was sought to be conducted by Teachers Recruitment Board for the Department of School Education, some of the selected candidates to the post of B.T. Assistant and P.G Assistant have been allotted to MBC



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Department for appointment in Kallar Reclamation School. Accordingly, the

respondent was issued with an order of appointment to the post of B.T.

Assistant in Government Kallar Reclamation Higher Secondary School,

Papparapatti, Usulampatti Taluk, Madurai District as per the order dated

15.12.1997. However, the respondent was not called to exercise his option for

appointment to Kallar Reclamation School, though he was selected to the post

of B.T.Assistant (Mathematics) in the Department of School Education.

Therefore, he made a request to transfer him to School Education Department

as he was originally selected for the Department of School Education, but

allotted to Kallar Reclamation School. Pursuant to the same, he was transferred

to School Education Department to the post of B.T.Assistant as per

G.O.Ms.No.96 School Education Department dated 24.04.2007. In the said

G.O, it was indicated that since he got transferred on his own request, he was

placed junior most in the Department of School Education. Subsequently, the

respondent made representation seeking to count his seniority from the date of

initial appointment in Kallar Reclamation School since the allotment was made

without calling for his option and further, contrary to the process of selection

that was conducted for Department of School Education. Considering his

request, his name was included in the panel for the year 2009 for promotion to

the post of PG Assistant by reckoning his seniority from the date of his initial



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appointment. He was given promotion to the post of PG Assistant as per the proceedings of Joint Director of School Education (Higher Secondary) Chennai dated 30.07.2009. Since the respondent was to be considered for promotion to the post of High School Headmaster and number of his juniors were given promotion overlooking his seniority, he made representation to the authorities on 05.12.2012 for promotion to the post of High School Headmaster based on his seniority from the date of initial appointment. Since his request was not considered, he filed a writ petition in W.P.No.9184/2013, which was disposed of, by directing the authorities to consider the claim of the respondent and pass appropriate orders, on merits and in accordance with law, within a period of eight weeks. Pursuant to the same, the first appellant issued the proceedings dated 29.07.2013 and 17.01.2014 rejecting the claim of the respondent, which have given rise to the filing of the instant writ petition in WP. No. 1175 of 2015 by the respondent herein.

4.Considering the arguments advanced on either side, the learned Judge allowed the aforesaid writ petition by order dated 28.02.2023, which is impugned herein. It would be appropriate to extract Paragraphs 8 to 10 of the same, as under:

“8.It is not in dispute that the petitioner was selected through the



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selection conducted by Teachers Recruitment Board for the Department of School Education. Some of the selected candidates to the post of B.T. Assistant and PG Assistant have been allotted to MBC Department for appointment in Kallar Reclamation School. As per order dated 15.12.1997, the petitioner was appointed to the post of B.T. Assistant in Government Kallar Reclamation Higher Secondary School, Papparapatti, Usulampatti Taluk, Madurai District. The petitioner was not called to exercise his option for appointment to Kallar Reclamation School though he was selected to the post of B.T.Assistant (Mathematics) in the Department of School Education. Hence, he made representation for appointment in the School Education Department. Pursuant to which, G.O.Ms.No.96 School Education Department dated 24.04.2007 was issued transferring the petitioner to School Education Department but he was placed junior most in the Department of School Education. The contention of the respondents that when the transfer was made on the own request of the petitioner he is bound to accept the conditions of such transfer, cannot be countenanced as the posting was made contrary to the process of selection that was conducted for Department of School Education in the year 1997.

9.The Corrigendum Order dated 17.01.2014 states that PG Assistant appointed in Kallar Reclamation School, later transferred to School Education Department as per G.O.Ms.No.7 dated 17.01.2002 are placed as junior most person in the School Education department. Whereas as per the order of this Court passed in W.P.No.13839 of 2014 dated 18.06.2014, PG Assistant selected through Teacher Recruitment Board in the year 1997 for School Education Department allotted to Kallar Reclamation Schools without any option being exercised by them, were directed to be given the benefit of seniority from the date of initial appointment. The same yardstick is to be applied to the petitioner's case also since he was also selected for the post of B.T.Assistant in School Education Department and allotted to Kallar Reclamation School without any option being exercised by him.

10. The Teacher Recruitment Board, in the subsequent selections issued separate notification for selection to the post of B.T. Assistant and PG Assistant for Kallar Reclamation schools which has made it clear that 1997 selection was made only in respect of teaching post in School Education Department. It is seen that the petitioner's juniors have been given promotion overlooking the petitioner affecting his service rights. It is also seen that earlier, he was given promotion to the post of PG Assistant in the year 2009 based on his entire length of service but after a period of three years, he was issued with an order of cancellation of promotion, as per the order of Joint Director of School Education dated 12.09.2013, on the premise that the service rendered by the petitioner in the post of B.T. Assistant in Kallar Reclamation School, cannot be taken into consideration for seniority and promotion in the School Education. The transfer will not in any way affect the retention of his original seniority that was assigned to him in the selection of the year 1997 by the Teachers Recruitment Board.



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Therefore, the subsequent revision of seniority cannot be sustained in law. Once the PG Assistant who were appointed along with the petitioner in Kallar Reclamation School were given promotion taking into account their seniority from the date of their initial appointment, the same yardstick is to be applied in the case of the petitioner by extending the same benefits. Thus, the respondents has to refix the seniority of the petitioner with effect from the date of his initial appointment in the year 1997 and grant him consequential promotion."

Aggrieved by the aforesaid order of the learned Judge, the appellants / State have come up with this writ appeal.

5.The learned Government Advocate appearing for the appellants has submitted that the respondent was sponsored through Employment Exchange for recruitment by Teachers Recruitment Board for the post of B.T.Assistant and he was issued with an order of appointment to the said post in Government Kallar Reclamation Higher Secondary School, Papparapatti, Usilampatti Taluk, Madurai District by order dated 15.12.1997. Consequently, based on his request, he was transferred to School Education Department as per G.O.Ms.No.96 School Education Department dated 24.04.2007 on certain conditions which included that the respondent would lose his seniority and will be placed junior most in the Department he joined. Thereafter, his name was included in the panel for promotion for the year 2009 to the post of P.G. Assistant by reckoning his seniority from the date of his initial appointment. But later, his promotion was cancelled in 2012 stating that the period of service



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rendered by him in Kallar Reclamation School cannot be taken into

consideration for his seniority since he got transferred on his own request. It is

further submitted that an approved probationer in the post appointed in the

other units of Department will be placed below the approved probationers in

identical category in that unit or Department. Rule 9 of the Special Rules

mandates that the seniority of teacher transferred from one unit to another shall

be reckoned from the date of joining the category in which he was transferred

and also will be placed below the approved probationers in identical category.

To fortify his contention, the learned Government Advocate relied on the

decision of the Hon'ble Apex Court in *K.P.Sudhakaran and Others vs. State of*

Kerala and Ors, reported in MANU/SC/8149/2006. He also relied upon the

decision of this Court in W.A.No.2723 of 2012 dated 14.12.2012 wherein it has

been held that once teachers get transferred on their request from one unit to

another unit, they should necessarily be placed as juniors to other teachers. This

order dated 14.12.2012 was followed by another Division Bench of this Court

in the judgment passed in W.A.Nos.1211, 1213 of 2019 and 1782, 1825 and

2031 of 2018 dated 18.06.2019. Without considering all these aspects, the

learned Judge erred in allowing the writ petition filed by the respondent herein,

by the order impugned herein, which will have to be set aside, according to the

learned Government Advocate appearing for the appellants.



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6. On the other hand, the learned Senior Counsel appearing for the respondent has submitted that the respondent was selected to the post of B.T. Assistant in the year 1997 through Teachers Recruitment Board along with PG Assistants and allotted to Kallar Reclamation School without calling for any option. Hence, he submitted a representation for appointment in the School Education Department, pursuant to which, G.O.Ms.No.96 School Education Department dated 24.04.2007 came to be issued transferring the respondent to the school Education Department. Taking note of the same, the learned Judge has rightly held that such transfer will not in any way affect the retention of the respondent's original seniority that was assigned to him in the selection of the year 1997 by the Teachers Recruitment Board and therefore, the subsequent revision of seniority cannot be sustained in law. Having held so, the learned Judge directed the appellants to re-fix the seniority of the respondent with effect from the date of his initial appointment in the year 1997 and to give him all consequential promotions with service benefits. Thus, according to the learned senior counsel, the order of the learned Judge does not require any interference at the hands of this court.

7. Heard the learned counsel on either side and perused the records.



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8. The issue involved in this appeal is no longer res integra. In the decision of the Hon'ble Apex Court in *K.P.Sudhakaran and Ors. vs. State of Kerala and Ors*, reported in MANU/SC/8149/2006, which has been relied upon by the appellants, it has been held as follows:

"In service jurisprudence, the general rule is that if a Government servant holding a particular post is transferred to the same post in the same cadre, the transfer will not wipe out his length of service in the post till the date of transfer and the period of service in the post before his transfer has to be taken into consideration in computing the seniority in the transferred post. But where a Government servant is so transferred on his own request, the transferred employee will have to forego his seniority till the date of transfer, and will be placed at the bottom below the junior-most employee in the category in the new cadre or department. This is because a government servant getting transferred to another unit or department for his personal considerations, cannot be permitted to disturb the seniority of the employees in the department to which he is transferred by claiming that his service in the department from which he has been transferred, should be taken into account. This is also because a person appointed to a particular post in a cadre, should know the strength of the cadre and prospects of promotion on the basis of the seniority list prepared for the cadre and any addition from outside would disturb such prospects. The matter is however, governed by the relevant service Rules."

9. It is also seen from the decision of this Court in W.A.No.2723 of 2012 dated 14.12.2012 that once teachers get transferred on their request from one unit to another unit, they should necessarily be placed as juniors to other teachers. The said decision was followed by a Division Bench of this Court in the judgment dated 18.06.2019 passed in W.A.Nos.1211, 1213 of 2019 and 1782, 1825 and 2031 of 2018.



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10. Considering the case on hand, a perusal of the papers, more particularly, the appointment order dated 15.12.1997 and G.O.Ms.No.96 School Education Department dated 24.04.2007, would clearly reveal that originally, the respondent was appointed in the Kallar Reclamation School, Papparapatti, Madurai District on 15.12.1997. Only based on the transfer request made by him, he was transferred to the School Education Department. As such, the respondent cannot take a stand that since he has been recruited for School Education Department, an option ought to have been given to him to post him in Kallar Reclamation School, Papparapatti, Madurai District. He also cannot come around and say that he should be granted the benefit to count the services from the date of his initial appointment on the ground that his juniors were given promotion overlooking his rights. The fact remains that he has been transferred to School Education Department only on his own volition. The law is very clear and the above judgments of the Hon'ble Supreme Court and this Court clearly cover the issue involved herein.

11. In view of the foregoing, the impugned order passed by the learned Judge is set aside and the writ appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D,J.] [M.S.Q, J.]



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