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W.A.(MD)Nos.506 of 2010 and 522 of 2012

and

W.P.(MD)Nos.2086 & 3975 of 2008 and 8189 & 20042 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.02.2024

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

and

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

W.A.(MD)Nos.506 of 2010 and 522 of 2012

and

M.P.(MD)No.1 of 2010 in W.A.(MD)No.506 of 2010

and

M.P.(MD)No.3 of 2012 in W.A.(MD)No.522 of 2012

and

W.P.(MD)Nos.2086 & 3975 of 2008 and 8189 & 20042 of 2013

and

M.P.(MD)No.2 of 2008 in W.P.(MD)No.3975 of 2008

and

M.P.(MD)No.1 of 2013 in W.P.(MD)No.8189 of 2013

W.A.(MD)No.506 of 2010:-

1.S.Thiagarajan

2.V.K.Kannan

3.K.Mallika

... Appellants

VS.

1.K.Balamurugan

2.M.Thandapani

3.A.Anthony Arockiya Raj

4.R.Perumal

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W.A.(MD)Nos.506 of 2010 and 522 of 2012

and

W.P.(MD)Nos.2086 & 3975 of 2008 and 8189 & 20042 of 2013

5.The Director of Tamil Nadu Elementary Education,
Chennai – 6.

6.The District Elementary Educational Officer,
Dindigul District,
Dindigul.

7.The Assistant Elementary Educational Officer,
Vedachandur,
Dindigul District.

8.S.Amalaorbavam

9.S.Latha

10.M.Nagajothi

11.Y.Infenta Latha

12.P.Jeeva

... Respondents

PRAYER : Writ Appeal filed under Clause 15 of the Letters of Patent, against the order dated 30.03.2010, in W.P.(MD)No.5418 of 2007.

For Appellants	: Mr.V.Panneer Selvam for M/s.C.S. Associates
For R1 to R3	: Mr.Mohammed Suhail for M/s.Ajmal Associates
For R5 to R7	: Mr.D.Sadiq Raja Additional Government Pleader
For R8 to R12	: No Appearance

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W.A.(MD)No.522 of 2012:-

J.Rajan

... Appellant

vs.

1.R.Hemalatha

2.The Director of Elementary Education,
College Road,
Chennai – 600 006.

3.The District Elementary Educational Officer,
Theni,
Theni District.

4.The Additional Assistant Elementary Educational Officer,
Periyakulam,
Theni District.

... Respondents

PRAYER : Writ Appeal filed under Clause 15 of the Letters of Patent, against the order dated 29.08.2011, in W.P.(MD)No.9109 of 2011.

For Appellant

: Mr.V.Panneerselvam
for M/s.C.S. Associates

For R1

: Mr.Mohamed Suhail
for M/s.Ajmal Associates

For R2 to R4

: Mr.D.Sadiq Raja
Additional Government Pleader



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W.A.(MD)Nos.506 of 2010 and 522 of 2012

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W.P.(MD)No.2086 of 2008:-

K.S.Vasuki

... Petitioner

vs.

- 1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Department of School Education,
Fort St. George, Chennai – 600 009.
- 2.The Director of Elementary Education,
College Road, Chennai – 600 006.
- 3.The District Elementary Educational Officer,
Madurai District,
Madurai.

- 4.The Additional Assistant Elementary Educational Officer,
T.Kallupatti Panchayat Union, T.Kallupatti – 625 702,
Madurai District.

5.K.Thangakamu

6.Jayajothi

7.B.Muthulakshmi

8.V.Saraswathi

... Respondents

[R5 to R8 impleaded as party respondents vide order
dated 09.04.2011 in M.P.(MD)No.1 of 2011)

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the third respondent in his proceedings in Na.Ka.No.2901/A5/07, dated 24.01.2008, quash the same as illegal and consequently, direct the third respondent to promote petitioner as Headmaster of Panchayat Union Primary School, pursuant to the counselling held on 03.11.2007 for that purpose, within the period stipulated by this Court.

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For Petitioner	: Mr.Mohammed Suhail for M/s.Ajmal Associates
For R1 to R4	: Mr.D.Sadiq Raja Additional Government Pleader
For R5 to R7	: Mr.K.Hemakarthiskeyan
For R8	: No Appearance

W.P.(MD)No.3975 of 2008:-

K.S.Vasugi

... Petitioner

vs.

1.The Director of Elementary Education,
College Road, Chennai – 6.

2.The District Elementary Educational Officer,
Tallakulam,
Madurai,
Madurai District.

3.The Assistant Elementary Educational Officer,
T.Kallupatti,
Madurai District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the proceedings issued by the first respondent in his proceedings in

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Na.Ka.No.16170/D3/2007, dated 11.06.2007, quash the same as illegal and consequently, direct the respondents to consider the petitioner for promotion to the post of Headmaster of Elementary Schools in T.Kallupatty Panchayat Union, taking into account of the ranking assigned by the Tamil Nadu Teachers Recruitment Board in 1995 in terms of G.O.Ms.No.388, Education, Science and Technical Education Department, dated 19.06.1996.

For Petitioner : Mr.Mohammed Suhail
for M/s.Ajmal Associates

For Respondents : Mr.D.Sadiq Raja
Additional Government Pleader

W.P.(MD)No.8189 of 2013:-

Vellaiyammal

... Petitioner

vs.

- 1.The Secretary to Government,
Government of Tamil Nadu,
Education, Science and Technology Department,
Fort St. George, Chennai – 600 009.
- 2.The Director of Elementary Education,
Office of the Directorate of Elementary Education,
Chennai.



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3.The District Elementary Educational Officer,
Office of the District Elementary Education Officer,
Theni District.

4.The Additional Assistant Elementary Educational Officer,
Office of the Additional Assistant Elementary Education Officer,
Periyakulam,
Theni District.

5.V.Manimegalai

6.G.Vasuki

7.T.Sethuraman

8.J.Jebaraj Kennedy

9.J.Rajan

10.A.Shanmugavalli

11.S.Valarmathi

12.G.Renukadevi

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the fourth respondent in Na.Ka.No. 154/A1/2013, dated 04.04.2013 with seniority list insofar as respondents 5 to 12 are concerned, quash the same insofar as respondents 5 to 12 are concerned and



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consequently, direct the respondents 1 to 4 herein to place the petitioner above the names of respondents 5 to 12 as per State Level Ranking allotted on the basis of merit and seniority as per G.O.Ms.No.388, dated 19.06.1996, issued by the first respondent in line with the judgments of the Hon'ble Supreme Court reported in (1992) 4 SCC 455 and (1998) 2 SCC 523.

For Petitioner : No Appearance

For R1 to R4 : Mr.D.Sadiq Raja
Additional Government Pleader

For R6, R8, R11 & R12 : No Appearance

For R9 : Mr.V.Panneer Selvam

W.P.(MD)No.20042 of 2013:-

Vellaiyammal

... Petitioner

vs.

- 1.The Director of Elementary Education,
Office of the Director of Elementary Education,
College Road, Chennai – 600 006.
- 2.The District Elementary Educational Officer,
Office of the District Elementary Educational Officer,
Theni, Theni District.



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3.The Assistant Elementary Educational Officer,
Office of the Assistant Elementary Educational Officer,
Periyakulam,
Theni District.

4.T.Sethuraman

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the second respondent in Na.Ka.No. 2350/AA5/2013, dated 23.11.2013, quash the same and consequently, direct the respondents 1 to 3 herein to promote the petitioner herein as Headmaster of Elementary School at Saruthupatti Panchayat Union Elementary School, Periyakulam Union, Theni District, with all monetary benefits, without any further delay.

For Petitioner : No Appearance

For R1 to R3 : Mr.D.Sadiq Raja
Additional Government Pleader

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COMMON JUDGMENT

DR.G.JAYACHANDRAN, J.
and
C.KUMARAPPAN, J.

After establishing the Teachers Recruitment Board in the year 1995 in the State of Tamil Nadu, the recruitment for the Teachers is being done through the Teachers Recruitment Board at State Level, which was hitherto done at the District Level or the Panchayat Level, as the case may be, in respect of High Schools and Primary / Elementary Schools, respectively.

2. When recruitment at the State Level was done, the persons, who were selected and appointed had a grievance that they were not posted within their native District, but far off District, causing inconvenience to them. On several representations to the State, to mitigate the difficulty and grievance, as a one time measure, the Government issued G.O.(Ms)No.388, Education, Science and Technical Education Department, dated 19.06.1996, which is the genesis for filing of Writ Petitions for and against.

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3. Though G.O.(Ms)No.388, Education, Science and Technical Education Department, dated 19.06.1996, was issued with very good intention, misinterpretation and abuse of the Government Order had led to multiple litigations with multiple interim orders and Contempt Petitions.

4. The sum and substance of the said Government Order was to provide transfer from one District to another District, which should be the native District of the applicant. However, request was made for transfer from one District to another District, which is not their native District, but the District, which is convenient for the applicant, for various reasons. Also, applications were made by candidates from one Panchayat Union to another Panchayat Union within the same District.

5. By virtue of interim orders, they were able to get transfer without losing their original seniority as per their first date of appointment. However, this was in fact, contrary to the service rule in general and whenever a request transfer is made from one District to another District, where separate seniority list is



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maintained, the applicant/candidate has to lose the seniority and will be placed at the bottom of the seniority list in the concerned District to which she or he is transferred. This rule also applies, if the transfer is made from one Union to another Union within the same District, where the Union is the appointing unit.

6. After being put to sufferance by various litigations and Contempt Petitions, the Education Department in the State has now come with an amendment to the service rule through G.O.(Ms)No.243, School Education (EE1(1)) Department, dated 21.12.2023, wherein after referring the judgments rendered by this Court, amendment is made to retain Statewide seniority in respect of Graduate Teachers, Secondary Grade Teachers and B.T. Assistants.

7. In the light of the above factual background, on analysing these batch of Writ Petitions and Writ Appeals, this Court finds that Vellaiyammal, who is the writ petitioner in W.P.(MD)Nos.8189 and 20042 of 2013, was initially appointed in the year 1995 as Secondary Grade Teacher at Myladumparai Union, Theni District and on her request, she was transferred to Sarathupatti, Periyakulam

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Union, on 23.07.1999. While joining the new Union, she had relinquished her original seniority and accepted to be placed at the bottom of the seniority in the Union, which she joined. However, when one T.Sethuraman was promoted as Headmaster of Sarathupatti Panchayat Union School, Periyakulam Union, vide proceedings dated 23.11.2023, he challenged the same claiming that his seniority has to be reckoned from the date on which he joined the other Union in the light of G.O.(Ms)No.388, Education, Science and Technical Education Department, dated 19.06.1996.

8. Vellaiyammal also preferred W.P.(MD)No.8189 of 2013 alleging that the respondents 5 to 12 therein are juniors to her as per the merit ranking of State level seniority and all along when candidates were considered for promotion as Headmaster of Secondary School, the State level rank list alone was considered. While so, contrary to G.O.(Ms)No.388, Education, Science and Technical Education Department, dated 19.06.1996, the Director of Elementary Education has passed proceedings dated 11.06.2007, placing the transferred teachers at the bottom of the list of seniority in the concerned Union, which is contrary to the



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spirit of G.O.(Ms)No.388, Education, Science and Technical Education Department, dated 19.06.1996.

9. K.S.Vasuki, who is the writ petitioner in W.P.(MD)Nos.2086 and 3975 of 2008, had approached this Court seeking Writ of Certiorarified Mandamus, to quash the impugned proceedings of the District Elementary Education Officer, dated 24.01.2008, rejecting her request to retain her original seniority despite her request transfer from her native District [Dindigul] to Madurai District. Further, she also prayed for considering her name for the promotional post of Headmistress.

10. In the other Writ Petition in W.P.(MD)No.3975 of 2008 filed for the relief of Writ of Certiorarified Mandamus, challenging the proceedings of the Director of Elementary Education, dated 11.06.2007, she sought for direction to promote her to the post of Headmistress of Elementary School in T.Kallupatti Panchayat Union, taking into account her ranking assigned by the Tamil Nadu Teachers Recruitment Board in the year 1995 in terms of G.O.(Ms)No.388, Education, Science and Technical Education Department, dated 19.06.1996.

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11. With similar or almost similar prayer, other batch of Writ Petitions came up for consideration before Hon'ble Mr.Justice R.S.Ramanathan, wherein the proceedings of the Director of Elementary Education, dated 11.06.2007, was the storm of attack. The said proceedings as a clarificatory note to G.O.(Ms)No.388, Education, Science and Technical Education Department, dated 19.06.1996, said that the concession granted under G.O.(Ms)No.388, Education, Science and Technical Education Department, dated 19.06.1996, is restricted only for the first time transfer from other District to the native District and not for subsequent transfers. It is an one time measure and it cannot be taken advantage in perpetuity.

12. The learned Judge after considering the submissions made by the learned counsels, held that this issue is no more *res integra* in the light of the order passed in W.P.(MD)No.22499 of 2007, dated 10.04.2008. The learned Judge also held that G.O.(Ms)No.388, Education, Science and Technical Education Department, dated 19.06.1996, which provides for one time concession, is applicable to persons, who got transfer from one District to another District or



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from one Panchayat Union to another Panchayat Union within the same District and they can retain their seniority.

13. The above said order is the subject matter of challenge in W.A. (MD)No.506 of 2010 filed by Mr.S.Thiagarajan.

14. Following the judgment of Hon'ble Mr.Justice R.S.Ramanathan, in a batch of Writ Petitions in W.P.(MD)Nos.5418 of 2007 etc. batch, the Hon'ble Mr.Justice S.Manikumar disposed W.P.(MD)No.9109 of 2011 and that one J.Rajan, who is the third party to the proceedings, has preferred W.A.(MD)No.522 of 2012.

15. On the examination of the materials and the submission of the learned Additional Government Pleader appearing for the State, this Court finds that insofar as Vellaiyammal, who is the writ petitioner in W.P.(MD)Nos.8189 and 20042 of 2013 is concerned, she had opted for transfer from one Union to another on her own and got transferred on 23.07.1999. She had agreed to the condition

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that she will forego her original seniority and accept to be placed at the bottom of the seniority in the transferred Union. This voluntary undertaking was after three years of passing of the Government Order, which has been consistently accepted to be an one time measure and only when the transfer was sought for to the native District or Union, as the case may be. Therefore, by no stretch of imagination, the prayer sought by Ms.Vellaiyammal can be acceded.

16. That apart, it is brought to the notice of this Court that now Ms.Vellaiyammal has attained the age of superannuation and she was also, during her service, promoted as Headmistress of Panchayat Union School. Hence, this Court finds that nothing survives in the case of Ms.Vellaiyammal.

17. As far as Ms.K.S.Vasuki, who is the writ petitioner in W.P.(MD)Nos. 2086 and 3975 of 2008 is concerned, the proceedings of the Director of Elementary Education, dated 24.01.2008, which is the subject matter of challenge in W.P.(MD)No.2086 of 2008, clearly indicates that her transfer was from her native District [Dindigul] to Madurai District. Therefore, she is liable to lose her



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seniority, since the transfer does not fall within the parameters of G.O.(Ms)No. 388, Education, Science and Technical Education Department, dated 19.06.1996. As a result, her other W.P.(MD)No.3975 of 2008 is also bound to fail.

18. The learned counsel appearing for the writ petitioner K.S.Vasuki submitted that by virtue of an interim order, K.S.Vasuki was promoted as Headmistress considering her original seniority and also further promoted as B.T. Assistant. Such promotion will be protected as per the tenor of the latest G.O. (Ms)No.243, School Education (EE1(1)) Department, dated 21.12.2023. Therefore, nothing survives in these two Writ Petitions.

19. Regarding W.A.(MD)Nos.506 of 2010 and 522 of 2012, which are subject matter of the orders passed in W.P.(MD)Nos.5418 of 2007 etc. batch and W.P.(MD)No.9109 of 2011, respectively, the appellant Rajan after filing in W.A. (MD)No.522 of 2012, had obtained stay of the operation of the order passed by the learned Judge and his status and seniority never been disturbed and pending appeals, the appellants were also promoted.

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20. The Government has considered the orders passed in various Writ Petitions and has come out with the Government Order, by amending the service rules, which is expected to be a solution for the anomaly prevailing.

21. The learned Additional Government Pleader, on instructions, also submitted that the Elementary Education Department has already prepared a draft Statewide seniority list insofar as B.T. Assistants and Primary School Headmasters and Middle School Headmasters. The draft list for Secondary Grade Teachers is under preparation. The said draft list will be circulated to all the Districts and after inviting objections and suggestions, the Statewide seniority list will be finalized and published.

22. This Court hopes that this exercise will be done expeditiously, and the same will resolve the disputes. It is needless to say that if any person has any grievance, it will be open to them to workout the remedy after publication of the seniority list as per G.O.(Ms)No.243, School Education (EE1(1)) Department, dated 21.12.2023.



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23. With the above observations, these Writ Appeals and Writ Petitions are disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No

NCC : Yes / No

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[G.J., J.] [C.K., J.]

13.02.2024

To

- 1.The Secretary to Government of Tamil Nadu,
Department of School Education,
Fort St. George, Chennai – 600 009.
- 2.The Director of Elementary Education,
College Road,
Chennai – 600 006.
- 3.The District Elementary Educational Officer,
Dindigul District,
Dindigul.
- 4.The District Elementary Educational Officer,
Theni,
Theni District.
- 5.The District Elementary Educational Officer,
Tallakulam,
Madurai,
Madurai District.

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- 6.The Assistant Elementary Educational Officer,
Vedachandur,
Dindigul District.
- 7.The Assistant Elementary Educational Officer,
Periyakulam,
Theni District.
- 8.The Assistant Elementary Educational Officer,
T.Kallupatti,
Madurai District.



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